

The Dell Group

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THE ADVISOR

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Your Free Newsletter of
Management Information

**SPECIALIZING IN SAFETY, ENVIRONMENTAL AND
HUMAN RESOURCES TOPICS**

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- Lead Paint Risk Assessments and Clearance Reports ● Lead Abatement Consulting
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- Management Training: Supervisory Skills, Modern Safety Management Skills, Behavior Based Safety

The Advisor is prepared by The Dell Group, Inc. to inform its clients and friends of developments in lead-based paint hazard evaluation and control, safety management, environmental compliance, and new developments in the environmental remediation field. The newsletter is available free of charge to interested parties. The articles appearing in this newsletter do not constitute legal or other advice or opinion. The views expressed in this newsletter are not necessarily those of The Dell Group, Inc. The application of various laws and regulations to your business operations may depend on many specific facts. Questions regarding your operation relative to the topics discussed in this newsletter should be directed to a qualified professional. For more information, call us at (800) 259-8930 or info@dellgroup.com

SEASON'S GREETINGS

Friends,

As the holiday season is upon us, we find ourselves reflecting on the past year and the gratitude we have for those who have helped to shape our business.

The end of the year brings no greater joy, than to express our sincerest appreciation to those who have made our success possible.

Thank you for your continued partnership, and giving us the opportunity to do what we enjoy. We wish you joy and prosperity as we embark upon the New Year together.

NEW OSHA RULE TRACKING WORKPLACE INJURIES AND ILLNESSES

Effective January 1, 2017, a new rule will require some employers to electronically submit injury and illness data. Some included data will also be posted to the OSHA website. OSHA claims that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers and the general public. The amount of data submitted will vary depending on the size of company, and type of industry.

How will electronic submission work?

OSHA will provide a secure website that offers three options for data submission. Users of automated recordkeeping systems will be able to transmit data via API (application programming interface), manually enter data into a web-form, or upload a CSV file to process single or multiple establishments. The site is scheduled to go live in February 2017.

Anti-retaliation protections

The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation, which can be satisfied by posting the already-required [OSHA workplace poster](#). It also clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses.

Enforcement Schedule & Requirements

The new reporting requirements will be phased in over two years: Establishments with 250 or more employees in industries covered by the recordkeeping regulation must submit information from their 2016 Form 300A by July 1, 2017. These same employers will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Establishments with 20-249 employees in [certain high-risk industries](#) must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

For more information see OSHA's [Recordkeeping Website](#), [Fact sheet](#), and [Frequently Asked Questions](#).

FINAL HAZCOM & GLOBAL HARMONIZATION DEADLINE

June 1st was the final deadline to convert to the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Companies must now be in full compliance with the revised hazard communication standard (HCS).

OSHA adopted GHS in 2012 so that labels and SDSs would be consistent with those used in most parts of the world. The revised standard was OSHA's second most cited violation in 2015, totaling 3.3 million dollars in proposed penalties. Only the fall protection standard for construction was cited more often by OSHA.

Previous deadlines:

- 2013: Employers must train employees on the new GHS labels and safety data sheets (SDSs).
- 2014: Manufacturers, importers and distributors must complete new labels and SDSs.
- 2015: 1994 HCS-compliant SDSs and labels can no longer be used.

From OSHA's [Guide for Employers That Use Hazardous Chemicals](#):

If an employer identifies new hazards due to the reclassification, it has until June 1, 2016, to ensure that those hazards are included in the hazard communication program; that the workplace labeling reflects those new hazards, and that employees are trained on the new hazards.

On Secondary containers OSHA says:

When a secondary container is used for longer than one shift, a label needs to be applied. This label must contain the identity of the hazardous chemical in the container, and the hazards present. Employers should select a system that will work for each location.

GUIDELINES FOR HAZARDOUS CHEMICALS

This safety [training video](#) from Atlantic outlines: How hazardous chemicals are communicated, Safety data sheets (SDS), the contents of safety data sheets, how to safely use a specific chemical, GHS labeling specifications, the importance of label specifications, and the hazard communication program.

NEW NIOSH APPROACH FOR SAMPLING NANOPARTICLES

Engineered nanoparticles are intentionally produced for a specific application, between 1 and 100 nanometers. Due to unique physical and chemical properties, nanoparticles are used in a variety of industrial and consumer products. Research is ongoing into the health hazards of engineered nanomaterials, but The National Institute for Occupational Safety and Health (NIOSH) has provided some guidance for assessing the risks.

Following recent studies NIOSH has refined their Nanoparticle Emission Assessment Technique, NEAT, for assessing worker and workplace exposures to engineered nanomaterials. NEAT 2.0 places a stronger emphasis on full shift, task specific, and area sampling. An evaluation of work practices, ventilation efficacy, risk management, and other engineering controls have allowed for a comprehensive exposure assessment, and the development of job-specific exposure matrices.

NEW OSHA RULE FOR CRYSTALLINE SILICA

OSHA has announced a final rule to improve protections for workers exposed to respirable silica dust. The rule aims to curb lung cancer, silicosis, chronic obstructive pulmonary and kidney disease in workers by limiting exposure to respirable crystalline silica. OSHA has staggered compliance dates to ensure employers have sufficient time to meet its requirements

The final rule contains two standards, one for construction, another for both general industry, and maritime. The standards reduces the Permissible Exposure Limit for all industries to 50 µg/m³, sets an action level of 25µg/m³, and includes criteria for respirable dust sampling, bringing OSHA in line with most global agencies

"The previous exposure limits were outdated and did not adequately protect workers," said OSHA Assistant Secretary Dr. David Michaels. "Every year, many exposed workers not only lose their ability to work, but also to breathe." More than 2 million workers face exposure to crystalline silica in their workplaces. OSHA estimates that the rule will save more than 600 lives, and prevent more than 900 new cases of the incurable disease, silicosis, each year.

New employer requirements also include; training, limiting access, providing medical exams to highly exposed workers, safe work practices and, engineering controls. A table of specified controls for compliance is included within the rule. Today most employers can limit harmful silica dust, with equipment that uses water to keep dust from getting into the air, or with ventilation systems to remove it.

For additional resources visit OSHA's [Silica rule website](#).

OSHA & THE NEW LABOR SECRETARY

On December 8, 2016, Andrew Puzder was named as President-elect Donald Trump's nominee for United States Secretary of Labor. Puzder is CEO of CKE Restaurants Holdings, Inc., parent company of Hardee's and Carl's Jr. restaurants.

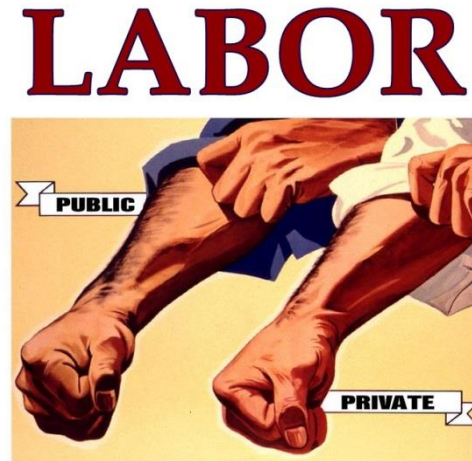
Prior to his nomination, Puzder has said little about OSHA or occupational safety, but we do find two items in his blog, where he covers business and labor topics.

In a [2014 entry](#), Puzder praised a *Wall Street Journal* article written by Koch Industries CEO, Charles Koch. From the article: “Our critics would have you believe we’re “un-American” and trying to “rig the system,” that we’re against ‘environmental protection’ or eager to ‘end workplace safety standards.’” These falsehoods remind me of the late Sen. Daniel Patrick Moynihan’s observation, ‘Everyone is entitled to his own opinion, but not to his own facts.’”

Koch continues, that his companies “earned well over 700 awards for environmental, health and safety excellence since 2009,” Koch Industries entered a partnership with OSHA in 2003, during the Bush administration, which concluded in 2009, after the Obama administration took office. Individual Koch facilities participate in OSHA’s [Voluntary Protection Program](#). The VPP recognizes employers that have implemented health & safety management systems, and maintain injury & illness rates below the national average for their industry.

The final entry to mention occupational safety on Puzder’s blog, is the 2013, [Texas and California spar over jobs and taxes](#). Praising Texas’ business climate, Puzder wrote that Texas was much better positioned to create jobs “known for minimal environmental and worker health and safety regulation.” Puzder calls for “sensible regulations” such as “Texas’ light regulation.”

Based on his statements it seems Puzder’s OSHA, will be reminiscent of the agency under the Bush administration. From 2001-2008 OSHA put more of an emphasis on cooperative businesses programs, than on enforcement. A small number of regulations may be revoked, however, Puzder doesn’t seem to signal, significant changes for OSHA.



OSHA UPDATE

OSHA's Fines Grow in 2016

Last year OSHA stated fines were going to increase. The maximum penalty rose by nearly \$50,000.

In 2015, Congress passed legislation requiring federal agencies to adjust their civil penalties to account for inflation. The new penalties took effect August 2, 2016. Any citations issued by OSHA on or after this date will be subject to the new penalties.

Type of Violation	Current Maximum Penalty	New Maximum Penalty
Serious Other-Than-Serious Posting Requirements	\$7,000 per violation	\$12,471 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation

The Top Ten

OSHA's most-frequently cited violations for 2016 may look similar to last year's, but there are changes happening behind the scenes.

OSHA is collecting additional information from employers; the resulting information has led to the agency "engaging with every employer" involved in the reported incidents, said Patrick Kapust, of OSHA's Directorate of Enforcement Activities, in an interview with *Safety & Health Magazine*

Also OSHA has announced it will begin using a new, weighted system for evaluating inspections. Evaluations will now consider the complexity of an inspection. "We continue to encourage employers to abate hazards before an OSHA inspection and, more importantly, before a worker gets hurt," said Kapust. The new system is intended to allow for easier strategic planning.

Based on preliminary list for the fiscal year, compiled from nearly 32,000 inspections

The top 10 cited health and safety violations in 2016 were:

1. Fall Protection
2. Hazard Communication
3. Scaffolding
4. Respiratory Protection
5. Lockout - Tagout
6. Powered Industrial Trucks
7. Ladders
8. Electrical, Wiring Methods
9. Machine Guarding
10. Electrical, General Requirement

Are You Ready For an OSHA Inspection?

OSHA can visit worksites without warning. Before a visit, employers should have already decided on who will serve as their point of contact, noted where various documents are located, and how to respond to questions. Following are basic rules for getting through an OSHA inspection.

Do	Don't
BE NICE	BE RUDE
ESTABLISH PROCEDURES FOR WHEN OSHA KNOCKS	KEEP INACCURATE RECORDS
VERIFY THE IDENTITY OF THE OSHA INSPECTOR	REFUSE ENTRY TO THE INSPECTOR
ENSURE THE INSPECTOR IS WEARING APPROPRIATE SAFETY GEAR FOR YOUR ESTABLISHMENT	AVOID ANSWERING QUESTIONS
MAKE SURE RECORDS ARE EASILY ACCESSIBLE	TELL EMPLOYEES TO LIE TO THE INSPECTOR
TAKE PHOTOS DURING THE INSPECTION	GIVE MONEY TO AN INSPECTOR
PROVIDE AN AREA FOR THE INSPECTOR TO INTERVIEW EMPLOYEES	WAIT TO CORRECT HAZARDS UNTIL CITED
CORRECT HAZARDS POINTED OUT BY THE INSPECTOR A.S.A.P.	

EPA UPDATE

Ohio EPA Website Now Hosting Emergency Spill Response Records

Previously only available through a public records request, The Ohio Environmental Protection Agency (OEPA) reports on Emergency Spill Response Incidents, now can also be found on their [E-DOCS website](#). Reports from 2009 to 2014 are now available, and OEPA is currently working to update the database through 2016.

Initial Pollution Incident Reports (IPIR) are found by searching under the "Incident Report" document category, the corresponding District Office Investigation Report (DOIR), by selecting "Investigation Report." Currently only IPIR that have a corresponding DOIR are available. A records request is still needed to obtain these IPIR, and DOIR supporting documents.

For additional information contact OEPA Public Records Manager, Rich Boudier.
(614) 644-2782, Richard.Boudier@EPA.Ohio.gov

Recycling Lead-Acid Batteries

In 2008, Ohio enacted a law prohibiting the disposal of lead acid batteries in [solid](#) or [hazardous waste](#) landfills. The law is intended to ensure that spent batteries are recycled.

Some batteries included are those used in, motorcycles, wheelchairs, boats and other vehicles. Exemptions include batteries used in consumer products like computers, and cellphones.

The Law does the following:

- Prohibits disposing of a used battery with other solid waste, requiring users (styled "generators") to dispose of batteries at a retailer, a wholesaler, or [other entity](#) ;
- Requires retailers to dispose of batteries at a wholesaler, battery manufacturer, battery recycling entity or other entity;
- Requires batteries wholesalers and retailers at the time of purchase, accept customers used lead-acid batteries of the same general type and quantity. Retailers are also required to post a sign [\[Example\]](#), of at least 8.5"x11", including specific language, visible to customers, and in proximity where batteries are displayed; and,
- Establishes civil penalties of \$25 dollars for retailers that do not post the sign, or that does not meet the specifications in the law.

For more information, contact the [Division of Environmental Response and Revitalization](#)
(614) 644-2924.

Managing Fluorescent Lamps

Many businesses don't realize that the OEPA has special regulations for spent (waste) lamps. By managing hazardous waste lamps as universal waste, businesses can reduce their regulatory requirements and help protect the environment.

When OEPA uses the term “lamp” it includes the following types of lights:

- Incandescent
- HID (high-intensity discharge)
- Fluorescent
- High-pressure sodium
- Metal halide
- Mercury-vapor
- Neon
- LED

Lamps can contain mercury and other heavy metals such as lead, cadmium and barium. If the levels of mercury or other toxic metals in the lamp are high enough, the lamp may be considered hazardous waste. Hazardous waste must be managed according to Ohio’s hazardous waste regulations. Waste lamps that are improperly managed or disposed of can lead to environmental contamination and pose a threat to public health. Therefore businesses, schools, retail stores, restaurants, offices and other non-households that generate waste lamps may be subject to OEPA’s hazardous waste rules. It is important for businesses to understand the requirements for hazardous waste lamps. If you are throwing your lamps in the dumpster, you may be illegally disposing of hazardous waste.

Methods for Managing Hazardous Waste Lamps

OEPA recommends managing waste lamps under the [Universal Waste Rules](#) (UWR). The UWR streamlines requirements for certain hazardous wastes including batteries, pesticides, mercury-containing equipment (such as thermostats) and lamps (such as fluorescent lamps). If you do not manage your hazardous waste lamps under the UWR then you must manage them under OEPA’s [hazardous waste rules](#).

How do I Know if my Lamps are Hazardous?

Before you throw your lamps in the trash, you must determine if they are hazardous. To make that determination you may:

- Rely on manufacturer data; provided that the data is current, and all relevant hazardous waste characteristics were included in their testing;
- Have the [lamps tested](#) yourself to determine if they are below the regulatory limits; or
- Assume that the lamps are hazardous.



Low-Mercury & Green Lamps

Some fluorescent lamp manufacturers have created "green" lamps that they claim are not hazardous. Although Green lamps contain less mercury than other lamps, this may not be enough to avoid being regulated as hazardous waste. To be considered non-hazardous, spent lamps must fall below the limit for all regulated metals.

Some of the regulatory limits include:

- Mercury 0.2 mg/L
- Cadmium 1 mg/L
- Lead 5 mg/L
- Barium 100 mg/L

Requirements for Managing Hazardous Lamps under UWR



Managing waste lamps as universal waste requires specific storage, labeling and disposal.

These requirements depend on the amount of universal waste, accumulated at any one time. Most businesses are small quantity handlers, accumulating less than 11,000 lbs. of universal waste (approximately 17,000 4-foot-lamps) at any time. For specific requirements see [OEPA's universal waste rules](#).

Disposal

As a universal waste handler, you must dispose waste lamps at another UW handler or an authorized facility. OEPA maintains a [list of authorized recyclers](#) on their [Fluorescent Lamp website](#). If transporting your waste lamps for disposal, you must comply with the universal waste [transporter requirements](#). If you are using a universal waste transporter to take your waste lamps, the transporter must comply with DOT packaging/labeling [requirements](#), transfer facility storage requirements and must immediately contain all releases of universal waste in the event of a spill.

Crushing Waste Lamps

UWR prohibits crushing lamps, and crushed lamps cannot be sent to a universal waste handler. If you want to crush spent lamps you must either demonstrate that they are non-hazardous, or manage them under hazardous waste rules. OEPA warns while some commercially available lamp crushers are designed to control mercury emissions, there remains a high potential for exposure to harmful mercury vapors. For more information see the OSHA [Fact Sheet](#) for guidelines on Lamp crushing operations.

CITATIONS & PENALTIES

Lack of Machine Safeguards Leads to Amputation at Mansfield manufacturer

Following multiple investigations of the Mansfield automotive parts manufacturer, Milark Industries, OSHA found Milark failed to provide adequate machine safe guards, which led to amputations and other machine-related injuries. OSHA has inspected the company 10 times since 2007.

“Milark Industries continues to create an environment where employees are allowed to bypass machine safety procedures, and are threatened to be disciplined if they don’t meet the production quotas,” said OSHA’s area director, Kim Nelson. “By doing so, the company is creating an unacceptable culture of risk and getting people hurt on the job.”

In 2015 a machine amputated three fingers and part of a fourth of a 19-year worker. In the following months a 22-year-old temporary employee suffered the partial amputation of two fingers on his first day of work, and a third worker had a serious injury.

Investigations cite the company for hazards at both its Baird Parkway and Rupp Road facilities in Mansfield. The agency found that Milark: failed to train workers in procedures to prevent unintentional machinery operation during service and maintenance, or lockout-tagout; Bypassed safety interlocks in order to maintain the production rate; Bypassed safety devices while conducting maintenance activities; and failed to lock-out robotic welding equipment.

Proposed citations for Milark Industries stem from three willful egregious, one willful, and three serious violations of safety standards stemming from multiple investigations, with proposed penalties of \$536,249. As a result OSHA has placed Milark in its Severe Violator Enforcement Program. The company contested OSHA citations, and December court date has been set before the OSHA Review Commission.

Franklin Foundry Continues to Expose Workers to Hazards, Faces \$143K in Fines

An OSHA inspection of A&B Foundry & Machinery, Inc., revealed workers were exposed to risks of respiratory damage, amputation and hearing loss. The Franklin foundry was cited for 15 safety and health violations including: operating machines without safety guards; failing to train workers on noise hazards and hazardous chemicals used in the facility; using damaged personal protective equipment; and not providing workers with fit-testing or medical evaluations. OSHA proposed penalties of \$143,150, part of which included fines for similar violations found in 2012.

Hebron Automotive Part Manufacturer Sunfield, Inc. Faces \$3.42 Million in Fines

After two workers suffered severe injuries in separate incidents, an OSHA inspection found numerous safety violations, exposing workers to amputation hazards and more. OSHA issued 57 violations to Sunfield, Inc. The agency has placed Sunfield on its Severe Violator Enforcement Program, and proposed more than \$3.42 million in total fines. Additionally the staffing agencies providing the bulk of the company's workforce: Atrium Personnel, IForce, and Employers Overload, also face proposed penalties of \$7,000 each, for failing to provide required safety training.

OSHA investigation found: a 22-year-old temporary employee suffered multiple lacerations and a fractured elbow, while removing scrap from a blanking press after operating parts caught his arm because safety curtains were not operating correctly. The injured worker had been working at the facility six months. A supervisor had identified the safety issue two hours prior to the injury, and failed to place the equipment out of service. The following month a full-time 58-year-old Sunfield employee had to undergo surgical amputation of his arm, after it was crushed as he removed scrap on a robotic press line. Investigators again found that the machine did not have adequate safe guards to prevent employees from coming in contact with operating parts. He had been on the job for just a year.

Prior to these inspections, Sunfield has had an extensive history of OSHA violations dating back 20 years. Since 1997, the agency has issued 118 citations similar to those cited and resulted in 90 serious, eight willful and five repeated violations to the company, which has repeatedly assured OSHA that it would address the unsafe conditions.

"Sunfield has shown a total disregard for its workers, the kind rarely seen since the darkest days of the past when callous industrialists ruled and put profits before human suffering and common decency," said OSHA Assistant Secretary, David Michaels.

Pennsylvania Company Fined \$135k After Terminating Employee For Reporting Hazards

In 2014, York Building Products terminated a plant manager after the employee repeatedly reported air quality and other safety and health hazards to the company's upper management. In a settlement agreement with the OSHA, the company will pay the terminated employee \$135,000 in back wages and compensatory damages.

"Employers should act promptly and positively when they receive safety complaints from employees," said Oscar Hampton, OSHA regional solicitor. "In this instance, the employer did not, and they are paying the price."