OSHA has announced it will start enforcing the new beryllium exposure standards for general industry, construction and maritime on May 11, 2018. There are a number of requirements and deadlines for companies with potential beryllium exposures. Does this apply to your company, and are you ready?

**What is Beryllium?**

Beryllium is a lightweight but strong metal used in aerospace, telecommunications, information technology, defense, medical, and nuclear industries. It can be found in various items such as brake systems, missile parts, guidance systems, welding, alloys in dental crowns and bridges, laser devices, heat shields, computer parts, x-rays, golf clubs, bicycles and more. Exposure to beryllium comes through inhalation and through contact.

**What’s Required in the New Beryllium Standard?**

***Exposure Assessments and Limits***

If your workers are expected to be exposed to beryllium, you must conduct an exposure assessment using performance or scheduled monitoring methods. There are new standards for exposures, including:

* Reduction of the permissible exposure limit (PEL) to 0.2 micrograms per cubic meter, averaged over 8 hours;
* A new short-term exposure limit (STEL) of 2.0 micrograms per cubic meter over a 15 minute sampling period; and,
* An action level of 0.1 micrograms per cubic meter, calculated as an 8 hour time weighted average.

***Written Exposure Control Plan***

If workers will be exposed to beryllium, companies must prepare a written exposure control plan. **It doesn’t matter if you’re over the above limits – if you have the potential exposure, you need a written plan.** The plan must include a list of operations and job titles affected, procedures for minimizing cross contamination and keeping surfaces clean, required engineering controls/practices to be used, respiratory protection methods, required personal protective equipment (PPE), and procedures for handling contaminated PPE, clothing and respirators. The plan must be reviewed annually, updated as required, and available for employee review.

***PPE***

Companies must provide respiratory protection where exposure cannot be controlled and personal protective equipment separate from street clothing must be provided to limit skin contact. For protective clothing, change rooms and showers are to be provided and used. These rooms and showers must be in place by March 11, 2019.

***Beryllium Work Areas***

Engineering and work practice controls such as ventilation changes or enclosure must be developed to prevent excessive beryllium from becoming airborne. Engineering controls are due by March 10, 2020. In the meantime, beryllium work areas must be marked and have limited access. In construction, a competent person must be designated to mark these areas.

***Medical Monitoring***

Companies with beryllium exposures must offer medical exams to affected workers. If a worker has a beryllium-related disease, companies must offer additional workplace accommodations for them to protect them from additional exposure.

***Worker Training***

Affected workers must be trained in the hazards of beryllium. This must be done separately from Hazard Communication training and be specific to beryllium.

***Next Steps***

Are your workers exposed to beryllium? What are your exposures, and do you have the necessary protections in place? Let iSi conduct your monitoring to check. We can also help you with plans, PPE recommendations and training.

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Are your workers exposed to beryllium? What are your exposures, and do you have the necessary protections in place? Let iSi conduct your monitoring to check. We can also help you with plans, PPE recommendations and training.

OSHA's beryllium exposure standard for general industry, construction and maritime has been in place since May 2018, with various [enforcement dates](https://isienvironmental.com/index.php/beryllium-standard-delay-blog/) for different requirements.  Included below are the major highlights of the standard as well as 2020 Final Rule updates due to become effective on September 14, 2020.

There are a number of requirements for companies with potential beryllium exposures. Do these apply to your company?

**What is Beryllium?**

Beryllium is a lightweight but strong metal used in aerospace, telecommunications, information technology, defense, medical, and nuclear industries. It can be found in various items such as brake systems, missile parts, guidance systems, welding, alloys in dental crowns and bridges, laser devices, heat shields, computer parts, x-rays, golf clubs, bicycles and more. Exposure to beryllium comes through inhalation and through contact.

**What’s Required in the OSHA's Beryllium Exposure Standard?**

***Exposure Assessments and Limits***

If your workers are expected to be exposed to beryllium, you must conduct an exposure assessment using performance or scheduled monitoring methods. There standards for exposures:

* Permissible exposure limit (PEL) to 0.2 micrograms per cubic meter, averaged over 8 hours;
* A short-term exposure limit (STEL) of 2.0 micrograms per cubic meter over a 15 minute sampling period; and,
* An action level of 0.1 micrograms per cubic meter, calculated as an 8 hour time weighted average.

*NEW (2020)   The definitions of a confirmed positive case (including a clarification of time requirements for abnormal or borderline test results) have been updated.*

***Written Exposure Control Plan***

If workers will be exposed to beryllium, companies must prepare a written exposure control plan. **It doesn’t matter if you’re over the above limits – if you have the potential exposure, you need a written plan.** The plan must include a list of operations and job titles affected, procedures for minimizing cross contamination and keeping surfaces clean, required engineering controls/practices to be used, respiratory protection methods, required personal protective equipment (PPE), and procedures for handling contaminated PPE, clothing and respirators. The plan must be reviewed annually, updated as required, and available for employee review.

***PPE***

Companies must provide respiratory protection where exposure cannot be controlled and personal protective equipment separate from street clothing must be provided to limit skin contact.   For protective clothing, change rooms and showers are to be provided and used. These rooms and showers must be in place by March 11, 2019.  There are specific rules for PPE

*NEW (2020)   OSHA did not intend for beryllium-related PPE be worn in areas outside of beryllium work areas.  Thus, it's important for employers determine what their beryllium area is, that is, where is there a potential for dermal contact and airborne impact and then act accordingly with PPE.  Employees who could reasonably be expected to have airborne exposure to and/or skin contact with soluble beryllium, beryllium solutions, or visible beryllium dust, fumes, or mists in concentrations of 0.1 percent by weight or more would be the ones affected.  OSHA also didn't intend for PPE to be changed out after each individual work task and didn't intended that residue completely eliminated before entering eating and drinking areas, it needs to be "as free as practicable."  They've made some word changes to clarify this.*

***Beryllium Work Areas***

Engineering and work practice controls such as ventilation changes or enclosure must be developed to prevent excessive beryllium from becoming airborne. Engineering controls are due by March 10, 2020. In the meantime, beryllium work areas must be marked and have limited access. In construction, a competent person must be designated to mark these areas.

*NEW (2020)   Some minor changes have been made in the Housekeeping section for disposal, recycling and reuse.  The rule’s requirements for disposal, recycling, and reuse do not apply to intra-plant transfers; more detail has been given as to what constitutes an appropriate enclosure; materials bound for disposal can be cleaned; and some minor wording changes have been made to this section and other sections to make them easier to understand.*

***Medical Monitoring***

Companies with beryllium exposures must offer medical exams to affected workers. If a worker has a beryllium-related disease, companies must offer additional workplace accommodations for them to protect them from additional exposure.

*NEW (2020)   OSHA has made clarifications regarding the specific timing on when employers are to have employees who may have been exposed to beryllium in an emergency get medical exams taken, depending on when their last exam was or if they've ever had one.  In another update, because exams at Chronic Beryllium Disease (CBD) Diagnostic Centers may take more than 30 days, OSHA has allowed for the initial consultations to be done within 30 days (including virtual/phone consultations) and then full evaluations within a reasonable time.  The employer must also be sure the employee is offered any tests deemed sufficient by the examining physician at the CBD testing center, and if not offered there, they should be allowed to be performed at a separate location mutually agreed upon by employer and employee.*

***Worker Training***

Affected workers must be trained in the hazards of beryllium. This must be done separately from Hazard Communication training and be specific to beryllium.

*NEW (2020)  Just as PPE pertains to those in beryllium areas, so does training.  Those are employees working in beryllium work areas and any other employees who may not be working directly with a beryllium-generating process, but who may reasonably be expected to have airborne exposure to and/or skin contact in concentrations of 0.1 percent by weight or more.*

***Recordkeeping***

*NEW (2020)   In recordkeeping requirements throughout the standard, all references to collecting social security numbers have been removed.*

***Other 2020 Changes***

* *Dermal and Airborne Contact, but Not Everybody*:  Just like PPE and training have been clarified it's only for those working in or could be reasonably affected by beryllium, medical monitoring, wash facilities and change rooms are also subject just to those persons who could be exposed.  References to dermal contact have been updated to also encompass airborne contact, but this change also helps narrows the requirements so that they don't have to be in place for everyone in the facility.
* Check out the complete 2020 final rule revisions and explanations in the Federal Register [HERE](https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-10678.pdf).

**Does This Apply to You?  We Can Help You Find Out**

Are your workers exposed to beryllium? What are your exposures, which work areas of your company are affected, and do you have the necessary protections in place?   Let iSi conduct your monitoring to check. We can also help you with plans, PPE recommendations and training. [Contact us today](https://isienvironmental.com/index.php/contact-us/)!

«Contact\_Name»

«COMPANY»

«ADDRESS»

«CITY», «ST» «ZIP»

Re: **NOTICE: YOU NEED TO KNOW THE FOLLOWING INFORMATION ABOUT OSHA ASBESTOS REGULATION INTERPRETATION!** *The next 5 minutes could save you thousands of dollars and hours of headaches!*

Dear «Salutation»

I am writing this letter to inform you of two developments in interpretation of OSHA’s regulations. You need to be aware of these now to ensure your company doesn’t unknowingly fall into the latest regulatory trap.

I have stated on many occasions that asbestos is the most regulated substance in industry today. Heavy asbestos regulation has caused many environmental, health and safety managers around the nation to come away from an asbestos issue scratching their heads in bewilderment. OSHA has gotten deeper into asbestos in the last three years. The regulations are more complex and potentially more volatile than ever. Both developments that I will discuss revolve around OSHA’s interpretation of specific definitions in its regulations.

The first issue involves OSHA’s determination that joint compound applied to wallboard should be considered as two separate materials. As you know, EPA made a determination several years ago that the joint compound applied to wallboard was inseparable from the wallboard. The joint compound, tape and wallboard were classified as a system. Then, when tested, if the composite sample of the system contained 1% or less asbestos in its composition, it was not and still is not regulated by EPA. However, OSHA’s determination is different from EPA's. OSHA now requires a building owner to treat each material separately and follow specified work practices if wallboard panels with asbestos containing joint compound or tape are removed and/or disturbed. OSHA justifies their position by stating that they are controlling potential health hazard and not air pollution, which is an EPA responsibility.

The second issue involves the actual definition of asbestos. OSHA defines both "asbestos" and "asbestos containing material" (ACM) in the regulation. The definition of asbestos includes a listing of the asbestos mineral types. The definition of asbestos does not include a minimum percentage, but the definition of ACM does. The minimum percentage of asbestos regulated in ACM is >1%. The regulation doesn’t specifically address how to control exposure to "asbestos" but does have rules and guidelines for controlling exposure to "ACM."

OSHA's use of the terms "asbestos" and "asbestos containing material" create some confusion. The two terms appear to be used interchangeably throughout the regulation, but the scope section of the regulation specifically regulates "asbestos" exposure. Based on previous interpretations by OSHA regarding issues similar to this one, there is a possibility that OSHA’s intent is to regulate all exposure to asbestos, no matter if the percentage content is 0.01% or 1% or 2.5%. There is a possibility that OSHA may state that exposure to ACM must be controlled using the guidance they give in the regulation and all other exposure to asbestos must be controlled if an exposure occurs. OSHA has not commented on this yet, but I expect they will soon. I have sent a letter to Thomas Marple, OSHA Area Director, requesting an interpretation of this issue. I will keep you informed of his response.

I haven’t been able to locate any information to indicate that OSHA is enforcing these interpretations in this region at this moment. However, the potential exists that OSHA will, especially as local regulatory officials become more familiar with the content of the regulation or if a complaint is registered with OSHA. These new regulations and interpretations are already being actively enforced in other states now.

Integrated Solutions recommends the following actions to protect yourself:

* Obtain legal advice and formulate an action plan;
* Review results of your current asbestos survey/operations and maintenance plan to determine your potential liability;
* Review current and planned renovation and/or demolition activities;
* Conduct construction specific sampling of wallboard if survey requires clarification;
* Conduct an exposure assessment for all activities involving any material and/or substance containing asbestos at any level above detection limits; and
* When disturbance of asbestos is required, conduct in a manner, which minimizes release of asbestos and meets OSHA requirements.

These new regulations are already affecting some of our clients, and we have been helping our clients deal with them. I wanted to give you the heads up about this and make sure that you too are covering all of your bases. If there is any way that we can help you, please let us know. We would be happy to lend you a hand. If you have any questions about the new regulations or anything else that has to do with this subject, please give me a call at (316) 264-7050 or e-mail me at drush@southwind.net.

Sincerely,

Doug Rush

Principal and Sr. Industrial Hygienist

Integrated Solutions

**What Annual Safety Training Requirements Should You Add to Your Calendar?**

Last week we discussed the annual [environmental training requirements](https://isienvironmental.com/index.php/annual-environmental-training-blog/) your company needs to schedule for next year. This week, we’re going to cover the Occupational Safety and Health Administration (OSHA) safety training you’ll need to get onto your 2018 calendars. Annual safety training is a best management practice, and is most often required when conditions in the workplace change. However, the OSHA standards don’t specifically require annual training for all of its topic areas, just a handful of them.

If you haven’t covered these topics this year, you have just a few days left in the month to do so.

**Employee Access to Medical Records**

This is one of the most overlooked requirements and one of the top items which pops up in our safety compliance audits. Annual notification for employee access to medical records is required. As a company you’re required to inform workers of their rights to access their medical records, where they’re kept, how to obtain them and who is responsible for keeping them.

**Respiratory Protection and Fit-Testing**

Employees wearing respirators or participating in your company’s respiratory protection program are required to receive annual training regarding respirator use, care, inspection, maintenance, limitations and other requirements. In addition, employees must be fit-tested in their respirator annually. That is, each employee should be tested to ensure the seal is still fitting their face and protecting them. There are standard fit-testing procedures to use to accomplish this item.

**Hearing Protection**

If your employees are exposed to noise at or above an 8-hour time weighted average of 85 decibels, your company is required to have a hearing conservation program. As part of this program, annual training is required. Ensure you post a copy of the occupational noise exposure standard in your workplace and make any and all training materials related to this available to your employees.

**HAZWOPER**

Employees responding to hazardous materials spills, conducting hazardous substance removals, or working at Resource Conservation and Recovery Act (RCRA) corrective action or treatment, storage, and disposal facility (TSDF) facilities are required to have hazardous waste operations and emergency response (HAZWOPER) training. There are various levels of HAZWOPER. Those with 24 and 40 hour initial training are required to have 8 hours of training annually per year.

**Bloodborne Pathogens**

Anyone with potential bloodborne pathogen exposure potential must have annual training and additional training whenever procedures and tasks are changed.

**Fire Extinguishers and Fire Brigades**

If your company provides portable fire extinguishers or other fire-fighting devices for designated employees to use in the workplace, training is required annually. For employees designated to inspect, maintain, operate or repair fixed fire extinguishing systems, annual training reviews are required. Fire fighters in shipyard operations are required to have semi-annual drills and annual training for fire watchers.

If your company houses an internal fire brigade that fight fires beyond the insipient stage, all fire brigade members are to be provided with annual training. Any members who are required to conduct internal structural firefighting are to have quarterly educational sessions or training as well.

**Asbestos and Other Chemical and Substance-Specific Training**

Anyone exposed to asbestos at or above permissible exposure limits are required to have annual asbestos awareness training. Maintenance personnel who may disturb asbestos within the course of their duties are also required to have annual awareness training.

Employees with potential exposures to OSHA 1910.1003’s 13 carcinogens, vinyl chloride, polyvinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, acrylonitrile (vinyl cyanide), ethylene oxide, formaldehyde, Methylenedianiline and 1, 3-Butadiene are required to have annual safe usage training.

**Others Worth Mentioning**

Mechanical Power Presses – Operators of mechanical power presses with the Presence Sensing Device Initiation (PSDI) mode on them are required to have annual operator training.

Agriculture Industry – In grain handling facilities annual training is required for workers at grain handling facilities. Topics to be covered include dust hazards, dust accumulation, ignition control and prevention, cleaning/clearing/housekeeping procedures, hot work procedures, preventative maintenance, lockout/tagout and bin entry and engulfment hazards (for those entering bins). In other agriculture-related workplaces where employees are required to use tractors, annual training regarding rollover protective structures is required and those using farm field equipment, farmstead equipment and cotton gins are required to have safe operating and guarding training annually.

Logging Industry – Supervisors and employees in logging industry operation are required to have annual CPR training, with first aid training every 3 years.

Every 3 years – Because of their prevalence in industry, we thought we’d also mention that forklift recertifications are due every 3 years as is refresher training for Process Safety Management.

Lockout/Tagout – Not necessarily a training requirement, but an annual requirement nonetheless, employers are required to review their energy control procedures at least annually to ensure the procedure and the requirements of the lockout/tagout standard is being followed.

It’s time to plan for 2019 reporting and compliance deadlines. Mark your calendars with these environmental and safety reporting deadlines.

* **OSHA Annual Injury and Illness Summary**: Post from February 1st through April 30th
* **OSHA Electronic Injury and Illness Reporting for 2018**: March 2nd
* **EPA SARA Tier II (311 and 312)**: March 1st
* **EPA Air Emissions Inventory**: Class I: April 1st, Class II: April 1st
* **EPA SARA Form R Toxic Release Inventory (313)**: July 1st
* **DOT Registrations**: June 30th

**Other Dates**

There are other environmental reports you must complete, but **due dates may vary according to your state and local regulations or when your permits or reports were first completed**. Some examples include:

* Title V Air Permits
* Hazardous Waste Reports
* Wastewater Discharge Certifications and Monitoring Reports
* Air MACT Certifications, Deviation Reports and Summary Reports
* Stormwater Reports, Inspections and Sampling
* Boiler Reports

**Other OSHA Dates and Upcoming Regulations to Lookout For**

* **OSHA Crane Standard** – Employers are required to evaluate operators to ensure they are licensed, certified, trained and evaluated: February 7th
* OSHA is expected to update its **respirator fit-testing protocols** in December, so there’s a chance this requirement will spill over into 2019.
* OSHA is planning on **updating its HazCom 2012 standard** in 2019 to better align itself with the Global Harmonization Standard.

Stay tuned to our blog for any updates or notices of new regulations.

Because environmental and safety regulations vary from state to state, city to city, there may be additional requirements for your company which are not listed above. If you need assistance in determining which of these apply to you, or assistance with completing these reports and permits, iSi would love to help! Please contact us for more information and pricing.

**What Annual Environmental Training Requirements Should You Add to Your Calendar?**

Over the next few weeks, we’ll highlight EPA and OSHA compliance deadlines you’ll need to get onto your 2018 calendars. This week we’re going to cover the most common annual environmental training requirements so that if you haven’t held one of these classes for this year, there’s still a few days left for you to do so.

**RCRA Hazardous Waste**

Training is required for anyone handling or managing hazardous waste. For large quantity generators, this training is required annually. For small quantity and conditionally exempt small quantity generators, “annual training” is not specified in the regulations but is considered a best practice. Many states have their own hazardous waste regulations which can vary from the federal version, so be aware of the regulations for your area.

**Stormwater Pollution Prevention Plan (SWP3)**

Training is required annually for any facility required to have a Stormwater Pollution Prevention Plan, and in some locations, additional training may also be required. iSi has recently completed a stormwater training project for a national client where we researched all stormwater compliance requirements for each of the 50 states. Through this, we’ve learned stormwater rules can vary greatly from state to state, and in some cases, from municipality to municipality. Check with your state’s general stormwater permit or contact iSi for more information about your state’s requirements.

**Spill Prevention, Control and Countermeasures (SPCC)**

Any company required to have an SPCC Plan must conduct training annually. SPCC Plans ensure facilities have containment and other countermeasures in place to prevent oil spills from reaching navigable waters. Annual training is required for oil-handling personnel to ensure the prevention measures and procedures are in place, understood and followed.

**Facility Response Plan (FRP)**

FRPs are concerned with oil spill responses after the spills occur. For those who are required to have FRPs in accordance with 40 CFR Part 112, there is training required as well as hands-on exercises. The National Preparedness for Response Exercise Program (PREP) is to be used for the hands-on portion and the U.S. Coast Guard’s Training Elements for Oil Spill Response can be used for the classroom training. Qualified individual and emergency procedures exercises must be conducted quarterly, equipment deployment exercises must be conducted semiannually, and incident management team tabletop exercises must be conducted annually. There are additional requirements for unannounced and after business hour training.

**Asbestos**

Those certified as asbestos workers, contractor/supervisors, inspectors, planners and project designers are required to complete annual refresher training. Maintenance personnel who may disturb asbestos within the course of their duties are required to have annual awareness training. Although EPA addresses awareness training for these workers, it’s OSHA which requires the training annually.

**Others Worth Mentioning**

TSDF Facilities: TSDF facility personnel must have RCRA emergency response training, and that training can be HAZWOPER if it meets the RCRA requirements. HAZWOPER refresher training is due annually.

Boiler and Industrial Furnaces: Control room operators, boiler operators, and any personnel who may directly affect air pollutant emissions must have annual training. Much of this training is administered by state-approved programs.

There are other annual environmental training requirements for industrial processes which are not as widespread including municipal solid waste combustors, medical waste incinerators, and underground hazardous waste injection wells. Much of this training is also conducted by EPA or state-approved training providers.

**Others Required, but Not Annually:**

Risk Management Plans: Every 3 years

Pesticides: Every 5 Years

Lead-Based Paint: Every 3-5 years depending on the initial test you took

EPA has issued some changes to its air permitting process in order to help companies save time and reduce paperwork and compliance burdens.

**Definition of Adjacent Areas**

As we first [reported here](https://isienvironmental.com/index.php/air-permit-adjacent-blog/) last fall, EPA was considering changing the interpretation of the word “adjacent” for its EPA Title V air permit and New Source Review (NSR) air permits for new construction or modifications. That interpretation change is now final.

In the regulations, the word adjacent comes into play when determining if a facility qualifies for permits.  When determining sources, a building, structure, facility or installation must be under the control of the same person, belong in the same industrial grouping, and located on one or more contiguous or adjacent properties.  When it came to “adjacent”, EPA had been also considering “functional interrelatedness,” that is, grouping together facilities with similar functions, even if they were miles apart.

According to the new rule, for all industries other than oil and natural gas production and processing, adjacent is physical proximity only.  EPA makes additional comments on the word “contiguous” as well, noting the difference between adjacent and contiguous.  Operations do not have to be contiguous to be adjacent.  That is, operations that do not share a common boundary or border, not physically touching each other will be adjacent if the operations are nearby.  If there is proximity (neighboring or side-by-side operations where the “common sense notion of a plant” can be deduced) that will be considered adjacent.  Railways, pipelines and other conveyances will not determine adjacency.

Please note that states with their own air permitting programs aren’t required to follow the new interpretation, so be aware of the regulations in your own state.

More information about [EPA’s change can be found here](https://www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations).

**Revised Exclusions for Ambient Air**

EPA has broadened the exclusions industrial facilities can take from the ambient air regulations.

The Clean Air Act sets standards that affect ambient air quality, that is, that portion of the atmosphere, external to buildings, to which the general public has access. In the air permitting process, companies are required to make air quality analyses of how their operations, (or changes to operations) will affect the ambient air quality. Within that requirement, there’s been an exclusion for areas that the public didn’t have access to. That is, you didn’t have to count the effects to the air quality of the areas of your facility that the public didn’t have access to as long as your company owned or controlled that area.

Until now, fences and other physical barriers have been the determining factor on public access.

In the updated regulations, EPA is allowing for other types of measures to which deter public access. Some examples could include:

* Signage
* Security Patrols
* Remote Surveillance Cameras
* Drones
* Natural Barriers Such as Cliffs or Rugged Terrain (case-by-case basis)

Your company will still need to have the legal authority to prevent the public from going onto that property. Please note that in this case as well, states with their own air permitting programs aren’t required to follow the new interpretation, so be aware of the regulations in your own state.

For more information, check out the [EPA’s guidance page here](https://www.epa.gov/nsr/forms/draft-guidance-revised-policy-exclusions-ambient-air).

**New Clean Air Act Interpretation May Affect Facility Permitting**

Facilities required to have an EPA Title V air permit, New Source Review (NSR) air permit, or a Prevention of Significant Deterioration (PSD) air permit may soon be affected by a proposed new interpretation of the word “adjacent”.

**Adjacent Properties**

In the regulations, the word adjacent comes into play when determining if a facility qualifies for permits. When determining sources, a building, structure, facility or installation must be under the control of the same person, belong in the same industrial grouping, and located on one or more contiguous or adjacent properties. When it came to “adjacent”, EPA wouldn’t give a determination on how far apart the properties needed to be and said that it would be determined on a case by case basis. Besides physical proximity, EPA has been considering “functional interrelatedness” in its adjacent determinations.

Companies determine how their facilities should be permitted within the rules, whether there is one combined source, or whether there are separate sources. In one court case, EPA disagreed with a petroleum company that it had separate sources. EPA said the company’s operations and wells were adjacent, even though they were miles apart. EPA was considering the operations, pipelines and wells as having functional interrelatedness. The petroleum company sued EPA, and the court found in favor of the petroleum company. The court said the definition of “adjacent” was simple and meant only physical proximity.

After the court ruling, EPA tweaked interpretation rules by region to include functional interrelatedness, and they were also thrown out by courts in other lawsuits and challenges.

**The New Interpretation**

EPA has issued a draft guidance for the interpretation of adjacent and it’s available for [public comment](https://www.epa.gov/nsr/forms/interpreting-adjacent-source-determinations). The new interpretation says for all industries other than oil and natural gas production and processing, adjacent is physical proximity only. EPA makes additional comments on the word “contiguous” as well, noting the difference between adjacent and contiguous. Operations don’t have to be contiguous to be adjacent. That is, operations that don’t share a common boundary or border, not physically touching each other will be considered adjacent if the operations are nearby. If there is proximity (neighboring or side-by-side operations where the “common sense notion of a plant” can be deduced) that will be considered adjacent. Railways, pipelines and other conveyances will no longer be used to determine adjacency.

**What’s Next**

The interpretation will be used from now on for new sources only. Operations already considered one source will remain that way as long as common control and industrial grouping code (SIC) criteria exists. States with approved NSR and Title V permitting programs aren’t required to follow the new interpretation but EPA recommends it for greater uniformity in permitting decisions.

Read EPA’s memorandum regarding adjacent properties [here](https://www.epa.gov/sites/production/files/2018-09/documents/draft_adjacent_policy_memo_9_04_2018.pdf).