

Safety, Health, Environment & Regulatory Affairs Committee

Annual Meeting 2024

September 29, 2024



Chair: Joe Cepec, Allegheny Petroleum Company

Vice-Chair: Monica Ford, Clariant, Ltd.

Secretary:

ILMA Board Liason: John Lorimor, Aerospace Lubricants, Inc.

Supply Chain Issues: HDPE Containers and the *Inhance* Regulatory Saga

- ▶ EPA “whole-of-government” regulatory approach to PFAS includes restricting the fluorination of HDPE containers
- ▶ Strict restrictions, such as a ban, would cause significant supply chain disruptions and stymie downstream industries reliant on HDPE containers
- ▶ EPA’s actions will be scrutinized by industry and environmental orgs.

Supply Chain Issues: HDPE Containers and the *Inhance* Regulatory Saga

▶ EPA Lost First Legal Battle

- ▶ U.S. Court of Appeals ruled that EPA is not authorized to prohibit the fluorination process under Section 5 of TSCA (new chemicals)
- ▶ The court left open the possibility for regulation under TSCA Section 6 (existing chemicals)

▶ Second Legal Battle Underway

- ▶ After the court's ruling, EPA granted a petition from environmental organizations seeking the ban of the fluorination process under TSCA Section 6
- ▶ EPA to start rulemaking, not committed to the ban and considering other regulatory options
- ▶ Environmental organizations filed a lawsuit to compel EPA to ban the process
- ▶ *Inhance* is likely to intervene to represent its interests in the case

Supply Chain Issues: HDPE Containers and the *Inhance* Regulatory Saga

► Advocacy Opportunities

- To guide its regulatory approach, EPA will be collecting info on the number, location, and uses of fluorinated containers in the country
- ILMA members are uniquely positioned to show the vital role that fluorinated plastic containers have in the industry
- ILMA will be monitoring developments and opportunities to affect the outcome of the proceedings

Supply Chain Issues: Extended Producer Responsibility

- ▶ EPR Legislative Landscape is rapidly evolving
 - ▶ 5 states have enacted EPR laws
 - ▶ Many other have introduced EPR bills, including NY, NJ, MA, IL, TN
- ▶ Producers and other members of the value chain need to understand and prepare for these changes

Supply Chain Issues: Extended Producer Responsibility

- ▶ Compliance issues

Brief Update on FTC Ban on Non-Compete Agreements

- ▶ A federal district court set aside the ban on non-competes
- ▶ Appellate review is likely
- ▶ The court's ruling does not affect state laws
- ▶ ILMA members should continue to be thoughtful about narrowly tailoring non-competes, non-solicitation, confidentiality agreements, etc.

Brief Update on OSHA's Walkaround Rule

- ▶ The updated “Worker Walkaround” Rule became effective on May 31, 2024
- ▶ Trade associations, led by the US Chamber of Commerce, filed lawsuits to challenge the rule on various grounds
- ▶ Until the litigation resolves, ILMA members should prepare for inspections that could include third parties
 - ▶ Confidentiality or non-disclosure agreements for all visitors
 - ▶ Identify areas that contain or might reveal a trade secret to request exclusion of third party
 - ▶ Train employer representatives about rights and limitations of employee representatives
 - ▶ “Refusal of Entry” as last resort to require warrant under the 4th Amendment

OSHA HazCom Update: Changes in Paragraphs (d) Hazard Classification and (i) Trade Secrets *September 24th, 2024*

John K. Howell, Ph.D.
GHS Resources Inc.

"The times, they are a changin'..." - Bob Dylan

What is the change to Hazard Classification, 1200(d)(1)(i)?

(d) Hazard classification. (d)(1)(i) Chemical manufacturers and importers shall evaluate chemicals... to classify the chemicals in accordance with this section [to] determine the hazard classes, and where appropriate, the category of each class that apply to the chemical being classified. **The hazard classification shall include any hazards associated with the chemical's intrinsic properties including: (A) a change in the chemical's physical form and; (B) chemical reaction products associated with known or reasonably anticipated uses or applications.** (ii) Employers are not required to classify chemicals unless they choose not to rely on the classification performed by the chemical manufacturer...to satisfy this ~~requirement~~**paragraph (d)(1).**

Is this change to (d)(1)(i) really new?

OSHA argues in the Preamble (FR 89, No. 98, pp 44277-44285) that, no, this is not a new requirement of HCS, citing:

- 1983 HCS Preamble, Letters of Interpretation (1994, 2016), 2007 Guidance, 2012 HCS and 2015 HCS Compliance Directive all support OSHA's position that including hazard information about *known or reasonably anticipated uses* is not a new interpretation.

This is a clarification

- OSHA did not intend for an upstream supplier to identify every conceivable use and to classify these potential hazards of chemicals downstream (p. 44282)
- Intent was to ensure classification only for those downstream uses where the manufacturer knows or could reasonably anticipate how a chemical will be used and where that use creates a hazard in the workplace that needs to be communicated.

Examples OSHA Cited

- Repeated use of an aerosol degreaser in automotive repair facilities linked to cases of neuropathy in service technicians
- Workers in hair salons exposed to excessive amounts of formaldehyde formed as a reaction product in hair straightening products
- Sawing of wood products creates dust exposure to which can cause lung disease

Where Is This Info Placed?

- OSHA: **Section 2 of the SDS**, but not on labels
 - ACC said such hazards are already communicated in Sections 5, 9 and 10
 - ILMA suggested this information be in Sections 11 and 15.
- OSHA disagreed saying Section 2 is the appropriate location for specific hazard classifications that workers can easily access.

Changes to 1910.1200(i)(1), Trade Secrets

(i) Trade secrets. (i)(1) The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name, other specific identification of a hazardous chemical, **and/or** the exact percentage (concentration) **or concentration range** of the substance in a mixture, from section 3 of the safety data sheet, provided that:

- (i) The claim that the information withheld is a trade secret can be supported;
- (ii) Information contained in the safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

Changes to 1910.1200(i)(1), Trade Secrets

- (iii) The safety data sheet indicates that the specific chemical identity and/or ~~percentage~~ concentration or concentration range of composition is being withheld as a trade secret; ~~and...~~
- (iv) If the concentration or concentration range is being claimed as a trade secret, then the safety data sheet provides the ingredient's concentration as one of the prescribed ranges below in paragraphs (i)(1)(iv)(A) through (M) of this section

Changes to 1910.1200(i)(1)(iv), Trade Secrets

(A) From 0.1% to 1%;

(B) From 0.5% to 1.5%;

(C) From 1% to 5%;

(D) From 3% to 7%;

(E) From 5% to 10%;

(F) From 7% to 13%;

(G) From 10% to 30%;

(H) From 15% to 40%;

(I) From 30% to 60%;

(J) From 45% to 70%;

(K) From 60% to 80%;

(L) From 65% to 85%; and (M)

From 80% to 100%

Changes to 1910.1200(i), Trade Secrets

(v) The prescribed concentration range used must be the narrowest range possible. If the exact concentration range falls between 0.1% and 30% and does not fit entirely into one of the prescribed concentration ranges, a single range created by the combination of two applicable consecutive ranges (e.g., between (i)(1)(iv) (A) and (G)) may be disclosed instead, provided that the combined concentration range does not include any range that falls entirely outside the exact concentration range in which the ingredient is present.

(vi) Manufacturers may provide a range narrower than those prescribed in (i)(1)(v)

Appendix D

3.	Composition/ information on ingredients	<p>Except as provided for in paragraph (i) of §1910.1200 on trade secrets:</p> <p>For Substances</p> <ul style="list-style-type: none"> (a) Chemical name; (b) Common name and synonyms; (c) CAS number and other unique identifiers; (d) Impurities and stabilizing additives (constituents) which are themselves classified and which contribute to the classification of the substance. <p>For Mixtures</p> <p>In addition to the information required for substances:</p> <ul style="list-style-type: none"> (a) The chemical name, CAS number or other unique identifier, and concentration (exact percentage) or concentration ranges of all ingredients which are classified as health hazards in accordance with paragraph (d) of §1910.1200 and <ul style="list-style-type: none"> (1) are present above their cut-off/concentration limits; or (2) present a health risk below the cut-off/concentration limits. <p><i>Note: When CAS number is not available or claimed as a trade secret, the preparer must indicate the source of unique identifier.</i></p> (b) The concentration (exact percentage) shall be specified unless a trade secret claim is made in accordance with paragraph (i) of §1910.1200, when there is batch-to-batch variability in the production of a mixture, or for a group of substantially similar mixtures (<i>See A.0.5.1.2</i>) with similar chemical composition. In these cases, concentration ranges may be used. <p>For All Chemicals Where a Trade Secret is Claimed</p> <p>Where a trade secret is claimed in accordance with paragraph (i) of §1910.1200, a statement that the specific chemical identity, and/or concentration (exact or range) of the composition has been withheld as a trade secret is required. When the concentration or concentration range is withheld as a trade secret, the prescribed concentration ranges used in §1910.1200(i)(1)(iv) – (vi) must be used. 7</p>
4.	First-aid measures	<ul style="list-style-type: none"> (a) Description of necessary measures, subdivided according to the different routes of exposure, <i>i.e.</i>, inhalation, skin and eye contact, and ingestion; (b) Most important symptoms/effects, acute and delayed. (c) Indication of immediate medical attention and special treatment needed, if necessary.

Changes to 1910.1200(i), Trade Secrets – What Does OSHA Say?

- In the NPRM, OSHA proposed several changes to paragraph (i). First, OSHA proposed to allow manufacturers, importers, and employers to withhold a chemical's concentration range as a trade secret, which had not previously been permitted, and to add language specifying that it is Section 3 of the SDS from which trade secret information may be withheld.

Changes to 1910.1200(i), Trade Secrets

- Second, OSHA proposed to require the use of prescriptive concentration ranges in lieu of the actual concentration or concentration range whenever the actual concentration or concentration range is claimed as a trade secret. These changes were proposed to align with Canada's WHMIS, allowing manufacturers, importers, and employers the ability to use the same SDS for both U.S. and Canadian workplaces.

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- Is your SDS authoring software being modified to incorporate the possibility in Section 2 of chemical reaction products known or reasonably anticipated to occur?

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- Is your SDS authoring software being modified to incorporate the possibility in Section 2 of chemical reaction products known or reasonably anticipated to occur?
- If you have not been using the Canadian trade secret percentage ranges, will your software convert your exact percentage to the required range?

Open Discussion

OSHA Rules: Proposed Heat Standard

- ▶ Scope
- ▶ Requirements
 - ▶ Hazard Identification
 - ▶ Control Measures
 - ▶ Recordkeeping
 - ▶ Heat Illness and Injury Protection Plan
 - ▶ Emergency Procedures
 - ▶ Training

OSHA Rules: Proposed Heat Standard

▶ Hazard Identification for Indoor Activities

- ▶ Identify work areas “reasonably expected” to expose employees to heat at triggering levels.
- ▶ Measure with “specificity” heat index of Wet Bulb Globe Temperature
 - ▶ Devices at or as close as possible to the work area
 - ▶ A single device can be installed if there is no reasonable expectation that heat exposure will differ between work areas
 - ▶ Representative sampling is allowed if employer uses the area expected to be the hottest

OSHA Rules: Proposed Heat Standard

▶ Control Measures

- ▶ Initial Heat Trigger (at or above 80 F or WBGT equal to the NIOSH Alert Limit)
 - ▶ Drinking Water
 - ▶ Indoor Break Areas
 - ▶ Indoor Cooling Measures
 - ▶ Acclimatization
 - ▶ Rest Breaks as Needed

- ▶ High Heat Trigger (at or above 90 F or WBGT equal to the NIOSH Recommended Exposure Limit)
 - ▶ Mandatory Rest Breaks
 - ▶ Observation of Signs & Symptoms
 - ▶ Hazard Alerts & High Heat Warnings

OSHA Rules: Proposed Heat Standard

▶ Recordkeeping

- ▶ Development and retention of written or electronic records of on-site temperature measurements
- ▶ Covers employers with indoor work areas where there is a reasonable expectation of heat exposure at the initial triggering threshold
- ▶ Retention of data for 6 months

OSHA Rules: Proposed Heat Standard

- ▶ Advocacy Opportunities
 - ▶ Comments must be submitted by December 30, 2024.
 - ▶ Survey for members
 - ▶ Oral hearings can be requested.

Brief Update on SCAQMD New Source Review of Toxic Air Contaminants

- ▶ Proposed Amended Rule 1401 seeks to add the following compounds

Compound Name	CAS Number
1-bromopropane	106-94-5
Trivalent chromium	16065-83-1
Parachlorobenzotrifluoride (PCBTF)	98-56-6
Tertiary Butyl Acetate (TBAc)	540-88-5
Hexamethylene Diisocyanate (HDI) (Monomer)	822-06-0
Polymeric Hexamethylene Diisocyanate	1221
Cobalt	7440-48-4
Trimethylbenzenes	25551-13-7

Brief Update on Used Drum Management and Reconditioning Rulemaking

- ▶ EPA continues to evaluate regulatory and non-regulatory actions to address concerns about residues in industrial containers shipped to reconditioners
- ▶ EPA continues to gather information to inform its approach by surveying reconditioners
- ▶ There is no regulatory action in the horizon; RIPA expects action in the Summer/Fall of 2025