COMPLIANCE MATTERS
Winter 2019

What to Expect from OSHA in 2019

It is the beginning of a new year, and with it brings changes to various health and safety regulations and requirements. Although the Occupational Safety and Health Administration (OSHA) begins 2019 without a confirmed leader, the agency is continuing to update and modify several of its regulations and policies, as well as increase focus on compliance inspections for emphasized hazards.

Electronic Recordkeeping Requirements

In 2016, OSHA issued a final rule to improve tracking of workplace injuries and illnesses (20 CFR 1904). This rule required certain facilities to electronically submit the injury and illness information from OSHA 300 and 300A logs.

When the rule was first released, facilities were required to submit forms online by July 1st of the following year. At the beginning of 2019, the submission deadline is changing from July 1st to March 2nd. Another major change to this rule is that companies with 250 or more employees are no longer required to submit information from both their OSHA 300 and 301 forms. Instead, only the information on the 300-A form is required to be submitted. According to OSHA, the revoking of the submission requirements was done to prevent the potential for public disclosure of information that may be sensitive. Although it is no longer required to be submitted online, OSHA 300 and 301 forms must still be completed, posted on site, and kept on hand for at least five years.

Enforcement of Updated Beryllium Standards

On May 20, 2017, OSHA introduced new standards to prevent chronic beryllium disease and lung cancer by limiting employee exposure to beryllium. On December 12, 2018, OSHA began to enforce all provisions for these new standards (General Industry – 29 CFR 1910.1024; Construction – 29 CFR 1926.1124; Shipyard – 29 CFR 1915.1024).

The updated beryllium standard reduces the permissible exposure limit (PEL) for beryllium to 0.2 micrograms per cubic meter taken as an 8-hour time-weighted average (TWA). A new short-term exposure limit (STEL) of 2.0 micrograms per cubic meter, taken over a 15-minute sampling period, has also been introduced in the updated standard. Industrial hygiene air monitoring should be conducted to identify employees who may be exposed to concentrations of beryllium higher than the PEL or STEL. Results from air monitoring can be used to identify areas where engineering controls or work practice controls can be used to limit employee exposure to beryllium, such as installing ventilation or enclosure systems. If these control measures cannot adequately reduce employee exposure to beryllium, and all other controls have been considered, respirators should be provided to employees. Facilities that utilize beryllium should develop a written exposure control plan and should train employees on hazards associated with beryllium exposure. Medical exams should be provided to employees identified with a beryllium-related disease.

OSHA Increases Penalty Amounts in 2019

As of January 23, 2019, OSHA has increased the penalty amounts to adjust for inflation. The table below lists the new penalty amounts compared to those from 2018, as specified in 29 CFR 1903.15:

Violation Type	Penalty Amount (2018)	Penalty Amount (2019)
Willful Violation	Minimum: $9,239 Maximum: $129,336	Minimum: $9,472 Maximum: $132,598
Repeated Violation	$129,336	$132,598
Serious Violation	$12,934	$13,260
Other-Than-Serious Violation	$12,934	$13,260
Failure to Correct Violation (per day beyond abatement date)	$12,934	$13,260
Posting Requirement Violation	$12,934	$13,260

OSHA Plans to Updated Hazard Communication Standard

In 2012, OSHA released a major update to align its hazard communication standard (29 CFR 1910.1200) to the United Nation's (UN's) Globally Harmonized System of Classification and Labeling of Chemicals (GHS). At the time, the updated hazard communication rule aligned with GHS Revision 3. However, the UN updates the GHS regulations every 2 years. OSHA is planning on updating the current hazard communication standard to align with the latest edition of the GHS sometime later in 2019. While no changes have been made yet, it is important to ensure that your facility is complying with the current hazard communication standard.

Looking Ahead

OSHA is continuing to update its regulations and policies in 2019. Recently updated regulations, such as the respirable crystalline silica rule and beryllium rule are being fully enforced, and new updates are being planned for later in the year. It is important to review your facility's safety programs to ensure that they comply with the most recent updates of their applicable regulations. If you have any questions regarding complying with current or proposed OSHA regulations, please contact CTI at cti@conversiontechnology.com.

Staying in Compliance with Air Quality Regulations

Does your facility have an air quality permit? If so, when was the last time it was updated? If your facility is not a major source of emissions, you may have an air permit with no expiration date. This can lead to situations where the air permit is 10 years, 15 years, or even older. Have facility operations not changed at all during that time? Has new equipment been installed? Are you sure that new boiler/oven/paint booth/etc. that was installed was truly exempt from an air quality permit? When was the last time the Environmental Protection Agency (EPA) or your State's environmental agency inspected your facility? If you are a major source of emissions, you probably see your inspector annually, but if you are not a major emitter, the inspections can be much more random and infrequent.

There are few manufacturing facilities that are exempt from operating without an air quality permit. Even an exempted facility could trigger air permitting requirements as a result of a modification. Before any modification that affects air emissions is started, a revised air quality permit application is required to be submitted to State or federal agencies. The term "modification" means any change in or alteration of fuels, processes, operations, or equipment which affects the amount or character of any air pollutant emitted, or which results in the emission of any air pollutant not previously emitted. Even if the modification meets your environmental agencies permit exemption thresholds, most of these agencies still request a No Permit Required determination to be made.

Fines for non-compliance with air quality regulations are some of the highest in the environmental sector. The EPA can assess civil penalties of up to $37,500 per day, per violation with total penalties up to $295,000. Fines can increase further with approval from the Department of Justice (DOJ). Furthermore, the EPA can assess criminal penalties against individual employees for criminal violations of the Clean Air Act (CAA). In 2018, there were 10 CAA Civil Cases. The settlements ranged from $300,000 to $25,000,000. For minor source permits, the EPA is typically not involved with violations, instead the State agency issues the orders and monetary penalties. In 2018, both the Georgia Environmental Protection Division (GAEPD) and the Alabama Department of Environmental Management (ADEM) issued 42 Air Quality Administrative Orders, each. The GAEPD and ADEM typically issue fines ranging from $3,000 to $15,000 for failures to submit permit applications for modifications, but these fines can increase substantially for repeated violations and/or exceeding major source thresholds. The quantity of citations and range of fines can vary widely from state to state. For example, the California Air Resources Board (CARB) issued 1,650 enforcement actions in 2017 with total penalties exceeding $17,000,000.

The majority of the enforcement actions with monetary penalties are the result of deviations from required reporting, failed emission compliance tests, or items discovered during inspections (e.g. unpermitted equipment, missing records, violations of visible emission standards). Deviations from reporting or compliance tests are often known by the facility who in turn, notifies the EPA and/or State of the deviation; therefore, responding to the violation can often be an easier task than preparing for an inspection. Inspections are typically unannounced. An inspection by an EPA or State air quality inspector will check the following during an evaluation:

1. Does the facility's as-built and operational parameters, especially air emissions, match the data submitted in the air permit application(s)?
2. Is all equipment with the potential for emissions included in the current air quality permit?
3. Is the required recordkeeping maintained and up to date? This can include the previous 5 years of recordkeeping.
4. Were all notifications, fees, and reports submitted to the EPA and/or State and in a timely manner?
5. Is pollution control equipment operated as required? Are visible emissions (where applicable) in compliance?
6. Is the facility following applicable work practice standards?

Can you say for certain that you can show compliance with those items when the EPA or State is at your facility? To stay in compliance with air quality regulations, an inspection to address the above should be conducted periodically by a qualified person familiar with the facility's operation, air quality permit, and the applicable air quality regulations. This can save the facility from costly enforcement actions. Even if compliance issues are discovered that must be reported to the EPA and/or State, self-reporting compliance deviations will result in more lenient actions than if discovered by the EPA or State during their inspection.

For more information on air permit requirements, or if you would like to discuss how CTI can help your facility maintain compliance with air permitting, please contact us at www.conversiontechnoloy.com/contact.

Laboratory Safety

On November 25, 2018, the National Fire Protection Agency (NFPA) issued an updated version of NFPA 45 – Standard on Fire Protection for Laboratories Using Chemicals. NFPA 45 includes information regarding fire protection requirements for laboratories, laboratory design, vent hood use, and safe quantities of flammable materials allowed to be stored and used in the laboratories. The 2019 edition of the standard includes minor changes from the previous 2015 version. Inspection, testing, and maintenance of fire-extinguishing systems in ductwork and chemical fume hoods has been revised from a specific time interval to a schedule that is deemed suitable for the type of system. Also, a minimum inspection frequency of 1 year has been added for chemical storage. The revision of the standard includes references to NFPA 30 – Flammable and Combustible Liquids Code for quantities of flammable and combustible liquids within liquid storage areas that are indoors.

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Superfund Amendment and Re-Authorization Act (SARA) Deadlines

Superfund Amendment and Re-authorization Act (SARA) Title III reports and notifications are required to be prepared and submitted by applicable facilities every year.

A facility that stores over 10,000 pounds of any chemical (e.g. over 1,387 gallons of diesel fuel), or over 500 pounds of an Extremely Hazardous Substance (e.g. sulfuric acid in electric forklift lead-acid batteries), must prepare a SARA Tier II Report and submit it to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and Local Fire Department by **March 1st each year**.

A facility that manufactures or processes over 25,000 pounds or otherwise uses over 10,000 pounds of a listed chemical is required to submit SARA Form R to the State Emergency Response Commission (SERC) and the EPA by **July 1st each year**.

The Tier II and Form R submittals have different sections to be filed, depending on the age of the facility, local emergency service requirements, and materials being reported.

Section 302 and 303: Emergency Planning Notifications for Extremely Hazardous Substances

SARA Title III, Sections 302 and 303, require emergency planning for over 360 "Extremely Hazardous Substances" (EHSs) when they are present at or above "Threshold Planning Quantities" (TPQs).

Under Section 302, a facility that handles any of the listed extremely hazardous substances in quantities over the TPQs is required to report to their respective SERC and LEPC that they are subject to the planning provisions of Sections 302 and 303. Under Section 303, these facilities are then required to participate in preparation of community contingency plans for hazardous materials accidents. Each facility must also inform the LEPC of the name of a designated "facility emergency coordinator" who will work with the LEPC in developing emergency plans. The facility coordinator is responsible for promptly informing the LEPC of any changes at the facility that might affect the local emergency plan and is also required when requested to provide the LEPC information to be used in developing and implementing the emergency plan.

As mentioned above, any facility with an EHS present on-site at any time in a quantity above the TPQ is subject to emergency planning reporting under Sections 302 and 303. This is typically required under chemical process safety management and other OSHA regulations as well.

Section 304: Accidental Release Emergency Notification

SARA Title III, Section 304 and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires emergency notification of leaks, spills and other releases of specified chemicals into any environmental medium: air, water or land.

The EPA regulations under Section 304 significantly expand the CERCLA notification requirement. Reporting is mandatory for any release of an amount equal to or greater than the reportable quantity (RQ) of any chemical on the CERCLA list of hazardous substances or on the Title III list of "extremely hazardous substances". It also requires that releases be reported immediately to the appropriate state commission and local committee.

In SARA Title III, a "release" is defined as any "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment," of any substances regulated under Section 304. Both Title III and CERCLA include the discarding of barrels or other receptacles containing, or that once contained, such substances.

The substances covered under the Title III release reporting requirements include all substances on the CERCLA list plus those on a list of "extremely hazardous substances" established by the EPA.

Section 311: SDS Submission & Section 312: Emergency and Hazardous Chemical Inventory

Section 311 of SARA Title III requires that facilities prepare or have available a Safety Data Sheet (SDS) for a "hazardous chemical" under the Occupational Safety and Health Act and they are required to submit SDSs to the SERC, the LEPC and the local fire department if those hazardous chemicals are present in quantities above the threshold quantity. Alternatively, a facility may submit a list of hazardous chemicals for which an SDS would be required. Some states request such a list instead of the actual SDSs. In addition, under Section 312, the facility must provide information annually on the quantity and location of hazardous chemicals at the facility, organized by categories of physical and health hazards on "Tier I" reports. At the specific request of the state commission, the local committee or the fire department, a facility must also supply more detailed information on specific hazardous chemicals ("Tier II" reports). Requirements for Tier I and Tier II reports vary from state to state.

Sections 311 and 312 also require a covered facility to allow the fire department with jurisdiction over the facility to conduct an on-site inspection of the facility. The facility must also provide specific location information on the hazardous chemicals at the facility.

Section 313: Toxic Chemical Release Report

Under Title III Section 313, certain facilities that manufacture, import, process or use any of the designated Toxic Release Inventory chemicals must report the total annual amount released if the reporting thresholds were exceeded. The current list of Toxic Release Inventory chemicals contains over 650 chemicals and chemical categories. Only facilities with SIC codes 20 to 39 with 10 or more full-time employees are subject to Section 313 reporting requirements. Reporting is required for each chemical that exceeds manufacture, process, or otherwise use thresholds. The reports for chemicals used during the previous calendar year must be submitted to both the EPA headquarters and the state-designated Section 313 coordinator by **July 1st of each year**.

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COMPLIANCE MATTERS

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With the release of the updated standard, now is a good time to ensure that your laboratories are compliant with all requirements. While NFPA does not have any power to ensure compliance with their standards, the Occupational Safety and Health Administration (OSHA) often cites NFPA standards when conducting inspections as consensus standards, like NFPA 45, are required to be followed and fall under the prevue of OSHA inspectors. Along with the requirements found in NFPA 45, you should ensure that your laboratories are also compliant with applicable OSHA regulations as well. All containers of hazardous chemicals should be properly labeled, and associated Safety Data Sheets (SDS's) should be maintained for all chemicals, as required by OSHA's hazard communication regulation (29 CFR 1910.1200). A Chemical Hygiene Plan (CHP) should also be maintained to protect laboratory workers from harm due to improper handling of hazardous chemicals, as required by OSHA's Occupational Exposure to Hazardous Chemicals in Laboratories standard (29 CFR 1910.1450). Your CHP should include standard operating procedures that are relevant to safety and health considerations for each activity involving the use of hazardous chemicals. The plan should identify control measures used to reduce exposure to hazardous materials, such as engineering controls, use of PPE, and administrative controls. The plan should include permissible exposure limits (PEL's) for OSHA-regulated substances, and should identify where SDS's are made available to laboratory employees. Along with maintaining a CHP, you should ensure that your laboratory employees are trained in methods and observations to detect the presence or release of a hazardous chemical. Training should also identify the physical and health hazards associated with chemicals used in the laboratories, and measures that workers can use to protect themselves from these hazards.

If you need assistance with ensuring that your laboratories are compliant with NFPA and OSHA requirements, please contact CTI at (770) 263-6330.

News You Can Use

- ❑ NFPA standards for combustible dust in food, wood, plastics, metal, and general manufacturing plants are currently being updated.
- ❑ CTI is now an Associate Member on ANSI R15.06 – Industrial Robots Rulemaking Committee
- ❑ Welcome William Cook and Samantha Barnes to the CTI family.

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The EPA is authorized to change the SIC codes, thresholds, list of chemicals, and reporting deadlines contained in Section 313.

The purpose of Section 313 is to make information available on the amount of specific toxic chemicals released to the environment from manufacturing facilities. This information became readily available via the Toxic Release Inventory (TRI) database in June 1989 through the National Library of Medicine's TOXNET system.