

To: Clients
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Sub: Changes to CA Environmental Regulations & OSHA Penalties
Date: December 28, 2015

CAL-EPA REGULATIONS EFFECTIVE 1/1/16

90-Day Storage Limit: Automobile dealerships generating more than 1,000 kg of hazardous waste per month must dispose of hazardous waste within 90 days (otherwise the facility must obtain a storage permit, an arduous process). Almost all dealerships generate more than 1,000 kg (about 300 gallons) of used oil and used coolant per month and hence, must limit storage to 90 days. In the past, local enforcement agencies excluded used oil from these calculations so all dealers fell below the 1,000 kg/mo. level. The new law, SB 612, clarifies the fact that all hazardous waste generated at the facility are counted towards the 1,000 kg/mo. calculation. For facilities generating less than 1,000 kg/mo. of hazardous waste (Federal Term: Small Quantity Generator), the maximum accumulation time is 180 days or 270 days if the waste must be transported more than 200 miles for treatment and disposal.

In summary, each hazardous waste storage container must have a proper *date of accumulation* marked on each container along with EPA required waste labeling and secondary containment requirements. The waste must be disposed of within 90 days of the start date. Almost all facilities have used oil pickup on a 30-day or more frequent cycle. However, other smaller waste streams, such as used coolant or contaminated fuel, are not on the radar screen. Dealers must ensure that these wastes are now on a 90-day pickup cycle through a licensed and registered hazardous waste hauler. Contact your hauler to set up a required pickup schedule immediately.

Federal Exemption (Non-California Dealers): Used oil is not considered a hazardous waste under federal regulations and facilities with less than 100 kg/mo. of hazardous waste are classified as Conditionally Exempt Small Quantity Generator (CESQG). The dealers that fall in this CESQG category have no accumulation limit on hazardous wastes.

Daily Inspection of Above Ground Tanks: All hazardous waste storage tanks must be inspected daily and a log must be maintained. Facilities with petroleum products storage exceeding 1,320 gallons (SPCC Plan required) must have all tanks inspected daily. The big question is if the tanks need to be inspected during weekends as well. The new CA law clarifies this requirement and states that the tanks need to be inspected a minimum of 5 days out of the week and during the weekends if they are being used. If the facility does not use the tanks on state or federal holidays, then the inspections are not required for those days. An inspection log is attached.

New Enforcement: All hazardous waste storage tanks must have a structural assessment completed every 5 years through a licensed professional engineer. This is a decades old law finding new traction among regulators. Approximate cost is about \$2,000 for two tanks. Exemption may be granted by the local fire department under certain conditions.

Ref.: Senate Bill 612 (Jackson, D-Santa Barbara) & California Health and Safety Code

OSHA PENALTIES

Background: California has had serious penalties in place for OSHA violations. The Cal/OSHA enforcement staff visits facilities when there are serious violations or if a *serious injury* or fatality occurs. Minor complaints by disgruntled employees or others are handled routinely via correspondence. Programmed inspections occur for high hazard industries (auto dealers are not part of that list) or for employers with a Workers Compensation ex-mod exceeding 1.5.

Penalty Structure: Penalties are expected to follow Cal/OSHA citations. Our newsletter on “How to Handle an OSHA Inspection” discussed the procedural issues involved in an inspection in detail. Current penalty structure is as follows:

- General & regulatory violations: \$700 each
- Serious violation: \$25,000/violation
- Failure to correct a violation by abatement date: \$15,000
- Willful violation: min of \$5,000 and max of \$70,000

Criminal penalties are assessed when a willful violation that causes death or permanent/prolonged impairment of the body of an employee occurs. Upon conviction, a fine of up to \$250,000 or imprisonment of up to three years, or both can take place. For corporations or LLCs, the maximum fine is \$1.5 million.

OSHA inspectors are seasoned professionals with a firm grip of the safety code. The inspectors have a tendency to be harsh when a serious injury occurs at a place of employment. Certain employers are of the opinion that minor infractions such as an opening from a missing breaker in an electrical panel are not a big deal. In reality, such a violation may result in a penalty of \$3,710. Penalties that have recently been assessed are as follows:

OSHA GENERAL VIOLATIONS:

- **Forklift:** Inspection not completed at start of shift. Assessed Penalty \$350.
- **Safety Data Sheets:** No Safety Data Sheets available at the workplace. Assessed Penalty \$485.
- **Heat Illness Prevention:** Employees not trained on Heat Illness Prevention. Assessed Penalty \$560.
- **Grinder:** Not securely mounted. Assessed Penalty \$825.

OSHA SERIOUS VIOLATIONS:

- **Gloves:** Gloves not worn when spraying corrosive liquid. Assessed Penalty \$1,350.
- **Hazmat Labeling:** Flammable liquid not labeled with hazard warning. Assessed Penalty \$1,800.
- **Forklift:** Forklift with no rating plate. Assessed Penalty \$2,250.
- **Extension Cord:** Ground prong removed. Assessed Penalty \$2,250.
- **Forklift Training:** Training not renewed in the past three years. Assessed Penalty \$2,250.
- **Body Protection:** Failure to provide protection to employees whose work exposes parts of their body to a hazardous substance. Assessed Penalty \$2,915.
- **Eyewash Station:** Eyewash station not available. Assessed Penalty \$3,150.
- **Electrical Panels:** Open breakers not covered. Assessed Penalty \$3,710.
- **Portable Ladders:** Employees not receiving training on safe ladder usage. Assessed Penalty \$4,050.
- **Emergency Shower:** Failure to provide an emergency shower for employees who may come into contact with corrosive or severely irritating substances. Assessed Penalty \$4,385.

- **Reporting Serious Injury:** Failure to report serious injuries, illnesses, and/or death within an 8 hour time frame. Assessed Penalty \$5,000.
- **Failure to Report Serious Injury to Cal-OSHA:** Employer did not report in an 8 hour window following a serious injury. Assessed Penalty \$5,000.
- **Respiratory Protection:** Not developing and implementing a written respiratory protection program. Assessed Penalty \$5,060 (following serious injury).
- **Grinder:** Contact surface of the abrasive wheel was not flat and free of foreign matter. Assessed Penalty \$6,185.
- **Injury and Illness Prevention Program:** Failed to correct unsafe conditions to protect employees from injury. Assessed Penalty \$7,650 (following serious injury).
- **Safety Glasses/Face Shields:** Safety glasses/face shields not worn when there is a risk of receiving an eye injury. Assessed Penalty \$7,650 (following serious injury).
- **Footwear Protection:** Employer failed to provide proper footwear protection. Assessed Penalty \$18,000 (following serious injury).
- **Ladder Usage:** Improper use of ladders. Assessed Penalty \$18,000 (following serious injury).
- **Ladder Usage:** Utilizing the step below the top cap of a ladder. Assessed Penalty \$6,750.

EPA VIOLATIONS:

- **SPCC Training Documentation:** Not available. Assessed Penalty \$600.
- **Hazardous Waste Storage Violations:** Secondary containment requirements, proper labeling, and timely disposal procedures not followed. Assessed Penalty \$25,000.

FEDERAL OSHA PENALTIES PROPOSED TO GO UP 82%

Background: Fed-OSHA last raised fines in 1990 and is one of the few federal agencies with civil penalties not pegged to the rate of inflation. OSHA is usually a forgotten agency on the Hill and this specific mandate of increasing the penalties by 82% in the new budget deal is somewhat unusual.

Increased Penalties: The Budget Agreement of November 2015 requires Fed-OSHA to increase the penalties by 82 % to catch up with the absence of increases since 1990 and thereafter, increase the fines with the Consumer Price Index (CPI) on an annual basis. If Fed-OSHA does choose to increase the penalties, the current maximum of \$7,000 for serious violations and failure to abate will go up to \$12,744. Californians merely yawned at this proposal as the present Cal/OSHA penalty for serious violation is \$25,000. Opponents of this fine structure argue that OSHA does not even use the present maximum penalty structure, so the increase is unwarranted. Supporters argue that increases in fines makes employers more likely to follow OSHA regulations.

In a country where mail fraud can get you 20 years in jail and the Clean Air Act violations (releasing Freon into the atmosphere) can get you 31 months in jail; death of an employee at a workplace hardly gets a serious penalty, let alone jail time!

DISCLAIMER: Information from the Cal/EPA, Cal/OSHA & Fed-OSHA websites was obtained to prepare this newsletter. The contents of this newsletter are for informational purposes only and not to be considered as legal advice. Employers must consult with their lawyer for legal matters and safety consultants for matters related to safety. The article was authored by Sam Celly of Celly Services, Inc., who has been helping automobile dealers comply with EPA & OSHA regulations since 1987. Sam received his BE (1984) and MS (1986) in Chemical Engineering, followed by a J.D. from Southwestern University School of Law (1997). Our newsletters can be accessed at www.epaoshablog.com. Your comments and questions are always welcome. Please send them to sam@cellyservices.com.