

CLIENT ALERT

CSB's New Accidental Release Reporting Requirement

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Industrial facilities must contend with yet another federal chemical release reporting requirement – this one requires reporting of releases to the Chemical Safety and Hazard Investigation Board (the CSB), an independent agency that was established in 1990. Under the new “[Accidental Release Reporting Rule](#),” the CSB is requiring facilities to report accidental chemical releases, which result in a fatality, serious injury, or substantial property damage. The purpose of this report is to give the CSB the information it needs to decide whether to initiate an investigation of the accident, and, ultimately, to provide a public account. The Rule becomes effective 30 days after the date of publication in the *Federal Register*, which is scheduled for February 21. So covered facilities must quickly get their arms around this new reporting program and integrate it into their compliance programs.

Nuts and Bolts of the New CSB Reporting Requirement

Under the Accidental Release Reporting Rule, owners or operators of “stationary sources” must report any accidental release of a “regulated substance or other extremely hazardous substance,” which results in a fatality, serious injury, or “substantial property damage.” Such reports must be submitted to the CSB within eight hours of the release. Many of these terms will seem familiar to Environmental Health and Safety personnel, because these same terms are found in many other federal reporting schemes. *But be forewarned:* the CSB’s Accidental Release Reporting Rule is separate from and in addition to release reporting obligations imposed under environmental laws, such as Section 103(a) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304(a) of the Emergency Planning and Community Right-to-Know Act (EPCRA) among others. Thus, one cannot rely on the definitions and exemptions found in these other reporting programs. Below is a summary of the key reporting issues under the CSB’s Accidental Release Reporting Rule.

Covered Facilities. The Accidental Release Reporting Rule applies to any “stationary source” of a release that causes a fatality, covered injury, or covered property damage. The Rule defines “stationary source” as “any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.” The Accidental Release Reporting Rule defines “accidental release” as an “unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.” Notably, the CSB deems “ambient air” to include “any portion of the atmosphere inside or outside a stationary source.”

Regulated Substances. The Accidental Release Reporting Rule applies to any “regulated substance or other extremely hazardous substance” that is accidentally released. The Accidental Release Reporting Rule defines an “extremely hazardous substance” as “any substance that may cause death, serious injury, or substantial property damages, including but not limited to any ‘regulated substance’ at or below any threshold quantity set by the EPA Administrator.” It must be noted that despite having the exact same name, the “extremely hazardous substances” subject to the Accidental Release Reporting Rule are not the same as, or in any sense limited to, EPA’s list of “extremely hazardous substances” that are subject to EPCRA § 304(a).

Serious Injury and Substantial Property Damage. The Accidental Release Reporting Rule limits the definition of “serious injury” to “any injury or illness that results in death or inpatient hospitalization,” and defines “substantial property damage” as “estimated property damage at or outside the stationary source equal to or greater than \$1,000,000.”

Report Timing. Within eight hours of an accidental release, the facility owner or operator must notify and submit a report to CSB either by email or telephone. If a facility has already reported the release to the National Response Center (NRC), pursuant to another emergency release notification scheme such as CERCLA § 103(a), the facility may satisfy its CSB reporting obligation by submitting its NRC identification number to the CSB. The facility, however, must submit its NRC identification number within thirty minutes of submitting a report to the NRC.

Report Contents. The accidental release report submitted to the CSB must include, among other things:

- The name and contact information of the owner, operator, and person making the report.
- The facility’s location information and facility identifier.
- The approximate time of the accidental release.
- A brief description of the accidental release.
- An indication of whether the release has resulted in a fire, explosion, death, serious injury, or property damage.
- The name of the material(s) involved in the release, as well as their Chemical Abstract Service (CAS) numbers.
- Estimated property damage at or outside the stationary source.
- Whether the accidental release resulted in an evacuation order impacting members of the general public.
- The amount of the release (if known).
- The number of fatalities (if known).
- The number of serious injuries (if known).
- The number and type of individuals evacuated (if known).
- The evacuation zone’s approximate radius (if known).

An owner or operator of the stationary source may revise or update information reported to the NRC or the CSB without penalty within 30 days of the report’s submission, or up to 90 days after submitting the report if the owner or operator explains why the revisions could not have been submitted within the first 30 days.

Enforcement for Non-Compliance. The CSB may forward suspected violations of the reporting rule to the EPA Administrator for enforcement. Penalties for failure to make a required report after an accidental release may include administrative penalties, civil actions, or criminal actions. (The Accidental Release Reporting Rule does not identify the size of the penalty that EPA may impose for violations.)

One-Year Grace Period. The CSB states that there will be a one-year enforcement grace period from the effective date of the Accidental Release Reporting Rule, unless there is a “knowing failure to report.” Notably, in the preamble to the Rule CSB states that a “significant number” of accidental releases are concentrated within certain industries, and anticipates that “firms within these sectors will be the focus of initial compliance education outreach.” However, the CSB states that it may extend the one-year grace period for sectors that might require additional time to comply with the reporting rule. The CSB also acknowledges

that situations may arise when an owner or operator is unable to report an accidental release within the required eight hours and notes that it will consider a long-term approach to these “unique situations.”

Conclusion

Notwithstanding the CSB’s promise that it will not be referring reporting violations for enforcement for the first year following publication in the *Federal Register*, facilities should move quickly to integrate this new reporting scheme into existing release reporting compliance programs. Given the differences in terminology employed under programs like the EPCRA emergency release notification requirement and the CERCLA release reporting requirements, this integration effort should not be underestimated.

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