

Regulatory Updates
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UPCOMING CONFERENCES

- SOCMA Summit and Annual Meeting, 11/14-16/2022, New Orleans LA
- ASSP Safety Conference and Expo, 6/5-7/2023, San Antonio TX and Online

SAFETY

Changes May Be Coming to EPA and Now OSHA Process Safety Requirements –

We reported last month about proposed changes to the EPA RMP rule. Now OSHA is considering revising the PSM standard. See the following excerpt.

On the heels of the Environmental Protection Agency's (EPA) [proposed rule](#) to amend its Risk Management Program (RMP) rule, the Occupational Safety and Health Administration (OSHA) is considering revising its standard on Process Safety Management of Highly Hazardous Chemicals (PSM) according to a new notice. [87 Fed. Reg. 53020](#) (Aug. 30, 2022). Many of the potential changes that OSHA is considering would expand the scope of covered employers and would echo EPA's proposed RMP amendments. . . On August 30, 2022, OSHA published a [Notice of Stakeholder Meeting](#) to discuss potential changes to particular provisions and the scope of the PSM rule. Although the stakeholder meeting was scheduled for September 28, OSHA has since postponed the meeting and has not yet rescheduled. See [here](#). Comments are due by October 28.

This could significantly impact members who are currently affected by the PSM rule. I recommend reading the detailed list of proposed changes [here](#). (Lexology, Beveridge & Diamond PC, 9/9/2022.)

OSHA Updates Its Severe Violator Enforcement Program - "On September 15, 2022, OSHA announced a significant set of updates to its dreaded [Severe Violator Enforcement Program \("SVEP"\)](#), the first update to the program in over a decade. . . Historically, the principal way that employers 'qualified' into SVEP was by enforcement actions that included two or more willful or repeat violations related to a particular set of standards that represented 'high emphasis hazards.' . . The most important change in the updated SVEP is that OSHA has eliminated the high emphasis hazard element of the qualifying criteria. That is, to fall into SVEP now, an employer merely needs to receive two or more repeat or willful violations in the same inspection involving any hazards/any standards." Read the full article [here](#). (OSHA Defense Report, Eric J. Conn, Ashley D. Mitchell, 9/16/2022.)

Webinar Recording: What Employers Need to Know about Monkeypox – While it's not the next COVID-19, here is some information on the Monkeypox virus from the OSHA Defense Report. Click [here](#) for the full article and a link to the webinar recording and slides.

Webinar Recording: OSHA's Recordkeeping, Reporting, and E-Recordkeeping Rules - "On September 13, 2022, Lindsay A. DiSalvo and Ashley D. Mitchell presented a webinar regarding 'Important Nuances of OSHA's Recordkeeping, Reporting, and E-Recordkeeping Rules.' Although OSHA's injury and illness recordkeeping and reporting rules may seem clear on their face, there are many nuances in the applicable standards that can create challenges to accurately making and maintaining those required records and reports."

Click [here](#) for the full article and a link to the webinar recording and slides. (OSHA Defense Report, 9/20/2022.)

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CSB Provides Guidance on Accidental Release Reporting Rule – “[On September 1], the U.S. Chemical Safety Board (CSB) released guidance on the agency’s [“Accidental Release Reporting Rule,”](#) which went into effect in March 2020. The new guidance is provided so that owners and operators of facilities involved in the production, processing, handling, or storage of chemical substances may better understand the rule and comply with the requirement to submit a report to the CSB within eight hours after an accidental release has occurred that results in a fatality, serious injury, or substantial property damage. The CSB’s [guidance document](#) clarifies key terms found in the reporting regulation, such as what constitutes regulated substances for the reporting requirement and the threshold amounts related to property damage for which reporting is required.” (csb.gov, 9/1/2022.)

Bills to Improve Recycling Accessibility Passed by Senate; Sent to House – “The U.S. House of Representatives will consider legislation to increase recycling accessibility in communities and improve recycling data collection when summer recess ends this month. The Recycling and Composting Accountability Act (RCAA), [S.3743](#), would identify challenges, improve data collection, and determine best practices with respect to recycling and composting in America. The Recycling Infrastructure and Accessibility Act of 2022, [S.3742](#), would provide a program to fund projects to improve recycling infrastructure in communities. Both bills passed the U.S. Senate by unanimous consent in July.” Read the full article [here](#). (Lexology, Keller and Heckman LLP, 8/30/2022.)

EPA Webinars: Hazardous Waste Electronic Manifests – Less than 2% of regulated sites are submitting all-electronic manifests. To help promote the program, “EPA hosts monthly webinars to share the Agency's progress on the e-Manifest initiative. Updates are also provided through the e-Manifest team's quarterly newsletter, which is sent out on our Listserv. To subscribe to our Listserv, send a blank message to: eManifest-subscribe@lists.epa.gov. For parties interested in participating in e-Manifest user testing, [learn how to participate today.](#)” The next webinar is October 26 at 2:00 pm ET. Use this [link](#) for more information. (epa.gov.)

Who is Signing Your Shipping Papers? – “When you sign a hazmat shipping paper or Manifest, you certify that every step of the shipping process was done in full compliance with applicable regulations. If you don’t have adequate training, signing shipping papers can expose you to serious risk and threaten the safety of everyone in the supply chain.” In my experience, audit your parts washer documentation in particular. These may not be on the environmental professional’s radar. Click [here](#) for a five-minute video. (Lion Technology, Inc., 8/26/2022.)

Court Finds that Addressing Cumulative Impacts of Air Toxics Required for Air Permitting in Louisiana – “The 19th Judicial District Court in Baton Rouge, Louisiana issued a decision on September 14, 2022, vacating a proposed industrial facility’s permit issued by the Louisiana Department of Environmental Quality (‘LDEQ’) and finding that LDEQ violated the federal Clean Air Act and its duty under the Public Trust Doctrine. Although the decision concerns permitting for a specific facility in St. James Parish, FG LA’s planned ethylene and

propylene complex, the decision has far-reaching effects for air permitting in Louisiana under the Prevention of Significant Deterioration (“PSD”) program. In the nearly 40-page decision, the Court holds on several issues including disapproval of the use of Significant Impact Levels (“SIL”) in the PSD analysis, requirements for Environmental Justice reviews and implementation of the U.S. Environmental Protection Agency’s EJSCREEN tool, review of air modeling conclusions, and analysis under Louisiana’s so called “IT Factors.” The opinion also states that the LDEQ failed to perform a cumulative impact analysis for potential air toxics emissions from the planned facility such as ethylene oxide and benzene.” Read the full article [here](#). (Lexology, Louisiana Law Blog, Kean Miller LLP - Lauren J. Rucinski, 9/21/2022.)

Court Rejects EPA’s Narrow Interpretation of a Key RCRA Exemption – “On September 22, 2022, the Environmental Appeals Board of EPA issued an Order finalizing a recent decision of an EPA Administrative Law Judge that rejected the Agency’s interpretation of the Manufacturing Process Unit (MPU) exemption under the Resource Conservation and Recovery Act (RCRA) regulations, which establishes the boundary where manufacturing ends and waste management – and thus EPA’s authority under RCRA – begins.” Read the full article [here](#). (Lexology, Beveridge & Diamond PC - Aaron H. Goldberg, Karen M. Hansen and Eric L. Klein, 9/28/2022.)

Send your suggestions and comments to joel@pinechemicals.org

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