

Regulatory Updates
Compiled for the Pine Chemicals Association
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Table of Contents

SAFETY

Page 2 - [OSHA Begins Rulemaking Process to Revise Standards for Occupational Exposure To Lead](#)

Page 2 - [The Employers E-Recordkeeping Coalition Submits Comprehensive Written Comments to OSHA's E-Recordkeeping Rulemaking Docket](#)

ENVIRONMENT

Page 4 - [EPA Proposes to Amend GHG Reporting Rule](#)

Page 4 - [Supreme Court Ruling on the Clean Power Plan](#)

UPCOMING CONFERENCES

--NSC Safety Conference and Expo, 9/16-21/2022, San Diego CA

--**PCA International Conference, 9/25-27/2022, Denver CO**

--ASSP Safety Conference and Expo, 6/5-7/2023, San Antonio TX and Online

SAFETY

OSHA Begins Rulemaking Process To Revise Standards For Occupational

Exposure To Lead – “On June 28, 2022, OSHA published an advance notice of proposed rulemaking (ANPRM) stating that it is considering rulemaking to revise its standards for occupational exposure to lead based on medical findings that adverse health effects in adults can occur at Blood Lead Levels (BLL) lower than the medical removal level (=60 micrograms per deciliter (µg/dL) in general industry, =50 µg/dL in construction) and lower than the level required under current standards for an employee to return to their former job status (<40 µg/dL). [87 Fed. Reg. 38343](#). OSHA states that it is seeking input on reducing the current BLL triggers in the medical surveillance and medical removal protection provisions of the general industry and construction standards for lead. OSHA is also seeking input about how current ancillary provisions in the lead standards can be modified to reduce worker BLLs. Comments are due August 29, 2022.” (Lexology, Bergeson & Campbell PC, 7/15/2022.)

The Employers E-Recordkeeping Coalition Submits Comprehensive Written

Comments to OSHA’s E-Recordkeeping Rulemaking Docket – The following is an update from the OSHA Defense Report’s Employer’s Coalition. “On March 30th, OSHA published a new proposed rule to amend and dramatically expand the requirements of its “[Improve Tracking of Workplace Injuries and Illnesses Rule](#)” (aka, the E-Recordkeeping Rule). We digested the tortured history of OSHA’s E-Recordkeeping Rule, the proposed amendments OSHA introduced this Spring, and the implications of the proposed changes in [this article](#). [. . .]To summarize, we addressed in the comments that:

- OSHA will use this electronic data for enforcement targeting, even though the criteria for recording illness and injuries neither assumes nor requires any correlation between the injury and regulatory non-compliance or any employer fault. This is even more important now, because some employers are recording numerous COVID-19 cases even when work-relatedness is uncertain.
- OSHA has no genuine need and cannot make meaningful use of the more detailed data set to be collected, yet it will create an extraordinary burden for employers to submit.
- OSHA is not capable of protecting employees’ confidential personal and medical information that will be collected with OSHA 300 Logs and 301 Incident Reports.
- The definition of “high hazard industry” is overly inclusive — covering thousands of small employers in industries with essentially average DART rates.
- Other important issues our coalition members have been identifying in our planning and strategy sessions.

We predict the rule will be finalized and issued by the end of this calendar year or early in 2023 – in time for the next E-Recordkeeping submission deadline next March. In the meantime, OSHA will be considering the written comments submitted by interested stakeholders and will deliver a proposed final amended rule to OMB. As we have done in the last several OSHA rulemakings, our Employers Coalition will seek to participate in the OMB review process. And we will continue to look for any other opportunities to advocate for the positions we staked out

in these written comments, including through informal meetings with the OSHA policy team and more formally through a stakeholder meeting (or several of them) with OMB. [Contact us](#) if your organization may be interested in participating in our Coalition or if you have questions about OSHA’s E-Recordkeeping rule.” Read the full article [here](#). (OSHA Defense Report, Eric J. Conn, 7/25/2022.)

Top of the Document

ENVIRONMENT

EPA Proposes to Amend GHG Reporting Rule – “On June 21, 2022, EPA proposed to amend specific provisions in the GHG Reporting Rule to improve the quality and consistency of the data collected under the rule, streamline and improve implementation, and clarify or propose minor updates to certain provisions that have been the subject of questions from reporting entities. [87 Fed. Reg. 36920](#). According to EPA, the proposed changes would improve understanding of the sector-specific processes or other factors that influence GHG emissions rates, improve verification of collected data, and complement or inform other EPA programs. EPA is also proposing revisions that would improve implementation of the GHG Reporting Rule, such as updates to applicability estimation methodologies, providing flexibility for or simplifying calculation and monitoring methodologies, streamlining recordkeeping and reporting, and other minor technical corrections or clarifications. Comments are due August 22, 2022.” (Lexology, Bergeson & Campbell PC, 7/15/2022.)

Supreme Court Ruling on the Clean Power Plan – Although this ruling has no direct impact on our industry, it does send the message that clear congressional authorization will be the justification for future regulations that are large in scope or impact. See the following excerpt from one of the many articles written on this subject:

On June 30, the last day of an historic term, the Supreme Court issued its decision in [West Virginia v. EPA](#). As expected, the Court struck down EPA's 2015 Clean Power Plan (CPP), which was intended to reduce greenhouse gas (GHG) emissions by shifting the generation of electricity from coal-fired plants to gas-fired facilities and renewables through a cap-and-trade system. [. . .] Writing for the six conservative justices, Chief Justice Roberts employed the so-called "major question doctrine" to hold that the CPP exceeded the authority Congress delegated to EPA in the Clean Air Act. Under that relatively new—and to many, controversial—doctrine, courts are instructed to be skeptical toward regulations that address major public policy questions, which the Court defines as matters of "vast economic and political significance." In those instances, the courts should be "reluctant to read into ambiguous statutory text the delegation claimed to be lurking there." "To convince us otherwise," the opinion continues, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to clear congressional authorization for the power it claims.

Read the full article [here](#). (Lexology, Davis Wright Tremaine LLP - Craig Gannett, et al., 7/7/2022.)

Office of Inspector General: EPA is Behind Schedule Performing Regulatory Risk Reviews of Air Toxics – “The EPA has not conducted all statutorily mandated residual risk and technology reviews or RTRs, or recurring eight-year technology reviews, or TRs, that are used to revise standards, as needed, to protect the public from air toxics emitted by stationary sources. As of November 1, 2021, 93 of the 169 industrial sources that require such reviews,

known as source categories, had overdue RTRs or TRs.” Read full report [here](#). (epa.gov, 3/30/2022.)

Send your suggestions and comments to joel@pinechemicals.org

Top of the
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