



INSIGHTS

Resource for Safety, Health, and Environmental Law & Crisis Management

DECEMBER 2007

IN THIS ISSUE

1. OSHA Issues PPE Rule
2. House Committee Passes S-MINER Bill over Industry, MSHA Objections
3. MSHA, OSHA Release Near-Term Regulatory Plans
4. Crandall Canyon Update
5. Mining Association Gears Up Budget
6. Senate Passes Asbestos Ban; Libby Litigation Continues
7. Mine Rescue Proposals Should Be Revised, Commenters Say
8. New Rules on Ammonium Nitrate, Propane, and Other Chemicals Require DHS Filings by Jan. 22

1. OSHA RELEASES PPE RULE

On Nov. 15, OSHA issued a rule that requires employers to pay for most employee personal protective equipment (PPE).

The regulation, which goes into effect next May, requires employers to pay for PPE specified in existing OSHA standards and for replacement PPE. It only addresses payment, and does not deal with the types of PPE an employer must provide or mandate employers to provide PPE where none has been required before. The new rule applies to general industry, construction, shipyards, marine terminals, and longshoring.

The regulation does not require payment for:

- uniforms, caps, or other clothing worn solely to identify a person as an employee;
- items worn to keep employees clean for purposes unrelated to safety or health, such as aprons;
- items worn for product safety, consumer safety, or patient safety and health, such as hairnets;
- non-specialty safety-toe footwear (including steel-toe shoes or boots) and non-specialty prescription safety eyewear, provided the employer allows its use off-site;
- logging boots;
- everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots, even when the employer requires them and the clothing provides protection from a workplace hazard;
- ordinary clothing, skin creams, etc. used solely for protection against the weather, including gloves, raincoats, ordinary sunglasses, and sunscreen, unless ordinary weather gear is insufficient to protect against the elements or the employee is required to work in artificial heat or cold, such as a freezer; and
- PPE lost or intentionally damaged by an employee.

In some industries, tradition dictates that employees supply their own PPE, especially when employees move frequently from job to job. The rule does not require employers to pay under these circumstances, provided the

employee's use of the PPE is completely voluntary, and the employee is permitted to withdraw use of his or her own PPE at any time. Even for employee-owned PPE, the employer is still required to assure it is adequate, properly maintained, and sanitary under the applicable OSHA standard.

The Agency estimated the regulation would reduce the number of occupational injuries by 21,000 per year and save over \$200 million annually in reduced direct costs. The Agency said employers currently pay for 95% of all PPE, and requiring payment for the remaining 5% will cost them \$85 million.

The regulation, over eight years in the works, was promulgated after the AFL-CIO and the food and commercial workers union sued in January to force its promulgation. Legislation was also introduced in Congress in March to force Agency action. A regulation became necessary after the Occupational Safety & Health Review Commission issued a ruling in the mid-1990s that OSHA's existing PPE standard could not be interpreted to require employers to pay for PPE.

2. HOUSE COMMITTEE PASSES S-MINER BILL OVER INDUSTRY, MSHA OBJECTIONS

Ignoring united industry opposition and objections from the very agency its legislation would empower, the House Committee on Education and Labor approved the S-MINER Act Oct. 31.

H.R. 2768 was passed along strict party lines by a vote of 26-18, and after three Republican amendments were defeated. The bill is ready for a House vote, if there is time in the remaining days of the Congress. Similar legislation is under consideration in the Senate but is considered unlikely to move this year.

In a prepared statement, Committee chair Rep. George Miller (D-CA) called the bill "a comprehensive approach to minimize the health and safety risks facing miners." His view ran counter to that of the National Mining Association, which said it "is far more likely to impede rather than improve our ongoing efforts to enhance mine safety." In published comments, Patton Boggs attorney Mark Savit called the legislation politically-motivated, and added that existing data suggest there is no need for the S-MINER Act. The Mining Awareness Resource Group, represented by Patton Boggs, opposed the legislation and pointed out to Members of Congress that it included provisions that were not feasible and that the Congressional Budget Office estimated would cost industry more than \$1 billion.

In a lengthy letter to the Committee timed to coincide with the Oct. 31 markup session, MSHA chief Richard Stickler said that while MSHA supported some provisions, those are "offset by potential harm" in the bill. It "would mandate 10 regulatory changes, impose at least 16 new mandates, create new unneeded offices within MSHA, and fundamentally change the MSHA accident investigation process," Stickler wrote.

The OSHA Fairness Coalition, expressing its "unequivocal opposition," complained that the legislation "would completely override the normal rulemaking process" in developing permissible exposure limits (PELs). The U.S. Chamber of Commerce and the National Association of Manufacturers are among 16 trade associations, including two from mining, that make up the organization.

The S-MINER Act combines into a single piece of legislation two bills originally introduced in June. It also adds new provisions in response to the Crandall Canyon underground coal disaster in August and tweaks certain proposals, apparently in an effort to accommodate MSHA objections. The Agency spelled out 16 objections in testimony before the Committee in July.

But perhaps the biggest surprise in the current legislation relates to provisions aimed at the underground metal-nonmetal (M/NM) sector, which has been free of the multiple-fatality tragedies that have marred the underground coal sector and led to last year's MINER Act and the S-MINER Act, its progeny.

Specifically, in all underground mines, new conveyor belts would have to meet NIOSH's flame-resistant requirements, and all existing belts in these mines would have to be replaced by the end of 2012 with those that meet the NIOSH requirements. The bill would also partially undo a final rule issued by MSHA in May dealing with seals in that it would require that seals not designed or built to withstand 240 psi be monitored

continuously. The MSHA regulation does not require such monitoring for seals built to withstand 120 psi. Besides applying to all underground coal mines, the provision also affects M/NM mines classified as category I, III, or IV operations. Provisions dealing with seal design, construction, inspection, maintenance, and monitoring would also apply.

Additional mandates applicable to the underground M/NM may be coming as well. A special advisory committee would have 21 months to recommend the need for regulations to assure underground M/NM miners are as protected in emergencies as underground coal miners.

Provisions that would affect all mines include, but are not limited to, the following:

- increases the minimum penalty to \$500, up from \$112,
- increases the minimum penalty for an S&S violation to \$1,000,
- sets the minimum and maximum penalties for pattern violations at \$50,000 and \$250,000, respectively,
- sets a range from \$10,000 to \$100,000 for interfering with an inspector or discriminating against a miner,
- gives MSHA the power to shut down an entire mine of a pattern violator,
- requires operators who contest a penalty assessment to put the amount of the assessment into an interest-bearing account while the matter is adjudicated,
- deletes the requirement that MSHA consider the ability of the operator to remain in business when weighing an assessment amount,
- prohibits discrimination against any miner, miner's representative, or applicant for mine employment for complaining about "an alleged danger or safety or health violation,"
- mandates that MSHA issue a withdrawal order from sections of a mine affected by an alleged violation of Mine Act provisions dealing with refuge chambers and emergency response plans,
- requires the mine operator to notify MSHA when it has abated a citation and gives the Agency the power to withdraw miners from the affected area if the operator fails to timely notify,
- requires notification to MSHA within one hour of several events not currently covered under an existing notification rule,
- requires an investigation by an entity independent of MSHA for accidents or incidents involving multiple fatalities or serious injuries or multiple entrapments,
- sets up an ombudsman to assure miners' rights are protected, and
- requires MSHA to adopt NIOSH's recommended exposure limits (RELs) applicable to mining while allowing an operator to challenge any REL if it lacks "the specificity required to serve as a PEL."

Regarding underground coal mines, the measure would require MSHA to issue interim final rules by next June 15 on refuge chambers that must include a requirement for installation of a mobile refuge chamber within 500 feet of the nearest working face in each working section. Belt air would be banned unless the operator could show mining can be conducted more safely with belt air than without it. The shelter provision effectively undermines a requirement of the MINER Act that called for a NIOSH study of refuge chambers. Likewise, it undercuts the work of a technical panel studying belt air, whose report is due next month.

Within four months, coal operators must submit plans to install improved underground communications systems that could withstand explosions and fires. The measure is an interim step toward mandating wireless communications equipment by 2009, which is a requirement of the MINER Act. MSHA would have a year to issue interim final rules to enhance the survivability of ventilation controls.

NIOSH would be required to remove self-contained self rescuers (SCSRs) from service periodically for inspection, with the number of SCSRs and mines affected to be determined by the Institute. NIOSH would have to provide replacements. Atmospheric monitoring systems capable of monitoring for carbon monoxide would have to be installed, and each miner "working alone for part of a shift" would have to be equipped with a multi-gas detector.

In a nod to alleged family liaison problems at Crandall Canyon, changes would be made to strengthen MSHA's capabilities in this area, and emergency response plans would have to be amended to include a provision explaining how an operator would assist MSHA in carrying out its family liaison responsibilities. The final say on whether or not to cease rescue/recovery operations would rest with MSHA.

New safeguards would be required for operations doing retreat mining. In addition, a special internal review process would have to be set up within MSHA to review operator plans for mining at depths of more than 1,500 feet and in other mines with a history of mountain bumps.

MSHA would have six months to write guidelines for rescue operations that would establish clear lines of authority among the various responders and "be appropriate for rescue in various types of conditions reasonably likely to be encountered." At MSHA-directed rescue operations, mine operators would be required to provide the Agency with all requested resources. Failure to do so would be considered "an egregious violation."

Contact Henry Chajet (hchajet@pattonboggs.com) or Mark Savit (msavit@pattonboggs.com) for more information.

3. MSHA, OSHA RELEASE NEAR-TERM REGULATORY PLANS

At least five new final regulations are about to be promulgated by MSHA and two new initiatives may be launched next year. Meanwhile, OSHA has scheduled no final regulatory action on any key issues of relevance to mining operations. The schedule was announced in the *Federal Register* Dec. 10 as part of federal agencies' release of their semi-annual regulatory agendas.

MSHA's final asbestos rule is scheduled for release next month. The regulation is currently under review at the Office of Management and Budget (OMB), where it has been since mid-November. The rule will reduce the Agency's exposure limit for asbestos to 0.1 fibers per cubic centimeter (f/cc) from the current level of 2 f/cc. The regulation is not expected to address the controversial issue of cleavage fragments.

Scheduled for release even sooner is a final rule on mine rescue teams, followed soon thereafter by a final rule on mine rescue team equipment. The mine rescue team rule is devoted exclusively to underground coal operations, while the equipment rule covers both underground coal and underground metal/non-metal (M/NM).

The Agency has scheduled release by February 2008 of a final rule on seals in underground coal mines. However, a final draft report of a study of explosive forces associated with seal destruction at the Sago mine was posted on MSHA's website Dec. 7. The report, prepared by the Corps of Engineers, suggests explosive forces may have been greater than the 93 psi estimated by the Agency in the methane explosion at that mine, which claimed 12 lives. Whether or not the newly-released information will affect the release date of the final rule is not known. An emergency temporary standard on seals is currently in effect.

Perhaps the biggest surprise is that the Agency plans to issue a regulation to establish the most appropriate conversion factor for determining compliance with the final exposure limit for diesel particulate matter (DPM) in underground M/NM mines. The Agency has missed a November 2007 deadline for release of a proposal on the matter. Final action is scheduled for May 2008.

The notice of regulatory action comes as a surprise, since MSHA officials participating in an underground stone seminar last month in Louisville said the conversion factor would be released in a program document, rather than through notice-and-comment rulemaking.

The final DPM PEL of 160 micrograms TC per cubic meter ($\mu\text{g}/\text{m}^3$) goes into effect May 20, and will replace the current interim limit of 350 $\mu\text{g}/\text{m}^3$ TC. .

TC is made up of elemental carbon and organic carbon. Potential organic carbon interferences that could falsely elevate the TC result exist in the underground mine environment. Therefore, in instances where the TC

level exceeds the PEL, MSHA applies a conversion factor to the elemental carbon reading in an effort to neutralize potential interference effects. Citations are issued only after both readings exceed the PEL plus an error factor. In setting a conversion factor for the final limit, MSHA may codify the current factor of 1.3 or introduce a new one. The rulemaking does not affect underground coal.

NIOSH has developed a respirable dust monitor that reads coal dust levels in real time; i.e., instantaneously. This would replace the current method of sample collection and laboratory analysis, a process that can take weeks. MSHA said it would issue a request for information on the device next month. The Agency said it wants to know from stakeholders how they think the device should be deployed in coal mines, and what regulatory or non-regulatory actions they recommend be put in place to promote its use.

MSHA said it may initiate rulemaking on refuge alternatives and on belt air, both in underground coal mines. Reports on these two issues are due this month from NIOSH and a technical study panel, respectively. The Agency made no mention of any planned action on substance abuse or crystalline silica. A final rule on fire extinguishers in underground coal mines was not included either. However, a final regulation on this issue appears imminent, as OMB completed its review on Dec. 4.

As for OSHA actions, that Agency said it would propose a rule on cranes and derricks next month. January is also the latest target for completion of a peer review of the health effects and risk assessment on crystalline silica. The Agency has missed at least two previous deadlines for completing this assessment. OSHA repeated what it has been saying for years regarding silica rulemaking; namely, that it is "evaluating several options for the scope of the rulemaking." OSHA also said estimates of costs and benefits are still under development.

The Agency also plans to update its Hazard Communications Standard to bring it into line with a global initiative on chemical hazards and labeling. OSHA said peer review of an economic analysis was to have been completed last month. No date for issuance of a proposed rule was given. OSHA said its risk analysis of the rule, as well as costs and benefits, were under development. OSHA issued a proposed rule this fall on confined spaces in construction, but the Agency gave no date for completion of a final rule.

No mention was made of a final rule on a qualitative fit-testing protocol for respirators. Its release appears imminent, however, since OMB completed review of the final rule on Dec. 4.

The Federal Motor Carrier Safety Administration said it would issue a final rule on electronic on-board recorders for long-haul truckers by September 2008. In so doing, the Agency estimated the costs of the rule at between \$190 million and \$280 million, and the benefits at \$200 million.

4. CRANDALL CANYON MINE UPDATE

As multiple probes of the Crandall Canyon tragedy continue, legislative initiatives were proposed to address safety issues raised by the underground coal mine disaster in Utah in August 2007. The state's two Republican senators, Bob Bennett and Orin Hatch, introduced an amendment to an appropriations bill that would have authorized \$1 million to study retreat mining, blamed by some for the Crandall Mine disaster. The money would have gone to NIOSH to evaluate retreat mining safety. Hatch also offered a second amendment to study the effect of the closure of the Western Mining Technology Center in Denver seven years ago, and whether or not it should be reopened. Meanwhile, H.R.3877, offered by Rep. Jim Matheson (D-UT), would have accelerated efforts to develop new technologies to improve communication systems in mines. The measures were included in an appropriations bill vetoed by the President Nov. 13.

Provisions dealing with issues raised by the tragedy – retreat mining, mining at great depths, family liaison and rescue/recovery activities – have also been written into the S-MINER Act. The bill has cleared committee and awaits floor action in the House.

Meanwhile, at least six separate investigations of the accident are underway. Congressional committees with jurisdiction are conducting probes, and three investigations are underway within the Department of Labor.

One is being conducted by MSHA, while a second was set up by Labor Secretary Chao. In announcing the latter review Aug. 30, Chao described the action as “unprecedented,” and said a two-person team made up of former long-time MSHA employees will evaluate MSHA’s actions at the mine on Aug. 6, the day the collapse occurred, and subsequent rescue efforts. Findings will result in recommendations to improve MSHA’s enforcement program and the Agency’s oversight of rescue and recovery programs, Chao said. The Department’s Inspector General is also looking into the disaster.

A sixth investigation is underway by the Utah Mine Safety Commission. Its focus is on determining what role the state should play in mine safety, accident prevention, and response. The Commission has sought access to MSHA’s ongoing investigation proceedings, but the Labor Department has resisted, citing concerns its own investigation might be compromised. However, federal officials said they would try to accommodate the Commission’s request to the extent possible. To that end, MSHA chief Richard Stickler will address the group Nov. 20 on the best ways states can contribute to mine safety and accident prevention. An unidentified member of MSHA’s investigative team will also address the body then.

In related action, a Senate subcommittee has subpoenaed coal executive Robert E. Murray to testify. The President and CEO of Murray Energy, co-owns the Crandall Canyon mine through a subsidiary. He had declined an appearance before the subcommittee in September to discuss the accident.

5. MINING ASSOCIATION GEARS UP BUDGET

The National Mining Association (NMA) has approved a 26% increase in its budget next year, as well as formed a top-level committee to facilitate decision-making in the wake of Congressional initiatives on mine safety and climate change. The money will go for lobbying and adding seven new staff positions in government relations, survey research, advertising, and grass-roots mobilization. The money will also be used to increase salaries both to retain and recruit top talent.

6. SENATE PASSES ASBESTOS BAN; LIBBY LITIGATION CONTINUES

The mining industry was more pleased than not over a bill passed unanimously in the Senate last month that would ban asbestos. The ban does not include so-called cleavage fragments, which are rock particles that do not cause asbestos-like diseases. Some scientists disagree, saying controlling exposure to cleavage fragments is prudent since they are chemically similar to asbestos and, in rare instances, may be similar in size and shape.

Industry counters no health studies exist that demonstrate the asbestos-like toxicity of cleavage fragments. Moreover, toxicity seems to be associated with long, thin fibers, which are characteristic of asbestos, as opposed to cleavage fragments, which overwhelmingly are short and thick. The Senate legislation dances around this dispute by calling for research into the health effects of what the bill labels as elongated mineral particles, which could include cleavage fragments.

The research would be done in three stages. Within a year of enactment, an evaluation of the current state of the science must be completed, followed six months later by a health effects report. Research to develop improved sampling and analytical methods would complete the program.

NIOSH would lead the research effort. Industry has objected to NIOSH’s role because it believes the Institute may not be unbiased on the matter. Indeed, since 1990 NIOSH policy has included as asbestos cleavage fragments of non-asbestiform analogs of asbestos minerals if the particles meet the federal definition of a fiber. Industry suggested that the research to be done by the National Academies, which instead is given an important consulting role in most of the research.

Besides research, the bill would amend the Toxic Substances Control Act to include in the ban more than 100 asbestiform amphibole minerals, and require EPA after 26 months to begin enforcing regulations to ban anyone from importing, manufacturing, processing, or distributing asbestos-containing materials in commerce.

Entities in possession of asbestos-containing materials would have to dispose of them within two years. To avoid wholesale removal of asbestos-containing materials already in place, exemptions would apply if the materials were in the possession of the end user or no longer in commerce.

Other important provisions would require EPA to establish a public education program about asbestos, and perform compliance testing to determine if products have asbestos in them. Ten research centers would be set up around the country to focus on finding better treatment for asbestos diseases, and developing early detection and prevention strategies. Funding would be \$1 million per year for each center over five years. The measure would also expand on an existing mesothelioma disease registry to include patients with other asbestos-related diseases.

A companion measure in the House, H.R. 3339, has yet to be voted out of committee.

In other asbestos news, EPA's Science Advisory Board put out another call for nominees to serve on an Asbestos Expert Panel it is forming. The group has been seeking nominees for several months. Experts are needed in biostatistics, epidemiology, toxicology, and related disciplines. In this latest call for experts, issued last month, the Agency set a Nov. 16 response deadline.

Libby, Montana has been declared a Superfund site by EPA due to contamination from asbestos-contaminated vermiculite ore mined there through most of the 20th century. More than 200 persons are said to have died from asbestos diseases either by living in the community or working at the mine and/or processing facility.

Mine owner W.R. Grace has been charged by the government with, among other things, concealing the dangers. The company denies the allegations. The trial originally was set for September 2006, but has been set back because of delays associated with pre-trial motions. In the latest such development, the 9th Circuit Court of Appeals said it would review decisions by a panel of the Court that reversed two rulings by the district court judge presiding over the case. The judge's decisions were largely unfavorable to the government.

Meanwhile, Grace has petitioned the court to reconsider a second panel's rulings that reversed or revised six other decisions by the judge that also weakened the government's case.

7. MINE RESCUE PROPOSALS SHOULD BE REVISED, COMMENTERS SAY

Commenters called on MSHA to be more flexible in its proposed rules on mine rescue teams and equipment. That was the essence of remarks by several witnesses at a round of public hearings on the proposals the Agency held recently.

James M. Murray of Cobra Natural Resources took issue with the provision that a mine rescue team had to be located within an hour's ground travel time from its mine rescue station. That could mean, he said, that many teams, including the one with which he is associated, would be forced to move from their current location and "possibly lose members in the process."

He suggested an exception be made for existing teams and stations, and that they be located within two hours of travel time instead, subject to district manager approval. His view was echoed by Kenneth M. Perdue of Alpha Natural Resources.

Murray also advised against the requirement that each composite rescue team be made up of two employees from each covered mine. He said mine rescue duty "cannot be legislated or compelled," and questioned whether such persons would possess the same dedication as others who volunteer out of a sense of duty. He also said MSHA should consider another type of team, one that is company-sponsored and made up of employees of a company but not necessarily from the same mine.

He also questioned the need for all team members to be familiar with the operations at each mine they serve. Do we require each member of a local fire department to train at each structure they cover? he asked rhetorically. The requirement, he cautioned, “may destroy more teams than it helps create.” In response to a panelist’s question, he also said he did not believe underground training was necessary at each mine. That is because once an explosion or fire occurs underground, everything changes, he said.

Alpha’s Perdue said rescue capabilities could actually be weakened by the provision requiring one of two teams at large mines to be either an individual mine-site team or a composite team. This would exclude state teams. He suggested they be included under a grandfathering clause.

Perdue also suggested that, for state-sponsored teams, half the required training should be waived for inspectors who serve on the team covering mines they also inspect. He said the recommendation should also apply to persons on composite or mine site teams because they work at covered mines daily and participate in quarterly evacuation drills.

He also described MSHA’s economic feasibility analysis as “woefully inadequate.” Under the proposal, he estimated the cost for coverage of his mines alone at \$530,000, which is roughly one-sixth of the total \$3.3 million annual cost estimate of the proposal for all mines.

Both Murray and Perdue introduced themselves as experienced mine rescue personnel.

Speaking at a hearing in Utah, David Litvin of the Utah Mining Association criticized the requirement that rescue teams participate in two contests annually. Team members can derive greater benefit from industry-sponsored programs, he contended. He also advocated using MSHA-certified training programs as an alternative. Litvin also predicted that the requirement would overwhelm organizers of the two existing annual contests held in the West.

In a written submittal, Paul Nowka said the requirement that methane detectors be capable of measuring up to 100% methane is unnecessary in non-gassy mines. MSHA should stipulate that if a mine is classified as non-gassy, then combustible gas measurements can be determined by the proper mine authorities or qualified personnel, he added. Nowka identified himself as a mine rescue trainer/coordinator at the Yucca Mountain test site in Nevada.

8. NEW RULES ON AMMONIUM NITRATE, PROPANE, AND OTHER CHEMICALS REQUIRE DHS FILINGS BY JAN. 22

The Department of Homeland Security (DHS) issued a final rule listing chemicals and threshold quantities regulators believe could be of potential use to terrorists that now require regulatory filings and significant new duties. The list is a revision from one promulgated earlier, and outlines a new approach regarding ammonium nitrate (AN), propane and other chemicals. The “Appendix A” list can be found at http://www.dhs.gov/xlibrary/assets/chemsec_appendixafinalrule.pdf

Affected facilities have until Jan. 22, 2008 to complete an online document called a Top-Screen if they possess any listed chemical at or above any of the screening threshold quantities (STQs). Once submitted, the Top-Screen data will be used by DHS to eliminate a chemical facility from further consideration, or to preliminarily classify it as “high risk” and rank it into one of four risk-based tiers. DHS will contact each facility individually regarding this ranking. If so ranked, the facility may then have to complete a Security Vulnerability Assessment, which includes a risk assessment and countermeasures analysis, followed by a Site Security Plan.

Facilities that fail to file by the deadline are subject to fines of \$25,000 per day or shutdown. Companies should review the entire list of chemicals to determine if any of their facilities are affected.

Patton Boggs' Safety Law group and the firm's Homeland Security group, headed by two former high ranking DHS officials, have teamed with Kroll International to assist clients in their compliance efforts. For information or assistance, contact Henry Chajet hchajet@pattonboggs.com

The DHS Appendix identifies AN in two forms: fertilizer and explosive. As a fertilizer, the revised standard considers AN in solid form with a nitrogen concentration of 23% or more and the STQ is 2,000 pounds. As an explosive, DHS lists the Division 1.1 explosive found in Department of Transportation regulations at 49 CFR 172.101; i.e., AN with more than 0.2% combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.

DHS believes AN as an explosive presents two security issues. It may be stolen or diverted to be used or converted into weapons, or released or detonated. As a theft/diversion hazard, the STQ is 400 pounds, and only covers AN in transportation packaging, such as cylinders and tank car. As a release hazard, the STQ is 5,000 pounds. In determining if amounts of AN meet or exceed either STQ, DHS said facilities are expected to include all amounts of a commercial grade of AN.

Regarding propane, the STQ in the revised Appendix A is 60,000 pounds, and facilities may exclude from the total calculation the amount stored in tanks holding 10,000 pounds or less. In the original, DHS had set a limit of 7,500 pounds. The change reflects DHS's focus on large commercial propane establishments rather than small non-industrial users.

To register, facilities must complete an on-line questionnaire, an activity the DHS spokesman said should take about two hours. The questionnaire then is to be downloaded, signed, and faxed to the Department. After its review, DHS will mail a username and password, which then are to be used to gain access to the Top-Screen. The web address to register is <https://csat-registration.dhs.gov>. Early registration does not mean a Top-Screen will automatically be required. The DHS helpline (866-323-2957) operates from 8 a.m. – 5 p.m. Eastern. .

The [Patton Boggs Health and Safety Law Group](#) consists of attorneys who have resolved client problems in environmental, energy, natural resource, and safety and health law since the late 1960s. With lawyers in Washington, D.C., Alaska, Colorado, Texas, New Jersey, New York, and Northern Virginia, we have experience with EPA, OSHA, MSHA, NIOSH, DOT, OPS, Coast Guard, NTSB, FAA, FDA, CSP, the Chemical Safety Board, and almost every other federal and state government environmental, health, and safety agency here and in many foreign governments around the world. We speak a variety of languages; have backgrounds in business, science, engineering, industry, and government; and combine preventive law counseling with courtroom and lobbying expertise to achieve results. For more information go to: <http://www.pattonboggs.com> or contact [Henry Chajet \(hchajet@pattonboggs.com\)](mailto:hchajet@pattonboggs.com) at 202-457-6511, [Mark Savit \(msavit@pattonboggs.com\)](mailto:msavit@pattonboggs.com) at 202-457-5269, [Cole Wist \(cwist@pattonboggs.com\)](mailto:cwist@pattonboggs.com) at 303-894-6159, [John Austin \(jaustin@pattonboggs.com\)](mailto:jaustin@pattonboggs.com) at 202-457-6167 or [Willa Perlmutter \(wperlmutter@pattonboggs.com\)](mailto:wperlmutter@pattonboggs.com) at 202-457-5223.

IMPORTANT NOTE: This newsletter does not constitute legal advice and counsel should be consulted regarding specific factual situations which will determine the compliance advice applicable to any particular question regarding the subject matter. If you would like additional information or advice and counsel on training, compliance or audits, please let us know.

NOTE: You may receive INSIGHTS from other people, which often occurs. To SUBSCRIBE, change your address or to change your e-mail format, simply click here. To UNSUBSCRIBE or OPT-OUT, simply e-mail INSIGHTS@pattonboggs.com with "UNSUBSCRIBE" in the subject line. To correspond with INSIGHTS, send your message to INSIGHTS@pattonboggs.com. Thanks.
