



Minnesota Crop Production Retailers

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# REGULLETER

## Large Penalties for Untimely Spill Reporting

Recent enforcement actions by EPA remind companies of the need to immediately report releases that exceed reportable quantities or reach navigable waters. One six figure penalty was issued to a company that failed to report when a product ran into the river in 2017. The company did not provide the required notification to federal, state and local emergency response officials.

EPA alleged that the company did not notify the National Response Center (NRC) for more than 4 hours after learning of the release. Another similar penalty came in Ohio to a chemical production company. Remember, EPA regulations require immediate reporting of hazardous material spills over reportable quantities to the NRC. While the term "immediate" is not defined by law, legislative history authorizes EPA to enforce for failure to report within 15 minutes. (Asmark Institute)

## DOT to Exercise Discretion for Random Testing

DOT may exercise discretion to

determine not to enforce the minimum annual percentage random testing rates for drugs and alcohol and the requirement that each employer ensure that the dates for administering random drug and alcohol tests are spread reasonably throughout the calendar year due to the COVID-19 public health emergency. However, employers capable of meeting these requirements must continue to do so.

Employers must continue to select drivers at the required rate of 50 percent of their average number of driver positions for controlled substances, and 10 percent for random alcohol testing during the calendar year 2020. If a test is unable to be completed due to the COVID-19 public health emergency, the motor carrier must maintain written documentation of the specific reasons for non-compliance. For example, employers should document closures or restricted use of testing facilities or the unavailability of testing personnel. Additionally, employers should document actions taken to identify alternative testing sites or other testing resources.

Likewise, employers who are unable to ensure that the dates for administering random controlled substances and alcohol tests are spread reasonably throughout the calendar year should document the specific reasons why they did not meet this requirement. For example, in addition to the lack of available testing facilities or personnel, there may be other factors such as prolonged or intermittent driver furloughs due to the impacts of COVID-19. (Asmark Institute)

## DOT Extends Waiver for CDL Drivers

DOT has extended the waiver for expiring Commercial Driver's Licenses (CDLs) and permits until September 30, 2020 in response to the COVID-19 public health emergency. Many CDL holders have been unable to renew their licenses and are unable to provide medical certificates to their State Driver Licensing Agencies. In addition, many medical providers have canceled regularly scheduled appointments and drivers have been unable to obtain appointments for physical examinations with medical examiners who comply with the Federal Motor Carrier Safety Regulations.

Drivers claiming relief under this waiver must continue to carry a paper copy of their expired medical certificate. (Asmark Institute)

### **EPA Releases Temporary Guidance on Respiratory Protection**

EPA has provided temporary guidance regarding respiratory protection requirements for agricultural pesticide handlers during the COVID-19 public health emergency. The temporary guidance provides for the use of alternative NIOSH-approved respirators offering equivalent or greater respiratory protection than those required on the pesticide label. It encourages hiring commercial applicator services with enough respirators and respiratory protection capabilities or opting to use agricultural pesticide products that do not require respirators. Lastly, pesticide applications could be delayed until another compliant option is available.

If all of those options have been exhausted, EPA's guidance provides additional options with strict terms and conditions. These include the reuse and extended use of disposable N95 filter facepiece respirators, the use of "expired" respirators, the use of respirators certified in certain other countries or delaying the annual respirator "fit test." EPA will, on a case-by-case basis, exercise its enforcement discretion for violations of respirator-related requirements provided that handlers and handler employers demonstrate that they have exhausted all available compliance options. (Asmark Institute)

### **OSHA Revises Guidance for Recording COVID**

OSHA has issued a memo to update guidance for recording cases of COVID-19 as an occupational illness.

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and must be recorded if the case is a confirmed case of COVID-19, is work-related and involves one or more of the general recording criteria in the recordkeeping regulation. Given the nature of the disease, in many instances it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace.

Employers must make a reasonable investigation to determine if the illness is work related. COVID-19 illnesses are likely work-related when several cases develop among workers who work closely together and there is no alternative explanation. An employee's COVID-19 illness is likely not work-related if he is the only worker to contract COVID-19 in his vicinity and his job duties do not include having frequent contact with the general public, regardless of the rate of community spread. If, after the reasonable and good faith inquiry described in the guidance, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness.

COVID-19 is a respiratory illness and should be coded as such on the OSHA Form 300. Because this is an illness, if an employee voluntarily requests that his or her name not be entered on the log, the employer must comply. The guidance is intended to be limited to the current COVID-19 public health crisis. (Asmark Institute)

### **CFATS Program Reauthorized for 3 Years**

The Department of Homeland Security's (DHS) Chemical Facilities Anti-Terrorism Standards (CFATS) program was set to expire on July 23rd but has been reauthorized for an additional 3 years. The amendment makes no program changes, but extends the program through July 27, 2023. The CFATS program continues to identify and regulate high-risk chemical facilities to ensure they have security measures in place to reduce the risks associated with those chemicals. (Asmark Institute)

### **Navigable Waters Protection Rule Stands**

A federal judge in California has ruled the Navigable Waters Protection Rule stands after an attempt to halt its implementation by a coalition of 17 states. After a hearing on the motions, he concluded there was not enough evidence to warrant a preliminary injunction or a delay in the rule's implementation. The Navigable Waters Protection Rule replaces the 2015 Waters of the U.S. rule and defines federal water jurisdiction. This has allowed the final rule to go into effect but stay tuned as the decision is likely to be appealed. (Asmark Institute)

