



# Embracing Change & Surviving the Flurry of EHS Regulations & Enforcement

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# 2021

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- **Biden Administration's 1<sup>st</sup> Year**
- **Post-Covid**
- **Relatively quiet...**

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# Some Troubling Signs...



- ~~Use of guidance documents in affirmative cases~~
- ~~2016 Assoc. AG memo~~
- ~~Cooperative Federalism~~
  - ~~Jan. 22, (Bodine) & Oct. 20, memos~~

# 2022

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- USEPA inspections!
- RCRA CEI (Compliance Eval. Inspection)
- Some state inspections



# 2023

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- **USEPA rules!**
- **New/revised rules**
  - **May - Methylene chloride ban (Proposed)**
  - **May - National plastics plan/ban (Comment)**
  - **August - Used Drum/“RCRA empty” (ANPR)**



## 2023 (continued)



- **More new/revised rules**
  - **January – PM2.5 NAAQS (Proposed)**
  - **April – Auto emissions standards (Proposed)**
  - **August – AERR (Proposed)**
  - **November - TSCA Sec. 8(a)(7) PFAS reporting**
- **CA climate disclosures (SB-253 & SB-261)**

# 2023

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- **OSHA rules!**
- **New/proposed rules**
  - **OSHA recordkeeping rule**
  - **Lockout/Tagout – safety circuits**
  - **HazCom labels**
  - **Heat stress National Emphasis Program (NEP)**

**2024**

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**“2024 is also going to be a big year  
for our regulatory programs...”**

**USEPA Deputy Administrator Janet McCabe**

<https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018c-eaf8-db9e-abbf-ffa14ba0000>

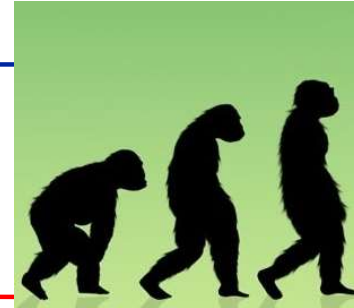
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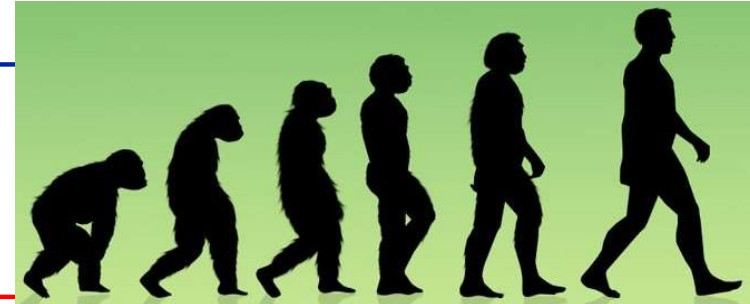


# Evolution of EHS Rules



- “Command & control”
  - Cast wide net on applicability
  - Strictly follow EPA/OSHA rules/policy
  - EPA/OSHA rules provide legal “safety net”
  - Regulator determines compliance

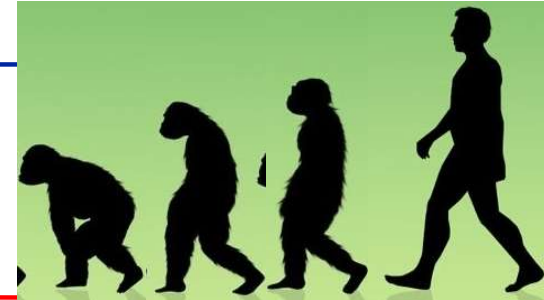
# Evolution of EHS Rules



- **“Compliance assistance”**

- Regulatory community as “customer”
- Workable compliance (exemptions, GP, PBR)
- Voluntary disclosures (immunity)
- Regulated determines compliance

# Evolution of EHS Rules



- **“California-style”**

- Regulator publishes onerous rules
- “Transparency”: Regulator releases your data
- Arbitrary enforcement by regulator
- Enforcement by citizen lawsuits
- Legal jeopardy to “process crimes”
- “Prophylactic” compliance = Avoid lawsuit

# TIP OF THE DAY...

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**DON'T SWEAT THE "STUFF"  
YOU CAN'T CONTROL ...**

**SWEAT THE "STUFF"  
YOU CAN CONTROL !!!**



# The Washington Post

*Democracy Dies in Darkness*

As Biden unwinds dozens of Trump’s energy and environmental policies, he’s forging his own

Biden’s policies

Status of Trump administration’s environmental policies

**79**  
Added

**75**  
Proposed

**90**  
Overturned








**84**  
Targeted

**58**  
Not targeted

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		<b>Added policies</b>	<b>Trump policy overturned</b>	<b>Targeted</b>	<b>Not yet targeted</b>
	Air pollution and greenhouse gases	41	28	27	10
	Chemical safety	3	2	14	3
	Drilling and extraction	13	27	19	21
	Infrastructure and permitting	6	17	7	8
	Accountability	4	3	0	0
	Water pollution	4	4	6	4
	Wildlife	8	9	11	12

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## General Survival Tips

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- Internal compliance teams – stay informed
- **Compliance audits - What's your baseline?**
- Develop robust training programs
- **Continuously evaluate & improve**

# Tracking Regulatory Changes...

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- **Sign-up for alerts**
  - **Consultants, EHS Orgs, Newsletters**
- **Regulatory alert software**
- **Continuing education**
- **Legal resources**





# OSHA Walkaround Rule Tips

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- Don't get blindsided by concerns
- Open dialogue with your employees
- Learn the pain points & take action!

# OSHA Walkaround Rule-Be Prepared

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- Layered Audits
- Self-Assessments
- 3<sup>rd</sup> Party Compliance Audits

1. Ensures accountability at **ALL** levels
2. Uncover “issues” **FIRST**

# OSHA Recordkeeping Rule

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- Establishments over 100 employees in high hazard industries
  - Form 300 and Form 301 in addition to 300A
- Legal company name included

# Heat Stress NEP

- Heat related inspections
  - Indoor & outdoor
- Water, rest, shade, training and acclimatization requirements
- Heat priority days
  - Heat index above 80°F



# Survival Tips - Heat Stress NEP

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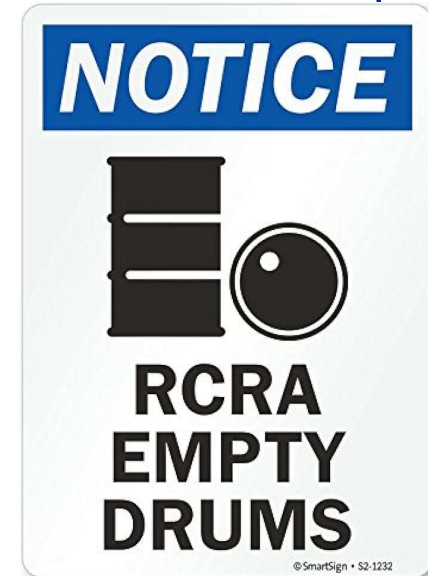
- Visual temperature indicators
- Work/break schedules
- Buddy system
- Water supply on site
- Buddy system



# RCRA “Empty” – Know Your Process

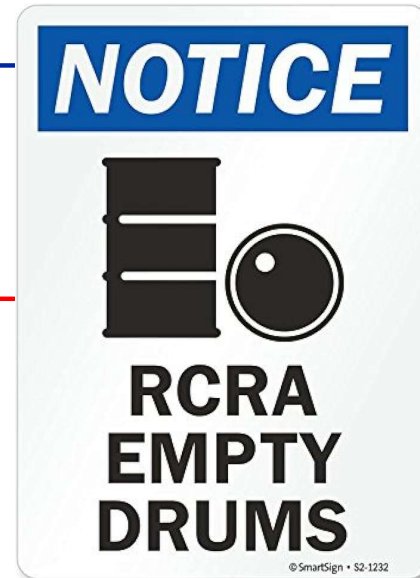
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- Understand quantities/impact
- Understand your current process
- Policy & training opportunities
- Vendor processes



## RCRA “Empty” Tips

- Standardize the process
- Train, Train, Train
- Determine in-house capabilities
- Reduce/Reuse/Recycle



# Surviving RCRA CEI

- Central & satellite drum areas
- 3-year look-back
- Correctives before formal citation
- List of citations at closing conference
- States' programs under USEPA scrutiny





# Surviving RCRA CEI

## Lessons Learnt



- You'll be fined by USEPA
- **NOTHING** is minor (labels, logs, HSM)
- **NEAR PERFECT** RCRA paperwork
- Manage **as if** LQG
- **Robust** RCRA exemption documentation

# Methylene Chloride Ban

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- Under TSCA Section 6(b) – risk evaluation
- Prohibit manufacture/processing/distribution for **all** consumer & **most** industrial and commercial use
- Onerous workplace chemical protection program (WCPP), beyond OSHA

# Methylene Chloride Ban WCPP

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- **Industrial hygiene testing**
  - Limits above and beyond OSHA
- **Personal breathing zone air samples**
  - Existing Chemical Exposure Limit (ECEL)
  - EPA Short-Term Exposure Limit (EPA STEL)
- **Regulated areas**

# Air Emissions Reporting Requirements (AERR)

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- Understand the new requirements
- Addition of HAPs & PFAS
- Prepare for increased reporting & \$\$\$
- Accurate data collection – invest in tech.
- Network

# PFAS Rules - Final

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- **TRI reporting**
  - **196** PFAS for RY 2023
- **TSCA Section 8(a)(7) reporting**
  - At least **1462** PFAS, retroactive to **2011**
  - Includes PFAS in **imported articles**
  - First report due **May 8, 2025**

# PFAS Rules – Proposed

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- **CERCLA proposed rule**
  - List PFOA & PFOS as CERCLA haz. substances
- **CAA – Included in AERR proposal**
- **CWA – Proposal for MCLs for 6 PFAS**

# PFAS Rules – Proposed

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- **RCRA #1 PFAS clean-up rule**
  - Add 9 PFAS as RCRA “hazardous waste”
- **RCRA #2 PFAS clean-up rule**
  - Corrective Action for ALL “hazardous waste” (e.g., Emerging Contaminants like PFAS)

# PFAS Regulatory Regime

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- “Full-court press” by Biden Admin.
- Regulate-out-of-existence
  - “Straight-to-ZERO” approach
  - Parts per trillion (ppt) detection limit
  - Clean-up standard = Non-Detect (ND)
  - Go after **ALL** PFAS (10,000+)?



## Some Thoughts on PFAS

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- Troubling precedents for **ANY** substance
  - Scary euphemisms (“**Forever Chemicals**”)
  - Rush to judgment (“**Emerging Contaminant**”)
  - Biased dissemination of science studies
  - No appreciation of dose (“**presence = problem**”)
  - Sky-high legal jeopardy (CERCLA, RCRA)

## The Future of PFAS...

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- **Studies indicating PFAS bonds can be broken in environment**
- **Optimistic PFAS dose response studies?**
- **PFAS have useful functions, but too late?**
- **Companies going bankrupt??**

# National Plastics Strategy

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- **Used Save Our Seas 2.0 Act, but NO seas!**
  - **A: Reduce pollution during plastic production**
  - **B: Improve post-use materials management**
  - **C: Prevent trash & micro/nanoplastics from entering waterways & remove trash from ...**
- **AKA “Plastics ban”**

# National Plastics Strategy

## Lessons Learnt

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- Forces out to ban plastics
  - 0.5% by wt, 1.0% by vol of materials/wastes
  - Low LCA, replacements increase emissions
  - Avoid real issue of **LITTERING**
  - Demonize & conflate “Plastic” term
- Plastics industry is **TIMID**

# ESG – One Company's Perspective

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- Since 2020
- Pretty much **E (Environmental)**
- 2 metrics + CO2e intensity of NA sites
- Customers not requiring it
- Concerned about ESG litigations

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 **ESG**  
ENVIRONMENTAL | SOCIAL | GOVERNANCE  
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# ESG – One Consultant’s Perspective

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- Adoption of ESG
- Is ESG a dirty word?
- Advantages
- Disadvantages/Pitfalls

Global adoption reaches a new high despite modest U.S. decline

The proportion of ESG users now stands at 90% – up from 2022 (89%) and 2021 (84%). Meanwhile, the percentage of “conviction” investors describing ESG as central to their investment approach remains static globally compared to last year (26%).



# ESG Initiatives

## Lessons Learnt

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- Know **why** you're doing it
- “Less is More”
  - Defensible metrics, available upon request
  - Metrics that help your operations
  - Evaluate EPA/OSHA regulatory fallout

# ESG Initiatives

## Lessons Learnt

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- Need to know **ENERGY** space
- Be **REAL** - avoid “virtue signaling”
- Be **NEUTRAL** on ESG platforms (e.g., CDP)
- Educate non-technical, non-regulatory ESG/sustainability folks



# ESG Initiatives

## Lessons Learnt

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- Partner with your vendors
- Document, Document, Document
- Tracking tools/software solutions

# ESG Initiatives

## Net Zero

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- **Let's be real**
- **Establish a baseline**
- **Set achievable targets**
- **Permitting reform absolutely necessary**



# What Happens in 2024?

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- It's an Election year
- More cash \$\$\$ to come
- Massive push from EPA
- Big Year for new rules



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## What Happens in 2024?

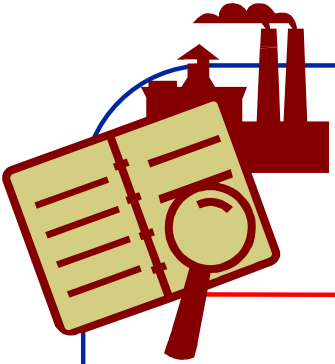
- **Private vs Public**
- **Global impacts – ESG**
- **Climate enforcement & compliance strategy continues to expand**

# Final Thoughts

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- **Going to be a Wild Ride!**
- **Stay informed**
- **Know your risks**
- **Understand the impacts on your facilities**





## What Happens in 2024?

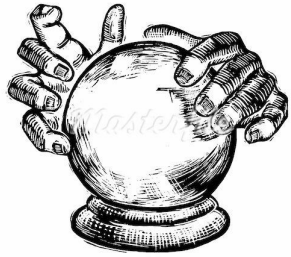
- Prepare your management
- Determine financial impact at all levels
- What will you tackle first?
  - Risk or monetary based



## Final Thoughts

- Focus on your foundations
- **Determine how you will stay in the loop**
- Leverage your business partners
- Create a plan

# What Happens in 2024?



- Similarities to 2015 of Obama admin.?
- Lots of “behind-the-scenes” actions
- “Baking-in” federal rules/policy/staff



# What Happens in 2024?



- **Finalize proposed rules**
  - **PM2.5 NAAQS**
  - **Methylene chloride ban**
  - **SEC climate disclosure**
  - **OSHA union walkaround**
  - **PFAS rules**

# What Happens in 2024?



- **Propose rules (try to finalize?)**
  - National plastics strategy plan
  - “RCRA-Empty” drum
  - More PFAS?
  - More NAAQS?
  - More TSCA Section 6 target chemicals?



# What Happens in 2024?

- **“Sue-and-Settle” = Policy & \$\$\$**

(<https://www.epa.gov/ogc/proposed-consent-decrees-and-draft-settlement-agreements#>)

- Prohibition memo rescinded 3/28/2022

- Congressional letter 11/14/2023

(<https://oversight.house.gov/wp-content/uploads/2023/11/Letter-to-EPA-on-Sue-and-Settle-118th.pdf>)

- **USEPA stormwater MSGP**

- 7/1/2021 Center for Biological Diversity lawsuit

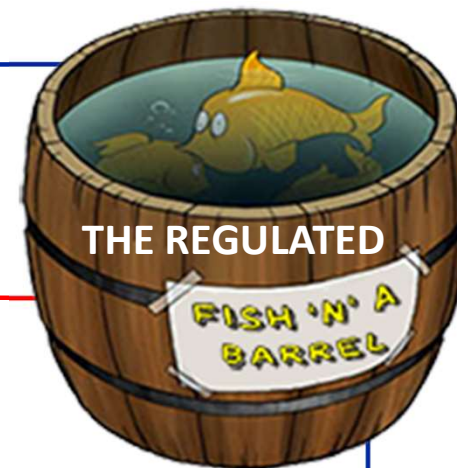
# What Happens in 2024?



- **BUT WAIT...**

- EPA & OSHA still have lots of \$\$\$\$\$
- Site inspections to continue
- Multi-media inspections
- Enforcement at full speed

# Final Thoughts



- Regulatory regime has changed
- Government fanning the flames
- Hope you aren't exposed to “public fury”
- Prepare your upper management (\$)
- Remember my Tip of the Day

# Burning Questions

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## Biographical Information

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Mr. Ling is the Corporate Environmental Director for PLASKOLITE, LLC., a Columbus-based manufacturer of continuously processed plastic sheet. Mr. Ling is responsible for PLASKOLITE's environmental affairs at its 18 manufacturing facilities in North America and around the world. He has over 33 years of experience in environmental engineering, both as a consultant to businesses, and now in a corporate-level environmental role. He has spoken and written on a wide range of environmental and energy management topics.

Mr. Ling graduated with a Bachelor of Science degree in Civil Engineering from the Florida Institute of Technology (1989). He also holds a Master of Science degree in Civil Engineering from the University of Notre Dame (1991). He is a Registered Professional Engineer in the states of Ohio and Florida, and a Qualified Industrial Storm Water Practitioner (QISP) in the state of California.

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Mr. Gibbs has over 31 years of diverse consulting and client advocacy experience providing strategic environmental consultation and project management. He has in-depth knowledge of compliance auditing programs and regulatory air permitting programs, including FESOP, Title V and PSD. He has managed and conducted hundreds of environmental due diligence and environmental, health and safety compliance audits for numerous industries. He has managed and executed compliance assurance projects involving federal and state regulations for media including air, water, waste, health and safety, security and transportation. He has led global, multi-disciplinary due diligence teams in support of acquisitions and divestitures, giving ability to provide a real-time integrated, forward-looking assessment of potential environmental liabilities resulting from the historical operation of a facility.

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Ms. Schick started her career at the Scotts Miracle-Gro Company in June 2015 and is currently the Corporate Environmental, Health & Safety Manager. Over the years, she has had a variety of EHS responsibilities including creating and maintaining corporate standards, policies, and initiatives, implementing corporate training and new learning management systems, and overseeing the company's Industrial Hygiene and third party EHS Audit Programs. Ms. Schick has worked on integrating several companies through mergers and acquisitions into Scotts EHS programs. Ms. Schick also oversees daily EHS compliance for Scotts' research facilities.

Ms. Schick is a graduate of Ohio University where she earned an MBA focused in Operations and Supply Chain Management. She earned her undergraduate degrees at Purdue University and holds a B.S. in Occupational Health and a B.S in Environmental Health.