

May 7, 2015

Mr. Thomas M. Galassi, MPH, CIH
Director
Directorate of Enforcement
Occupational Safety & Health Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Director Galassi:

On behalf of the National Association of Chemical Distributors¹ (NACD), I write to thank you for taking time to meet with our members to discuss their concerns regarding implementation challenges in the chemical supply chain for the Hazard Communication Standard 29 CFR 1910.1200 (HCS) and to seek additional clarification on OSHA's enforcement discretion policy and supplemental guidance for chemical distributors.

NACD appreciates your office and the Office of Standards and Guidance subsequently meeting with us to discuss our members' questions and understand the industry's perspective. NACD also appreciates OSHA's recognition of the complexity and scale of the changes required of the chemical distribution industry during this transition period.

NACD seeks further clarity and certainty that OSHA's enforcement discretion policy is not limited solely to chemical mixtures, but, rather, applies *broadly* to downstream users that have not received the updated information due to circumstances beyond their control.

NACD values the February 9, 2015, enforcement discretion guidance memorandum providing members of the chemical supply chain clarity and certainty on determining "reasonable due diligence" and "good faith efforts" to comply with the HCS standard in "circumstances beyond their control." The guidance provided in the memorandum only addresses situations in which downstream users have not received updated classifications, safety data sheets (SDS), and labels

¹ The National Association of Chemical Distributors is an international association of more than 440 chemical distributors and supply-chain partners. NACD's membership comprises businesses representing in total more than 85% of the chemical distribution capacity in the nation and generating 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs. NACD members are predominantly small regional businesses, many of which are multigenerational and family owned. The typical chemical distributor has 26 employees and operates under an extremely low margin. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous improvement in every phase of handling, transportation, storage, and disposal of chemical products.

for chemical mixtures; however, the factors and efforts outlined in the memorandum should not be limited to situations for chemical mixtures, but rather should clarify OSHA's broader and long-established enforcement policy.²

Chemical distributors provide a unique and critical role in the supply chain. Manufacturers increasingly rely on chemical distributors to market and sell their products in a variety of packaging sizes to an incredibly varied customer base. Distributors provide a variety of functions in the chemical supply chain, including reselling chemical ingredients in smaller quantities on behalf of chemical manufacturers such as less than truckload shipments, containers and drums ranging from 55-330 gallons, and very small units ranging from sample sizes to 5-gallon containers. Distributors provide local bulk storage, rail and large packaging capabilities, and specialty blending.

Under the HCS, a "chemical manufacturer" is defined broadly as "an employer with a workplace where chemical(s) are *produced* [manufactured, processed, formulated, blended, extracted, generated, emitted, or repackaged] for use or distribution."³ Under this definition, the majority of chemical distributors are regulated as manufacturers. Companies that **only** warehouse chemicals or operate as trader brokers would be held to the requirements for "distributors" under the statute.⁴ More than 75% of NACD member companies perform both manufacturing and distributing functions, so are subject to the June 1, 2015, deadline for all of their products.

The vast majority of chemical distributors are dependent upon upstream suppliers to provide the updated HCS information for many of their products. For example, one company imports chemical products but the majority of its business is buying and reselling chemical products in unopened sealed containers where the upstream supplier provides the SDS and label. Another example is a company receiving a rail car of bulk chemicals and then packaging the product into smaller quantities, storing the product for later shipment, or immediately shipping the product to the customer with the information provided by the suppliers on the SDS and label. These individual situations demonstrate some of the barriers to the flow of information in the chemical supply chain that are beyond a company's control.

OSHA's enforcement discretion policy was intended to apply in cases where downstream members of the chemical supply chain have "performed their due diligence and made good faith efforts to obtain necessary information to comply with the June 1, 2015 deadline."⁵ This policy allows for inspectors to "consider barriers to the downstream flow of information that are beyond their control" and ensures this policy is "uniformly applied to individual situations."⁶

² OSHA's October 31, 2014 Response Letter to NACD's Petition

³ [29 CFR 1910.1200\(c\)](#), emphasis added.

⁴ [29 CFR 1910.1200\(b\)\(4\)](#)

⁵ OSHA's October 31, 2014, Response Letter to NACD's Petition

⁶ Id.

While OSHA recognizes the spirit of this policy, the February 9, 2015, memorandum limits its applicability to chemical mixtures. Given the complexities of the chemical supply chain and the unique barriers to the downstream flow of information creating these circumstances beyond their control, the spirit of the enforcement discretion memorandum necessitates its modification to apply to the chemical distribution industry more broadly and its subsequent incorporation into the forthcoming compliance directive and trainings.

NACD requests OSHA modify the February 9, 2015, memorandum to include situations beyond chemical mixtures and to develop supplemental guidance for chemical distributors to address the questions NACD staff and members have presented to you.

As demonstrated by their participation in Responsible Distribution, NACD member companies are committed to health and safety in the workplace. We appreciate your office taking the time to address our concerns. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



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CC: Directorate of Standards and Guidance, Directorate of Cooperative and State Programs