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The 12 Things You Need to Know About OSHA’s   
New Confined Space in Construction Standard

OSHA’s new confined space entry standard for construction became effective this month. Until now, the 1926 construction standards didn’t have separate regulations for confined spaces. The only rules regarding confined spaces in construction were training-related.

The new rules are similar to those found in the general industry standards, but have some exceptions, clarifications, and tighter definitions.

1. What’s a Confined Space?

This standard lists over 30 examples of confined spaces in construction activities. Some listed include work in bins, boilers, pits, manholes, tanks, incinerators, scrubbers, vessels, HVAC ducts, water mains, digesters, silos, air preheaters, turbines, chillers, bag houses, sewers, and transformer vaults.

2. General Industry or Construction – Which One Do You Use?

If your company performs both general industry AND construction activities, you are to follow the construction standard. Construction activities are generally considered the building of a new structure or the upgrading of it.

3. Enforcement Postponement

OSHA has postponed enforcement until October 2 to allow additional time for training and for employers to acquire the equipment necessary to comply with the new standard. OSHA will not issue citations to employers who make good faith efforts to comply. These “Good Faith” efforts may include: scheduling for training, ordering equipment, and taking measures to educate and protect employees from confined space hazards.

4. Multi-Employer Worksites – Who’s In Charge? Who Communicates What?

In the construction standard, roles and responsibilities are better defined. There are three different entities which are named: controlling contractors (main contractor responsible for work), the host employer (the facility/owner), and entry employees (the company whose employees will be doing entry).

The controlling contractor is the primary point of contact for information about permit spaces, not the host employer. The host employer is responsible for providing information to the controlling contractor about the permit spaces at the worksite. The controlling contractor is then responsible for passing that information on to any subcontractors who will have entry employees. Subcontractors are responsible for notifying the controlling contractor of their entry program and any hazards they encounter in the space. Then that information is passed back to the host employee from the controlling contractor.

*Heads up property managers!* If the owner of the property on which the construction activity occurs has contracted with an entity for the general management of that property, OSHA will treat the contracted management entity as the host employer for as long as that entity manages the property.

5. Hazard Evaluations

A competent person is the one who’s responsible for evaluating the worksite to identify the confined spaces and permit-required spaces before the job begins. In the general industry standard, the employer is the entity which is responsible for this, not the individual.

6. Air Monitoring is Required

A strong emphasis is put on continuous atmospheric monitoring and it’s required whenever possible. The atmosphere within the space must be continuously monitored unless the entry employer can demonstrate that commercially monitoring equipment is not available or periodic monitoring is sufficient.

7. Limited or Restricted Means for Entry or Exit = a Confined Space

Areas with limited or restricted means for entry or exit within this standard are included as confined spaces. These are areas where there’s a condition that has a potential to impede movement into or out of a confined space. OSHA gives examples of trip hazards, poor illumination, slippery floors, inclining surfaces, and where entry or exit is only by ladder. Thus, if an area has poor lighting, it could be considered a confined space because it would hinder escape in an emergency.

8. Training Delivery

All training needs to be provided in a language and a vocabulary that the worker understands. If you have workers who cannot understand English, you will need to provide training in the language they do understand.

9. Notifying the Rescue Team

The construction standard says if an employer is relying on local emergency services to handle confined space rescue, that employer is required to alert emergency services of this. So if you’re expecting the local fire department to do the rescue, you need to let them know ahead of time.

In addition, as an employer, you need to ask your emergency services contacts to let you know whenever they will not have the capabilities to respond for a period of time. For example, if you were using the fire department, you would need to arrange for the fire department to let you know when they were going to be using all of their resources responding to another emergency.

Your rescuers will also need to be informed of the hazards ahead of time, be equipped to respond in a timely manner, and be given access to all permit spaces so that they can develop appropriate plans for rescue. Thus, some planning and communication with your rescue team/emergency services choice will need to be conducted prior to the project.

10. Engulfment Hazards

Whenever there is a chance of engulfment, continuous monitoring of potential hazards must be performed. OSHA uses the example of working in a storm sewer. Monitoring of weather or water levels using electronic sensors or observers upstream would give workers a sense of the impending water inundation hazard within enough time to evacuate safely.

11. Non-Permit Entry

If an employer directs an employee to work in a confined space without a permit, that employer must prevent exposure to physical hazards by eliminating those hazards or isolating them through such methods as lockout/tagout, ventilation, purging, inerting, or flushing spaces. Action must be taken to reduce the level of any hazard, and just using PPE would not be sufficient.

12. Suspending a Permit

The standard allows for suspending the permit rather than cancelling it. This would occur if the entry conditions on the permit suddenly changed. Returning the space to the conditions on the permit would allow for re-entry into the space without a full cancellation and issue of a new permit.

For more information about the new standard, visit OSHA’s webpage dedicated to this topic at <https://www.osha.gov/confinedspaces/index.html> or call iSi at (678) 712-4705.

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**The Most Common Gaps Found in Environmental Audits**

Environmental regulations are enforced by federal, state and local governments. How do you make sure you have your bases covered? An environmental audit can determine your current status and what your vulnerabilities are.

iSi’s [environmental audits](https://isienvironmental.com/index.php/environmental-compliance/) cover air, wastewater, stormwater, waste, spill prevention, tanks, DOT and emergency planning (EPCRA) requirements. They are a mock regulatory audit, looking at all aspects of your program through data gathering, walkthroughs and records reviews.

The following are our Top 8 Most Common Environmental Compliance Gaps found in our audits:

**1.  Inaccurate Permits, Registrations & Notifications**  
What your facility does will determine which of these you need.  For example, have you notified the proper agencies regarding your spraying, blasting, emitting, generating, collecting, storing, disposing and discharging operations?

**2.  Inaccurate/Incomplete Facility Plans**  
Specific written plans are required depending on what you do or have onsite. Which apply to you? Are they updated on the frequency required?

**3.  Missing/Incomplete Facility Inspections**  
Are you conducting the inspections which apply to you, on the frequency required?  What documentation is required?

**4.  Missing/Incomplete Facility Tracking**  
Are you tracking your air emissions correctly? What about waste generation? Tier II or Form R chemicals?

**5.  Inaccurate/Incomplete Reporting**  
Are you required to report monthly, quarterly, semi-annually or annually?  What does your state/city/county require?  What about your spills?

**6.  Inaccurate/Undocumented Training**  
Have you conducted the training you are required to?  Are the right people trained?  Refreshers needed?

**7.  Incomplete/Inaccurate Records**  
Are you keeping required records? Where are they kept and for how long?

**8.  Poor Day to Day Facility Management**  
Is there a disconnect in the proper way to do something vs. how it’s actually being done?

iSi can help you get a baseline on your environmental compliance responsibilities and help you prioritize the ones which are most critical to be taken care of.  [Request a quote for an environmental audit today!](https://isienvironmental.com/index.php/pricing/)  Need more information about these issues?  [Contact us](https://isienvironmental.com/index.php/contact-us/)!

**OSHA Updates Its Combustible Dust National Emphasis Program**

In 2007, after a number of combustible dust incidents, OSHA issued its National Emphasis Program on Combustible Dusts. After years of inspections and gained knowledge about combustible dusts in industry, OSHA maintains this National Emphasis Program is now updating it to better target those industries they are finding are having the most issues.

**What Are Combustible Dusts?**

Combustible dusts are organic or metal dusts ground into very small particles, fibers, flakes, chips, or chunks which makes them more likely to cause fire, flash fire, deflagration and explosion hazards. They can be found in process equipment, dust collectors, electrical equipment, and all around the building.

Some typical combustible dusts include:

* Metal dusts like aluminum, magnesium and iron
* Wood dusts
* Coal, carbon and carbon black
* Plastic dusts, phenolic resins and additives
* Rubber dust
* Biosolids
* Organic dusts like sugar, flour, paper, soap and dried blood
* Textile dusts

Grain handling dusts are also combustible, however, due to the incidents and explosions involving grain handling facilities, they have their own emphasis program. The combustible dust emphasis program looks at all other dusts or those facilities that may not qualify to be inspected under the grain handling emphasis.

**Affected Industries**

The combustible dust emphasis program has listed quite a few NAICS codes targeted for programmed inspections in its [Appendix B](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-008.pdf). Some of these include:

* Wood products
* Forest and furniture
* Chemicals
* Metal processing
* Agriculture and food (human and animal)
* Rubber and Tire
* Paper products
* Textiles
* 3-D printing
* Pharmaceuticals
* Wastewater treatment
* Recycling
* Coal dust handling and processing

Through its inspections since 2007, OSHA found:

**The Top 5 Industries with the Most Combustible Dust Hazards**

* Farm suppliers
* Institutional furniture manufacturers
* Metal window and door manufacturers
* Sheet metal work
* Furniture and upholstery repair

**The Industries With the Most Fatalities and Catastrophes:**

* Animal food manufacturing
* Sawmills and lumber production
* Wood manufacturing and processing
* Agriculture processing

**New Industries Added to Appendix B to Be Inspected**

Through inspection data it was found that certain industries needed to be added to Appendix B because they were more likely to have combustible dust hazards or the number of combustible dust-related fatalities or catastrophes had went up. These include:

* Commercial bakeries
* Printing ink manufacturing
* Cut stock, resawing lumber, and planing
* Leather and hide tanning and finishing
* Truss manufacturing
* Grain and field bean merchant wholesalers

**Industries Removed from Appendix B**

Those industries that OSHA found were less likely to have combustible dust hazards or who had low incidents and violations were removed from Appendix B and are no longer on the target list for programmed inspections. These include:

* Fossil fuel electric power generation
* Cookie and cracker manufacturing
* Pharmaceutical preparation manufacturing
* Unlaminated plastic profile shape manufacturing
* Noncurrent carrying wire device manufacturing
* Blind and shade manufacturing

**How Will OSHA Determine Who Gets Inspected?**

OSHA will pull a list of all companies whose NAICS codes fall under those listed in [Appendix B](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-008.pdf) to generate a random number list. Each company will be assigned a number and OSHA inspectors who have had specialized training in combustible dust hazards will be assigned to conduct inspections. This list will remain active for 3 years before a new one is generated. Between 2013 and 2017, OSHA conducted approximately 500-600 per year between programmed (planned) and unplanned inspections.

Your company can be deleted off the list if you have been inspected within the past 5 fiscal years, were inspected for combustible dust hazards and no citations were issued, or if you were inspected for combustible dust hazards and were cited but a follow-up inspection verified you did abate the hazards. If you are a VPP or SHARP company, you also will be deleted off the list.

Even if you’re not on the list for programmed inspections or in Appendix B, you can still be inspected if there has been a complaint or if you have had a fatality or catastrophic incident related to combustible dust.

There is no OSHA combustible dust standard, so what will an inspector be looking for when they come onsite for one of these inspections? Stay tuned for our next blog article, “What Will Inspectors be Looking for in Combustible Dust Inspections?”

**What Will Inspectors Look for in Combustible Dust Inspections?**

We recently discussed in this blog [OSHA’s revised Combustible Dust National Emphasis Program](https://isienvironmental.com/combustible-dust-emphasis-program-blog). Along with that revision OSHA’s shared its instructions to inspectors on what how to conduct the inspection, what to look for, how to build a case for a citation and which standards they could cite in a citation.

In this article, we’ll list out exactly what an inspector will be looking for if they arrive to your site for a combustible dust inspection, the information you’ll need to provide, and which standards you can be cited under. There is no official OSHA combustible dust standard, so inspection instructions can help serve as a guidance to help you determine what you need to have in place not only to do well in an inspection, but to keep your people safe.

**How Will OSHA Determine Who Gets Inspected?**

First, will you be on the target list?

The NAICS codes who are likely to have combustible dust hazards are gathered together on [Appendix B](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_03-00-008.pdf) of the emphasis program. OSHA will pull a list of all companies who qualify and generate a random order list. Each company will be assigned a number and OSHA inspectors who have had specialized training in combustible dust hazards will be assigned to conduct inspections. This list will remain active for 3 years before a new one is generated. Between 2013 and 2017, OSHA conducted approximately 500-600 per year between programmed (planned) and unplanned inspections.

Your company can be deleted off the list if you have been inspected within the past 5 fiscal years, were inspected for combustible dust hazards and no citations were issued, or if you were inspected for combustible dust hazards, was cited but a follow-up inspection verified you did abate the hazards. Also, if you are a VPP or SHARP company, you can be deleted off the list.

If you’re not on the list for programmed inspections, you can still be inspected if there has been a complaint or if you have had a fatality or catastrophic incident related to combustible dust.

**What Will Inspectors Be Looking for in a Combustible Dust Inspection?**

This is the list of items that OSHA will be evaluating and the potential documentation they will be looking for:

1. **History of Fires and Explosions**

Inspectors will be determining if your plant has a history of fires, flash fires, deflagrations of process vessels and inside buildings, and explosions of vessels. They’ll be conducting employee interviews, looking at OSHA logs, looking at insurance claims, accessing local fire department records, and conducting onsite visual inspections to look at the condition of your equipment. They’ll be placing special attention to discoloration, bulging, repairs and missing/damaged pieces or appendages of your equipment.

1. **Safety Data Sheets (SDSs)**

Inspectors will go through your SDSs, looking for combustible dusts.

1. **Electrical Area Classification Drawings/Documents**

Inspectors will be looking at your classification documents to find areas marked Class II, Division 1 or 2 to ensure electrical equipment is approved for that hazardous location.

You are required to have these drawings per [29 CFR 1910.307](https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.307), which is the Hazardous (Classified) Locations Standard.

1. **Dust Hazard Analysis**

Inspectors have been instructed to do a dust hazard analysis toward the end of the inspection to help them in determining your citation, rather than at the beginning of the inspection to determine the scope. This analysis includes observations of all areas of the facility for accumulation issues to determine overall potential for fire, flash fire or explosion.

They’ll be looking at:

* Horizontal structures
* Conduits and pipe racks
* Cable trays
* Floors
* Above suspended ceilings
* On or around equipment, especially on elevated horizontal surfaces

They will be taking measurements of depth, determining physical area sizes, and may be bringing cameras and video cameras on poles to help take photos of high places.

1. **Control and Suppression Systems**

Inspectors will be looking to ensure:

* Dust collectors and dust handling equipment has explosion prevention/suppression systems and deflagration propagation prevention devices;
* Dust systems that return clean air to buildings have proper protections;
* There are no hazardous levels of combustible dust accumulations outside of equipment;
* Number and sizes of horizontal surfaces are minimized and designed to prevent dust accumulation;
* Equipment that produces, transports, stores or handles dust (mixers, silos, mills, ducts, dust collectors, etc.) are designed and maintained to prevent dust leakage/escape/clouds;
* Material transport systems (conveyors, elevators) are designed to prevent dust leakage/escape/clouds;
* The method of cleaning and the tools you use to clean are proper. Are you using specialized vacuums to clean up combustible dusts, what are you doing to clean up dust, and if you use compressed air is it under 30 psi with the right chip guards and PPE?
* Electrical equipment and lights are proper for use in those areas;
* Powered industrial trucks are approved for use in those locations;
* Hot work, welding, cutting and grinding is not performed in those areas;
* Ductwork from dust generation, handling and collecting systems is conductive, bonded and properly grounded to dissipate static accumulation;
* Maintenance of mechanical equipment is conducted to prevent generation of heat and sparks;
* Process systems have magnetic separators and/or tramp metal separators installed;
* Your ductwork has proper transport velocity to prevent accumulation in the ducts and that ducts have inspection and cleanout ports/hatches;
* Housekeeping procedures are in place; and,
* You have ignition control programs for:
  + Hot work and hot surfaces
  + Bearings
  + Self-heating materials
  + Open flames
  + Fuel-fired equipment
  + Heated process equipment
  + Heated air
  + Frictional sparks
  + Impact sparks
  + Electrical equipment
  + Electrostatics or other similar sources in dust handling equipment.

1. **Sampling Results**

Inspectors will be collecting dust samples from each area they believe has a potential for a combustible dust hazard. This could be from elevated surfaces, horizontal surfaces as high overhead as possible, floors and equipment surfaces, dust collection equipment and within process equipment. They are not allowed to enter into your confined spaces, but they can use a non-spark producing scope or scoop on an extension pole to collect their sample.

Samples will be sent to the OSHA Salt Lake Technical Center which has specialized knowledge and experience with combustible dust hazards.

A good practice with all OSHA inspections is to make sure you conduct your own side-by-side sampling, that is, you sample what they sample and get your own independent results. Be advised, combustible dust samples are going to be considerably more expensive samples to have analyzed by a laboratory than other types of materials.

1. **Other Documentation**

Inspectors will be gathering all kinds of other information including:

* How your equipment is connected and how the process flows;
* Piping and process diagrams;
* They’ll take photographs, videos and make diagrams or sketches documenting extent and depth of dust and condition of equipment;
* Room dimensions;
* Engineering controls used;
* Design information, make, model, serial numbers of dust collectors;
* Date of installation and operator manuals for dust collection system;
* Dirty and clean size/volumes for dust collection system;
* Warning signs and alerts on equipment regarding combustible dust;
* External ignition sources; and,
* Internal ignition sources.

**What are Some Potential Standards You Could be Cited Under?**

OSHA does not have its own dedicated combustible dust standard, but it can use a wide variety of other standards to cite you for these hazards. These include:

**Housekeeping Standard (Non-Storage Areas) – 29 CFR 1910.22**

A little dust here and there wouldn’t be enough. You can be cited under this standard if you have a visible volume of combustible dust in the workplace. This is where that dust hazard analysis comes in. They will use their measurements and observations for extent, depth and calculations of area. If you have dust everywhere and it’s pretty significant, expect a violation of this standard.

**Housekeeping Standard (Storage Areas) – 29 CFR 1910.176(c)**

This is from the Handling Materials – General standard which says that storage areas need to be free from accumulation of materials that constitute hazards including explosion and fire.

**General Duty Clause – Section 5(a)(1)**

As with a lot of other cases, usually there’s always something within the tried-and-true General Duty Clause that could be included. In this case it will be related to the dust collection system or your dryers, mixers, material storage, bucket elevators and mills. In addition to reviewing your safety and maintenance manuals, inspectors may do some research into your industry to find potentials for combustible dust hazards and also use NFPA 65 or other NFPA standards to find issues.

Some ideas for citations under the General Duty Clause listed for inspectors in their inspection guidance include:

* Problems with dust collectors;
* Ductwork-related problems;
* Improperly designed deflagration venting;
* Unprotected processing and material handling equipment (no deflagration suppression); and,
* Improperly designed or maintained blowers, collection systems and exhaust systems used at sawmills.

**Ventilation – 29 CFR 1910.94**

Paragraph (a) of this standard deals with abrasive blasting including fire and explosion hazards. If your ventilation equipment is not constructed in accordance to NFPA 91 and 68, then you can be cited here.

**PPE – 29 CFR 1910.132(a)**

If employees are not wearing FR (flame-resistant) clothing around combustible dust areas where they could receive burn injuries from flash fires, you can be cited under the PPE standard.

**Hazardous (Classified Locations) – 29 CFR 1910.307**

This is in the Electrical Subpart S area of the standards. If sample results show you have combustible dust in a Class II area and it’s not safe for it to be there, you would be cited under this one. They can also cite Class I and III electrical-related issues here too if they find them along the way.

**Powered Industrial Trucks – 29 CFR 1910.178**

If you have a forklift that’s not rated an EX (explosion proof) in the area where there’s combustible dust, you can be cited here. Also be aware that many jurisdictions still have Powered Industrial Truck emphasis programs so they can conduct an additional separate inspection regarding your trucks while they are there for combustible dusts.

**Welding, Cutting and Brazing – 29 CFR 1910.252**

Under the general requirements, if you are conducting cutting and welding in explosive atmospheres, you can be cited here.

**Warning Signs – 29 CFR 1910.145**

This comes from the standard for Specifications for Accident Prevention Signs and Tags under Subpart J, General Environmental Controls. If you have safety instruction signs missing from equipment or missing from entrances where there are explosive atmospheres, expect a citation here.

**Hazard Communication – 29 CFR 1910.1200**

Did you know that combustible dust is considered a hazardous chemical? This needs to be incorporated into your hazcom program. All equipment containing combustible dusts, including drums and containers used to collect dusts from dust collectors and cyclones must be properly labeled just like any other hazcom container.

You should also document notifying and training employees on its hazards.

SDSs are now supposed to include combustible dust as a not otherwise classified hazard with the signal word “warning” and the hazard statement “may form combustible dust concentrations in the air.”

**Others and Specialty Standards**

* Means of Egress – 29 CFR Subpart E
* Portable Fire Extinguishers – 29 CFR 1910.157 (no emergency action plan or fire prevention plan)
* Fire Brigades – 29 CFR 1910.156
* Spray Finishing – 29 CFR 1910.107
* Bakery Equipment – 29 CFR 1910.263
* Sawmills – 29 CFR 1910.265
* Pulp and Paper Mills – 29 CFR 1910.261

Do you need help with combustible dust? iSi can help with programs, audits and hazard assessments, sampling, PPE determinations, training and more. [Contact us today!](https://isienvironmental.com/pricing/)

Citation Case Study: Paint Drippings on the Ground a Hazardous Waste Violation

The following is an example of a hazardous waste citation given to a manufacturing facility by a state’s environmental regulatory agency. The company appealed to the state’s Office of Administrative Hearings. Although this particular citation was from a state regulatory agency, the citation referenced a federal hazardous waste regulation and thus this issue may be cited in any location.

Can this scenario be found at your facility?

**Scenario:**

A company had paint drips on the ground outside by their dumpster. The paint drips had accumulated over time since the company had been in the same location for over 10 years.

**The Citation:**

*40 CFR 265.31*

The company was cited for violation of hazardous waste rules for “Failure to prevent the possibility of fires, explosions or sudden releases of hazardous waste.”

The company tried to prove the paint drips came from exempt containers that were RCRA empty at the time of disposal into the dumpster, and the paint drips had accumulated over time.

**The Ruling in Appeal:**

In this appeals process, a judge reviewed the work of the state inspector and heard testimony by the cited company.

The first consideration was whether all wastes were removed from the can that could be removed, as required by regulation in order for the remaining contents to be exempt. KDHE and the Administrative Judge found that if the contents were able to drip from the cans upon transport to the dumpster, and in the quantity dripped, not all of the wastes were removed from the paint cans that could have been removed. As a handler of hazardous wastes, the company had a responsibility to take precautions to ensure that hazardous materials were not subject to a release "to air, soil, or surface water which could threaten human health or the environment."

The judge noted that spills were understandable; however, the failure to clean up the spills and mitigate the release is crucial.

With the premise that the hazardous waste contents of the paint cans were no longer exempt once they exited the paint can(s), the question is then whether the spills identified during the inspection violated 40 CFR 265.31. The regulation states: "Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment." The judge found that the company did not minimize the possibility of a fire or release of hazardous waste, and took the least restrictive means' of handling a hazardous waste, resulting in spills.

**Possible Solution:**

During the hearing a question was posed to the inspector as to what could have been done to prevent the spills. The inspector mentioned the possibility of using better bags for disposal or even double bagging the paint containers, and landfills are constructed to avoid release of hazardous wastes into the environment.

The company was told it must take precautions to mitigate release, at the very least until the waste reaches the landfill and the citation was upheld.

Asbestos is contained in thousands of products, from building materials and adhesives, fireproofing materials to consumer products. The use of asbestos has dramatically declined since the 1980s, and more than 50 countries have banned its use. However, one type of asbestos is still being used to make certain products in the U.S., and EPA is working to ban it. It’s called chrysotile, or white asbestos.

Chrysotile is the most common type of asbestos. Its soft, flexible fibers form a serpentine material that’s strong, heat resistant to 3000 degrees and non-conductive. Some chlor-alkali manufacturing plants that make chlorine and sodium hydroxide and some vehicle brake and sheet gasket manufacturers still import and use chrysotile asbestos in their products.

**The EPA Ban on Chrysotile**

EPA has issued a proposed rule to ban chrysotile asbestos in the following products:

* Chrysotile asbestos used in bulk or in asbestos diaphragms in the chlor-alkali industry beginning two years after the effective date of the final rule;
* Chrysotile asbestos-containing sheet gaskets in chemical production beginning two years after the effective date of the final rule;
* Chrysotile asbestos-containing brake blocks used in the oil industry;
* Chrysotile asbestos-containing aftermarket automotive brakes/linings and other friction products, including for consumer use; and
* Chrysotile asbestos-containing gaskets, including for consumer use.

Asbestos diaphragms are used by chlor-alkali plants for the water treatment industry, but that use has been declining. EPA estimates only 9 chlor-alkali plants in the U.S. still use asbestos diaphragms as there are other alternatives, accounting for only 33% of all chlor-alkali plants. EPA was not able to quantify the scope of asbestos use in the brake and gasket industries.

EPA’s rule would also include targeted disposal and recordkeeping requirements that would take effect 180 days after the effective date.

**Other Upcoming Asbestos Studies by EPA**

As part of the Toxic Substances Control Act (TSCA), asbestos was one of 10 chemical substances on a list to be studied and put through a risk evaluation. EPA decided to do the evaluation in two parts. The first part was the risk evaluation for chrysotile, leading to this ruling on banning it. In Part 2, EPA will be looking at a number of other issues related to asbestos, including:

* Different types of asbestos (amphibole-type asbestos such as crocidolite, amosite, tremolite)
* Legacy uses of asbestos in commercial, industrial and consumer products
* Disposal phases
* Occupational exposure
* Consumer and bystander exposure
* General population exposure
* Potential exposed or susceptible subpopulations (children, workers, smokers, others)

In addition, EPA will be evaluating asbestos-containing talc and vermiculite. This does not apply to talc used in makeup, but talc that’s imported and used in industrial, commercial and consumer products such as filler/putty, crayons with talc-containing asbestos and toy crime scene kits with talc-containing asbestos. EPA will be looking at the import of this talc, distribution of it in commerce and its disposal. Vermiculite was used in building materials, and 70% of all vermiculite sold in the U.S. was extracted from an open pit mine in Libby, Montana until it closed in 1990.

EPA is accepting public comments on the proposed rule for chrysotile asbestos  at [https://www.regulations.gov/](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.regulations.gov%2F&data=04%7C01%7CGillespie.Taylor%40epa.gov%7C1f6ac08653864974598408da171f2be4%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637847719933714072%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=XhhJqbzIllAHB2D1YWAHH0GUtNty1PiWQtqW8ubNICI%3D&reserved=0).

**Chemical Manufacturers & Importers: Ensure You’re on EPA’s Active Chemical List**

In compliance with updates to the [Toxic Substance Control Act (TSCA)](https://www.epa.gov/chemicals-under-tsca), EPA is updating its inventory of the chemicals manufactured or imported in the U.S.  They are making an "Active" chemical list and an "Inactive" chemical list.

If your company manufactured or imported a chemical between June 21, 2006 and June 21, 2016, you will need to make sure it's on the list and marked "Active" in order to continue to produce or import it after **February 7, 2018**.  If you reported your chemicals in the 2012 or 2016 TSCA Chemical Reporting Rule, they're already marked Active on the list, as are chemicals added after June 22, 2016.  However, for many companies TSCA reporting is for large quantities.  This effort includes chemicals in small quantities as well.

If you're a chemical processor, you have until October 5, 2018 to report chemicals as Active.  However, for you it's voluntary reporting and more of a protection in case one or more of your raw materials doesn't get reported by the manufacturer.

Reporting is to be done through Notice of Activity forms on EPA's Central Data Exchange.  There are [a few exemptions to reporting](https://www.epa.gov/tsca-inventory/list-active-substances-exempt-tsca-inventory-notifications-active-inactive-rule)including naturally occurring substances, pesticides, mixtures, tobacco, food/food additives, drugs, cosmetics, byproducts, research and development substances, chemicals for export only or test marketing, and chemicals already reported by someone else/already on the list.

After the deadline passes, a chemical marked as Inactive will be able to be reactivated, however, there will be an official approval process to go through in order to do that.

Is your chemical already on the list?  [Check out the current Active list here](https://www.epa.gov/tsca-inventory/interim-list-active-substances).  Does this apply to you or [do you need assistance?  Contact us!](https://isienvironmental.com/index.php/contact-us/)

**Hazardous Waste Biennial Reports Due March 1**

Because 2018 is an even-numbered year, this is the year hazardous waste generators must submit their Biennial Hazardous Waste Reports by March 1.

The rule is part of EPA’s Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. It requires facilities to report the nature, quantities and disposition of hazardous wastes generated every 2 years. Treatment, storage, and disposal facilities (TSDFs) are also required to make a report of the wastes they’ve received from off-site.

Your facility must complete biennial reports if you generate 2,200 lbs. of hazardous waste in any calendar month. You may have additional state requirements and thresholds to consider as well.

Biennial reporting typically applies to large quantity generators, but state regulations may vary for small quantity generators and conditionally exempt small quantity generators.

These reports are sent to your authorized state agency or EPA regional office, depending on where your facility is located and your state rules.

This may be the last year that the current biennial reporting system will be used. EPA’s new e-Manifest system is currently being looked at as a replacement to the biennial reports, but no finalization of this has been made yet. [Check out our article on the new e-Manifest system.]

Need help in determining if you’re subject to this reporting? Need help filling out the paperwork and submitting it? Let iSi take care of this report for you! Contact us today for more information and pricing.

**Transitioning into the Biden Administration**

A Look Into the New Administration’s Environmental Priorities

New year, new president, and a new push on policies. Trying to guess what will happen for the next four years into any new Administration is like trying to figure out when it will actually rain here in the Midwest. But, just like the assistance of a meteorologist, we can start to predict what we will see with the help of folks who understand and specialize in public policy.

At the head of the Biden EPA is Michael Regan. A 20-year experienced environmental regulator, he was the head of the North Carolina Department of Environmental Quality and returns to the White House from formerly being an air quality specialist in the Clinton EPA.

Here are a few things to look for from the Biden/Regan team:

**Environmental Justice (EJ)**

While there are still questions bouncing around about how the Administration will carry out EJ, facilities can get ahead of the game and be prepared for what is to come. One of the biggest items that will be coming out of EJ is communities having their voices heard in environmental regulation. Something companies can start doing to prepare for this is reaching out to the communities where their facilities are located at. We understand the data we collect and how we collect it, but does the public understand it? Now is the time to educate the community you share a fence line with.

There are two major legislative proposals to keep an eye on. The Environmental Justice Mapping and Data Collection Act of 2021 will create a tool built upon the EPA’s EJScreen to identify demographic factors, environmental problems, socioeconomic circumstances and public health concerns. This data collected will help build maps of communities that are affected the most. This will help the Administration to direct appropriate funds to those communities.

Companies should be looking at the EPA’s EJScreen tool. It interprets and shows environmental indicators and demographic indicators. It is used for informing outreach and engagement practices, as well as permitting and compliance implementation, just to name a few.

The Environmental Justice for All Act will establish EJ requirements, advisory bodies and programs to address the environmental effects on human health for low-income communities. It will also provide the establishment of the Interagency Working Group on Environmental Justice Compliance.

**More Inspectors on the Ground**

With COVID-19, we saw fewer boots on the ground and the number of virtual inspections and audits go up throughout facilities. With vaccines rolling out and the country starting to open back up, there is going to be a drive to get inspectors back on the ground. Now is the time to go over your facility’s reporting to make sure it is accurate and to re-evaluate your risk assessment plans and make sure your facility complies with all regulations.

**Waters of the United States (WOTUS)**

WOTUS is already under review for this Administration. We can expect to see extreme discussion on this since having to define WOTUS is difficult, as it is controversial. Multiple states, tribes and environmental groups pushed back on the Trump Administration’s Navigable Waters Protection Rule, so we can speculate that the Biden Administration will want to expand the definition and scope and go for a broader rule to replace it.

**Per- and polyfluoroalkyl substances (PFAS)**

Expect to see the enforcement of PFAS being talked about, as well. Some questions are if the Biden Administration will use the All-of-Government approach like we are seeing in climate change, if they will revisit the 70 ppt LHA for drinking water and if the remediation of PFAS will be listed as a hazardous waste under RCRA or CERCLA. States are also getting involved with PFAS. There will be multiple legislation pieces floating around on both the federal and state level. Regan is committed to making PFAS a “top priority” for this team and he mentioned in his Senate confirmation that part of this approach will include pursuing discharge limits and water quality values.

**Need Any Help?**

If you need help with getting your facility in compliance, iSi has multiple project managers that specialize in doing third-party compliance audits and reporting. [Contact us](https://isienvironmental.com/contact-us) today!