

**OSHA Continues Outreach and Enforcement
of its Isocyanates National Emphasis Program**
Donald P. Gallo, Esq. and Carolyn A. Sullivan, Esq.
Reinhart Boerner Van Deuren s.c.

Isocyanates have been in the forefront of the news lately due to the 2013 release of the Occupational Safety and Health Administration's ("OSHA") Directive Number CPL 03-00-017: Occupational Exposure to Isocyanates National Emphasis Program ("NEP"). In prior articles [[insert links to *Please Be Aware - OSHA's National Emphasis Program - Occupational Exposure to Isocyanates*](#) and to *OSHA's National Emphasis Program - Occupational Exposure to Isocyanates Prepare for an Inspection Before OSHA Arrives on Your Doorstep*] we provided an overview of the new NEP, which is intended to protect workers from exposure to isocyanates in the workplace, and we explained how to prepare for an OSHA inspection before an agency inspector arrives at your doorstep. The purpose of this article is to provide an update on the NEP and OSHA's enforcement efforts.

The NEP took effect on June 20, 2013, lasts for three years, and covers all isocyanates. The program combines enforcement (inspection targeting) and outreach to employers, workers, and safety and health professionals to raise awareness of the health effects associated with occupational exposure to isocyanates. Workers who are exposed to isocyanates can suffer serious health problems stemming from allergic cross-sensitization, occupational asthma, dermatitis, bronchitis, and hypersensitivity pneumonitis. Dermal exposure may be a significant cause of respiratory sensitization.

OSHA's primary targeting list was prepared using National Institute for Occupational Safety and Health ("NIOSH") Health Hazard Evaluations, inspection sampling data/ known overexposures, and worker's compensation data. The agency's second targeting list focuses on settings with no known overexposures. Also, OSHA area offices can add sites to the inspection list when exposure would be anticipated based upon local knowledge or when isocyanate use is verified by OSHA.

During an inspection, OSHA may interview employees and will review the employer's OSHA 300 Injury and Illness Logs (to determine whether any relate to isocyanate exposure) and its Hazard Communication Program, including written materials, labels, safety data sheets, and training. OSHA inspectors also will review the Personal Protective Equipment ("PPE") hazard assessment and evaluate the use of appropriate equipment, such as eye/face/respiratory protection and chemical-resistant gloves. Additionally, inspectors will collect personal air samples, check for visible surface contamination, and conduct wipe sampling (including, but not limited to, tools, drinking fountains, lockers, and inside PPE) of various areas to determine surface, dermal, and PPE contamination.

In the six months after the NEP took effect (from June 2013 to January 2014), OSHA performed approximately 110 inspections, 43 of which involved violations. 181 violations were cited overall. Seventy one percent of the violations were deemed "serious," with an average penalty per serious violation of \$2,028. A serious citation is likely if isocyanate exposure exceeds the OSHA PEL and an additional serious citation could be issued if feasible

engineering/administrative controls were not used or were ineffective.¹ Exceedances of an OEL (where there is no established PEL) could be considered a violation of OSHA's General Duty Clause at OSH Act section 5(a)(1) ("Each employer ... shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees") and could result in issuance of a Hazard Alert Letter. If exposure exceeds an OEL but is less than a PEL, then OSHA also may consider a General Duty Clause violation and a Hazard Alert Letter. Even if no overexposures are documented but illnesses/health effects are reported, a General Duty clause citation or Hazard Alert Letter may ensue. Finally, citations also can be issued under applicable PPE regulations or housekeeping standards. To date, the most frequently cited OSHA standards were: respiratory protection (29 CFR § 1910.134); hazard communication (29 CFR § 1910.1200); spray finishing (29 CFR § 1910.107); flammable liquids (29 CFR § 1910.106); and, personal protective equipment (29 CFR § 1910.132).

If you have any questions about the NEP, reducing worker exposures to isocyanates, or preparing for an OSHA inspection, please contact us.

¹ OSHA, the National Institute for Occupational Safety and Health ("NIOSH"), and/or the American Conference of Industrial Hygienists ("ACGIH") have set permissible exposure limits ("PELs") and other occupational exposure limits ("OELs") on methyl isocyanate, methylene diphenyl diisocyanate, and toluene diisocyanate.