

Regulatory Updates
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UPCOMING CONFERENCES

--NSC Safety Southern Conference & Expo, 10/23-26/2023, New Orleans LA

--SOCMA Summit & Annual Meeting, 11/6-8/2023, New Orleans LA

--ASSP Safety Conference and Expo, 8/7-9/2024, Denver CO

SAFETY

OSHA Proposes Rule Clarifying Employee Representation During Inspections -

“OSHA issued a notice of proposed rulemaking (NPRM) August 29, 2023 on who can be an employee representative that accompanies compliance officers during physical workplace inspections. [Employers and employees have the right under the Occupational Safety and Health Act](#) to have a representative authorized by them accompany OSHA officials during inspections to aid the investigation. [The NPRM specifically clarifies](#) that ‘employees may authorize an employee, or they may authorize a non-employee third party if the compliance officer determines the third party is reasonably necessary to conduct an effective and thorough inspection.’ Further, third-party representatives aren’t limited to industrial hygienists or safety engineers, which are two examples given in the existing regulation. The proposed revisions will not change a compliance officer’s authority to:

- determine if an individual is authorized by employees,
- prevent someone from participating in the walkaround inspection if their conduct interferes with a fair and orderly inspection, or
- limit participation to protect employer trade secrets.

‘Employee participation and representation is critical to an inspector’s ability to complete a thorough and effective workplace investigation and helps OSHA gather information about the job site’s conditions and hazards,’ according to OSHA. OSHA states, ‘Third-party representatives may be reasonably necessary because they have skills, knowledge or experience that may help inform the compliance officer’s inspection. This information may include experience with particular hazards, workplace conditions or language skills that can improve communications between OSHA representatives and workers.’ The agency is also seeking public comment on the ‘criteria and degree of deference’ it should give to employees’ choice of representative when determining whether or not a third party can participate in an inspection. Comments can be submitted at the [federal eRulemaking portal](#) by Oct. 30, 2023. The docket number used for submissions is OSHA-2023-0008.” (safetynewsreport.com, Merriell Moyer, 8/29/2023.)

OSHA Provides Regulatory Framework for Heat Injury and Illness Prevention

Standard - “OSHA released an outline of potential options for its proposed Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings standard, giving employers an idea of what may be coming. [The document](#) is a regulatory framework for a heat injury and illness prevention rule the agency envisions as “a programmatic standard that could require employers to create a plan to evaluate and control heat hazards in their workplace.” The agency said it has identified several options for control measures based on the National Institute for Occupational Safety and Health (NIOSH) Criteria for a Recommended Standard, existing state standards and stakeholder comments. ‘Many of these options look familiar to anyone who does business in a state plan state with a heat standard,’ [according to law firm Ogletree Deakins.](#)” (safetynewsreport.com, Merriell Moyer, 8/30/2023.)

ENVIRONMENT

Definition of "Waters of the United States" and Rule Status and Litigation

Update - “On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued [a final rule to amend the final “Revised Definition of ‘Waters of the United States’” rule](#), published in the *Federal Register* on January 18, 2023. This final rule conforms the definition of “waters of the United States” to the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. Parts of the January 2023 Rule are invalid under the Supreme Court’s interpretation of the Clean Water Act in the [Sackett decision](#). Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court’s decision. The conforming rule, "Revised Definition of 'Waters of the United States'; Conforming," [published in the Federal Register](#) and became effective on September 8, 2023. As a result of ongoing litigation on the January 2023 Rule, the agencies are implementing the January 2023 Rule, as amended by the conforming rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states and for certain parties, the agencies are interpreting "waters of the United States" consistent with the [pre-2015 regulatory regime](#) and the Supreme Court's decision in *Sackett* until further notice.” Read the full article [here](#), which if you scroll down on that link, you’ll see a map to indicate which operative definition is in effect in your state. (epa.gov, 9/8/2023.)

EPA Proposes to Amend General Provisions for NESHAP – “On September 13, 2023, EPA proposed to amend the General Provisions for National Emission Standards for Hazardous Air Pollutants (NESHAP) to address applicability and compliance issues resulting from the addition of a compound to the list of hazardous air pollutants (HAP) under the Clean Air Act (CAA). [88 Fed. Reg. 62711](#). According to EPA, this action focuses on issues related to newly applicable standards for sources that become major sources solely from the addition of a compound to the CAA HAP list. This action also includes a discussion of the impacts of a newly listed HAP on the federal operating permit program. Comments are due November 13, 2023.” (Bergeson & Campbell PC, 9/15/2023.)

SECURITY

American Chemistry Council’s Statement on Chemical Security, Past and Present

- “. . .The events of September 11 forced our nation to reassess how we look at safety and security. From that tragedy, the Department of Homeland Security (DHS) arose. In the years since, DHS has led the charge in assessing threats and developing and implementing regulations which aim to protect the country from future attacks. Chemical manufacturing facilities, like other critical infrastructure such as the electrical sector, were identified early-on as potential high-risk targets. So, while DHS began the important work of establishing what is now known as the Chemical Facility Anti-Terrorism Standard (CFATS), the American Chemistry Council (ACC) and our members immediately took action of our own.

In 2002, 5 years before CFATS was officially launched, ACC’s Board of Directors approved the adoption of the Responsible Care Security Code – a commitment by ACC members and Responsible Care partners to enhance the security of our facilities and our communities. The Code outlines 10 Management Practices to help companies continually improve security by identifying, assessing and addressing vulnerabilities, enhancing training and response capabilities, and engaging with customers, suppliers, service providers and government agencies. The Security Code builds on the foundation of environmental health, safety and security established under Responsible Care and is recognized by local, state and federal governments as a model security program for chemical facilities and other U.S. industries. In fact, the DHS SAFETY Act recognizes the Security Code as a Qualified Anti-Terrorism Technology. In 2007, after years of dedicated work by DHS and industry stakeholders, ACC and our members pushed for the adoption of CFATS and the resources and support of the U.S. government to help protect our workers and our communities . . .That’s why ACC and our members were disappointed that Congress, despite strong bipartisan support for the program, failed to reauthorize CFATS before a July deadline. The program’s expiration has suspended the valuable resources and tools that the program provided our industry. This week, as we reflect on the tragedy of September 11th, we urge Congress to act swiftly to remedy this failure, reinstate CFATS, and support the chemical industry’s continued efforts to protect our workers, our communities, and our nation.” Read the full statement [here](#). (AmericanChemistry.com, 9/11/2023.)

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Send your suggestions and comments to ehs@pinechemicals.org