

**Regulatory Updates**  
**Compiled for the Pine Chemicals Association**  
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UPCOMING CONFERENCES

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

--PCA International Conference, 9/17-19/2023, Dublin Ireland

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

## **SAFETY**

**OSHA Launches New National Emphasis Program Focused on Fall Hazards** - “On May 1, 2023, OSHA [announced](#) the launch of a new [National Emphasis Program \(“NEP”\) focused on preventing fall hazards](#) in general industry and construction, the leading cause of fatal workplace injuries and the violation that the agency cites most frequently in construction industry inspections. The Falls NEP was signed April 24, 2023, and took effect the same day as OSHA’s announcement, on May 1, 2023. It may have been that the Falls NEP was a long time coming. Per OSHA’s announcement, the NEP is based on historical Bureau of Labor Statistics (“BLS”) data and OSHA enforcement history. For example, data from BLS shows that, of the 5,190 fatal workplace injuries in 2021, 680 were associated with falls from elevations, about 13 percent of all deaths. Additionally, data from OSHA’s annual enforcement report indicates that, of 24,333 total inspections in 2021, 7,954 had an emphasis on falls, or about 33% of all inspections.” Read the full article [here](#). (OSHA Defense Report, Beeta Lashkari, et al., 5/10/2023.)

**Recent News Releases from the Chemical Safety Board** – Here are links to some recent news releases from the CSB that are germane to our industry. (csb.gov)

- [U.S. Chemical Safety Board Releases Final Report into 2020 Toxic Gas Release and Chemical Fire at Bio-Lab Facility in Westlake, LA](#) (Protection of water-reactive chemicals from water exposure during severe weather events.)
- [CSB Releases Final Report into 2021 Fatal Acid Release at LyondellBasell La Porte Complex in La Porte, Texas](#) (Attempting to remove a valve actuator but inadvertently removed pressure-retaining components.)
- [CSB Issues New Safety Alert Focused on the Potential Hazards of Emergency Discharges from Pressure Release Valves](#)

**Lithium Battery Safety** – With lithium battery incidents in the news, here are two articles of general interest.

Firefighting Lithium Battery Fires – “US FAA promoted a video recently that lays out three principles for fighting fires involving portable electronic devices containing lithium batteries and shows as device batteries enter thermal runaway, flare, burn, smoke and vent gas under controlled testing conditions. While the video is intended for flight crews who may encounter a device fire on board an aircraft, the principles in it could prove useful for anyone faced with a fire involving a mobile phone, tablet, or laptop in the workplace or at home.” View the video [here](#). (Lion Technology, Inc., Roger Marks, 4/28/2023.)

Identifying Defective Lithium Batteries – “PHMSA offers a guide to help shippers assess whether a lithium battery is damaged, defective, or recalled (DDR) for transportation purposes. Lithium batteries that take damage, show defects, or are recalled over safety concerns pose a far greater risk of short-circuiting and entering thermal runaway during transportation than non-damaged batteries. To address the extra risk, shippers must comply with stricter requirements for packaging, labeling, shipping papers, etc. to offer DDR lithium batteries by ground or vessel.

Air transportation of damaged, defective or recalled lithium batteries is totally forbidden. PHMSA's [guide to the risks of "DDR" lithium cells and batteries](#) identifies tell-tale signs of a damaged or defective lithium battery.” Defects include leaks, smells, sustained heat, swelling, discoloration, corrosion, known misuse, exposure to water, and defective wiring. (Lion Technology, Inc., 5/1/2023.)

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## ENVIRONMENT

**EPA Proposes Rule Banning Methylene Chloride in All Consumer Uses** – “On May 3, US EPA proposed extensive new restrictions on the manufacture, processing, distribution, and use of methylene chloride, also known as dichloromethane (DCM). As authorized under Section 6 of TSCA, [EPA is proposing to](#) implement the following restrictions for methylene chloride:

- Prohibit manufacture, processing, and distribution for consumer use,
- Prohibit most industrial and commercial uses,
- Require new worker protections and exposure monitoring, and
- Add recordkeeping and notification requirements for several conditions of use.

Limited time exemptions: The rule provides ‘certain time-limited exemptions from requirements for uses of methylene chloride that would otherwise significantly disrupt national security and critical infrastructure.’ EPA will accept public comments on the proposed rule until July 3, 2023. The proposed rule follows [EPA’s latest risk evaluation for methylene chloride](#), completed in November 2022. With that evaluation, the agency determined that methylene chloride poses an unreasonable risk to health “as a whole chemical substance.” (Lion Technology, Inc., 5/5/2023.)

**Supreme Court Limits Federal Jurisdiction Over Wetlands** – “Perhaps settling a debate that has been raging for at least 20 years, the U.S. Supreme Court issued a decision today in [Sackett v. EPA](#) that is intended to settle, once and for all, the scope of federal power over wetlands. The Court found that the meaning of the term ‘waters of the United States’ (WOTUS) in the federal Clean Water Act, 33 U.S.C. § 1362(7), covers ‘only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic[al] features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes.’ While acknowledging that the term also includes so-called ‘adjacent wetlands,’ the Court limited that term to those wetlands that are ‘as a practical matter indistinguishable from waters of the United States,’ which requires first, that the body of water is itself a water of the United States (following the restrictive definition it just announced) and second, that the wetland has ‘a continuous surface connection with that water, making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.’ . . . The *Sackett* decision should correct this [regulatory patchwork](#), as we anticipate that the EPA and U.S. Army Corps of Engineers will now proceed with the additional rulemaking (to be completed in 2024) it [announced](#) last fall to again revise and refine the WOTUS definition, resulting in one operative definition of WOTUS nationwide.” Read the full article [here](#). (Lexology, Pierce Atwood LLP - Lisa A. Gilbreath, et al., 5/25/2023.)

## **EPA Clarifies Hazardous Waste Requirements Applicable to Lithium-Ion**

**Batteries** - The short version is to manage waste lithium ion batteries as universal waste. “On May 24, 2023, EPA [released a guidance memorandum](#) addressing the hazardous waste status of lithium ion batteries under the Resource Conservation and Recovery Act (RCRA). EPA released the guidance to ‘both remove uncertainties for the states and industry about the regulatory status of these materials,’ and to ensure that lithium ion batteries are properly handled when they are recycled. In the guidance, EPA concludes that lithium ion batteries generally qualify as

hazardous waste under RCRA: ‘most lithium-ion batteries on the market today are likely to be hazardous waste when they are disposed of due to the ignitability (D001) and reactivity (D003) characteristics.’ EPA also explained that, while qualifying as hazardous waste, lithium ion batteries can be managed as ‘universal waste’ under 40 C.F.R. Part 273, which imposes a more ‘streamlined’ set of requirements than the standard set of hazardous waste requirements. These determinations will have a significant impact on entities who dispose of lithium ion batteries, as well as entities involved in battery end-of-life management activities, including recycling.” Read the full article [here](#). (Lexology, Covington & Burling LLP - Thomas Brugato, 5/30/2023.)

**PFAS 101** – Since this subject is frequently in the news, here’s a [link](#) with good information. This issue doesn’t directly affect our industry, however. (Lexology, Vorys Sater Seymour and Pease LLP - Nina I. Webb-Lawton, 5/9/2023.)

*Send your suggestions and comments to [ehs@piechemicals.org](mailto:ehs@piechemicals.org)*

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