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# **Chemical Detox for the Workplace**

## **A Guide to Securing a Nontoxic Work Environment**

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*April 2019*

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Founded in 2002, the nonprofit Center for Progressive Reform connects a nationwide network of scholars with policymakers and allied public interest advocates. CPR pursues a vision of legal and regulatory policies that put health, safety, and environmental protection before private interests and corporate profit. With rigorous analysis, strategic engagement in public interest campaigns, and a commitment to social welfare, CPR supports thoughtful government action, ready public access to the courts, enhanced public participation, and freer access to information.

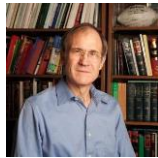
## Acknowledgments

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CPR is grateful to the Public Welfare Foundation and Marisla Foundation for supporting the development of this report, as well as to the Bauman Foundation and the Deer Creek Foundation for their generous support of CPR's work in general.

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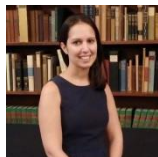
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## Table of Contents

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Acknowledgments .....	ii
About the Authors.....	ii
Executive Summary.....	1
Section One: Strategies to Reduce Toxic Risks and Assist Injured Workers.....	4
Exercising Your Right to Know .....	4
Working with an Employer to Utilize Safer Alternatives .....	4
Refusing Hazardous Work.....	5
Reporting an Emergency.....	6
Filing a Complaint with OSHA .....	6
Who May File a Complaint? .....	7
Can an Employer Retaliate? .....	8
What Are Key Features to Include in a Complaint? .....	8
How Do I Submit a Complaint? .....	9
What Happens After Filing the Complaint? .....	9
Case Study: Complaint Against an Austin, Tex., Janitorial Services Company .	10
Submitting a Tip to EPA.....	11
Using Citizen Suit Enforcement .....	12
Basic Components of Citizen Suits.....	13
Case Study: Giant Cement .....	14
Filing for Workers' Compensation.....	15
Filing a Toxic Tort Suit .....	16
Case Study: TVA Kingston Coal Ash Contamination .....	17
Contacting Local Prosecutors .....	17
Advocating Beyond the Workplace.....	18
Notable Advocacy: Banning Methylene Chloride .....	19
Section Two: An Overview of Federal Laws Governing Toxic Chemicals.....	21
Occupational Safety and Health Act.....	22
Federal Environmental Laws.....	23
Toxic Substances Control Act .....	24
Resource Conservation and Recovery Act.....	25
Comprehensive Environmental Response, Compensation, and Liability Act ..	26
Emergency Planning and Community Right-to-Know Act .....	26
Clean Air Act .....	28
Clean Water Act.....	29
Federal Insecticide, Fungicide, and Rodenticide Act .....	29

Section Three: Resources for Gathering Information about Chemical Hazards.....	30
Utilizing Workers’ Right to Know .....	30
OSHA’s Hazard Communication Standard .....	30
Injury and Illness Records.....	31
Exposure Records, Medical Monitoring, and Air Sampling Data .....	32
NIOSH Health Hazard Evaluations.....	33
Case Study: 2017 HHE of Chemical Exposure at a Hospital .....	35
Emergency Planning and Community Right-to-Know.....	35
State Right-to-Know Laws and Databases.....	36
Accessing Federal Agency Data.....	37
OSHA’s Integrated Management Information System (IMIS).....	37
Department of Labor Enforcement Database.....	38
EPA Enforcement & Compliance History Online .....	38
OSHA Hazard Alerts.....	38
OSHA’s Occupational Chemical Database.....	39
OSHA Tables Comparing PELs with other Limits .....	39
NIOSH Pocket Guide .....	39
Agency for Toxic Substances and Disease Registry ToxFAQs.....	39
EPA’s Integrated Risk Information System (IRIS).....	39
Freedom of Information Act (FOIA) Requests .....	40
Sample FOIA Request Letter for Individuals .....	41
Researching Other Public Databases .....	42
U.S. ChemHAT .....	42
Pharos Database .....	42
Interstate Chemicals Clearinghouse.....	42
Toxics Use Reduction Institute .....	42
RISCTOX .....	43
European Union REACH Program.....	43
Project ToxicDocs .....	43
DocumentCloud.....	43
Conclusion .....	44
Appendix: Chemical Detox for the Workplace Resource List.....	45
Endnotes.....	47

# Chemical Detox for the Workplace

## A Guide to Securing a Nontoxic Work Environment

### Executive Summary

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An estimated 50,000 lives are cut short every year in the United States — an average of 137 deaths a day — because of occupational diseases. Most of these deaths result from toxic chemical exposures on the job.<sup>1</sup> Based on this estimate, an individual is more likely to die from a fatal illness acquired at work than from an opioid overdose,<sup>2</sup> a firearm incident, or a motor vehicle crash.<sup>3</sup> The true death toll from occupational illness is likely higher than estimated because government statistics are incomplete.

Inadequately regulated chemical hazards are at their deadliest in the workplace. People exposed to toxics at work tend to encounter dangerous substances more frequently, for longer durations, and at higher levels than the public at large. Workers are at substantial risk across dozens of sectors including agriculture, domestic cleaning, hair and nail salons, home repairs, building construction, and chemical manufacturing.

The risk to workers persists despite a web of laws intended to protect against them. Congress authorized the federal Occupational Safety and Health Administration (OSHA) to adopt protective standards that ensure “to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if [the] employee has regular exposure to the hazard . . . for the period of [their] working life.”<sup>4</sup> Some environmental laws, administered by the Environmental Protection Agency, provide workers with additional protections under certain circumstances. Many state and local governments have also adopted chemical safety laws and restrictions over the past few decades.

Agencies like OSHA, however, encounter major obstacles when developing workplace protections for toxic substances even when there is overwhelming scientific evidence of significant health risks. The difficulty results not from a lack of data, but from intense lobbying from well-funded industries. Budgetary constraints and lack of political will also stall updates to existing health standards and the creation of new ones. As a result, when OSHA moves to address hazardous chemicals in the workplace, it can take a decade for the agency to clear a new rule through the regulatory system.<sup>5</sup> This delay results in needless worker fatalities and illnesses and leaves families saddled with hefty medical expenses and deep emotional burdens.

Rather than standing by waiting for the regulatory process to operate at this glacial pace, workers, worker representatives, and advocates can take action to learn about chemical hazards, health effects, and measures to eliminate or reduce exposures in the workplace. Confronting an employer about



chemical risks is a difficult and courageous endeavor that takes planning and fortitude. Such direct action can pay off, as when high-road employers engage with workers to find safer processes or chemicals. But when employers ignore their employees' concerns, workers have several options for holding them accountable, from filing complaints with government agencies to suing employers themselves.

This guide is intended to assist workers and worker representatives with finding information on chemical hazards and then utilizing that information to achieve a nontoxic workplace. Although this

guide does not cover every issue or situation workers may face, it is our hope that it will assist with identifying the appropriate questions to ask, initiating research on chemicals of concern in the workplace, and collaborating with other workers, unions, and local organizers to take action.

**Section One** provides a list of tactics worker advocates can employ to reduce toxic risks and assist injured workers.

**Section Two** gives readers a basic overview of the federal laws applicable to toxic chemicals. While the Occupational Safety and Health Act covers many workplaces, it does not apply everywhere. Further, depending on the industry, environmental laws may provide remedies for exposed workers. Other laws, regulations, contracts, or agreements may — and likely do — govern in specific states and specific workplaces. Before taking any action, additional background research and consultation with worker advocates, university professors, citizen groups, and others in a community or nearby states is recommended.

**Section Three** specifies the best resources available to help identify chemical hazard information and take action to reduce chemical hazards in the workplace.

\* \* \*

Individuals reading this guide are encouraged to reach out to a union representative, worker center, or worker advocate in their community before engaging in research or taking action. You are likely not alone in your concerns, and others in the community may have useful research already available and may be able to connect you with informational resources.

Additionally, if you are considering taking action, joining with others may strengthen your cause as well as offer additional protections from retaliation by an employer. Joining with others to assess the political context in your community will also help determine the best course of action beyond an individual worksite.

For assistance finding local OSHA groups, advocacy organizations, and worker centers in your area, please contact CPR policy analyst Katie Tracy at [ktracy@progressivereform.org](mailto:ktracy@progressivereform.org).



## Section One: Strategies to Reduce Toxic Risks and Assist Injured Workers

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When an employer refuses to take reasonable action to protect workers from dangerous chemical exposures, workers have a variety of options for holding the employer accountable, from filing a complaint to market-based campaigns. Often, workers and their advocates will have to employ multiple strategies to achieve their risk-reduction goals. But ultimately, every worker has a right to a safe and healthy workplace free of toxic chemicals that could lead to injury or death.

### Exercising Your Right to Know

The nation's environmental and workplace safety laws ensure that people have a right to know about the chemicals they encounter in their daily lives. Employers should have detailed and accessible information about the chemicals used on a worksite. Critically, they must also provide workers training that informs them about the chemicals they will be working with, the hazards of such chemicals, how to identify those hazards, and precautionary measures taken to protect workers, as well as how workers can protect themselves. Environmental laws are designed with the broader public's right to know in mind, but databases developed in accordance with those laws may still provide useful information to workers who want to advocate for elimination or better control of chemicals in the workplace. The National Institute for Occupational Safety and Health, part of the U.S. Centers for Disease Control and Prevention, even has a small program designed specifically to investigate hard-to-identify workplace health hazards. It can produce employer-specific risk-reduction recommendations that may not be strictly enforceable but that are hard for an employer to ignore. Section Three, below, provides additional detail about these laws, as well as a list of places to look for more information about chemical hazards.

### Working with an Employer to Utilize Safer Alternatives

Whenever possible, when workers have identified dangerous chemicals to which they are exposed, their best solution is to find a way to eliminate the use of the toxic chemical by finding safer alternatives. Workers can use the resources listed in Section Three to identify safer alternatives or processes and then talk with their employer about instituting these alternatives.

If a workplace is unionized, the employer has a duty to bargain in good faith with the union. This means the employer must provide the union with information about workplace hazards, including hazards from toxic chemicals. The employer must also allow the union to perform inspections of the workplace and take samples. If the union seeks improvements to address the hazards, the employer is required to come to the table to negotiate in good faith.

Additionally, collective bargaining agreements (CBAs) may include protections that supplement applicable laws and standards. CBAs may also describe procedures for filing a grievance against the employer for exposure to chemicals or other workplace hazards. Any unionized employee concerned about toxic chemicals in the workplace should consult their collective bargaining agreement and talk with the bargaining unit's authorized employee representative.

### Refusing Hazardous Work

In emergency situations, the Occupational Safety and Health Act (OSH Act) and the National Labor Relations Act (NLRA) provide certain workers protections from retaliation by their employer for refusing to perform hazardous work.

Employees protected by the OSH Act have a right to refuse hazardous work if (1) they have a "reasonable" belief that the working conditions pose a real danger of serious injury or death, (2) where possible, they have brought the dangerous conditions to the employer's attention, and the employer refused to address them, and (3) there is no time to get the dangerous conditions corrected by calling an OSHA inspector.<sup>6</sup>



The "reasonable" belief standard requires that a reasonable person in the same circumstances as the worker would have reached the same conclusion that performing the assigned task would subject them to serious injury or death and that the danger is so immediate that it could not be remedied by calling an OSHA inspector. This requires more than that the employee had a good-faith belief that the work they were asked to perform was hazardous.

Moreover, it is vital that all elements are satisfied; otherwise, the law provides no protection for refusing to work, and the employer may take adverse action, including firing the employee. Satisfying these elements is difficult and rarely accomplished.

The NLRA also provides certain private sector employees the right to refuse hazardous work.<sup>7</sup> Specifically, the law protects employees from retaliation if two or more employees are acting in concert in refusing to perform work that they in good faith believe to be hazardous. If the workers are members of a labor union, they must be careful that their refusal to work does not

violate a “no strike” clause of their collective bargaining contract with the employer.

The NLRA does not apply to all workers — it does not cover independent contractors, supervisors, domestic workers, agricultural workers, railway workers, or federal or state public sector employees (with the exception of U.S. Postal Service workers).

If employees are covered by the NLRA and they refuse to perform hazardous work, the employer is prohibited from retaliating against them. If an employer does retaliate, the employees can file an unfair labor practice charge against the employer within 180 days of the retaliatory action pursuant to Section 8(a)(3) of the statute.

### Reporting an Emergency

In the case of an emergency — a hazard that poses an immediate threat to human health or the environment — the best course of action is to call 9-1-1, and then report the hazard to the appropriate agency.

Workplace emergencies, including fatalities or life-threatening conditions, should be reported to OSHA immediately.

Environmental emergencies, such as oil and chemical spills, radiological and biological discharges, and accidental release of pollutants, should be reported to EPA’s National Response Center. If someone may have ingested a poisonous substance, the Poison Control Center should also be contacted immediately.

### Key Resources

OSHA Emergency Hotline: 1-800-321-OSHA

EPA National Response Center: 1-800-424-8802

Poison Control Center: 1-800-222-1222

After contacting local authorities and the appropriate agency or agencies, it may be a good idea to follow up by submitting a complaint or tip in writing to OSHA and EPA, and any relevant state agencies.

### Filing a Complaint with OSHA

Workers and qualified worker representatives may file a complaint with federal OSHA (or the state agency counterpart) to report workplace hazards or violations of workplace standards and to request an inspection. For example, workers might consider filing a complaint with OSHA to report violations of the Hazard Communication standard, exposure to a chemical above the permissible exposure level set by OSHA, or failure by an employer to provide personal protective equipment.

Filing a complaint alerts OSHA that workers at a particular worksite have concerns about their health and safety and that an inspection may reveal violations or otherwise hazardous conditions that need to be corrected.

When OSHA receives a formal complaint, the agency will conduct an inspection. If OSHA finds violations during an inspection, the agency will issue a citation against the employer requiring certain actions to abate the violations and often imposing a monetary penalty. Additionally, the mere presence of OSHA can put employers on notice that employees expect safe and healthy working conditions and that they will report hazards to authorities if the employer does not address them.

Still, it is important to consider carefully whether to file a complaint in each particular case. If you are not reasonably certain that there is an ongoing violation of an OSH regulation or standard in the workplace, it is possible that OSHA will not find any violations during its inspection, which may lead an employer to point to the inspection as reason not to address or communicate about employee concerns.

Employees considering whether to file a complaint with OSHA should consult with a worker representative or attorney before doing so to ensure they fully understand what is required and what risks are involved, as well as how to avoid those potential risks.

For example, submitting a complaint signed by two or more workers may provide some protection under the National Labor Relations Act (NLRA), whereas the NLRA does not apply when only one worker files the complaint. Similarly, when the hazard or violation may fall under the jurisdiction of an agency other than OSHA, filing the complaint with that agency may provide better protections and remedies in the event the employer unlawfully retaliates.

Some of the most common questions and answers about filing an OSHA complaint are discussed below.

### **Who May File a Complaint?**

Any employee or a qualified employee representative may file a complaint with OSHA. Qualified employee representatives include the employee's attorney, an authorized representative of a collective bargaining unit, or a *bona fide* representative acting at the employee's request, such as a spouse, health care provider, social worker, or a nonprofit group, among others.<sup>8</sup>

Additionally, any member of the public may submit a tip to OSHA with information about a safety or health hazard in the workplace. Of course, given OSHA's severe resource constraints, the agency is unlikely to follow up on a tip from a member of the public with any rigor unless the condition appears to be especially hazardous.



### ***Can an Employer Retaliate?***

It is illegal for an employer to retaliate against any employee who files a complaint with OSHA, but workers should keep in mind that retaliation can still occur. Although a worker who experiences retaliation may have remedies under the law, prevailing in a case against an employer for retaliation is extremely difficult because of the challenge in proving the employer took an action against an employee because of their complaint to OSHA.

As a preventive measure, the complaint should clearly state that the complainant's information is to remain confidential and not be shared with the employer. While OSHA is supposed to keep workers' information confidential upon their request, the information contained in the complaint might be sufficient for an employer to determine who filed it even when no name is provided, or even when it is filed by a qualified employee representative on behalf of a worker.

### ***What Are Key Features to Include in a Complaint?***

A formal complaint that will trigger an OSHA inspection should be submitted in writing and as soon as possible after the hazard is observed, and it should provide specific details about the hazardous condition. However, OSHA will limit the scope of its inspections to the issues complained about, so workers may want to keep the complaint broad enough so that the inspection is not too narrow to catch the suspected violations.

Some questions to attempt to answer in a written complaint:

- What is the employer's name and mailing address?
- Who manages the worksite and how can OSHA reach them?
- What is the location of the worksite?
- What is the specific hazard observed? If a chemical hazard, what chemicals are involved?
- What day and time was the hazard last observed?
- Does the hazard only occur at a specific time of day, on a specific shift, on certain days or weeks, etc.?
- Has anyone become ill or been injured due to this hazard? If so, what was the injury or illness that resulted?
- Has the hazard been reported to management? If so, what actions, if any, did management take to address the hazard?
- What specifically would you like OSHA to do in response to the complaint? Would you like OSHA to conduct an inspection?
- Are you filing the complaint as a current employee, a former employee, or as a representative of a current employee?
- Should OSHA keep your name and contact information confidential?

### ***How Do I Submit a Complaint?***

Complaints may be submitted in person, by fax, by mail, or through the agency's online complaint system (see box at right).

If submitting online, the complaint will be directed to the appropriate office. If faxing, mailing, or submitting in person, when the worksite identified in the complaint is located in a federal OSHA state, the complaint should be submitted to the nearest OSHA regional or area office. In states that operate their own OSH program under a state plan, submit via fax, mail, or in person to the state OSH agency. For a list of OSHA state offices, visit <https://www.osha.gov/html/RAmap.html>.

### ***Key Resource***

OSHA's Online Form for Filing Complaints:  
[www.osha.gov/workers/file\\_complaint.html](http://www.osha.gov/workers/file_complaint.html)

### ***What Happens After Filing the Complaint?***

When OSHA conducts an inspection in response to a worker complaint, the inspector often limits the scope of the inspection to the specific hazard(s) described in the complaint.

No matter the type or scope of the inspection, the OSH Act provides employees three important rights:

- 1) The right to have a representative present during the inspection.
- 2) The right to talk privately with the inspector.
- 3) The right to take part in meetings with the inspector, both before and after the inspection is conducted.<sup>9</sup>

The ins and outs of OSHA's legal process are complex and beyond the scope of this guide. An excellent place to begin is with the Occupational Safety & Health Law Project's report, *Keep the Job Safe and Healthy: A Workers Toolkit to Understanding OSHA's Legal Process*, available at [www.oshlaw.org/resources](http://www.oshlaw.org/resources).

### ***Case Study: Complaint Against an Austin, Tex., Janitorial Services Company***

In 2015, workers employed by a janitorial services company in Austin, Texas, began to experience adverse health effects, including skin rashes, headaches, burning eyes, and throat and nose irritation, when using cleaning products provided by the company. They were unaware of the chemicals in the cleaning products, did not receive proper training on the chemicals, lacked eye protection, and were provided with gloves that tore easily, resulting in direct exposure to the cleaning products. At one site, a worker who was suffering from nose bleeds brought concerns to her supervisor and asked for a dust mask, but was told that none were available. A worker at another site told her supervisor she needed gloves but was turned down, prompting her to purchase gloves herself. At a third site, a worker asked for training about the chemicals but was told by her supervisor that she would have to come in before her shift and would not be paid for time spent in training. At a fourth site, workers were concerned that they had not received training on the chemicals they were using. Workers from all four sites decided to file a joint complaint with OSHA in hopes that the agency would address their concerns. Although the workers were not unionized, they worked with a national union representative and a public health professor to draft the complaint.

The complaint laid out all of the concerns listed above and identified the four separate worksites of concern. It provided the employer's name and mailing address, and the address for each of the four worksites, as well as the supervisor's name, when that information was available. The complaint also included a one- to two-paragraph statement describing the hazards at each worksite, the number of workers at risk, the time and place OSHA would be most likely to witness the hazards, and a brief note about whether the workers had raised the concern with management prior to filing the complaint.

The complaint prompted inspections at each of the four worksites. OSHA issued serious citations at all four facilities for failure to ensure each employee had proper eye and face protection when exposed to corrosive chemical splashes to the eyes, failure to provide emergency eye wash stations within the work area, failure to provide appropriate hand protection (i.e., gloves) for the chemicals being used, and failure to provide effective information and training on the hazards of chemicals to which workers were exposed. OSHA initially imposed \$8,400 fines on each worksite for the violations and required the employer to abate all violations. As part of a formal settlement with the company, OSHA reduced the violations from "serious" to "other," and dropped all but one of the fines, which it reduced to \$5,000. Despite this fairly light punishment for the violations, the employees have now made clear that they expect healthy and safe working conditions, and the employer is on notice that it will be held to account if it fails to provide gloves and eye protection, and if it neglects to train workers on the safe use of the chemicals to which they are being exposed.

## Submitting a Tip to EPA

While most hazards inside the workplace should be reported to OSHA, some may be more appropriate to report to EPA, or to both agencies. For example, a chemical leak inside a workplace should be reported to OSHA, and in many instances, should also be reported to EPA, especially if the chemical presents a risk to public health or the environment outside the workplace. Similarly, a violation of EPA's risk management standards pertaining to toxic chemicals may be reported to OSHA, EPA, or both agencies. When in doubt, we recommend notifying both agencies of the hazard.

When submitting a non-emergency tip to EPA headquarters, the best approach is to report the concern using EPA's online "Report an Environmental Violation" web form, at right.<sup>10</sup> Tips may also be submitted by telephone by calling the EPA regional office for the relevant state.<sup>11</sup> Whether the tip is submitted online or by telephone, it is good practice to specify what action EPA is being asked to take in response to the tip, such as conducting an inspection.

Submitting a tip to EPA benefits the agency by assisting with compliance and enforcement efforts, especially since the agency's enforcement resources are limited and spread thin. When environmental laws and regulations are well enforced, it not only helps protect public health and the environment, it also helps level the playing field for businesses that follow the law. Additionally, tips can help EPA identify the environmental concerns of most significance to certain communities.

If EPA inspectors find a worker exposed to hazardous chemicals, the agency refers the case to OSHA, according to a Memorandum of Understanding (MOU) the agencies signed in 1990.<sup>12</sup> The MOU establishes a tracking system for referrals of violations and allegations exchanged by the two agencies. The agencies have also agreed to share information about complaints, inspections, violations, penalties, and other enforcement actions pertaining to the scope of the MOU. Additionally, the MOU indicates agreement by the two agencies to provide training to the other agency's personnel that covers relevant laws and regulations, compliance requirements, referral procedures, and joint enforcement and inspection initiatives.

In addition to submitting the tip to EPA officials, workers or representatives should consider alerting the state's environmental agency or health department, as well as local city or county agencies, as appropriate. Contact information for local agencies can be found in the Index of Health and Environmental Agencies of U.S. States and Territories, which is available online at [www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories](http://www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories).

### *Key Resource*

Report an Environmental Violation to EPA:  
<https://www.epa.gov/enforcement/report-environmental-violations>



## Using Citizen Suit Enforcement

Under the federal OSH Act and state OSH programs,<sup>13</sup> workers do not have an option to file a lawsuit against an employer to enforce the law, even if federal OSHA or the state agency fails to do so. However, the right of members of the public to enforce the law by filing “citizen suits” is a common feature in our nation’s federal environmental laws. These citizen suit provisions essentially deputize members of the public, including workers and their representatives, to help enforce the law.

Citizen suit provisions typically authorize lawsuits against an establishment for violating the statute, such as releasing hazardous pollutants into the air or discharging wastes into the water. Depending on the statute, the suit may seek to recover civil penalties for the violation or may seek an injunction compelling the violator to abate the violation. When the statute provides for

the recovery of civil penalties, the party filing the citizen suit can leverage the civil penalties to their advantage in negotiating for improvements in the workplace, as occurred in the Giant Cement case example below.

Environmental statutes also authorize citizen suits against EPA for failing to perform nondiscretionary duties required by law; this second type of citizen suit is more common in the context of rulemaking than enforcement because most enforcement decisions are considered by courts to be discretionary.



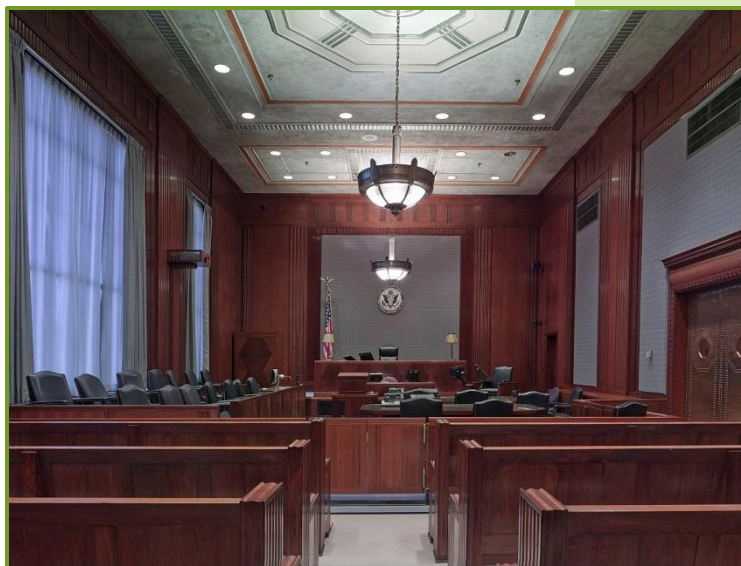
The following discussion summarizes the basic components of citizen suits and provides a few examples of how workers exposed to toxic chemicals may utilize these suits against their employers. These cases are complex and are not always the best approach to resolving a concern; thus, workers interested in citizen suits should consult with an attorney or worker representative before proceeding. If workers succeed on a citizen suit, the employer would likely be required to pay the attorney’s fees.

Before filing a citizen suit alleging violations by an employer or establishment for occupational exposures, it is worth considering whether first to seek recourse by filing a complaint with OSHA or a tip with EPA. In some instances, filing a complaint or tip may work to remedy the problem without ever filing a lawsuit.

### ***Basic Components of Citizen Suits***

Typically, citizen suit provisions extend to any person the power to file a lawsuit against any other person or entity that violates the law. The right to file suit often becomes available only after the person who intends to file the suit has provided a “notice of intent to sue” to the relevant enforcement agency and the party alleged to be in violation, specifying the alleged violations. Such a notice typically requires a waiting period, which gives the alleged violator an opportunity to correct the problem and gives the agency an opportunity to “diligently enforce” the statute. If the agency has already begun its own enforcement action against the violator, the party filing the suit may not be able to proceed with their case. If the agency does not begin its own enforcement action and the violator does not correct the problem, workers should be aware that there might be a statute of limitations for filing the suit in court.<sup>14</sup>

Although citizen suits can be complex, simply sending the notice of intent to sue may be enough to get the attention of the violator without ever having to file the suit. Companies faced with a potential citizen suit may urge the relevant agency to initiate an enforcement action and resolve the allegations to



forestall the citizen suit. Such a step would likely be based on the calculation that the agency might settle the case on terms more favorable to the company than might result from the private lawsuit. For this reason, in such cases, the individuals who intend to file the citizen suit should monitor the agency’s enforcement action to ensure it addresses the violations adequately. Nonetheless, this guarantees some action is taken against the violator without the party filing the suit having to spend years involved in complex litigation. In other words, simply filing a notice of intent to sue may prompt action by the establishment and the agency without the citizen ever having to step foot in the courtroom. For examples of notices of intent to sue filed with EPA, visit [www.epa.gov/noi](http://www.epa.gov/noi).

Because each law has its own specific requirements, workers (and their representatives) should consult the particular statute before filing suit. In addition, for workers, one of the biggest challenges with citizen suits is dealing with retaliation. Anti-retaliation provisions in state and federal whistleblower laws are inconsistent and rarely give workers sufficient protection.

### ***Case Study: Giant Cement***

In 2006, the United Steelworkers sent “notices of intent to sue” to Giant Cement Holding, Inc. and two of its subsidiaries, Giant Cement Company and Giant Resource Recovery, due to environmental reporting violations discovered at the company’s co-located cement plant and hazardous waste storage facility in Harleyville, South Carolina. One such “citizen suit” involved the company’s cement plant, where hazardous-waste-derived fuel was used to fire a cement kiln. While the practice is permissible under the law, the workers inside the plant had no information about what toxins the hazardous waste contained or how to address exposures. To address that, workers first went to the company to ask for information about the hazards presented by the fuel. This concern was particularly heightened after a hose failed and a worker was drenched with the hazardous-waste-derived fuel. The company refused to provide the information about the waste or give the union safety representative access to any documentation provided by the hazardous waste generators that had sent their waste to the Giant facility.

The workers joined with their union representatives and attorneys to examine the facility’s chemical reporting under the Emergency Protection and Community Right-to-Know Act (EPCRA). Looking at prior Form R submissions available on EPA’s Toxic Release Inventory (TRI) website, they looked at TRI reporting data and discovered the company had not reported to EPA on a number of chemicals listed in the company’s Risk Management Plan (RMP). Although this by itself is not necessarily a violation, the workers felt confident the omissions rose to a violation given the volume of the hazardous-waste-derived fuel used at this particular facility. They sent the notice of intent to sue to the facility, EPA, and other parties required by law and initiated a citizen suit for violations of EPCRA Section 313 after the 60-day notice period lapsed.

After receiving documents from the company during the discovery phase of the lawsuit, the workers and their representatives discovered numerous other chemicals that had not been properly reported under the EPCRA TRI program. This raised the stakes significantly, as penalties under EPCRA were \$32,500 per day per violation. After protracted litigation and the filing of cross summary judgment motions, the companies agreed to settle the case out of court with the Steelworkers. As a result, the union was able to ensure the settlement focused entirely on protecting the workers inside the plant and the surrounding community. Under the settlement, the company agreed to file 45 new TRI reports for hazardous chemicals. It also required Giant to make a \$10,000 contribution per year for ten years to the local fire department to bolster first responder capabilities, required Giant Cement to install new laboratory equipment to analyze incoming hazardous waste, grant the union access to the on-site laboratory and hazardous waste documentation, and implement an environmental management system at the facility with periodic third party audits, and make the audits available to the Steelworkers.

*Source: Joseph M. Santarella, Jr., Workers Have the Right-to-Know Too, Front Lines (United Steelworkers and Tony Mazzocchi Center), July 13, 2009, at 4.*

## Filing for Workers' Compensation

When a worker suffers a work-related injury or illness, workers' compensation insurance may assist with paying medical expenses and replacing lost income. Workers' compensation may also provide benefits to the surviving relatives of a worker killed on the job.

State workers' compensation laws cover most workers, though the coverage varies by state. For example, Texas does not require employers to provide workers' compensation coverage, and some states may exempt small employers. Federal workers must look to federal law for coverage.

When workers' compensation insurance provides coverage, it serves as the exclusive remedy available to workers and their families. This means that an injured or ill worker, or the family of a deceased worker, may not file a lawsuit against an employer for medical costs, lost income, pain and suffering, or punitive damages. However, in some instances, it may be possible to file a lawsuit against an employer for intentional torts (i.e., intended acts committed by an employer that cause harm to another), which some states allow as an exception to the general prohibition on tort suits.

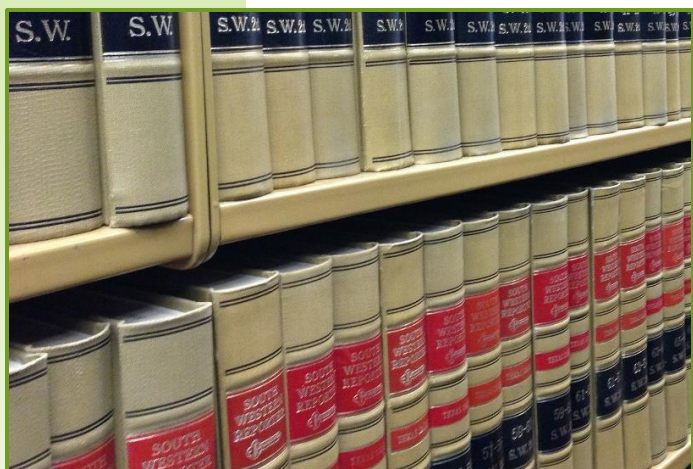
Unfortunately, workers' compensation often fails to compensate injured or ill workers adequately. According to a 2015 OSHA report, employers regularly evade their responsibility for worker health and safety, and state workers' compensation systems fail to provide injured workers the full benefits promised in exchange for giving up their right to file suit against their employers.<sup>15</sup> OSHA cites figures in the report that indicate "[w]orkers' compensation payments cover only a small fraction (about 21 percent) of lost wages and medical costs of work injuries and illnesses; workers, their families, and their private health insurance pay for nearly 63 percent of these costs, with taxpayers shouldering the remaining 16 percent."<sup>16</sup>

To find out about each state's workers' compensation laws and coverage, visit the National Employment Law Project's webpage, <https://www.nelp.org/workers-comp-law-resources/>.

Additional resources are also available from the Workers' Comp Hub, [www.workerscomphub.org](http://www.workerscomphub.org), a joint project of the National Council for Occupational Safety and Health (National COSH) and the National Economic & Social Rights Initiative (NESRI). The site offers access to a regularly updated newsletter, as well as advocacy tools for proposing progressive state-level reforms.

## Filing a Toxic Tort Suit

A worker who is injured or made ill from chemical exposure in the course of his or her employment may be able to bring a civil tort lawsuit to recover damages for personal injury. Workers who believe they may have a legal claim for personal injury should contact an attorney as soon as possible to discuss the matter. In a toxic tort case, the plaintiff will have the burden of proving their injury or illness was caused by exposure to a toxic substance. To help the attorney put forward the strongest case possible, workers should keep all information they have about their exposure.



As noted above, workers' compensation is typically the exclusive remedy available from an employer, although a lawsuit may be valid as an exception to a state's workers' compensation law in certain circumstances where an employer committed an intentional tort or failed to secure workers' compensation insurance as required by law.

Workers may also have a valid claim against an individual or company other than the employer (i.e., a third party) responsible for causing harm.

For example, workers injured or made ill from a toxic chemical in a product may have a valid legal claim against the product manufacturer or distributors. They may have a claim based on a product defect or failure to warn. In a failure-to-warn case dealing with occupational exposures, the plaintiff is alleging that the product was defective because it lacked a warning of potential harm, the defendant breached a duty of care owed to the injured person(s), and the defect or lack of warning caused the injury or disease. If workers think they have been injured or sickened because of a product they used or encountered on the job, they should consult an attorney.

In certain circumstances, workers may also be able to file a lawsuit against the owner of the worksite for "premises liability." A premises owner may be liable to a third party's workers on its premises due to the owner's own negligence, or may be "vicariously liable" for the negligence of another party (e.g., a company contracted to perform work at the site). Asserting vicarious liability is challenging because the premises owner must have retained control over the work performed or approved of the unsafe working conditions. On the other hand, a premises owner owes a duty of care to all people on its premises and is directly liable for harm caused by a breach of that duty.

### ***Case Study: TVA Kingston Coal Ash Contamination***

In December 2008, the largest coal ash spill in U.S. history took place when a dike broke at the Tennessee Valley Authority's (TVA) Kingston fossil fuel plant. More than a billion gallons of coal fly ash and water spilled out, flooding nearby homes and contaminating the Emory River and surrounding waterbodies. The TVA contracted a firm, Jacobs Engineering, to handle the cleanup. The company, in turn, hired hundreds of workers to perform cleanup operations. Both the TVA and Jacobs Engineering told the workers time and again that exposure to the coal ash was completely safe. One official went so far as to tell workers they could eat a pound a day without worry.

Not suspecting the dangers because they were repeatedly told it was harmless, these workers worked without protective gear even in the most dangerous areas of the site, and then brought soiled clothes home to be laundered, exposing their spouses and children to the coal ash dust. Within a year of the cleanup getting underway, workers and their families began getting sick. When they raised concerns and asked for respiratory protection and protective gear, their requests were denied.

Workers, spouses of workers, and next of kin of deceased workers filed suit against Jacobs Engineering, Inc., alleging several claims — negligence, recklessness, fraud, and misrepresentation, among others. In November 2018, a jury found that the company had breached its contract with TVA and endangered workers. The litigation is ongoing, with the next phase of the lawsuit focusing on each plaintiff's individual case.

*Source: Jamie Satterfield, Kingston Coal Ash Case: From Spill to Sickneses to Lawsuits, Knoxville News Sentinel (Feb. 5, 2019), <https://www.knoxnews.com/story/news/2019/02/05/kingston-coal-ash-spill-timeline-lawsuit/2767409002/>.*

### **Contacting Local Prosecutors**

Workers who suffer harm because of occupational exposure to toxic chemicals may wish to contact a local prosecutor to press for criminal charges against the employer. A local prosecutor has authority to bring criminal cases under the general criminal laws of the state, regardless of whether the employer violated a specific regulation. Some potential criminal charges that could apply to employers' actions or inactions that cause workers to be harmed by exposure to toxic substances on the job could

include manslaughter, criminally negligent homicide, endangerment, assault, battery, or reckless conduct.

To learn more about reaching out to local prosecutors, read CPR's manual for advocates released in 2016, *Preventing Death and Injury on the Job: The Criminal Justice Alternative in State Law*, available at [http://progressivereform.org/articles/WorkerProsecutionManual\\_1602.pdf](http://progressivereform.org/articles/WorkerProsecutionManual_1602.pdf).

### **Advocating Beyond the Workplace**

Beyond addressing toxic chemicals in a specific workplace by raising concerns, submitting complaints, or filing lawsuits, workers can help improve chemical safety for consumers, families, and the environment by engaging in advocacy initiatives. Reaching out to others affected by a similar problem, including neighboring communities surrounding a particular worksite, helps bridge shared interests and build a united front to address the harmful consequences and cumulative impact of toxic chemical exposure.

Connecting with union representatives, worker centers, nonprofit groups, and community organizers is the best first step toward becoming an effective advocate on these issues. Such groups are likely aware of political issues, pending legislation or regulations, circulating petitions, ongoing or prospective lawsuits and class actions, surveys, market-based campaigns, or legislative initiatives in which workers can participate or contribute. They can also help to connect workers to the leading activists, attorneys, unions, or other organizations working on a particular matter, assist with finding training opportunities and materials, or help to remedy workplace-specific issues.

### ***Notable Advocacy: Banning Methylene Chloride***

In October 2017, Drew Wynne was working at the production facility of his startup coffee company, Rip Tide Coffee, in North Charleston, South Carolina. Wynne wanted to remove old paint from a floor at the establishment, so he went to a local Lowe's store and bought paint stripper. Tragically, Wynne was killed while working on the floor due to inhalation of the toxic methylene chloride vapors emitted from the paint stripper.

When Wynne's family learned that methylene chloride had taken loved ones from at least 50 other families, they decided to advocate for change. The Wynne family joined with advocacy organizations, including Safer Chemicals, Healthy Families, the Environmental Defense Fund, and the Natural Resources Defense Council to raise awareness.

While OSHA has a standard limiting occupational exposure to methylene chloride, it does not apply to all workers, including the self-employed. And although EPA announced a proposal to ban the manufacture, import, processing, and distribution of methylene chloride for consumer and most commercial paint and coating removal in January 2017,<sup>i</sup> EPA delayed the rule from moving forward shortly after the Trump administration took office. Had EPA moved forward on the proposed ban quickly, it could have been enacted before Drew Wynne's death.

During the delay, at least three other people's lives were cut short by methylene chloride paint strippers. One of those victims was Kevin Hartley, a 21-year-old who worked with his family's company. He died on the job while refinishing a bathtub, despite wearing a mask to avoid inhaling the toxic vapors.

In mid-2018, the Wynne and Hartley families met with members of Congress and then-EPA Administrator Scott Pruitt to share their stories and urge them to move forward with the ban, noting their loved ones would still be alive if the toxic paint stripper were not readily available on store shelves. On May 10, 2018, EPA announced it would move forward "shortly" with the proposed ban. Months passed with no action. When EPA had not finalized a ban by January 14, 2019, Safer Chemicals, Healthy Families, Vermont Public Interest Research Group, and the mothers of two victims joined to file a citizen suit<sup>ii</sup> under TSCA seeking to compel the agency to take action immediately. In February 2019, the Natural Resources Defense Council and the Labor Council for Latin American Advancement (represented by Earthjustice), filed a separate suit against EPA, also seeking to compel the agency to move forward and ban the chemical.<sup>iii</sup>

On March 15, 2019, EPA announced a final rule to ban methylene chloride for consumer uses.<sup>iv</sup> Instead of moving forward with a ban on commercial uses, EPA chose to issue an advanced notice of proposed rulemaking to solicit public input on a potential rule to



establish a training, certification, and limited access program, ultimately leaving both workers and consumers who obtain commercial products in harm's way.

While advocating for EPA to take action, the families and advocates have simultaneously launched a highly successful market-based campaign. In 2018 and 2019, Safer Chemicals, Healthy Families' "Mind the Store" campaign, the Wynne's, NRDC, and campaign partners across the country convinced 13 major retailers in North America to remove paint strippers containing methylene chloride and N-methylpyrrolidone (NMP) from store shelves.<sup>v</sup> They are continuing to watchdog these retailers to ensure they follow through on their promises.

<sup>i</sup> EPA Methylene Chloride and N-Methylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(a), 82 Fed. Reg. 7464 (proposed Jan. 19, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-01-19/pdf/2017-01222.pdf>.

<sup>ii</sup> Notice of Intent to Sue from Brenden Cline & Daniel Rosenberg, Nat. Resources Defense Council, to Andrew Wheeler, Acting Admn'r, U.S. Env'tl. Protection Agency (Dec. 6, 2018), [https://www.epa.gov/sites/production/files/2018-12/documents/2018-12-06\\_nrdc\\_notice\\_of\\_intent\\_to\\_sue\\_-\\_methylene\\_chloride\\_6a\\_rule\\_0.pdf](https://www.epa.gov/sites/production/files/2018-12/documents/2018-12-06_nrdc_notice_of_intent_to_sue_-_methylene_chloride_6a_rule_0.pdf); Complaint, Vermont Public Interest Research Group v. Andrew Wheeler (D. Vt. 2019) (No. 2:19-CV-9), [https://saferchemicals.org/wp-content/uploads/2019/01/saferchemicals.org\\_vpirg\\_et\\_al\\_v\\_wheeler\\_complaint.pdf](https://saferchemicals.org/wp-content/uploads/2019/01/saferchemicals.org_vpirg_et_al_v_wheeler_complaint.pdf).

<sup>iii</sup> Complaint, Labor Council for Latin American Advancement v. EPA (S.D.N.Y. 2019) (No. 1:19-CV-01538), <https://earthjustice.org/sites/default/files/files/Methylene%20Chloride%20Complaint.pdf>.

<sup>iv</sup> News Release, Env'tl. Prot. Agency, EPA Bans Consumer Sales of Methylene Chloride Paint Removers, Protecting Public (Mar. 15, 2019), <https://www.epa.gov/newsreleases/epa-bans-consumer-sales-methylene-chloride-paint-removers-protecting-public>.

<sup>v</sup> Mike Schade & Sujatha Bergen, Buyer Beware: Dangerous Paint Strippers Still Sold at The Home Depot, AutoZone and Other Stores, SAFER CHEMICALS, HEALTHY FAMILIES (Jan. 25, 2019), <https://saferchemicals.org/2019/01/25/buyer-beware-dangerous-paint-strippers-still-sold-at-the-home-depot-autozone-and-other-stores/>.

## Section Two: An Overview of Federal Laws Governing Toxic Chemicals

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Pursuing any of the strategies outlined in Section One requires a thorough understanding of the relevant laws, regulatory programs, and government institutions that are intended to protect workers' rights. What follows is a summary of eight federal laws that directly or indirectly address occupational exposure to toxic chemicals.

The Occupational Safety and Health Act (OSH Act) of 1970 is the primary federal law addressing workplace health and safety, and it authorizes the Occupational Safety and Health Administration (OSHA) to adopt standards to address significant workplace hazards, including toxic substances. The Mine Safety and Health Administration (MSHA) addresses mine worker health and safety but is beyond the scope of this guide.

The U.S. Environmental Protection Agency (EPA) administers several environmental laws that also address chemicals, including provisions applicable to occupational exposures. Although the Toxic Substances Control Act (TSCA) does not apply solely to workers, it provides a comprehensive framework for assessing and restricting toxic chemicals that present unreasonable risk of harm to human health. The Resource Conservation and Recovery Act (RCRA) is concerned with management and disposal of solid and hazardous waste. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates the manufacture, labeling, sale, and use of pesticides. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires owners and operators of chemical facilities to submit reports to EPA and provide certain information to the public. These and other applicable federal environmental laws are discussed in more detail below.

Beyond these, many state and local governments have adopted chemical safety laws and regulations over the past few decades that supplement and fill some of the gaps in federal law. Contractual agreements, such as a collective bargaining agreement at a unionized worksite, or a government procurement contract, may also apply to specific worksites and include legally enforceable provisions not covered by the federal laws discussed here.



## Occupational Safety and Health Act

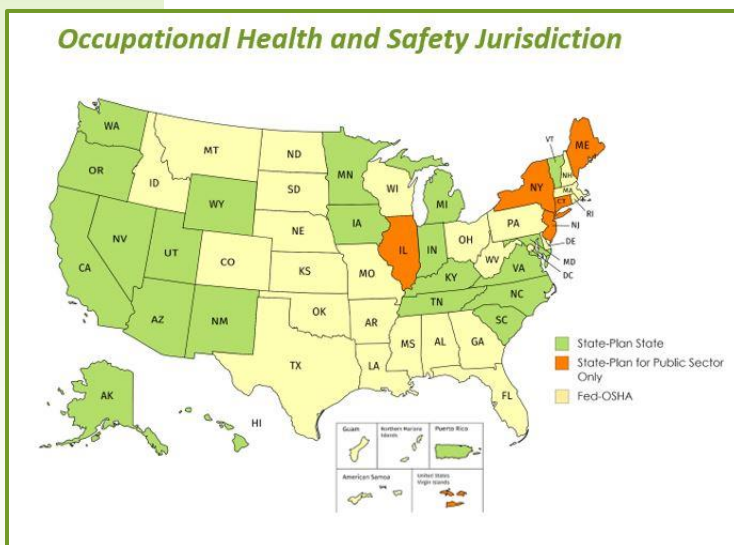
The OSH Act tasks federal OSHA with adopting and enforcing standards to address significant workplace hazards, including toxic chemical substances, which pose a significant health or safety risk to workers.

The OSH Act applies to federal employees and most private sector workers in all states and territories except those that have sought and received approval from federal OSHA to operate their own health and safety programs (often referred to as “state-plan states”). OSHA’s jurisdiction does not extend to self-employed individuals, employers with fewer than ten employees, immediate family members of farm employers, or workplaces regulated by another federal agency (e.g., mine workers are covered by the Mine Safety and Health Act, administered by the Mine Safety and Health Administration (MSHA)).

In “state-plan states,” the legislature or state OSH agency may adopt standards that exceed the federal minimums and may expand coverage to state and local government workers. At present, 21 states and one U.S. territory operate under an approved state plan that covers both the private

and public sectors. Another five states and one U.S. territory operate under a state plan covering the public sector only, with federal OSHA maintaining jurisdiction over the private sector. In the remaining 24 states and territories, federal OSHA has jurisdiction over the private sector, while the public sector is not covered.

In OSHA’s initial two years, the agency adopted approximately 400 permissible exposure levels (PELs) for chemicals in the workplace based on existing standards developed by the



American Conference of Governmental Industrial Hygienists (ACGIH) in 1968.<sup>17</sup> OSHA also adopted about 25 exposure limits as national consensus standards, which the American Standards Association had recommended.<sup>18</sup> While Congress understood the start-up standards “may not be as effective or up to date as is desirable,” the expectation was that they would serve as nationwide minimums that OSHA would strengthen as needed.<sup>19</sup> Yet despite significant new scientific and technological advancements, OSHA has largely been unable to update these start-up PELs due to budgetary constraints and political opposition.<sup>20</sup>

OSHA will cite an employer if it finds it is not complying with applicable standards, but OSHA's chemical PELs are so weak in many instances that workers may be at risk even if an employer is in compliance. OSHA can sometimes overcome this lack of protection by citing an employer for violation of the OSH Act's "general duty clause." This provision of the law requires an employer to protect workers from known harm regardless of whether OSHA has adopted a standard or has an existing standard that fails to address the hazard completely. However, the agency must meet a higher burden of proof to substantiate a general duty clause citation than to substantiate a violation of standards specific to a regulated hazard.<sup>21</sup>

Beyond specific limits on exposures to certain chemicals, OSHA has also adopted some industry-specific standards, such as its Hazardous Waste Operations and Emergency Response (HAZWOPER) standard, which protects workers at hazardous waste sites, and its Process Safety Management (PSM) standard, which protects workers employed at facilities with processes involving any of roughly 140 highly hazardous chemicals. OSHA has also adopted recordkeeping and training requirements that apply regardless of industry. For example, OSHA's Hazard Communication (HazCom) standard requires that employers provide workers with training and information before they work with hazardous chemicals and substances. OSHA also provides workers the right to see recordkeeping information such as illness and injury logs, personal health information, and exposure data. As discussed in Section Three below, these recordkeeping and training requirements serve as a major means for workers to obtain information about chemicals present in the workplace and learn precautionary measures to prevent injury or illness due to exposure.

If an employer fails to comply with any OSHA standard or regulation, a worker may file a complaint with OSHA, or with the equivalent state agency in state-plan states. (See Section One above for more information about filing a complaint.) Because the OSH Act does not provide workers with a private right to file a lawsuit, the only option workers have to help with enforcing the law is to file a complaint with OSHA or the state-plan equivalent.

### **Federal Environmental Laws**

Federal environmental laws administered by the U.S. Environmental Protection Agency (EPA) can provide workers with additional protections, information, and enforcement mechanisms beyond those provided under the federal OSH Act.

First, when EPA has the authority to adopt human health standards that apply in occupational settings, the standards are often more protective of workers than those adopted by OSHA. Because EPA's safeguards apply broadly to the public, they extend far beyond federal OSHA's jurisdiction,

which is limited and specifically excludes self-employed workers, employers with fewer than ten employees, certain farming operations, workers under the purview of another agency (e.g., mine workers), and public sector workers.<sup>22</sup> Unlike OSHA, EPA can impose restrictions on a chemical that can apply at any establishment.

EPA's standards may also be more protective of human health than OSHA's because EPA adopts standards at a risk level that OSHA has deemed "nonactionable." OSHA has adopted a *de facto* policy of regulating only

when it can prove a hazardous substance poses a cancer risk of 1 in 1,000.<sup>23</sup> In contrast, EPA's traditional risk benchmark for exposure to a cancer-causing substance is much more protective, at 1 in 1 million.<sup>24</sup> Thus, an EPA rule would presumably address risks for certain substances at a level at which OSHA would not have even begun to take action. Similarly, where OSHA does take action, it might not reduce risk as significantly as EPA would.



Second, many environmental laws provide information about toxic substances that workers can use to supplement training and informational resources provided by their employers in accordance with the OSH Act. Environmental reporting and enforcement data, for example, can help workers identify uncontrolled releases of toxic substances in or around a facility in violation of environmental laws, posing a risk of exposure to workers at the facility.

Third, while the federal OSH Act does not provide workers a private right of action against employers to enforce the law, most federal environmental statutes deputize the public to pursue enforcement through "citizen suit" actions. Citizen suits are discussed in detail in Section One above. Lastly, the anti-retaliation provisions of environmental statutes are typically far more protective than the OSH Act.<sup>25</sup>

A summary of the federal environmental statutes that address chemical substances follows along with enforcement mechanisms these statutes offer for individuals harmed by violations. Before taking any action, it is important for workers to understand which of these laws may apply to their particular worksite. Workers should consult with advocates, representatives, and attorneys familiar with their state to understand any state variations on the federal laws.

### **Toxic Substances Control Act**

The Toxic Substances Control Act (TSCA) establishes a comprehensive framework for addressing chemicals in interstate commerce. TSCA was initially enacted in 1976 and most recently overhauled in 2016 by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.<sup>26</sup> TSCA tasks EPA

with evaluating chemical substances in commerce in the United States and restricting or banning those substances that present an unreasonable risk to public health or the environment. Although TSCA is a far-reaching statute, it does not cover food, drugs, cosmetics, or pesticides, which other federal statutes address. While the law is not written specifically for the workplace like the OSH Act, if EPA finds that a substance presents a risk to workers, it may impose certain restrictions on new or existing uses of the substance to manage that risk. Under TSCA, EPA also imposes rules on the remediation of asbestos and polychlorinated biphenyls (PCBs). Under the Trump administration, the agency has so far declined to address occupational exposures in a meaningful way; however, as EPA moves forward with chemical evaluations, TSCA rules may provide new or supplemental protections for workers from toxic chemicals.

Under TSCA, workers can raise concerns about violations of the law by filing a tip directly with EPA. Additionally, TSCA provides members of the public, including workers, the right to file “citizen suits” to enforce the act. Specifically, any person may file a civil lawsuit against another person or establishment to restrain alleged violations of a rule or order relating to testing of chemicals or mixtures; a rule or order relating to manufacturing and processing notices; a risk management rule to restrict or ban a chemical in commerce; a rule or order relating to Asbestos Hazard Emergency Response; and a rule or order relating to Lead Exposure Reduction.

### ***Resource Conservation and Recovery Act***

The Resource Conservation and Recovery Act (RCRA), enacted in 1976, authorizes EPA to regulate the generation, transportation, treatment, storage, and disposal of hazardous waste at active sites.<sup>27</sup> RCRA also establishes a framework for the management of nonhazardous solid wastes. The statute was amended in 1986 to address environmental harm from the storage of petroleum and hazardous wastes in underground storage tanks.

Workers who believe they are exposed to toxic substances associated with any hazardous waste operations can submit a tip to EPA about potential violations of RCRA, in addition to filing an OSHA complaint.

RCRA also authorizes citizens to file a civil suit to enforce violations of the statute. Specifically, the law allows for civil suits against any person, past or present generator, transporter, or owner or operator of a treatment, storage, or disposal facility, who contributes to the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.<sup>28</sup> RCRA’s citizen suit provision has been interpreted broadly by the courts to allow suits calling on facilities to abate imminent, potentially serious dangers to health or the environment, even if there is not a current statutory violation.<sup>29</sup> Citizen suits can be a powerful tool for workers seeking a court order compelling a facility to conduct site investigations, monitoring,

and testing, and barring endangerment (e.g., removing the contamination) resulting from operations or cleanup.

### ***Comprehensive Environmental Response, Compensation, and Liability Act***

Enacted in 1980, and amended in 1986, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is the primary federal statute authorizing EPA to clean up contaminated sites and respond to the release of hazardous substances threatening public health and the environment.<sup>30</sup> The statute, commonly referred to as “Superfund,” imposes requirements on the cleanup of hazardous waste sites and holds the persons responsible for releases at these sites liable for the cleanup. EPA cleans up hazardous waste sites when those responsible for the releases are unidentifiable. The statute also includes provisions for reporting and responding to releases of hazardous substances into the environment.



Under section 103 of the statute, the person in charge of a facility must notify the National Response Center if a reportable quantity of a CERCLA hazardous substance is released within a 24-hour period, unless the facility has a permit for the release. These section 103 reports can be a useful tool for workers searching for information about releases from the facility at which they work.

Those working on Superfund sites can report violations of CERCLA to EPA. The law also contains a citizen suit provision, deputizing citizens to file a civil action “against any person . . . who is alleged to be in violation of any standard, regulation, condition, requirement, or order. . . .”<sup>31</sup> Like other citizen suit provisions, CERCLA also authorizes lawsuits against the federal government for failure to perform any nondiscretionary act or duty.

### ***Emergency Planning and Community Right-to-Know Act***

The Emergency Planning and Community Right-to-Know Act (EPCRA), enacted in 1986 as part of the Superfund Amendments and Reauthorization Act (SARA), is a federal law governing community preparedness for potential chemical emergencies. The four major provisions of EPCRA include: (1) Emergency planning; (2) Emergency release notification; (3) Hazardous chemical storage reporting requirements; and (4) Toxic chemical release inventory.<sup>32</sup>

The law requires local governments to prepare chemical emergency response plans with assistance from the state. These plans are intended to provide information that can be used in the event of an emergency release.

EPCRA also imposes multiple reporting and notification requirements on chemical facilities. If a facility releases into the environment any of the 355 hazardous substances covered by EPCRA or the 700+ chemicals subject to emergency notification requirements under CERCLA above a reportable quantity, the owner or operator of the facility must report the release to designated government officials.

The hazardous chemical storage reporting requirements under EPCRA include community right-to-know provisions, which ensure the public has access to information about chemicals stored at, used by, or released from individual facilities within a community. Facilities that store hazardous substances above certain thresholds on site must report that data to state and local officials and the local fire department on Emergency and Hazardous Chemical Inventory forms, called “Tier I” or “Tier II” reports. Tier II reports provide all of the same information as Tier I reports, plus additional details, and are required by most states.

As required by OSHA’s hazard communication standard, facilities must maintain Safety Data Sheets (SDSs) for each hazardous chemical they store or use. Under EPCRA, facilities must maintain SDSs for any chemical that meets a certain threshold quantity, as well as submit the SDSs and provide any inventory of those chemicals to state and local officials, and local fire departments.



Facilities must also submit to EPA annual documentation of how much of each chemical was managed through recycling, energy recovery, treatment, and environmental releases. The forms submitted by the facilities are compiled in EPA’s Toxics Release Inventory (TRI) and made available to the public.

Workers can look to the reporting requirements of EPCRA to find information about chemicals of concern at their particular worksite. By comparing the information reported under the various requirements, workers may also learn whether their employer is diligent in tracking the use and disposal of toxic chemicals across the various reports. If an employer is not properly reporting data to EPA or making that information publicly available in accordance with the statute, workers may submit a tip to EPA.

EPCRA also deputizes citizens to file suit against an owner or operator of a facility for failure to submit a follow-up emergency notice, submit a safety data sheet, complete and submit an inventory form containing required information, or complete and submit a toxic chemical release form for TRI chemicals.<sup>33</sup> Citizen suits are also permitted against the EPA administrator



for failure to publish inventory forms, respond to a petition to add or delete a chemical, publish a toxic chemical release form, establish a computer database, promulgate trade secret regulations, or render a decision in response to a petition. Lastly, citizen suits can be filed against the EPA, a governor, or a state emergency response commission for failing to provide a mechanism for public availability of information, or for failing to respond to requests for certain information.

### **Clean Air Act**

The Clean Air Act (CAA) was first enacted in 1970 and was substantially updated in 1977 and 1990.<sup>34</sup> The law protects human health and the environment by limiting harmful emissions of toxic pollutants from stationary and mobile sources. The statute focuses on reducing common air pollutants, limiting the emissions of toxic pollutants known to cause cancer or other serious health effects, and eliminating and reducing chemicals that destroy stratospheric ozone.

EPA has interpreted the Clean Air Act to exclude indoor air quality; however, “EPA has . . . used work practice standards to regulate air contamination from asbestos, most of which occurs indoors rather than outside, on the ground

that the manner in which asbestos is handled indoors can be a major source of asbestos releases into the ambient environment.”<sup>35</sup>



As directed by the statute, EPA has implemented a Risk Management Plan (RMP) rule<sup>36</sup> that requires industrial facilities using high volumes of extremely hazardous substances to submit risk

management plans to the agency. An RMP must include a hazard assessment detailing the potential effects of an accidental release, a report of accidents over the past five years, and an assessment of worst-case scenario and alternative accidental releases. The RMP must also include a prevention program describing safety precautions and maintenance, monitoring, and employee training measures. Another feature of the RMP is an emergency response program explaining training measures and procedures for response agencies and the public in the event of an emergency.

Workers who believe an employer is violating the CAA may submit concerns directly to EPA. The CAA also authorizes civil suits filed by private citizens “against any person . . . who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation” or

“against any person who proposes to construct or constructs any new or modified major emitting facility . . . or [violates] any condition of such permit.”<sup>37</sup> Civil suits may also be filed against the EPA administrator for failure to perform any nondiscretionary duty under the act.

### ***Clean Water Act***

Enacted in 1972, the Clean Water Act (CWA) tasks EPA with preventing pollution of U.S. waterbodies and maintaining a regulatory system for permitting discharges of pollutants into waterways.<sup>38</sup> Under the law, EPA establishes technology-based effluent limitations and water quality standards, develops guidance, and issues discharge permits to facilities.

In addition to filing a tip with EPA about potential violations, the CWA authorizes citizen suits filed by private parties to enforce the law. Specifically, any person may file a civil action “against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation. . . .”<sup>39</sup> Civil suits may also be filed against the EPA administrator for failure to perform any nondiscretionary act or duty required by the act.



### ***Federal Insecticide, Fungicide, and Rodenticide Act***

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), enacted in 1996, authorizes EPA to regulate the distribution, sale, and use of pesticides in the United States.<sup>40</sup> Under FIFRA, EPA has adopted a worker protection standard that provides agricultural workers and pesticide handlers with some occupational protections.

The Worker Protection Standard<sup>41</sup> (WPS) requires owners and employers of agricultural establishments and commercial pesticide-handling establishments to provide workers and pesticide handlers with training on pesticide safety and information about pesticide applications. It also imposes obligations on employers to protect workers from exposures.

Violations of FIFRA, including the worker protection standard, may be reported to EPA. Unlike most other federal environmental laws, however, FIFRA does not contain a citizen suit provision.

## Section Three: Resources for Gathering Information about Chemical Hazards

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When armed with information about the chemicals they may be exposed to on the job, workers are empowered to make informed decisions about their health. Understanding the chemical hazards in a specific workplace will help workers, representatives, and advocates decide the best approach for taking action to protect workers in that establishment, as well as the community at large.

A wealth of information on chemicals is available to workers and the public, but it is important to know where to find credible information that is relevant to a specific workplace.

This section begins by examining the legal rights workers and worker representatives have to request and receive information about chemicals and hazards from an employer. It then explores other potential ways to obtain information about a particular establishment or specific chemical, such as by searching agency enforcement datasets or requesting information from the government. Finally, this section highlights a selection of the best catalogs of information on chemicals from other publicly available sources.

### Utilizing Workers' Right to Know

#### *OSHA's Hazard Communication Standard*

OSHA's Hazard Communication (HazCom) standard requires that employers provide workers with both training and information before working with hazardous chemicals and substances. The training must inform workers of the chemicals they will be working with, the hazards of such chemicals, how to identify those hazards, and precautionary measures taken to protect workers, as well as how workers can protect themselves.

Employers must also maintain a list of all hazardous chemicals present in the workplace, properly label hazardous chemicals with hazard warnings and other information, and maintain, make available, and ensure workers are trained to read Safety Data Sheets (SDSs) for each hazardous substance. The SDSs must include information about the chemical's hazards and effects, instructions on preventing exposure, and steps for emergency treatment in the event of an exposure. It will also identify the proper respirator to wear in situations where OSHA standards require employers to substitute respirators for work practice and engineering controls.

Companies must also have a written hazard communication program and, upon request, provide workers and worker representatives with a copy of the program and of SDSs for each substance. It is worth noting that one very

significant limitation to SDSs is that employers are not legally required to provide them in any language other than English.<sup>42</sup>

While the HazCom standard is an important mechanism for gathering information about chemicals to which workers are exposed at their specific worksite, the information is not always complete. Many chemical substances have not been evaluated to assess their risks to human health or the environment. Only a chemical's well-known hazards are reported on the SDS, so the SDS may not paint a full picture of all possible hazards, especially long-term health effects like cancer.

Another limitation to an SDS is that it does not list interactions with other chemicals to which workers may be exposed. For this reason, additional research may be useful to get a more comprehensive picture of the hazards and health effects.

If an employer fails to provide training or information required by the HazCom standard, a worker may file a complaint with OSHA or with the equivalent state agency in state-plan states. (See Section One above for more information about filing a complaint).

### ***Injury and Illness Records***

An employer's injury and illness records are another potential resource for finding out about chemical hazards at a specific worksite. OSHA requires many employers with ten or more employees to record all serious work-related injuries and illnesses on standardized forms.<sup>43</sup> When an injury or illness occurs, the employer must fill out an incident report on Form 301 to collect detailed information about the incident. The employer must also include some of the information from Form 301 on OSHA Form 300, which is a log of all injuries or incidents occurring in the establishment involving loss of consciousness, restricted work activity or job transfer, days away from work, or the administration of medical treatment beyond first aid.

Between February 1 and April 30 of each year, employers must prepare Form 300A, a summary of their OSHA 300 log, and post it for employees to view. In addition, current and former employees and their representatives may view a full copy of an employer's OSHA 300 log at any time by requesting a copy from the employer. Upon receiving the request, the employer must provide the copy by the close of business on the first business day following the request.

### ***A Tip About Safety Data Sheets***

If workers do not want to request a Safety Data Sheet (SDS) from an employer for fear of retaliation or any other reason, they can easily access many SDSs and other chemical fact sheets online through a variety of publicly available sources. The National Council for Occupational Safety and Health (National COSH) website offers several excellent options to begin research: [www.coshnetwork.org/node/35](http://www.coshnetwork.org/node/35).

Although these records are unlikely to show chronic illnesses suffered by workers due to long-term exposure to a chemical, workers may learn about on-the-job injuries or illnesses associated with an acute chemical exposure. For example, reviewing injury and illness logs for respiratory distress (e.g., difficulty breathing or asthma), burning eyes, or skin rashes, burns, or



contact dermatitis may help workers understand they are being exposed to hazardous chemicals at work. However, it is important to recognize that this information may be limited because employers need only record injuries or illnesses that require medical treatment beyond first aid. If the OSHA 300 information is not provided to workers annually or upon request, employees can file a complaint against the employer.

Workers may also request these injury and illness records to determine if an employer is keeping accurate records in accordance with OSHA regulations. If not, employees can file a complaint with OSHA asking for the agency to cite the employer for failure to record an incident or incidents, so long as the specific injuries or illnesses did not occur more than six months prior.

Requesting this information from an employer may raise the risk of adverse action in response. Often workers are rightly worried that requesting information will trigger retaliation from their employers. Although OSHA does have a procedure for protecting workers from such retaliation, many retaliation complaints are unsuccessful because OSHA has found it difficult to prove an employer's reason for some action against an employee was their complaint to the agency.

In addition to recording injuries and illnesses on an OSHA 300 log, employers are also required to notify OSHA whenever a worker is killed or hospitalized, such as from an acute exposure to a toxic chemical. Occupational diseases that do not materialize right away will not appear on injury and illness logs. OSHA maintains a database of all worker fatalities reported to the federal office or to state OSH agencies, accessible at [https://www.osha.gov/dep/fatcat/dep\\_fatcat.html](https://www.osha.gov/dep/fatcat/dep_fatcat.html). Additionally, a database of severe injuries reported to federal OSHA as of January 1, 2015, can be found at <https://www.osha.gov/severeinjury/index.html>. However, OSHA does not post severe injury reports from state-plan states, so workers in those states would need to check with the state OSH agency to see if this information is publicly accessible.

#### ***Exposure Records, Medical Monitoring, and Air Sampling Data***

Beyond OSHA's Hazard Communication standard, some individual chemical standards require employers to conduct air sampling (i.e., exposure monitoring) of the worksite or to offer certain types of medical testing to

workers who have been exposed to toxic substances. Under OSHA's standard on Access to Employee Exposure and Medical Records,<sup>44</sup> employees have a right to request, examine, and copy without charge their own medical or exposure records and any analyses of employee medical and exposure records that concern working conditions or the workplace. Workers may also provide written permission to any designated representative of their choice to review their exposure or medical records. Certified collective bargaining agents may access employee exposure records and exposure analyses without the employee's written consent, but must have written consent to access an employee's medical records.

OSHA also maintains a searchable database where users can find establishment-specific industrial hygiene air sampling data collected by OSHA compliance officers. Although OSHA has not collected data for every worksite and does not necessarily indicate whether worksites found in the database were in violation of an OSHA standard, the database may help users learn more about chemicals and exposures at a particular worksite or in the same industry as their employer. The sampling data are available at [www.osha.gov/opengov/healthsamples.html](http://www.osha.gov/opengov/healthsamples.html).

### ***NIOSH Health Hazard Evaluations***

Workers experiencing adverse health symptoms that they believe are due to chemicals in the workplace may submit a request to the National Institute for Occupational Safety and Health (NIOSH) for a Health Hazard Evaluation (HHE), an assessment of potential health hazards at the worksite.

NIOSH is a subdivision of the Centers for Disease Control and Prevention (CDC) that focuses exclusively on occupational safety and health research. Upon request, NIOSH's HHE program will often evaluate a worksite free of charge to help identify workplace health hazards, such as chemical exposures, and inform both an employer and its workers about the hazards present and methods for addressing those hazards.

The lengthy time it takes NIOSH to complete an HHE is one drawback to this approach. Nonetheless, when the source of work-related illnesses is unknown, an HHE can be an effective means of determining the source. Another drawback is that NIOSH's recommendations are not enforceable against the employer. However, the recommendations can serve as a record showing that an employer is aware of a hazard, a key element for OSHA to prove that an employer has violated the general duty clause of the OSH Act.

Due to limited resources, NIOSH may not grant all HHE requests it receives. However, if it does grant a request, NIOSH may respond by conducting either a telephone consultation or a comprehensive on-site evaluation. During a phone consultation, officials will communicate with the employer and employees, and review reports on exposure, illness, and injury. Within

roughly three months of the consultation, NIOSH will issue a letter with its findings and proposed recommendations.

If NIOSH decides to conduct an on-site evaluation, officials will typically visit the worksite within three months of the request. During the visit, evaluators will seek to identify potential health hazards, assess exposures, conduct symptom surveys, perform medical testing, and test engineering controls.<sup>45</sup> NIOSH seeks to publish a report with its findings and recommendations for

the employer within a year of the site evaluation. It also makes the report available online (without naming the specific employer) and shares it with relevant state health agencies.

Certain elements of an HHE request make it more likely that NIOSH will conduct an on-site evaluation. For instance, a request filed by three or more employees, by a union, or by an employer gives the HHE program the right to enter the workplace. An on-site evaluation is also more likely if a request

concerns hazards for which there is no OSHA standard, such as chemical exposures not well understood but that appear to cause workers at the establishment to experience symptoms of potential health problems.

### ***Key Resources***

Download the HHE Request Form:  
[www.cdc.gov/niosh/hhe/pdf/hhe\\_request\\_form\\_fillable.pdf](http://www.cdc.gov/niosh/hhe/pdf/hhe_request_form_fillable.pdf)

Review the NIOSH Handbook for HHE Requests:  
<https://www.cdc.gov/niosh/docs/2014-136/pdfs/2014-136.pdf>

Search HHE Reports (through 2010):  
[www2a.cdc.gov/hhe/search.asp](http://www2a.cdc.gov/hhe/search.asp)

### ***Case Study: 2017 HHE of Chemical Exposure at a Hospital***

*Note: The hospital in this case study is not specified because NIOSH HHE reports do not identify employers by name. See <https://www.cdc.gov/niosh/hhe/reports/pdfs/2015-0053-3269revised092018.pdf> for more information.*

When hospital employees experienced symptoms such as burning eyes, nose bleeds, headaches, dizziness, and skin rashes, they became concerned that the adverse health effects were the result of exposure to a sporicidal product containing hydrogen peroxide, peracetic acid, and acetic acid. The employees submitted a confidential request to NIOSH for an HHE.

NIOSH responded by visiting the hospital to observe workers carrying out their cleaning tasks, collected samples, and discussed procedures for recording injuries and illnesses with the appropriate hospital representatives. NIOSH returned to the hospital multiple times over the course of several months to perform air sampling; assess the heating, air conditioning, and ventilation system; and administer surveys and a questionnaire.

Based on the findings of the HHE, NIOSH proposed a series of recommendations for the hospital to implement. Among the recommendations, NIOSH suggested that the hospital minimize the use of the sporicidal products in non-patient care areas, dilute the product properly, reduce vapors that can be inhaled, provide gloves to use when handling the product, ventilate work areas properly, comply with OSHA regulations on recording injuries, and better accommodate workers who develop symptoms due to exposure.

#### ***Emergency Planning and Community Right-to-Know***

As noted in Section Two, the Emergency Planning and Community Right-to-Know Act (EPCRA) is a federal law governing community preparedness for potential chemical emergencies. Under the EPCRA provisions dealing with reporting requirements for storing hazardous chemicals, the law includes community right-to-know provisions to ensure the public has access to information about chemicals stored at, used by, or released from individual facilities within a community.

Facilities that store hazardous substances above certain thresholds on site must report that data to state and local officials and the local fire department on Emergency and Hazardous Chemical Inventory forms, called “Tier I” or “Tier II” reports. Facilities must also maintain SDSs for any chemical that meets a certain threshold quantity and submit the SDSs and provide any inventory of those chemicals to state and local officials, as well as to local fire departments.



Under the toxic chemical release inventory component of the statute, facilities must submit annually to EPA documentation of how much of each chemical was managed through recycling, energy recovery, treatment, and environmental releases. The forms submitted by the facilities are compiled in EPA's Toxics Release Inventory (TRI) and made available to the public.

Workers can access this information to find out about chemical hazards and accidental releases at their worksite or in their community. EPA does not make all of the information reported under EPCRA and various other environmental statutes available online, although it does provide access to TRI data. State environmental agencies may provide access to some materials, such as Tier II reports.

The *Houston Chronicle*, a newspaper with an award-winning history of reporting on chemical hazards, has made much of the data required by EPCRA and other statutes available through its Right-to-Know Network (RTK Net) at <http://www.rtk.net>. Users can browse industrial facilities' Risk Management Plans submitted to EPA (in accordance with the Clean Air Act), and chemical release information contained in TRI, as well as find hazardous waste reports required by the Resource Conservation and Recovery Act (RCRA), and chemical spills and incidents reported to the National Response Center (NRC).

Workers can also look to the information reported by facilities to learn whether their employer is diligent in tracking the use and disposal of toxic chemicals across the various reports. If an employer is not properly reporting data to EPA or failing to make that information publicly available in accordance with the statute, workers can submit a tip to EPA. EPCRA also deputizes citizens to file suit against an owner or operator of a facility for failure to submit a follow-up emergency notice, submit a safety data sheet, complete and submit an inventory form containing required information, or complete and submit a toxic chemical release form for TRI chemicals.<sup>46</sup> Submitting tips to EPA and filing citizen suits are discussed more above in Section One.

### ***State Right-to-Know Laws and Databases***

Several states have enacted "right-to-know" laws that require companies to provide information to the public about toxic chemicals. For example, California's Proposition 65<sup>47</sup> guarantees individuals the right to information about cancer-causing chemicals before they are exposed to them. Under Prop 65, businesses that sell consumer products in the state must provide a warning if the products contain chemicals known to cause cancer or reproductive harm. The California Office of Environmental Health Hazard Assessment (OEHHA), in accordance with Prop 65, annually publishes a list of chemicals known to the state to cause cancer or reproductive harm.<sup>48</sup>

States are also beginning to require disclosure of ingredients used in certain products. California, for example, recently enacted the first state disclosure law in the nation requiring the listing of cleaning product ingredients directly on their labels.<sup>49</sup> Starting January 1, 2021, each household and commercial cleaning product or disinfectant must include a label identifying allergens and chemicals of concern. Other ingredients must be disclosed on the manufacturer's website beginning in 2020, including fragrances, intentionally added ingredients, and any of 34 contaminants, if the substance is present at or above a concentration of 100 parts per million. Additionally, the online disclosure must include the chemical substance's CAS number — a unique numerical identifier assigned to every chemical substance by the Chemical Abstracts Service, a division of the American Chemical Society.

New York has also recently begun to require disclosure of ingredients in commercial and household cleaning products.<sup>50</sup> Specifically, all intentionally added ingredients, contaminants, fragrances, and allergens must be disclosed online on the manufacturer's website. A centralized database of manufacturers' websites will be made available on the Interstate Chemicals Clearinghouse (IC2) website at <http://www.theic2.org>.

Because these disclosures must be made online, workers in every state have access to this information.

## Accessing Federal Agency Data

### *OSHA's Integrated Management Information System (IMIS)*

OSHA provides a search tool on its website, <https://www.osha.gov/pls/imis/establishment.html>, allowing anyone to look up inspection and enforcement reports for a specific establishment. Such data can provide workers and their representatives with useful information about a particular workplace, such as the number of times OSHA has inspected it, the types of violations OSHA has cited, and any penalties imposed against the employer. However, OSHA conducts few inspections and collects even fewer exposure samples, meaning some establishments may not have any recent inspection or enforcement data available. As a result, lack of data does not mean an employer is complying with OSHA standards.

Even if inspection and enforcement reports are available for a specific worksite, they are unlikely to provide much information related to chemical exposures. One reason for that is that OSHA has few chemical-specific standards in place, and thus, when an unregulated chemical presents an occupational health or safety hazard, the employer is not in violation of a specific standard. Similarly, where a chemical exposure standard exists but is so weak that only exposures at enormous levels would violate it, a chemical may present a health risk at a level that is technically within the legal limits.

In either scenario, the inspector would not be able to cite the employer for a violation of a chemical-specific standard. OSHA might cite the employer for another type of violation related to the exposure, such as a recordkeeping violation, or a general duty clause violation, but determining whether this relates to a chemical hazard would require a detailed review of each citation.



### ***Department of Labor Enforcement Database***

The Labor Department's enforcement database, <https://enforcedata.dol.gov>, compiles enforcement data from multiple divisions of the agency, including OSHA, the Wage and Hour Division (WHD), and the Mine Safety and Health Administration (MSHA). The database includes an interactive search tool that is easy to navigate even for beginners. For more experienced data crunchers, it also offers a catalog where users can download large datasets for each of the agency divisions.

### ***EPA Enforcement & Compliance History Online***

EPA's Enforcement & Compliance History Online (ECHO) database, at <https://echo.epa.gov>, makes it easy for users of all experience levels to search for a facility's enforcement and compliance data across all of the federal laws over which EPA has jurisdiction. Users can also filter the search to find information related to specific types of violations, enforcement actions, and much more.

### ***OSHA Hazard Alerts***

OSHA sometimes sends Hazard Alerts to employers warning them about industry-specific dangers and providing guidance on how employers can protect workers who may be at risk of exposure to those dangers. Hazard alert letters may be issued for any health or safety hazard, and sometimes these alerts include toxic chemicals. For example, in January 2013, OSHA issued a hazard alert on Methylene Chloride Hazards for Bathtub Refinishers.<sup>51</sup> The alert explains that at least 14 worker deaths between 2000 and 2013 were related to bathtub refinishing with stripping agents that contained methylene chloride, a volatile solvent that can produce adverse health effects, including death from exposure at low levels, especially when used in poorly ventilated spaces.

Workers can explore OSHA's hazard alerts webpage, [www.osha.gov/ooc/alerts-letters.html](http://www.osha.gov/ooc/alerts-letters.html), to determine if any have been issued for the industry in which they work. The hazard alert will describe the hazard, the health effects, and the controls employers should institute to protect workers. Workers can also compare the information from a hazard alert to other sources described throughout this guide.

### ***OSHA's Occupational Chemical Database***

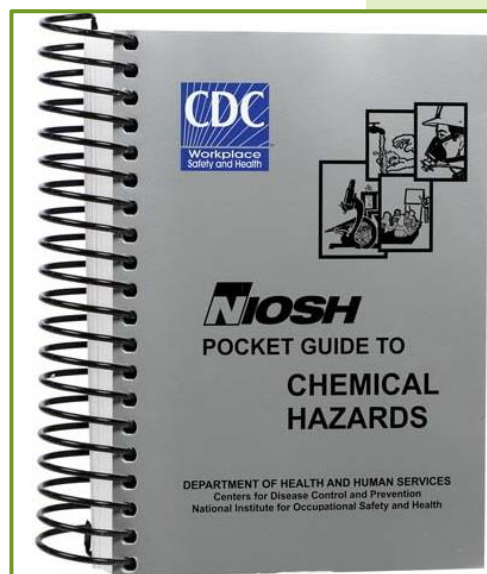
OSHA's chemical database, [www.osha.gov/chemicaldata](http://www.osha.gov/chemicaldata), allows users to find reports on specific chemicals that describe the chemical's physical properties, exposure guidelines, hazard information, and emergency response information. Users can search by chemical name or Chemical Abstract Service (CAS) number.

### ***OSHA Tables Comparing PELs with other Limits***

For the purposes of comparing OSHA's PELs with stronger exposure limits from other sources, OSHA has developed a table, <https://www.osha.gov/dsg/annotated-pels/tablez-1.html>, comparing its existing PELs with limits developed by the American Conference of Governmental Industrial Hygienists (ACGIH), the National Institute for Occupational Safety and Health (NIOSH), and the California Division of Occupational Safety and Health.

### ***NIOSH Pocket Guide***

The National Institute for Occupational Safety and Health (NIOSH), has published the "NIOSH Pocket Guide to Chemical Hazards" and made it available online, [www.cdc.gov/niosh/npg/default.html](http://www.cdc.gov/niosh/npg/default.html), as well as in print, in PDF, and via a mobile app. The guide provides specific information on 677 chemicals or substances commonly found in occupational settings. Although the information is useful for conducting research on these chemicals, the exposure limits found in the guide are not necessarily protective and should not be relied on as an indication of what constitutes a safe level of exposure.



### ***Agency for Toxic Substances and Disease Registry ToxFAQs***

The Agency for Toxic Substances and Disease Registry's (ATSDR) Division of Toxicology offers easy-to-understand summaries about individual toxic substances, from acetone to zinc. All of the summaries, <https://www.atsdr.cdc.gov/toxfaqs>, are made available in English, and many are available in one or more other languages. The summaries describe the substance, what happens when it enters the environment, how humans might be exposed, how it affects human health, whether or not it is likely to cause cancer, if medical testing is available, and whether or not the federal government has imposed any restrictions on the substance.

### ***EPA's Integrated Risk Information System (IRIS)***

EPA's Integrated Risk Information System (IRIS) conducts risk assessments of chemicals, groups of chemicals, and mixtures to determine the hazards they present to human health. EPA makes these assessments available to the

public on its website, <https://www.epa.gov/iris>. Users can search for IRIS assessments by chemical, CAS number, or keyword. The data can serve as a useful comparison or supplement to information obtained through other sources; however, assessments are written in technical terms, making them difficult to understand without a science background.

### ***Freedom of Information Act (FOIA) Requests***

When the U.S. government possesses information about chemicals that is not widely available to the public, one way to obtain it is to submit a formal request to the federal agency that is most likely to have the sought-after information. The Freedom of Information Act (FOIA) requires federal agencies to provide information to any person who requests it, unless the information falls under one of several exclusions or exemptions to the law, such as the exemption from disclosing information pertaining to confidential business information.<sup>52</sup> Before filing a FOIA request, the best practice is to simply contact the agency by phone or send an email requesting the information to see if they will provide it without the need for a formal letter. If they do not reply in a reasonable time, or fail to provide all the materials sought, then a formal FOIA request is in order.

Submitting a FOIA request is as simple as drafting a short letter to the agency's FOIA Office. The letter may be printed and mailed, or depending on the agency, submitted electronically through an online portal, or by email or fax. A FOIA request should describe as clearly as possible the record(s) requested and specify whether the agency should provide the information in print or electronically.

Information about submitting a FOIA request is available online at <https://www.FOIA.gov>. This website explains the process, answers questions about fees and fee waivers, and gives access to agency-specific procedures. It also links to data that agencies have previously produced in response to FOIA requests.

Although the Freedom of Information Act is limited to information in the possession of federal government agencies, most states have adopted similar laws for obtaining information from state agencies.

### ***Sample FOIA Request Letter for Individuals***

[Date]  
[FOIA Officer Title]  
[Name of Federal Agency]  
[Street Address]  
[City, State, Zip Code]

Re: Freedom of Information Act Request; Fee Waiver Request

Dear [FOIA Officer Title]:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. §552, I request access to and a copy of all records created, received, or disseminated by the [Federal Agency] over the past [#] years relating to [describe the subject matter, being as specific as possible].

I would like to receive the information by electronic mail sent to [e-mail address or mailing address], as it becomes available. If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act. I also ask that you release all non-exempt portions of otherwise exempt materials.

I request a waiver of all fees associated with this request, pursuant to §552(a)(4)(A)(iii) of the Act. The disclosure of the requested information will contribute significantly to the public's understanding of [explain as clearly as possible how the material requested concerns the agency's operations or activities, how disclosure will be used to contribute to public understanding at large, and how disclosure will enhance/impact the public's current understanding]. Additionally, I have no commercial interest in the requested information, and I will not benefit financially from disclosure. [Explain how the information will be used to advance public understanding, making as clear as possible that no/little commercial gain will be derived from the work product.] If my fee waiver request is denied, I authorize charges up to \$[x] without prior approval. If fees will exceed this limit, please notify me in advance of fulfilling this request.

For the sake of timeliness, please communicate with me by email or phone if you have questions regarding this request. I look forward to your reply within 20 business days, as the statute requires.

Sincerely,

[Requester's Name]  
[Mailing Address]  
[E-mail address]  
[Telephone Number]

## Researching Other Public Databases

### *U.S. ChemHAT*

The Chemical Hazard and Alternatives Toolbox, or ChemHAT, [www.chemhat.org](http://www.chemhat.org), is a publicly available database of information about safer alternatives to dangerous chemicals. The database was launched by the Blue Green Alliance as a means of determining if a chemical is dangerous, and if so, identifying safer alternatives to that chemical.

### *Pharos Database*

A project of Healthy Building Network (HBN), the Pharos database, [www.pharosproject.net](http://www.pharosproject.net), contains information about health and environmental hazards associated with more than 100,000 chemicals, polymers, metals, and other substances. The downside to this resource is that it requires a paid subscription, but the upside is that it offers a free trial. Workers looking for information can take advantage of the free trial or consult with their union, a local COSH group, or a worker advocacy organization, which may have a subscription and be able to help with finding information particular to the chemicals of concern in their workplace. Once inside the database, users have an option to search the Pharos Building Product Library by product manufacturer or product type. Users can also search for specific chemicals and materials under a separate tab.

### *Interstate Chemicals Clearinghouse*

The Interstate Chemicals Clearinghouse (IC2) is a collaborative effort by state, local, and tribal governments committed to providing agencies, businesses, and the public with information about chemicals and chemical assessments and to identifying safer alternatives to toxic chemicals. On the IC2 website, <http://theic2.org/>, users can search a database of state chemical legislation and policies. The website also contains lists of states' chemicals of concern and access to chemical hazard assessments.

### *Toxics Use Reduction Institute*

The Toxics Use Reduction Institute (TURI) is located at the University of Massachusetts Lowell. The Massachusetts Toxics Use Reduction Act (TURA) of 1989 established the institute. TURI is focused on reducing toxic chemical usage, protecting public health and the environment, and collaborating with businesses and government to find safer alternatives to toxics. Through TURI's website, <https://www.turi.org/>, users can find fact sheets on a host of chemical substances, listed in alphabetical order. Additionally, TURI collects data from roughly 600 companies in Massachusetts on the toxic chemicals they used and toxic byproducts they generated over the previous year. The database is called "TURADData" and is available through TURI's website.

### **RISCTOX**

The RISCTOX database, <https://risctox.istas.net/en>, includes data on the health and environmental risks of more than 100,000 chemicals in both Spanish and English. The database was developed by the Instituto Sindical de Trabajo, Ambiente y Salud (ISTAS), commissioned by the European Trade Union Institute (ETUI) and supported by the European Environmental Bureau. Users can compare the information found on RISCTOX with information found through other sources to get a comprehensive understanding of a chemical's potential harm. A limitation of the database for U.S. users is that, although it provides information about whether the specific chemical is subject to restriction, it only includes European restrictions.

### **European Union REACH Program**

In 2007, the European Union (EU) adopted a regulatory program — the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) — to address toxic chemicals that present risks to health and the environment. Through this program, users from all over the world can search a database of chemicals, <https://echa.europa.eu/information-on-chemicals>, to find information about health and environmental effects. This database can help users find information about chemicals that have not been assessed by U.S. agencies or to supplement assessment data from other sources.

### **Project ToxicDocs**

Through the Project ToxicDocs database, [www.toxicdocs.org](http://www.toxicdocs.org), a project of Columbia University and the City University of New York, users can easily access millions of once-secret documents about toxic substances obtained from private chemical firms through toxic tort litigation. A simple keyword search will scan the text of documents in this database and return a range of information, including emails, internal memoranda, board minutes, unpublished studies, and more.

### **DocumentCloud**

Document Cloud, [www.documentcloud.org](http://www.documentcloud.org), offers a free catalog of primary source documents on a virtually endless number of topics, including toxic substances. Although this service is intended for journalists, anyone can search the catalog and review documents without needing to register for an account. For beginners, a simple text search for keywords will return a wealth of information. For example, a search for the phrase “silica exposure” returned over 1,000 available documents.





## Conclusion

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Every worker has the right to a healthy workplace free of toxic hazards that could cause illness, injury, or death. Yet employers sometimes ignore the most silent and invisible killer in the workplace: toxic chemicals. Despite a number of laws intended to protect workers, political opposition, budgetary constraints, and the lack of political will stand in the way of meaningful progress toward addressing weak and outdated standards or adopting new safeguards.

Workers, their representatives, and advocates can take action even when government agencies' efforts are lacking or have stalled. Numerous resources explored in this manual are readily available to learn about chemical hazards, health effects, and measures to eliminate or reduce exposures in the workplace. When employers ignore workers' concerns, workers have several options for holding their employers accountable, from filing complaints with government agencies, to suing employers themselves, to advocacy beyond the workplace. Joining in solidarity with coworkers, worker representatives, union leaders, advocates, and fence-line communities to raise concerns about toxic chemicals in the workplace will ensure employers hear their shared concerns and their demands to move to safer alternatives and eliminate toxic chemicals from the workplace.

## **Appendix: Chemical Detox for the Workplace Resource List**

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### **Reporting an Emergency**

OSHA Emergency Hotline: 1-800-321-OSHA

EPA National Response Center: 1-800-424-8802

Poison Control Center: 1-800-222-1222

### **Filing a Complaint with OSHA**

Webform: [www.osha.gov/workers/file\\_complaint.html](http://www.osha.gov/workers/file_complaint.html)

Find OSHA Offices by States: <https://www.osha.gov/html/RAmap.html>

OSH Law Project, A Workers Toolkit to Understanding OSHA's Legal Process: [www.oshlaw.org/resources](http://www.oshlaw.org/resources)

### **Submitting a Tip to EPA**

Report an Environmental Violation web form:

<https://www.epa.gov/enforcement/report-environmental-violations>

Index of Health and Environmental Agencies of U.S. States and Territories:

[www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories](http://www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories)

### **Citizen Suit Enforcement**

EPA Notices of Intent to Sue: [www.epa.gov/noi](http://www.epa.gov/noi)

### **Workers' Compensation**

National Employment Law Project:

<https://www.nelp.org/workers-comp-law-resources/>

National COSH and NESRI, Workers' Comp Hub: [www.workerscomphub.org](http://www.workerscomphub.org)

### **Contacting Local Prosecutors**

CPR Manual, Preventing Death and Injury on the Job: The Criminal Justice Alternative in State Law:

[http://progressivereform.org/articles/WorkerProsecutionManual\\_1602.pdf](http://progressivereform.org/articles/WorkerProsecutionManual_1602.pdf)

### **Utilizing Workers' Right to Know**

National COSH, Safety Data Sheets and other Chemical Fact Sheets:

[www.coshnetwork.org/node/35](http://www.coshnetwork.org/node/35)

OSHA Database of Worker Fatalities:

[https://www.osha.gov/dep/fatcat/dep\\_fatcat.html](https://www.osha.gov/dep/fatcat/dep_fatcat.html)

### **Utilizing Workers' Right to Know (cont'd)**

OSHA Database of Severe Injuries (reported as of Jan. 1, 2015):

<https://www.osha.gov/severeinjury/index.html>

OSHA Sampling Data: [www.osha.gov/opengov/healthsamples.html](http://www.osha.gov/opengov/healthsamples.html)

NIOSH Health Hazard Evaluation Request Form:

[www.cdc.gov/niosh/hhe/pdf/hhe\\_request\\_form\\_fillable.pdf](http://www.cdc.gov/niosh/hhe/pdf/hhe_request_form_fillable.pdf)

NIOSH Handbook for HHE Requests: <https://www.cdc.gov/niosh/docs/2014-136/pdfs/2014-136.pdf>

Search HHE Reports (through 2010): [www2a.cdc.gov/hhe/search.asp](http://www2a.cdc.gov/hhe/search.asp)

*Houston Chronicle*, Right-to-Know Network: <http://www.rtk.net>

Interstate Chemicals Clearinghouse (IC2): <http://www.theic2.org>

### **Accessing Federal Agency Data**

OSHA Integrated Management Information System:

<https://www.osha.gov/pls/imis/establishment.html>

Department of Labor Enforcement Database: <https://enforcedata.dol.gov>

EPA Enforcement and Compliance History Online (ECHO):

<https://echo.epa.gov>

OSHA Hazard Alerts: [www.osha.gov/ooc/alerts-letters.html](http://www.osha.gov/ooc/alerts-letters.html)

OSHA's Occupational Chemical Database: [www.osha.gov/chemicaldata](http://www.osha.gov/chemicaldata)

OSHA Table Comparing PELs with Other Limits:

<https://www.osha.gov/dsg/annotated-pels/tablez-1.html>

NIOSH Pocket Guide: [www.cdc.gov/niosh/npg/default.html](http://www.cdc.gov/niosh/npg/default.html)

ATSDR ToxFAQs: <https://www.atsdr.cdc.gov/toxfaqs>

EPA Integrated Risk Information System (IRIS): <https://www.epa.gov/iris>

Freedom of Information Act (FOIA) Requests: <https://www.FOIA.gov>

### **Researching Other Public Databases**

Chemical Hazard and Alternatives Toolbox (U.S. ChemHAT):

[www.chemhat.org](http://www.chemhat.org)

Healthy Building Network's Pharos Database: [www.pharosproject.net](http://www.pharosproject.net)

Interstate Chemicals Clearinghouse (IC2): <http://theic2.org/>

University of Massachusetts Lowell, Toxic Use Reduction Institute (TURI):

<https://www.turi.org/>

RISCTOX Database: <https://risctox.istas.net/en>

European Union REACH Program: <https://echa.europa.eu/information-on-chemicals>

Project ToxicDocs: [www.toxicdocs.org](http://www.toxicdocs.org)

Document Cloud: [www.documentcloud.org](http://www.documentcloud.org)

## Endnotes

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- <sup>1</sup> AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT 5 (2018), <https://aflcio.org/reports/death-job-toll-neglect-2018>.
- <sup>2</sup> *Overdose Death Rates*, NAT'L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates> (last update Jan. 2019) (indicating in Figure 3 that there were 47,600 deaths involving any opioid in 2017).
- <sup>3</sup> NAT'L CTR. FOR HEALTH STATISTICS, CENTERS FOR DISEASE CONTROL & PREVENTION, NATIONAL VITAL STATISTICS REPORTS, VOL. 67, NO. 5, DEATHS: FINAL DATA FOR 2016, at 60–61 (2018), [https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67\\_05\\_tables.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr67/nvsr67_05_tables.pdf) (stating that in 2016, the latest year for which data is available as of this writing, motor-vehicle traffic-related injuries resulted in 38,748 deaths and firearm injuries resulted in 38,658 deaths).
- <sup>4</sup> 29 U.S.C. §655(b)(5) (2018).
- <sup>5</sup> See *The OSHA Rulemaking Process*, OCCUPATIONAL SAFETY & HEALTH ADMIN. (Oct. 15, 2012), [https://www.osha.gov/OSHA\\_FlowChart.pdf](https://www.osha.gov/OSHA_FlowChart.pdf); see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-330, WORKPLACE SAFETY AND HEALTH: MULTIPLE CHALLENGES LENGTHEN OSHA'S STANDARD SETTING 7 (2012), <https://www.gao.gov/assets/590/589825.pdf> (finding that on average OSHA took a total of 7 years and 9 months to develop and issue standards between 1981 and 2010).
- <sup>6</sup> *Workers' Right to Refuse Dangerous Work*, OCCUPATIONAL SAFETY & HEALTH ADMIN., <https://www.osha.gov/right-to-refuse.html> (last visited Mar. 28, 2019).
- <sup>7</sup> NAT'L COUNCIL FOR OCCUPATIONAL SAFETY & HEALTH, PWWER, FACT SHEET: HEALTH AND SAFETY AND THE NATIONAL LABOR RELATIONS ACT, [https://worksafe.org/file\\_download/inline/f722f39a-e4b0-43a9-910a-17df9a9da58b](https://worksafe.org/file_download/inline/f722f39a-e4b0-43a9-910a-17df9a9da58b) (last accessed Feb. 13, 2019).
- <sup>8</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., OSHA 3021-11R, WORKERS' RIGHTS 12 (2016), <https://www.osha.gov/Publications/osha3021.pdf>.
- <sup>9</sup> *Id.* at 12–13.
- <sup>10</sup> *Report Environmental Violations*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/enforcement/report-environmental-violations> (last visited Feb. 13, 2019).
- <sup>11</sup> *How to Report Spills and Environmental Violations*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/pesticide-incidents/report-spills-and-environmental-violations> (last visited Feb. 13, 2019).
- <sup>12</sup> Memorandum of Understanding between the U.S. Department of Labor, Occupational Safety and Health Administration, and the U.S. Environmental Protection Agency, Office of Enforcement (Nov. 23, 1990), <https://www.osha.gov/laws-regs/mou/1990-11-23>.
- <sup>13</sup> California's Private Attorneys General Act (PAGA), CAL. LABOR CODE §2699, allows for citizen suits relating to occupational health and safety violations in limited circumstances. See, e.g., Kevin R. Allen, *What You Should Know about the Private Attorneys General Act in 2017*, CONTRA COSTA LAWYER ONLINE (July 1, 2017), <http://cclawyer.cccba.org/2017/07/what-you-should-know-about-the-private-attorneys-general-act-in-2017/>. However, the requirements that must be satisfied prior to filing a civil action make it difficult for civil suits relating to OSH violations to proceed against an employer.
- <sup>14</sup> See 28 U.S.C. § 2462 (2018) (providing a five year statute of limitations for civil enforcement actions seeking civil penalties brought in federal court). However, citizen suits seeking injunctive relief for ongoing violations are not subject to the same statute of limitations.
- <sup>15</sup> See generally OCCUPATIONAL SAFETY & HEALTH ADMIN., ADDING INEQUALITY TO INJURY: THE COSTS OF FAILING TO PROTECT WORKERS ON THE JOB (2015), [https://www.osha.gov/Publications/inequality\\_michaels\\_june2015.pdf](https://www.osha.gov/Publications/inequality_michaels_june2015.pdf).

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *E.g.*, DOL Request for Information, Chemical Management and Permissible Exposure Limits (PELs), 79 Fed. Reg. 61,384, 61,388 (Oct. 10, 2014), <https://www.gpo.gov/fdsys/pkg/FR-2014-10-10/pdf/2014-24009.pdf#page=1> (discussing the history of OSHA's efforts to establish permissible exposure limits).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 61,419 (citing S. Rep. 91-1282, at 6 (1970)).

<sup>20</sup> For example, because of regulatory hurdles and strong political opposition, it took the Occupational Safety and Health Administration (OSHA) over 20 years to update its standard on deadly crystalline silica.

<sup>21</sup> *E.g.*, OCCUPATIONAL SAFETY & HEALTH ADMIN., U.S. DEP'T OF LABOR, OSHA INSTRUCTION, DIRECTIVE NO. CPL 02-00-160, FIELD OPERATIONS MANUAL (FOM) 4-9-4-17 (2016), [https://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-00-160.pdf](https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-160.pdf). Citing employer noncompliance under the general duty clause does not remove the need for OSHA to issue more stringent standards than those currently in effect or to issue new standards for chemicals for which OSHA has no PEL on the books. For OSHA to take action that is meaningful, however, Congress would need to update the OSH Act and enhance the agency's authority.

<sup>22</sup> See Letter from David Michaels, Assistant Sec'y for Occupational Safety & Health, U.S. Dep't of Labor, to Jim Jones, Assistant Admn'r for the Office of Chem. Safety & Pollution Prevention, Env'tl. Protection Agency (Undated), <http://src.bna.com/hU4>.

<sup>23</sup> OCCUPATIONAL SAFETY AND HEALTH LAW 587 (Gregory N. Dale & Katherine A. Tracy eds., 4th ed., 2019) ("OSHA has incorporated the Supreme Court's suggested level of significant risk—a risk of 1/1,000—as a policy norm") (citing *UAW v. Pendergrass*, 878 F.2d 389 (D.C. Cir. 1989) (discussing the Supreme Court opinion in *AFL-CIO v. Am. Petroleum Inst. (Benzene)*, 448 U.S. 607, 655-56 (1999))).

<sup>24</sup> *E.g.*, Clean Air Act, 42 U.S.C. § 7412(c)(9)(B), (f)(2)(A); see also Joseph M. Santarella Jr. & Susan J. Eckert, *Advancing Workers' Interest Through Environmental Laws 2.0* (2018) (unpublished) (on file with author).

<sup>25</sup> *Whistleblower Statutes Desk Aid*, OCCUPATIONAL SAFETY & HEALTH ADMIN. (Feb. 23, 2016), [https://www.whistleblowers.gov/sites/default/files/whistleblowers/whistleblower\\_acts-desk\\_reference.pdf](https://www.whistleblowers.gov/sites/default/files/whistleblowers/whistleblower_acts-desk_reference.pdf) (providing comparison of all whistleblower statutes under OSHA's jurisdiction).

<sup>26</sup> Pub. L. No. 114-182, 130 Stat. 448-513 (codified as amended at 15 U.S.C. §§ 2601–2697 (2018)).

<sup>27</sup> *Summary of the Resource Conservation and Recovery Act*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act> (last visited Mar. 22, 2019).

<sup>28</sup> 42 U.S.C. § 6972(a) (2018).

<sup>29</sup> See Ariela Migdal, Note, *RCRA in the Workplace: Using Environmental Law to Combat Dangerous Conditions in Sweatshops*, 75 N.Y.U. L. REV. 1843, 1857, 1867–68 (2000).

<sup>30</sup> *Summary of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act> (last visited Feb. 13, 2019).

<sup>31</sup> 42 U.S.C. § 9659(a) (2018).

<sup>32</sup> OFFICE OF LAND & EMERGENCY MGMT., U.S. ENVTL. PROTECTION AGENCY, FACT SHEET: THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (2017),

[https://www.epa.gov/sites/production/files/2017-08/documents/epcra\\_fact\\_sheet\\_overview\\_8-2-17.pdf](https://www.epa.gov/sites/production/files/2017-08/documents/epcra_fact_sheet_overview_8-2-17.pdf).

<sup>33</sup> 42 U.S.C. § 11046(a)(1) (2018).

<sup>34</sup> U.S. ENVTL. PROTECTION AGENCY, PUB. NO. EPA-456/K-07-001, THE PLAIN ENGLISH GUIDE TO THE CLEAN AIR ACT 2–4 (2007), <https://www.epa.gov/sites/production/files/2015-08/documents/peg.pdf>.

<sup>35</sup> *E.g.*, Todd S. Aagaard, *Regulatory Overlap, Overlapping Legal Fields, and Statutory Discontinuities*, 29 VA. ENVTL. L.J. 237, 245 (2011) (citing Clean Air Act Sec. 112(h), 42 U.S.C. § 7412(h)).

<sup>36</sup> 40 C.F.R. §§ 68.1–68.220 (2018); *Risk Management Plan (RMP) Rule Overview*, ENVTL. PROT. AGENCY, <https://www.epa.gov/rmp/risk-management-plan-rmp-rule-overview> (last visited Mar. 22, 2019).

<sup>37</sup> 42 U.S.C. § 7604(a) (2018).

<sup>38</sup> *Summary of the Clean Water Act*, ENVTL. PROT. AGENCY, <https://www.epa.gov/laws-regulations/summary-clean-water-act> (last visited Mar. 22, 2019).

<sup>39</sup> 33 U.S.C. § 1365 (2018).

<sup>40</sup> *Summary of the Federal Insecticide, Fungicide, and Rodenticide Act*, ENVTL. PROT. AGENCY, <https://www.epa.gov/laws-regulations/summary-federal-insecticide-fungicide-and-rodenticide-act> (last visited Mar. 22, 2019).

<sup>41</sup> *Agricultural Worker Protection Standard*, ENVTL. PROT. AGENCY, <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps> (last visited Mar. 22, 2019).

<sup>42</sup> Letter of Interpretation from John A. Pendergrass, Assistant Sec’y of Occupational Safety & Health, U.S. Dep’t of Labor, to Richard F. Andree, Executive Vice President, Safety & Health Mgmt., Consultants, Inc. (Feb. 24, 1988), <https://www.osha.gov/laws-regs/standardinterpretations/1988-02-24>.

<sup>43</sup> 29 C.F.R. § 1904.35 (2018); *see also OSHA Injury and Illness Recordkeeping and Reporting Requirements*, OCCUPATIONAL SAFETY & HEALTH ADMIN., <https://www.osha.gov/recordkeeping/index.html> (last visited Feb. 13, 2019).

<sup>44</sup> 29 C.F.R. § 1910.1020 (2018).

<sup>45</sup> NAT’L INST. FOR OCCUPATIONAL SAFETY & HEALTH, U.S. DEP’T OF HEALTH & HUMAN SERVS., HEALTH HAZARD EVALUATION PROGRAM: WHAT EMPLOYEES SHOULD KNOW 2 (2014), <https://www.cdc.gov/niosh/docs/2014-136/pdfs/2014-136.pdf>.

<sup>46</sup> 42 U.S.C. § 11046(a)(1) (2018).

<sup>47</sup> CAL. HEALTH & SAFETY CODE §§ 25249.5–25249.14.

<sup>48</sup> *The Proposition 65 List*, OFF. OF ENVTL. HEALTH HAZARD ASSESSMENT, <https://oehha.ca.gov/proposition-65/proposition-65-list> (last updated Nov. 23, 2018).

<sup>49</sup> Cleaning Product Right to Know Act, 2017 Cal. Stat. Ch. 830.

<sup>50</sup> New York State Department of Environmental Conservation, Household Cleansing Product Information Disclosure Program (June 6, 2018), [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/cleansingprodfin.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/cleansingprodfin.pdf).

<sup>51</sup> OCCUPATIONAL SAFETY & HEALTH ADMIN., OSHA-HA-3623-2013, HAZARD ALERT: METHYLENE CHLORIDE HAZARDS FOR BATHTUB REFINISHERS (2013), [https://www.osha.gov/dts/hazardalerts/methylene\\_chloride\\_hazard\\_alert.pdf](https://www.osha.gov/dts/hazardalerts/methylene_chloride_hazard_alert.pdf).

<sup>52</sup> 5 U.S.C. § 552 (2018).

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