



Volume 73

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Seasons Greetings!

As we enter into the holiday season, all of us at the Asmark Institute would like to wish you a Merry Christmas and a safe and prosperous New Year. We appreciate your business and look forward to working with you as we enter the new year!

New IBC Inspection Decal Available Online

A special multi-year decal specifically designed for use with the "Container & Containment" rules for Intermediate Bulk Containers (IBC) have been added to the Online Catalog at www.asmark.org. To check out the new items, go to www.asmark.org and click on "Products."

New "Equal Opportunity is the Law" Poster Required

The U.S. Equal Employment Opportunity Commission (EEOC) has revised its "Equal Employment Opportunity is the Law" poster. This new version is required to be on display at companies that employ 15 or more people. Compliance with this requirement was suppose to be in place by November 21, however EEOC still hadn't provided the final wording to the printers across the country until just last week. Our vendor has confirmed they have received the wording and are printing and filling orders for the new posters.



Long Awaited Final Amendments to SPCC Announced

U.S. EPA announced on November 5 the final regulation that amends certain requirements for facilities subject to the Oil Spill Prevention, Control and Countermeasure (SPCC) rule. The amendments clarify regulatory requirements, tailor requirements to particular industry sectors, and streamline certain requirements for a facility owner or operator subject to the rule. This rulemaking marks the completion of the SPCC action, which was proposed on October 15, 2007, finalized on December 5, 2008, and for which the agency requested public comments again on February 3, 2009. The changes to the final regulation were minimal and retain practically all of the beneficial features for small businesses. With the regulation now final, we can proceed down the road to help retailers comply. Most of the confusion has been eliminated by the worthwhile, yet lengthy process undertaken by U.S. EPA.

The Asmark Institute was asked to partner with The Fertilizer Institute in December 2006 to develop a state-of-the-art web-based tool to help facilities comply with the SPCC requirements. The Asmark Institute has continued to work with The Fertilizer Institute (TFI) and EPA to develop a web-based program, entitled **mySPCC**. EPA has conducted a preliminary review of **mySPCC**. Now that the final rule has been published, the Asmark Institute, TFI and EPA will be meeting to finalize this tool in the near future, and it is believed that EPA will support the program much like the **myRMP** program.

The new web-based tool **mySPCC** has been built with the same standard of quality and user friendliness as the recent **myRMP Suite of Retail Guidance Materials**. Programming for the self-certification SPCC plan (for use with a tank greater than 5,000 gallons) was completed in the fall of 2007. Programming for the second new tool that helps a user electronically complete the streamlined template (for use at facilities with no tank greater than 5,000 gallons) was completed the fall of 2008 and is awaiting release. Combined, these two new web-based tools will be called **mySPCC Suite of Retail Guidance Materials**. The new **mySPCC Suite** is expected to be introduced in the first quarter of 2010, pending review and approval. [Click here](#) for more information about the SPCC final rule.

DHS Sees Ranking of Facilities as an Ongoing Process

The Department of Homeland Security (DHS) announced the release of an additional 540 final tier ranking letters on November 20. Of the 540 facilities, 473 received notification of final assignment to Tier 4 and 67 to Tier 3 status. Site security plans will be due at DHS within 120 days or by March 22, 2010. We anticipated the release of all notification letters at one time, but recently confirmed with DHS they see the process as an ongoing activity that essentially will never be completely finished. It could be months before the first round of facilities receive their final tier notifications.

Showdown for Ammonium Nitrate

As the facilities that handle bagged ammonium nitrate start receiving their final tier notification letters from DHS, management is faced with the tough decision whether or not to continue handling the product. Upon receiving notification from DHS of a Tier 4 assignment, a facility can expect to expend 100+ man-hours to develop the Site Security Plan (SSP). The SSP must be submitted to DHS for review and expect a visit from DHS to "test" your plan. DHS cannot mandate a specific security measure, and if the facility cannot obtain approval from DHS, the facility must keep submitting the plan until DHS agrees (approves) the SSP.

SSP Tip: Be very careful what you print (agree to) in your SSP. Inspections will be based on the facility's SSP. Any security measure written and agreed to in the SSP between the facility and DHS, must be provided for, implemented, maintained and tested in accordance with the SSP. Essentially, the facility is writing the standard for which their facility will be judged against. Detail will be crucial! If you say in your approved SSP that you have a chain link security fence with a tamper-proof cable top and bottom, barb wire on top, a sensing device that alarms if cut and maintained in good condition by a contractor, the DHS inspectors will look for each specific aspect to be present and fully operational onsite at the time of the inspection. If the fence is rusted, or any security measure absent or not fully operational, it will result in a violation. A maintenance plan must be in place to ensure the fence is always in good condition and this type of detail will be expected for each component of the SSP. **Be advised!** CFATS compliance is not just another paperwork exercise as DHS warned they will be able to detect "pencil-whipping" and if the site views it in that way, by reviewing the SSP document. Expect inspectors to bring a copy of your SSP to substantiate your level of security. The inspectors may make 2-4 visits to the site, including one at night during the inspection. Facility personnel will be asked to demonstrate their thought process behind their SSP and security effort.

Proposed Air Quality Permits for Texas Ag Retailers

The Texas Commission on Environmental Quality (TCEQ) published in the Texas Register on November 6, proposed rules for air quality permits for agricultural facilities. TCEQ is proposing a new air quality standard permit for dry bulk fertilizer handling operations and anhydrous ammonia installations (among other permits). Upon issuance by the commission, the new standard permit would be used to authorize dry bulk fertilizer handling or anhydrous ammonia operations after the effective date of the standard permit. **Donnie Dippel**, Executive Director with the Texas Ag Industries Association, reports there will be a public meeting on December 10, 2009 at 9:30 am at the TCEQ Building B, Room 210A, 12100 Park 35 Circle, in Austin, Texas. The comment period closes on December 15. [Click here](#) for more information on the proposed rules.

CropLife America Files Request to Supreme Court to Review NPDES Decision

CropLife America (CLA) filed a Writ of Certiorari with the Supreme Court requesting that the Court review and overturn the early 2009 decision in the case of National Cotton Council vs. Environmental Protection Agency. CLA was joined by a separate and similar petition filed by American Farm Bureau. The Supreme Court could

take up to three months to accept or refuse to hear the case. CLA will continue to monitor any developments and work with key stakeholders on this front. CLA expects to have several in-process stakeholders considering filing amici submissions to the Supreme Court in support of their petition.

House Seeks New Rule to Improve Visibility of Ag Equipment

HR 3720 is proposed legislation to direct the Secretary of Transportation to promulgate a rule to improve the daytime and nighttime visibility of agricultural equipment that may be operated on a public road. The bill was introduced on October 6 and has gained support. The rulemaking seeks to accomplish: "Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation, after consultation with the American Society of Agricultural and Biological Engineers, other appropriate Federal agencies and other appropriate persons, shall promulgate a rule to improve the daytime and nighttime visibility of agricultural equipment that may be operated on a public road. Such rule shall establish minimum lighting and marking standards for applicable agricultural equipment manufactured 1 year or more subsequent to the effective date of the rule. Such rule shall provide for methods, materials, specifications, or equipment employed, equivalent to the standard set in ANSI/ASAE S279.14 published in July 2008 by the American Society of Agriculture and Biological Engineers and entitled "Lighting and Marking of Agricultural Equipment on Highways", or any successor standard."

No retrofitting will be required according to this provision of the bill: "No provision of any rule promulgated pursuant to this section shall require the retrofitting of agricultural equipment that was manufactured prior to 1 year after the date on which a final rule is promulgated pursuant to subsection (a)." The term "agricultural equipment" means "agricultural field equipment" as defined under the standard ANSI/ASABE S390.4 published by the American Society of Agriculture and Biological Engineers, or any successor standard.

EPA Proposes New Labeling Rules to Control Spray Drift

U.S. EPA rolled out proposed guidance on November 4, 2009 for new pesticide labeling to reduce off-target spray and dust drift. EPA hopes the new instructions will improve the clarity and consistency of pesticide labels and help prevent harm from spray drift. The agency is also requesting comment on a petition to evaluate children's exposure to pesticide drift.

"The new label statements will help reduce problems from pesticide drift," said **Steve Owens**, the assistant administrator for EPA's Office of Prevention, Pesticides and Toxic Substances. "The new labels will carry more uniform and specific directions on restricting spray drift while giving pesticide applicators clear and workable instructions."

The new instructions will prohibit drift that could cause adverse health or environmental effects. Also, on a pesticide-by-pesticide basis, EPA will evaluate scientific information on risk and exposure based on individual product use patterns. These assessments will help the agency determine whether no-spray buffer zones or other measures – such as restrictions on droplet or particle size, nozzle height, or weather conditions – are needed to protect people, wildlife, water resources, schools and other sensitive sites from potential harm.

In addition to the draft notice on pesticide-drift labeling, EPA is also seeking comment on a draft pesticide drift labeling interpretation document that provides guidance to state and tribal enforcement officials. A second document provides background information on pesticide drift, a description of current and planned EPA actions, a reader's guide explaining key terms and concepts, and specific questions on which EPA is seeking input. These documents and further information are available in docket EPA-HQ-OPP-2009-0628 at www.regulations.gov.

In a second Federal Register notice, EPA is also requesting comment on a petition filed recently by environmental and farm worker organizations. The petitioners ask EPA to evaluate children's exposure to pesticide drift and to adopt, on an interim basis, requirements for "no-spray" buffer zones near homes, schools, day-care centers, and parks. EPA will evaluate this new petition and take whatever action may be appropriate after the evaluation is complete. For further information and to submit comments, go to docket EPA-HQ-OPP-2009-0825 at www.regulations.gov.

Avoid Out-of-Service Orders

Out-of-service orders keep trucks and drivers idle, delay deliveries, and hurt your company's reputation. Below are the top 10 states with the highest out-of-service rates for interstate trucks and drivers for 2008:

Truck OOS Rate

1. Nebraska - 36.71%
2. Connecticut - 36.06%
3. Utah - 35.18%
4. Colorado - 34.82%
5. Missouri - 31.32%
6. Arizona - 31.23%
7. Idaho - 29.47%
8. Delaware - 29.04%
9. Louisiana - 28.95%
10. Wyoming - 28.87%

Driver OOS Rate

1. Oregon - 15.92%
2. Connecticut - 13.74%
3. Arizona - 13.58%
4. Wyoming - 12.02%
5. Utah - 10.95%
6. Minnesota - 10.86%
7. Idaho - 10.76%
8. Georgia - 10.04%
9. Maine - 9.81%
10. Arkansas - 9.56%

J.J. Keller & Associates advise against letting your drivers and vehicles contribute to these numbers. Keller has been our vendor of choice for more than 20 years now. They give the following two reasons why vehicle inspections are important to you:

- Vehicle Inspections is one of the seven BASICS emphasized by the new Comprehensive Safety Analysis (CSA) 2010 system.
- Vehicle Inspections are directly related to the FMCSA's new Roadability Rules that start taking affect December 17, 2009.

EPA Names Regional Administrators

U.S. EPA Administrator Lisa Jackson has named the following Regional Administrators:

- Region 1: **H. Curtis Spalding** (CT, ME, MA, NH, RI, VT) formerly executive director of Save the Bay organization in Rhode Island;
- Region 2: **Judith Enck** (NJ, NY, PR, US Virgin Islands) formerly New York Deputy Secretary for the Environment and a policy advisor to the Attorney General.
- Region 3: **Shawn M. Garvin** (DE, DC, MD, PA, VA, WV) formerly with EPA Region 3 for over 10 years.
- Region 6: **Dr. Alfredo Armendariz** (LA, NM, TX, OK) formerly associate professor at Southern Methodist University in Dallas, where he taught environmental and civil engineering.
- Region 9: **Jared Blumenfeld** (CA, AZ, HI, NV, Pacific Islands) formerly the director of the San Francisco Department of the Environment.

Regional Administrators for regions 4 and 5 haven't been announced yet, as well as regions 7, 8 and 10.

FMC Challenges EPA's January 1, 2010 Carbofuran Ban

FMC Corporation and a group of U.S. crop commodity associations are mounting a legal challenge to the U.S. EPA's decision to refuse to grant an administrative hearing on its decision to ban the insecticide carbofuran (Furadan). EPA officials are prepared to move ahead with plans to revoke all U.S. food tolerances for the chemical on January 1, 2010. FMC and the commodity associations announced they will take legal action in a U.S. federal circuit court of appeals. FMC is upset with the EPA for refusing to grant an administrative hearing and on its decision to revoke all tolerances, or residue limits, of carbofuran in U.S. foods.

"EPA's unprecedented attempt to deny any review of its science deprives the registrant and the growers who

use carbofuran the right to prove that the product is safe, and represents a bold abuse of power in contradiction of the agency's earlier commitment to transparency and good science," stated **Dr. Michael Morelli**, Director of Global Regulatory Affairs for FMC Agricultural Products Group. "Additionally, EPA's attempt to link carbofuran food residues to symptoms of potential poisoning in children is particularly unwarranted."

EPA contends that "short-term health effects (of carbofuran ingestion) include headache, sweating, nausea, diarrhea, chest pains, blurred vision, anxiety and general muscular weakness" and encourages farmers to switch from carbofuran to "safer pesticides or other environmentally preferable pest control strategies."

FMC argues, however, that EPA has admitted there are no safety concerns with carbofuran residues in food or in imported crops. EPA's only alleged concern, according to FMC, is with drinking water. Its concern is based on an incorrect assumption that 100 percent of crops are exposed to carbofuran, while only approximately 1 percent of crops are treated with the chemical, FMC asserts. FMC will argue in federal court that current law mandates that registrants be provided a right to a timely and neutral hearing with the EPA when there are "obvious and genuine factual issues between EPA and those parties over the safety of a pesticide." Morelli said the EPA is in violation by choosing to disregard the legal requirements for granting an administrative hearing.

The EPA's actions regarding carbofuran have been puzzling to those in the agricultural community, as they seem to circumvent the normal re-registration process for chemicals as described by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Morelli said. He noted that aside from several major grower associations, the USDA and all 50 secretaries of state departments of agriculture support the continued use of carbofuran under limited circumstances.

USA TODAY Reports: Serious HazMat Spills Not Reported

Peter Eisler, writer with *USA Today*, reports that according to federal records, nearly half of all "serious" hazardous materials spills on roads, rails, airstrips and waterways go unreported to the government, leaving investigators without data used to identify unsafe carriers and containers.

From 2006 through 2008, hazmat carriers failed to report 1,199 "serious" incidents, such as larger spills that cause substantial evacuations, major road closures, serious injuries, or releases of especially dangerous materials. The number of serious incidents that were reported: 1,403.

The DOT's Pipeline and Hazardous Materials Safety Administration began identifying unreported incidents in 2005 using news accounts and logs from emergency response agencies. USA TODAY requested the previously unreleased data and analyzed it for their report.

Hazmat carriers are required to report spills to DOT, and the data "are directly related to the department's ability . . . protect the public from the inherent hazards associated with (hazmat) transportation," the safety administration said in a statement. Besides being used to spot unsafe haulers and containers that are prone to failure, the data also helps "identify precursors to potential high consequence incidents." However, since Jan. 1, 2006, the agency has sanctioned just seven carriers for not reporting serious hazmat spills; four were fined up to \$2,750 each. All other cases were handled with warnings.

"It is DOT's responsibility to take some type of enforcement action," said **Representative Jim Oberstar**, D-MN., and chairman of the House Transportation Committee. Without accurate data, the agency "cannot put together a strategic plan for reducing hazardous materials transportation incidents, fatalities, and injuries," added Oberstar, who plans to explore the issue at a hearing Thursday.

Smaller hazmat carriers may not know the reporting rules, said **Rich Moskowitz**, Vice President of the American Trucking Association (ATA). "There needs to be better outreach to the industry and if that fails, then . . . stepped up enforcement."

Indiana To Get Nation's First Bridge Made of Fiberglass

Sugar Creek, Indiana is slated to get an innovative bridge built with fiberglass beams and a polymer composite decking. The \$600,000 project should be virtually immune to corrosion from weather or traffic and is expected to last 75 to 100 years without maintenance. Asmark first used structural fiberglass in 2005 when building a section of fence and some of the new training scenarios used in the *Emergency Response to Agricultural Incidents* course.

UPS and Postal Service Announces Rate Adjustments for 2010

United Parcel Service (UPS) notified us it will raise its 2010 rates for ground packages, air express and US-origin international shipments by an average 4.9%. The new rates take effect January 4, saying that its fuel surcharge tables for air express and ground services will be adjusted. The air-rate increase is set on a 6.9%, minus a 2% reduction in the air and international fuel surcharge index.

The U.S. Postal Service announced they are also scheduled to change their prices again on January 4. This time it is a positive change for our clients! The only rate that is changing that will affect us is the price for a flat rate priority-mail envelope. These envelopes will go down from \$4.95 to \$4.90. All First Class Mail, Post Cards, Flat Envelopes, Parcels, and Extra Services (certified mail, delivery confirmation, and Return Receipt) will stay the same price.

Canada Post Also Sets Rate Hikes

Canada Post has also advised that effective January 11, 2010, the following basic postage rates have been proposed and are awaiting regulatory approval:

- Domestic letter mail (up to 30 grams) Increases from \$0.54 to \$0.57
- U.S. letter mail (up to 30 grams) Increases from \$0.98 to \$1.00
- International letter mail (up to 30 grams) Increases from \$1.65 to \$1.70

Worth repeating...

"There is no limit to the good you can do if you don't care who gets the credit." **General George C. Marshal**

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