



Volume 66

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Tis the season...

With the busy spring season in full swing, there is no better time to remind everyone to pay attention to safety as you carry out your duties. Longer hours, heavier workloads, weather, and a host of other seasonal considerations make for the greatest potential for accidents and injuries. Many times the cause of the incident is just getting in too big of a hurry. *"The door to safety swings on the hinges of common sense."* (The author is unknown, but this quote was found by **Danielle Weems-Brown**.) Best wishes from the Asmark Institute for a safe and prosperous year!

New York Pesticide Fees Up According to NYSABA

Effective April 1, 2009, most of the pesticide fees have doubled as part of the 2009 New York State Budget reports **Jeanette Marvin**, Executive Director for the New York State Agri-Business Association (NYSABA) and **William G. Smith, Sr.** Extension Associate with the New York Pesticide Management Education Program. The changes include the fees charged for certified commercial pesticide applicators, technicians, and aquatic antifouling paint applicators, as well as pesticide businesses and commercial permit holders. The following is a summary of the changes:



- Exam fee increased from \$50 to \$100 for each examination.
- Commercial applicator/technician fees (except for 3A or 3B only) increased from \$225 to \$450 for the first category of certification and from \$75 to \$150 for each additional category or subcategory. This is the fee for a three-year certification period.
- Fees for commercial applicators/technicians certified in subcategory 3A only or subcategory 3B only increased from \$100 to \$200 annually.
- Pesticide business fees increased from \$450 to \$900 for a three-year registration.
- Commercial permit fees increased from \$300 to \$600 for a two-year permit.
- Aquatic pesticide permit fees increased from \$50 to \$100 for each permit.

We extend our congratulations to Jeanette and NYSABA for their progress over the past few years and also for their development of a new logo. This organization is building momentum and we are proud to be affiliated with them.

Swine Flu Information

The recent Swine Flu or H1N1 influenza is thought to spread mainly person-to-person through coughing or sneezing of infected people. The public can take everyday actions to stay healthy such as staying informed, washing one's hands often with soap and water, covering your nose and mouth when coughing or sneezing,

and avoiding touching your eyes, nose or mouth to reduce the spread of germs. [Click here](#) to stay abreast of the H1N1 outbreak or call 1-800-CDC-INFO for more information.

National Safety School 2009 - Mark your calendars!

The National Agronomic Environmental Health and Safety School will be held in Bloomington, IL this year on August 18 & 19. There is a renewed spirit and level of energy in the Safety School and we encourage everyone to register and participate in this quality program. An outstanding lineup of topics and speakers for 2009 has been secured. The Safety School program will benefit you and your staff! We ask that you seriously consider attending this year to see for yourself. The 2009 agenda will be posted soon and can be viewed by visiting www.naehss.org.

New Mail Procedures Implemented in 2009

Understandably, we get teased a lot every year about the amount of paperwork we generate and send out. We hand out letter openers and take the ribbing in good stride - knowing full well the actual amount sent out because practically all of it comes back to us for processing. Our standard over the years has been to process better than 95% of our incoming mail within 72 hours. More than 60% is processed the same day it is received. The Post Office has continued on a track of cutting cost, which results in cutting services, and ultimately slows the movement of mail. To offset this slowdown, we named **Brian Mason** as our contact with the Postal Service at the end of 2008. Brian has been equipped with a vehicle to ensure our incoming mail is received in good order and our outgoing mail is taken to the Post Office each day by the designated cutoff. Since our mail carrier arrives at noon, these measures have cut 1-2 days off of mail time, resulting in better turnaround.

Tips for Returning Your Monthly Training Kits...Did you know?

One of the nice features of the monthly training program is the cost is only a \$1 per participant. A lot happens for this dollar. Back in 1997, the cost was \$2.50 per participant. Due to quantity, technology and new efficiencies gained, we were able to roll the cost back to \$1 in 1998. Needless to say, we caught a few folks off guard when we lowered the price for something while improving the system. We have an ongoing commitment to continuing this trend and thought it might be beneficial to include an article with some tips on getting the most value for your money when returning your monthly safety training kit. Did you know:

- Using Next Day Air to return your training for a year will cost about \$240? The average training for a facility of 8 employees costs only \$96 a year, and the normal postage for the year is \$17?
- Not using the self-addressed envelope provided for return of your training may delay delivery?
- Use of Certified or Registered Mail routinely delays delivery by 2-5 days?
- Saturdays, Sundays and holidays do not count in the number of delivery days by UPS, FedEx or the U.S. Postal Service?
- Use of any type of special services such as Delivery Confirmation will delay delivery?
- Sending a special delivery package and releasing the carrier from requiring a signature of the person signing for the package is not recommended?
- Returning your monthly training with insufficient (or no) postage costs you in the long run - we bill for the postage, plus a \$1 for normal situations.

CVSA Targets Ag Retailers to Lose Hours of Service Exemption

A study by DOT's Volpe National Transportation Systems Center found that agricultural carriers operating exclusively within a 100-mile radius had a 19 percent higher crash rate than agricultural carriers operating outside a 100-mile radius during the period of 2005-2007. The study also saw utility service motor carrier crash rates jump by 40 percent during this same period.

"Since driver related factors are such a large contributor to crashes, it stands to reason that the hours-of-service exemptions provided in the last Highway Act (SAFETEA-LU) are largely responsible for the increased rates," said Commercial Vehicle Safety Alliance (CVSA) Executive Director, **Stephen F. Campbell**, who called the Volpe study a compelling reason to repeal these hours-of-service exemptions. "Safety is clearly

compromised by these exemptions and they should be repealed in the upcoming Transportation Reauthorization Act," he said. CVSA is an international not-for-profit organization comprised of local, state, provincial, territorial and federal motor carrier safety officials and industry representatives from the United States, Canada and Mexico.

SAFETEA-LU exempted agricultural carriers from the hours-of-service regulations if they operated only within a 100-mile radius from their central base of operation. It also exempted utility service vehicle drivers from all hours-of-service regulations.

The study also showed that in 2007 agricultural carriers as a whole had higher violation and out-of-service rates than the rest of the trucking industry in the categories of unsafe driver, driver fitness, vehicle maintenance, and improper loading. The overall average increase was 32 percent. Agricultural carriers operating solely within a 100-mile radius had higher violations and out-of-service rates than those operating outside of a 100-mile radius in the categories of unsafe driving, driver fitness, vehicle maintenance, and improper loading. The overall average increase in this case was 24 percent.

In addition to repealing these exemptions based on the data in the Volpe study, CVSA is proposing that all motor carrier safety exemptions, whether provided in statute or by regulation, should be sunsetted on a date certain in the future with the requirement that they be re-applied for through the regulatory process specifically outlined in Section 31315 of the U. S. Code, Title 49. This process would be administered by the Federal Motor Carrier Safety Administration (FMCSA). Section 31315 requires that in order for a safety exemption to be granted, the group seeking such an exemption must demonstrate to the Secretary of Transportation that "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." This effort would also require FMCSA to review their 1988 tolerance guidelines on intrastate exemptions and withdraw those no longer justified.

"If an exemption is not justified based on performance data, or pursued in a uniform and systematic manner, it not only compromises safety, it also violates the basic principle of uniformity which CVSA advocates," said Campbell. "This lack of uniformity creates confusion among roadside officers which leads to less than optimal oversight and enforcement."

Special Note: The hours or service exemption was originally sought for use by agricultural retailers transporting commodities for farm supplies for agricultural purposes during the planting and harvesting seasons. Several other special interest groups such as utility companies and even Hollywood have been able to become party to the exemption over the years. After reviewing the safety statistics of several of the motor carriers in our industry, we have concluded CVSA is unfairly including agricultural retailers in the category of being unsafe and should review by individual industry the safety statistics before acting. Our industry needs to pull together to focus on retaining the core exemption as originally provided and expel, or separate ourselves from, those special interest groups with safety issues that have managed to attach themselves to our exemption. Imagine a spring season with strict limitations of a 60-hour work week for your driver employees.

5-Year RMP Updates in Full Swing

We have 99% of the data in-house to complete the 5-year RMP updates due on June 21, 2009. Work on the update process will continue through about June 15th. Each facility will receive a draft copy of their RMP to review and proof sometime around June 1st. An original signature will be required for submittal to the RMP Reporting Center. The Asmark Institute will submit all RMPs to arrive to the RMP Reporting Center prior to the June 21, 2009 deadline. As always, we will document EPA's receipt of your RMP and keep the documentation on file. Please forward any correspondence you receive from U.S. EPA to **Dustin Warder**. Dustin manages the RMP Program for the Asmark Institute and is responsible for completing the 5-year update.

Are Your I-9 Forms Current?

The U.S. Citizenship and Immigration Services (USCIS) has published a revised Form I-9. Use of this revised form is mandatory as of April 3, 2009. There has been much confusion over this revision since USCIS failed to provide clear revision and form expiration dates. The new I-9 shows a revision date of 02/02/09 (found in the lower right corner of the form) and an expiration date of 06/30/09. Previous versions of Form I-9 may no longer be used.

New Requirements for Iowa Pesticide Applications

The Iowa State University Extension recently alerted applicators to be aware of some changes to pesticide record-keeping requirements and the Iowa Bee Rule. The changes put forth by the Iowa Department of Agriculture and Land Stewardship took effect on January 22, 2009 and requires that commercial applicators now include the time a pesticide application begins and ends. This additional recordkeeping item was added to the list under section 21-45.26(3) Record-keeping requirements of the Iowa Administrative Code.

Recent changes to the Iowa Bee Rule also affect commercial applicators. The previous Iowa Bee Rule that has been in effect for nearly 30 years was rescinded and replaced. The new rule has two components. The new Iowa Bee Rule specifically applies to commercial applicators and reads as follows: "Between 8 a.m. and 6 p.m., a commercial applicator shall not apply to blooming crops pesticides labeled as toxic to bees when the commercial applicator is located within one mile of a registered apiary. A commercial applicator shall be responsible for maintaining the one-mile distance from apiaries that are registered and listed on the sensitive crop registry on the first day of each month." The labeling statement that identifies a pesticide as toxic to bees can be found under the "Environmental Hazards" section of the pesticide label. The sensitive crop directory (i.e. registry) is maintained by the Iowa Department of Agriculture and Land Stewardship for use in protecting bees from pesticide exposure. The new Iowa Bee Rule also pertains to beekeepers' responsibilities and requires them to register their apiaries on the sensitive crops registry if they want to protect their bees from pesticide exposure. Registration expires December 31st of each year and may be renewed the following year.

Court Stay Grants EPA Two Years to Finalize NPDES Permits

On April 8, 2009, the Environmental Protection Agency (EPA) announced that it would not petition for rehearing of the U.S. Court of Appeals for the Sixth Circuit decision that vacated the agency's final rule exempting pesticide applications from the need to obtain a Clean Water Act permit. On April 9, 2009, the Department of Justice (DOJ) chose not to seek rehearing on the opinion issued by the federal court. DOJ instead filed a motion to stay issuance of the Court's mandate for two years to provide EPA time to develop, propose and issue a final National Pollutant Discharge Elimination System (NPDES) general permit for pesticide applications, for States to develop permits, and to provide outreach and education to the regulated community. If the request is granted, water permits would not be required until expiration of the stay. EPA estimates that the ruling will affect approximately 365,000 pesticide applicators that perform 5.6 million pesticide applications annually.

On January 26, 2007, EPA's final rule became effective, which gave legal effect to the agency's longstanding policy of not requiring permits under the Clean Water Act's NPDES for many applications of pesticides to, over, or near waters of the United States. Under the EPA's interpretation of the Clean Water Act's definitions of "pollutant" and "point source," pesticide applications made in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), did not require NPDES permits even if the pesticide entered waters of the United States. In a lawsuit challenging the legal validity of the final rule, the United States Court of Appeals for the Sixth Circuit on January 7, 2009, struck down the rule as contrary to the plain meaning of the Clean Water Act.

CropLife America, National Cotton Council, and American Farm Bureau Federation were among numerous stakeholder representatives that urged EPA to petition the Court for a rehearing of its decision. On March 6, 2009, **USDA Secretary Vilsack** wrote a letter to **EPA Administrator Lisa Jackson**, asking EPA to consider the "significant adverse effect" of the Court's decision on farmers and USDA's own pest control activities. EPA

received similar requests from the Association of State Water Pollution Control Administrators, ranking members of both House and Senate Agriculture Committees, and industry associations. Nevertheless, EPA declined to seek rehearing, opting instead to seek a two-year stay of the mandate.

In its motion to the Court, EPA argued that the stay is necessary to “avoid significant disruption” to EPA, state permitting authorities, and the hundreds of thousands of persons and businesses who apply pesticides. If the rule were vacated immediately, neither EPA nor state authorities would have the capability under existing regulatory programs to address the many pesticide applications suddenly requiring NPDES permits. Rather than issue thousands of individual permits to each discharger, EPA has announced a preference for authorizing pesticide discharges through a general permit which can broadly address a large number of similarly situated dischargers. EPA estimates that a period of two years is necessary to develop a general permit, a process which entails environmental analyses, public notice and comment, and state certifications.

EPA Forced to Pull TRI Reporting Amendments

The Omnibus Appropriations Act of 2009, signed into law on March 11, 2009, includes a provision that reinstates stronger requirements for reporting toxic chemical releases. The measure overturns EPA’s December 2006 rulemaking that revised reporting requirements for the Toxics Release Inventory (TRI). Although the change may be untimely, EPA says the July 1, 2009 reporting deadline will not be extended, and the new reporting changes made by the law affect reports due July 1.

“The public has a right to know about chemicals in their air and water. EPA watered down this regulation and allowed facilities to hide critical data about their toxic chemical emissions. It is time to restore the public’s right to know about the release of toxic chemicals in their communities,” said **Senator Frank Lautenberg** (D-NJ), who authored the provision. The latest measure included in the Appropriations Act reinstates the stronger reporting requirements that were in place before the December 2006 rulemaking became effective. The text of the provision essentially cuts off funds for implementing the 2006 final rule, gives that rule no force or effect, and instructs EPA to allow the regulatory text to revert to what it was before the 2006 amendments.

The change requires that all reports on persistent, bioaccumulative, and toxic (PBT) chemicals be submitted on “Form R,” the more detailed form. However for all other chemicals, the shorter form “Form A” may be used only if the “annual reporting amount” is 500 pounds or less and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding one million pounds during the reporting year. TRI reports for 2008 are due on July 1, 2009. EPA understands that due to the timing of the legislation, facility owners and operators, including many small businesses, will not have as much time as usual to prepare TRI estimates, and, they may not have acquired or retained the relevant data from 2008. However, owners or operators of facilities may use readily available data, or where such data are not available, reasonable estimates, of the amounts involved, in completing the Form R. [Click here](#) for more information on TRI.

Most Quotable...

“There’s a larger message that we have to give to the American people, which is that EPA is back on the job, that we are guardians protecting clean air and clean water,” said **EPA Administrator Lisa Jackson** in a *U.S. News & World Report* on April 10, 2009. The article reports on a “Revived EPA” that is “starting to flex its muscles again.” The Environmental Protection Agency has been pumping out proposals and directives on everything from climate change to pollution from ships. Click [here](#) to access the full article.

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