**ASSE LONG BEACH CHAPTER**

**GOVERNMENNT AFFAIRS REPORT**

**FALL 2016**

**By**

**Tom Butler, Government Affairs Chair**

**REPEAT VIOLATIONS CHANGE**

The California Department of Industrial Relations (DIR) has amended Section 334 (d) (Classification of Violations and Definitions) concerning Repeat Violations which will become effective on January 1, 2017. The amendment will affect all employers by extending the history of violations to be considered for Repeat from three (3) years to five (5) years. As highlighted below, the DIR will consider a Repeat for those employers with multiple locations throughout the State of California.

(d) Repeat Violation - is a violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards.

**In 2016, the Director amended Section 334, subsection (d.) The amendments, which are reflected in the language above, will become effective on January 1, 2017. Until that date, the existing language of subsection (d,) set forth immediately below, remains in effect.**

"(d) Repeat Violation (until January 1, 2017)

(1) General--is a violation where the employer has corrected, or indicated correction of an earlier violation, for which a citation was issued, and upon a later inspection is found to have committed the same violation again within a period of three years immediately preceding the latter violation. For the purpose of considering whether a violation is repeated, a repeat citation issued to employers having fixed establishments (e.g., factories, terminals, stores . . .) will be limited to the cited establishment; for employers engaged in businesses having no fixed establishments (e.g., construction, painting, excavation . . .) a repeat violation will be based on prior violations cited within the same Region of the Division.

**UPDATE ON PROPOSED 5189.1 CAL/OSHA STANDARD ON REFINERY PROCESS SAFETY (PSM)**

**NOTICE OF PROPOSED RULEMAKING CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 109 (Published July 15, 2016)

ANNOUNCEMENT

New Section 5189.1 of the General Industry Safety Orders

The Cal/OSHA Standards Board will hold a public hearing starting at 10:00 a.m. on September 15, 2016, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest.

REPORT

Over 400 pages of written comments were submitted, in addition to the oral comments made at the September 15, 2016 hearing.

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| STAKEHOLDER | COMMENT |
| Western States Petroleum Association | Three areas of concern1. Legal - seek to regulate processes and parties outside the scope of permissible regulation under California Statutes
2. Economic – Rand study vs. *"Turner, Mason & Co. Evaluation of RAND Corporation Report* - *'Cost-Benefit Analysis of Proposed California Oil and Gas Refinery Regulations'",* dated September 6, 2016
3. Inconsistent with the amendments currently being proposed by the Governor's Office of Emergency Services (CalOES) to the California Accidental Release Prevention (CalARP) Program (Proposed CalARP)
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| Cal/EPA | Deputy Secretary for Law Enforcement and Counsel stated that Cal/EPA wishes to continue to coordinate with Cal/OSHA on the PSM and CalARP regulations. |
| Organized Labor  | Concerned that the July 2016 version of the proposed PSM regulations are weaker that the September 2015 version with no input from Organized Labor |
| Environmental Groups  | Concerned that the July 2016 version of the proposed PSM regulations are weaker that the September 2015 version with no input from Environmental Groups. |
| US Chemical Safety Board | Concerned that the July 2016 version of the proposed PSM regulations are weaker that the September 2015 version.  |

Improving Public and Worker Safety at Oil Refineries Report of the Interagency Working Group on Refinery Safety

<http://www.calepa.ca.gov/Publications/Reports/2014/RefineryRpt.pdf>

Process Safety Management for Petroleum Refineries **GENERAL INDUSTRY SAFETY ORDERS**,
New Section 5189.1

<http://www.dir.ca.gov/OSHSB/Process-Safety-Management-for-Petroleum-Refineries.html>