

Chemical Safety and Hazard Investigation Board Proposes New Rule for Evidence Preservation Requirements

The Chemical Safety and Hazard Investigation Board ("CSB") has proposed a regulation enabling CSB to issue a written "Notice of Accident Investigation Initiation and Order to Preserve Evidence" ("the CSB Notice") to a facility that has a chemical "accident" or "incident" involving an extremely hazardous substance as defined in the federal Clean Air Act. Owners or operators receiving the CSB Notice would be required to take appropriate steps to ensure that the accident scene and evidence is protected from alteration. The CSB Notice would identify the Investigator in charge and direct the owner/operator to preserve relevant evidence. The owner/operator would be required to acknowledge receipt of the CSB Notice, and post it in areas that would aid site preservation.

Under the proposed rule, although the owner/operator retains control over the site, the recipient of a CSB Notice must also take steps to notify CSB whenever it is necessary to disturb an accident site or relevant evidence, or, if advance notice is not possible, must provide post-action written notice with appropriate explanations. Enforcement options include subpoena power, a civil action in the district court to enforce a disobeyed subpoena, and criminal referral of any "knowing failure to comply" with the new regulation or the terms of any CSB Notice.

Written comments on the rule must be received on or before February 3, 2006.

If you would like more information on the specifics of the proposed new rules or assistance in commenting, please contact

James D. Braddock
James.Braddock@haynesboone.com
512.867.8462