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Best Wishes for a Safe, Healthy & Prosperous New Year!

One of the real joys of ringing in a New Year is the opportunity to say *"Thank You"* and to wish you the very best for a safe, healthy and prosperous 2007! We appreciate your business and the opportunity to help you with your compliance needs.

EPA Issues SPCC Final Rule

The long-awaited final Spill Prevention, Control and Countermeasures (SPCC) rule was published on December 12th. There were several amendments to the original rule, including the removal of certain requirements for animal fats and vegetable oils. The final rule also extended the deadline for compliance to 2009. The extension of the compliance deadline also means farms with 10,000 gallons or less of a covered oil are not included under the amended rule for an indefinite period or until EPA issues a separate rule on farm operations. The final rule provides an option to allow the owners or operators of facilities with an above ground oil storage capacity of 10,000 gallons or less, and who meet other qualifying criteria, to self-certify their SPCC Plans in lieu of review and certification by a Professional Engineer (PE). Motive power containers and mobile refuelers received exemptions from this final rule. Now that the requirements have been finalized, the Asmark Institute will develop a web-based program to help retailers produce a personalized SPCC Plan for facilities with 10,000 gallons or less. The web-based SPCC program will be developed for facilities choosing to self-certify their SPCC Plan and will be available for use by July 1, 2007. For more information on the final rule, please [click here](#).

CropLife America Challenges EPA on Clean Water Act/NPDES Rule

In an effort to seek clear, scientifically sound protections for America's water quality, **CropLife America** (CLA) and **Responsible Industry for a Sound Environment** (RISE), have filed a legal challenge seeking to broaden the scope of the recent EPA final rule that clarifies when pesticides can be applied without first obtaining a Clean Water Act (CWA) permit. The association was joined in its efforts by crop protection companies and allied agricultural associations, including **BASF, FMC, Syngenta, Bayer Crop Science, Delta Council, National Cotton Council, Illinois Fertilizer & Chemical Association, Agribusiness Association of Iowa** and **Southern Crop Production Association**, all of which are challenging the rule.

"The EPA rule, while a step in the right direction, only applies to aquatic uses and forest canopy applications of pesticides," said **Jay Vroom**, President and CEO of CropLife America. "Our challenge to the EPA is to expand the rule to all pesticides, including production agricultural uses of beneficial crop protection products and other essential uses of pesticides." "Broadening the rule would provide needed assurance to farmers and ranchers who follow the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in applying pesticides, that they will not need a CWA permit," Vroom added.

CLA has maintained that FIFRA - the primary law governing the application of pesticides - effectively regulates pesticide applications on, over and near "waters of the U.S." Further, CLA takes the position that the FIFRA regulation is sufficient to ensure the safety of all pesticide uses, not just those subject to EPA's new rule. Labeling requirements under FIFRA are imposed to protect human health and the environment. This position was supported by others in the agricultural community and by public health officials in the two rounds of public comments solicited by the EPA on this issue.

An additional factor behind the CLA challenge is that, if followed, EPA's final rule would only remove a portion of the Clean Water Act's ambiguity regarding the scope of NPDES permitting requirements, leaving a wide gray area concerning most activities. Source: *CropLife America*

FMCSA Proposes to Merge Medical Certificate Info with CDL

The Federal Motor Carrier Safety Administration (FMCSA) has issued a proposal to merge information currently on the medical certificate with the CDL. Section 215 of the Motor Carrier Safety Improvement Act of 1999 called for the change. The proposal, published in the November 16, 2006 Federal Register, would require CDL holders subject to the physical qualification requirements of the FMCSR, to provide a current copy of their medical examiner's certificate to their state driver licensing agency. This information would then be recorded on each individual's motor vehicle record (MVR). The specified medical certification status information would be made available to authorized agency personnel and would be available on MVRs obtained by employers and drivers. When the proposal is finalized and after a prescribed phase-in period, CDL drivers would no longer be required to carry a copy of the medical examiner's certificate. Their certification status would be verified electronically and motor carriers would no longer be required to maintain the original or a copy of the medical certificate in each CDL driver's qualification file. Under the proposal, the medical examiner certificate requirements for Non-CDL drivers would not change. Such drivers would continue to carry on their person and provide a copy of the medical examiner certificate to the motor carrier to be placed in the driver qualification file. Comments on Docket Number FMCSA-1997-2210 must be received by DOT by February 14, 2007.

DHS Introduces New Regulations to Secure High-Risk Chemical Facilities

On December 22, 2006, the Department of Homeland Security (DHS) made available for public review an aggressive and comprehensive set of proposed regulations that will improve security at high-risk chemical facilities nationwide. The proposed regulations are expected to be published in the Federal Register soon as an Advanced Notice of Rulemaking and will be available for public comment until February 7, 2007.

"The consequences of an attack at a high risk chemical facility could be severe for the health and safety of the citizens in the area and for the national economy," said Homeland Security Secretary Michael Chertoff. "Congress has provided the department with a critical new authority to set performance standards that are both sensible and disciplined, allowing owners and operators the flexibility to determine an appropriate mix of security measures at their facility under our supervision and subject to our approval. We're grateful for this new authority, and we intend to implement it quickly and apply it aggressively."

The proposed regulations require that chemical facilities fitting certain profiles complete a secure online risk assessment to assist in determining their overall level of risk. High-risk facilities will then be required to conduct vulnerability assessments and submit site security plans that meet the department's performance standards. The department will validate submissions through audits and site inspections, and will provide technical assistance to facility owners and operators as needed. Performance standards will be designed to achieve specific outcomes, such as securing the perimeter and critical targets, controlling access, deterring theft of potentially dangerous chemicals, and preventing internal sabotage. Security strategies necessary to satisfy these standards will depend upon the level of risk at each facility. The proposed regulations provide chemical facilities with two quick and simple opportunities to challenge the disapproval of a site security plan. Failure to comply with performance standards may result in civil penalties up to \$25,000 per day, and egregious instances of noncompliance could result in an order to cease operations.

Since 2003, the department has worked closely with the chemical industry as well as state and local authorities on strengthening security at chemical facilities throughout the country. Most chemical facilities have already initiated voluntary security programs and made significant investments to achieve satisfactory security levels. The Homeland Security Appropriations Act of 2007 granted the department authority to regulate the security of high-risk chemical facilities and requires that the proposed regulations be issued by April 4, 2007. The proposed regulations contemplate immediate implementation at the highest risk facilities, and a phased implementation at other chemical facilities that present security risks addressed by the statute, beginning in 2007 and continuing through 2008. The Advanced Notice of Rulemaking is available at the DHS website (www.dhs.gov). Source: *The Fertilizer Institute*

Outer Continental Shelf Language Passes

In its last roll call vote of the 109th Congress, the United States Senate passed H.R. 6111, the Tax Relief and Health Care Act of 2006. The Senate Outer Continental Shelf language (S. 3711) was contained in the final bill that passed by a 79 to 9 vote. The bill, supported by agriculture, opens substantial new areas to oil and natural gas drilling in the Gulf of Mexico and shares billions of dollars in revenues with Louisiana and other energy-producing Gulf Coast states for coastal wetlands restoration, hurricane protection and flood control projects. An additional share will be used to build parks and preserve green spaces in all 50 states. The measure will now go to President Bush for his signature.

NTSB "Most Wanted List"

The National Transportation Safety Board (NTSB) recently reviewed its Most Wanted List of safety improvements, a list that calls for action by federal agencies on the most critical transportation safety issues. The Most Wanted List highlights specific recommendations NTSB believes would significantly reduce transportation deaths and injuries. In addition to pinpointing important safety issues, the Most Wanted List also rates agencies by the timeliness with which they act to implement the recommendations. The most recent list includes subjects that may affect the retail industry.

- **Reduce Accidents and Incidents Caused by Human Fatigue** — Operating a vehicle without the operator having adequate rest, in any mode of transportation, presents an unnecessary risk to the traveling public. The laws, rules, and regulations governing this aspect of transportation safety are archaic in many cases and are not adequate to address the problem.
NTSB Recommendation: Establish scientifically based hours-of-service regulations that set limits on hours-of-service, provide predictable work and rest schedules, and consider human sleep and rest requirements.
- **Motor Carrier Operations** — The two most important factors in safe motor carrier operations are the operational status of the vehicles and the performance of the individuals who drive them. If significant problems in these two areas persist, the motor carrier should have its license to operate revoked. NTSB has called on the FMCSA to implement such an oversight system.
NTSB Recommendation: Continue efforts to develop a fitness rating system that appropriately recognizes importance of vehicle and driver factors in measuring the overall safety of a motor carrier's operations. Note: FMCSA timeframe for addressing this issue was unacceptable.
- **Preventing Medically Unqualified Drivers from Operating Commercial Vehicles** — Investigations of accidents involving drivers with serious medical conditions have exposed disturbing flaws that exist in the medical certification process of commercial vehicle drivers. These flaws can lead to increased highway fatalities and injuries for commercial vehicle drivers, their passengers, and the motoring public.
NTSB Recommendation: Continue efforts to develop medical certification procedures that ensure unfit drivers are not allowed behind the wheel of a commercial vehicle. Note: FMCSA timeframe for addressing this issue was unacceptable.

EPA Pesticide Container and Containment Rule Update

EPA plans to send draft policy documents by January 5, 2007 to states describing how they can use their own pesticide containment programs in place of EPA's recently finalized rule. EPA plans to distribute a final containment policy by February 16, 2007. States would then have until August 16, 2007 to submit a letter to EPA requesting authority to implement state regulations in place of EPA regulations, and a decision will be made by December 14, 2007. Source: *CropLife America*

Winds of Change

The outcome of the mid-term elections will undoubtedly have an impact on our industry. It was recently learned that **Senator Barbara Boxer** (D-CA) will replace **Senator James Inhofe** (R-OK) as Chairman of the Environment, Public Works (EPW) Committee. Senator Inhofe was an ally to our industry, routinely monitoring over-reaching rules such as SPCC that had potential to negatively affect small business. *Bits & Pieces* reported on his committee's hearing in June, specifically called to address issues of uneven enforcement of federal rules between the different regions of EPA. Since EPW has oversight responsibility for EPA, we believe the winds of change may shift from ensuring the agency carries out its mission in a fair and consistent manner, to one that challenges EPA to fully implement and enforce the rules to their most advantageous interpretations. Senator Boxer named former Natural Resources Defense Council Advocacy Director **Erik Olson** as Deputy Staff Director and General Counsel of EPW Committee. Olson's focus has been on drinking water issues. We are already seeing signs there will be challenges from certain regions in the near future.

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