

Regulatory Updates
Compiled for the Pine Chemicals Association
March 1, 2023

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UPCOMING CONFERENCES

--**PCA Spring Meeting, 4/3-5/2023, Hilton Head Island SC**

--**PCA EHS Committee In-Person Meeting, 4/4/2023, Hilton Head Island SC**

--NSC Spring Safety Conference & Expo, 5/17-19/2023, Indianapolis IN

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

--NSC Safety Southern Conference & Expo, 10/23-25/2023, New Orleans LA

SAFETY

Timing for OSHA to Finalize the Amended E-Recordkeeping Rule Is Becoming

Clearer - “. . . Throughout the last year, OSHA’s intent to finalize this rule ahead of the next deadline for employers to submit E-Recordkeeping data (i.e., well ahead of March 2023) was clear, but that will not be the case. OSHA delayed finalizing the proposed revisions to the E-Recordkeeping Rule several times. The delays have now prompted further litigation by a pro-worker activist group . . . OSHA appears to be taking its time reviewing and analyzing written comments to the proposed rule, but OSHA’s latest declaration of a June 2023 deadline with renewed pressure by the petitioners to finalize this rulemaking makes it highly likely we will see a final rule this Summer. To do that, we will likely see a proposed final rule delivered to the White House’s Office of Management and Budget within the next couple of months. This has no impact on the submission of Calendar Year 2022 data that is coming due in about a month – March 2, 2023, but this timing does make it likely that the changes will apply to the next data submission – March 2, 2024. As a reminder for what is at stake in this rulemaking, OSHA’s current proposed changes to the E-Recordkeeping Rule seek not only to restore the requirement from the original 2016 rule to have larger employers submit the full panoply of recordkeeping data (i.e., data from 300 Logs, 301 incident reports, and the 300A annual summaries), but also to expand the number of employers that must submit data by lowering the threshold number of employees from 250 to 100 and by expanding the list of covered high-hazard industries.” Read the full article [here](#). (The OSHA Defense Report, Dan C. Deacon, Eric J. Conn, 2/2/2023.)

OSHA Expands “Instance by Instance” Citation Policy: A Game Changer for

OSHA Enforcement - “On January 26, 2023, OSHA [revealed to the public](#) two enforcement memoranda that it had issued to its field offices and all of the State OSH Plans that will substantially sharpen OSHA’s enforcement teeth and increase the pain OSHA can deliver to employers across the country. Specifically, OSHA dramatically expanded the circumstances when it can issue [“instance-by-instance” citations](#) to employers, and also [discouraged the grouping of similar citations](#) under a single penalty. Instance-by-Instance (IBI), or per-instance enforcement is one of OSHA’s most powerful tools to ratchet up civil penalties. It is essentially a multiplier for OSHA citations based on a “unit-of-violation” set by OSHA standards that require individualized duties; i.e., train each employee, guard each machine, require a hard hat for each employee, etc. As a result, rather than a single citation with a single penalty for an employers’ failure to ensure that all employees wear a hard hat at a construction site, per-instance enforcement allows OSHA to instead issue ten citations with ten separate penalties for each of the ten employees observed without a hard hat.” Read the full article [here](#). (The OSHA Defense Report, Eric J. Conn, Darius Rohani-Shukla, 2/6/2023.)

OSHA Revises Combustible Dust Emphasis Program - Although our industry isn’t on this target list, combustible dust safety must stay on our radar. “Effective January 30, OSHA revised its [National Emphasis Program \(NEP\) for combustible dust](#). The purpose of the NEP update is for OSHA to continue to inspect facilities that generate or handle combustible dusts that are likely to cause fire, flash fire, deflagration, and/or explosion hazards. The updated

combustible dust NEP replaces a directive in place since 2008, and will remain in effect until OSHA cancels it. It does not replace OSHA’s directive for inspection of grain handling facilities, but may affect the scope of coverage. Appendix B of the updated directive includes a revised list of industries that OSHA compliance and enforcement officers will use ‘for targeting purposes. . . ‘ The full list of industries targeted for combustible dust starts on [page B-1 of the directive.](#)” Read the full article [here](#). (Lion Technology, Inc., Nick Waldron, 2/3/2023.)

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ENVIRONMENT

No news.

DOT

Railroad Ordered to Cleanup Derailment/Hazmat Release Site and Pay Costs -

“Last week, US EPA ordered the railway company connected to the freight train derailment and hazmat release in East Palestine, OH to remove hazardous substances from the site and to pay for cleanup. CERCLA authorizes US EPA to identify parties responsible for a hazardous substance release and assure their cooperation in cleanup operations. CERCLA/Superfund imposes “strict liability” for persons involved in a hazardous substance release, whether or not that party was negligent or failed to comply with applicable regulations. Regulated chemicals released to the environment as a result of the February 3 derailment include vinyl chloride, butyl acrylate, isobutylene, Ethylene glycol and ethylhexyl acrylate. The "Findings of Fact" section of the order starts on page 4 and provides a blow-by-blow account of the incident and the first days of the emergency response effort. Under the terms of [EPA’s CERCLA cleanup and liability order](#), the railroad must clean up every piece of debris and the contamination per the EPA’s exact specifications. Failure to meet the terms of the order—including provisions for cleanup activities, security planning, air and water monitoring, soil remediation, reporting and more—could result in civil penalties. The order also states that should the railroad fail to comply, EPA may seek damages in the amount of **three times the cost incurred** due to the railroad’s noncompliance. A *Unilateral Administrative Order for Removal Actions* like the one EPA issued to the railroad, described in section 106 of CERCLA, is one of EPA’s strongest tools for compelling parties to cleanup and fund remediation of hazardous substance contamination.” Read the full article [here](#). (Lion Technology, Inc., Roseanne Bottone, Roger Marks, 2/27/2023.)

Reporting Hazmat Transportation Incidents – “When a hazardous material is released during transportation, the incident must be reported to US DOT using Form F 5800.1. Depending on the severity of a release and the materials involved, an immediate phone report to the National Response Center (NRC) may be required. A hazmat release can trigger environmental reporting requirements, too. The severity of the incident determines both who receives the initial report and how soon after the incident a report must be made.

Who Submits a Hazmat Incident Report?

The duty to report a hazmat transportation incident falls to the “person” in physical possession (PIP) of the hazmat at the time of the incident. That might be a driver, a package sorting facility, or the shipper/receiver.

Immediate Report to NRC

The PIP must notify the National Response Center (NRC) by phone as soon as possible (but no later than 12 hours after the incident) if, as a direct result of hazardous materials, any of the following serious incidents occur as a direct result of hazardous materials:

- A person is killed or must be admitted to a hospital;

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- The public must be evacuated, or a major transportation artery or facility must be shut down, for more than an hour;
 - The operational flight plan of an airplane must be changed;
 - Fires, breakage, or spillage of radioactive materials or an infectious substance other than a regulated medical waste;
 - A release of more than 119 gallons or 882 lbs. of marine pollutants;
 - Any battery or battery-powered device incident that involves a fire, violent rupture, explosion or dangerous evolution of heat aboard an aircraft; or
 - Any other life-threatening situation in the judgment of the PIP.
- [49 CFR 171.15]” (Lion Technology, Inc., Roseanne Bottone, Roger Marks, 2/24/2023.)

Send your suggestions and comments to ehs@piechemicals.org

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