



August 2017

California Adopts New Regulations for Refineries

On August 7, 2017, the California Department of Industrial Relations and the California Environmental Protection Agency amended the California's Occupational Safety and Health Process Safety Management (PSM) standard to improve workplace safety and hazard prevention and management at the 15 refineries in California. The new standards are more stringent than federal OSHA's process safety management (PSM) standard. They place new administrative and financial burdens on refiners and, according to a state regulatory impact assessment, will cost refineries \$58 million dollars to comply with the new standards in the first year alone. The new standards take effect on October 1, 2017.

The new standards substantially amend CalOSHA's PSM standard including, but not limited to:

- > Requiring refineries to perform a Damage Mechanism Review for each existing and new mechanical, chemical, physical or other process that results in equipment or material degradation or document the rationale for not doing so.
- > Requiring refineries to eliminate hazards to the greatest extent feasible using inherent safety measures which permanently reduce hazards (i.e. engineering controls). This is in contrast to OSHA's hierarchy of controls which generally permits employers to utilize less stringent safety measures, like personal protective equipment or administrative rules, to reduce or eliminate hazards. This is a significant change.
- > Imposing stringent timeframes to complete certain analysis and investigations related to PSM. For example, the new standards require refineries to complete investigations of incidents that result in, or could reasonably have resulted in, a fire, explosion or release of a highly hazardous material that has the potential to result in death or serious physical harm within 90 days of the incident. If the incident is complex, employers must prepare status reports every 30 days regarding the investigation until it is completed. By contrast, federal OSHA does not impose similar timeframes.

Although the new standards impose additional requirements on California refineries, it is unlikely that the federal Occupational Safety and Health Administration (OSHA) will follow suit in the near future. OSHA may, however, pursue general duty clause violations against refineries and seek to use the new CalOSHA regulations to establish industry recognition – an element of a general duty clause violation – of the alleged hazard. Finally, unlike federal OSHA, states may choose to implement similar regulations in the future. Greenberg Traurig has wide-ranging experience assisting employers in process safety management compliance and can assist refiners with coming into compliance with CalOSHA’s new regulations.

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