



THE CUBICAL

May 28, 2024

Trade Secret Protection for Mixtures Under OSHA's HazCom Standard

On May 20, 2024, OSHA promulgated a final rule to update its Hazard Communication Standard (referred to herein as "HCS" or the "HazCom Standard"). As the federal safety agency noted in a statement announcing the promulgation of the final rule, the primary purpose of the updates is to bring the HazCom Standard into alignment with the seventh revision of the Global Harmonized System of Classification and Labelling of Chemicals ("GHS"). The final rule will take effect on July 19, 2024.

One of the more interesting aspects of the final rule is that it seems to bring more clarity regarding the extent to which concentration information for mixtures can be identified as protected trade secrets in Safety Data Sheets ("SDSs"). Information concerning the concentration of ingredients in mixtures is afforded some degree of trade secret protection under previous iterations of the HazCom Standard. However, the previous text had lacked clarity regarding the extent to which concentration *ranges* must be specified.

The text in the new rule seems to represent something of a compromise. Concentration range information must be disclosed for ingredients in mixtures for which trade secret claims have been made. However, in disclosing such concentration range information, a trade secret claimant may use one or more of a series of prescribed concentration ranges established by the new rule. All other requirements regarding trade secret claims for mixtures remain, including the requirement to provide more detailed concentration information to health professionals in certain emergency or non-emergency medical situations.

NCDEQ Issues Human Health Risk Assessment Report for 1,4-Dioxane

In response to a law enacted by the North Carolina legislature in 2023, the North Carolina Department of Environmental Quality ("NCDEQ") has issued a report on a human health risk assessment that it conducted for 1,4-dioxane in North Carolina's drinking water. 1,4-Dioxane considered to be a likely carcinogen by EPA, and as possibly carcinogenic by the International Agency for Research on Cancer. 1,4-Dioxane contamination has been identified as a concern in recent years because of its use as a stabilizer for 1,1,1-trichloroethane (also known as "1,1,1-TCA"), a chlorinated solvent that was in fairly widespread use in the 80s and 90s.

According to the human health risk assessment report, which was issued on May 1, 2024, North Carolina has been identified as having the third highest measured concentration of 1,4-dioxane in the country. North Carolina ranked fourth among all states in terms of the number of drinking water systems impacted by 1,4-dioxane contamination. Where 1,4-dioxane was detected in drinking water systems, the average concentration was twice the national average. Most such detections occurred in the Cape Fear River Basin.

NCDEQ's ultimate goal is to use the report as the basis for establishing water quality standards for 1,4-dioxane that are protective of human health. There are no federal drinking water standards for 1,4-dioxane, so the primary regulatory mechanism for protecting public health is to establish WQS for 1,4-dioxane. According to the report, North Carolina residents currently only receive just over 20 percent of the protection that would be afforded by a health-based WQS for 1,4-dioxane in drinking water supplies.

Needless to say, one can expect that health-based WQS for 1,4-dioxane in drinking water will likely be established by NCDEQ over the next several years.

Home Builder Settles Enforcement Action Alleging Construction-Related Stormwater Violations in Several Southern States

A national home builder recently settled an enforcement action in EPA Region 4 alleging violations of construction activity stormwater management requirements at multiple sites in several southeastern states, including Alabama and South Carolina. Under a consent decree agreed to with the U.S. Government, the State of Alabama, and the South Carolina Department of Health and Environmental Control, the home builder, D.R. Horton, will be required to pay a civil penalty of \$400,000 and implement a comprehensive stormwater management strategy. In addition, D.R. Horton will be required to spend at least another \$400,000 by undertaking a supplemental environmental project (SEP). Additional stipulated penalties may also accrue for failure to comply with all applicable stormwater management requirements, the terms of the Consent Decree, or the elements of the stormwater management strategy. Such stipulated penalties range from as little as \$50 to as much as \$50,000 if an excessive number of required site inspections are either not performed, or not documented.

This enforcement action is a stark reminder of the consequences of noncompliance

with construction-related stormwater management requirements. Responses to such noncompliance generally do not garner as much attention as higher profile citizen suits or enforcement responses to violations of point source discharge requirements. However, it is important to remember that construction projects are generally high-profile activities in the communities where they are taking place. Events such as sediment releases typically do not go unnoticed and will generally result in local or state regulatory authorities taking action. Where such noncompliance is significant or widespread, EPA can and will get involved. And when EPA does get involved, the cost of the noncompliance will likely reach into six-digit territory at the very least.

The Cubical is a complimentary publication from Daniel J. Brown, L.L.C. containing articles on topics of general interest, and does not constitute legal advice. © 2023 Daniel J. Brown, L.L.C. and all rights reserved for all articles authored by Daniel J. Brown. Opinions expressed by special guest authors are the opinions of such authors, and do not necessarily reflect the opinions of Daniel J. Brown, or Daniel J. Brown, L.L.C.

Daniel J. Brown, L.L.C.

4062 Peachtree Rd.
Suite A #304
Atlanta Georgia 30319
(404) 850-1111

Subscribe

Email Us

Daniel J. Brown, L.L.C. | 4062 Peachtree Rd. Suite #304 | Atlanta, GA 30319 US

[Unsubscribe](#) | [Update Profile](#) | [Constant Contact Data Notice](#)



Try email marketing for free today!