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 2011! We appreciate our relationship and the opportunity to work with you in 2011!

Asmark Institute Family Grows
We are excited to report the stork made a special delivery to Dena and Timmy Rhodes just in time for Christmas. Grayson Wayne Rhodes arrived on December 1st and weighed in at 8 pounds, 13 ounces. Mom, Dad and little Grayson are all doing well. Congratulations Dena and Timmy!

It is with great pleasure that we announce the addition of Melissa Iskra to the Asmark Institute team. Our organization is growing and Melissa will help strengthen our efforts in public relations, customer service and communications. Melissa graduated Magnum Cum Laude from Murray State University with a Bachelor of Science Degree in Agribusiness Management. She is from Fort Wayne, Indiana and has been actively involved in both FFA and 4-H and a host of agricultural activities. Welcome Melissa!

Spotlight: Website Welcomes 250,000th Visitor
An exciting milestone was reached in mid-December when Al White with Crop Production Services in Indianola, Mississippi logged onto www.asmark.org and was welcomed as visitor number 250,000. Al logged onto the website at 10:57 a.m. on Monday, December 13th and completed his Handi-Plan. Unlike other websites that count the number of pages accessed to run up the numbers, our website counts the number of real people that log onto our site. Each person that logs onto the website is counted as one visitor for the entire day, regardless of how many times they log on or the number of pages accessed. For being lucky visitor number 250,000, Al will receive one of the new 1/64th scale Special Edition Trucks commemorating the launch of the new website. Congratulations Al!

Website Login Countdown: 28 Days Left to Re-Set Your Password
The launch of the new website last October eliminated the need for social security numbers to be used as passwords. Each person registered for the website was asked to re-set their password and validate their E-mail address during the annual compliance visit. The annual compliance visits will be completed soon and this is a reminder that all passwords must be reset by January 31, 2011. The website will require the new personalized format password (must contain 8-16 characters, with at least 1 number and letter) starting February 1st and will no longer accept social security numbers for security reasons.

2011 Emergency Response Training
Invitations for the Spring Emergency Response to Agricultural Incidents “full course” classes have been mailed. The four-day course is held at our training facility in La Vergne, Tennessee and always fills up fast. Register today to ensure space is available for the class of your choice. Register online by clicking here.
2011 Emergency Response Refresher Training Starts in the Southwest
If you are located in Arizona, California, Hawaii, Louisiana, Nevada or Texas, and you have already completed the four-day “full course” training, watch the mail for your invitation to the 2011 Refresher Course training. Refresher training in the Southwest and West will be held early in the year from now on, so register today by clicking here. Other parts of the country will begin Refresher Course training in July, so watch for that schedule to become available in May.

Georgia Agribusiness Council Names Bryan Tolar as New President
The Georgia Agribusiness Council (GAC) Executive Committee announced that Bryan Tolar had been named President of the Council effective January 1, 2011. This appointment was made after former President Gary Black resigned from the position to pursue election of political office. Bryan joined the Council in 1997 and was named Director of Marketing, Education and Environmental Programs in 2001. In 2003, Bryan became the Vice President of Public Affairs representing GAC member interest in the public arena on all issues related to agribusinesses, including regulatory and legislative matters.

Indiana to Certify Employees that Apply, Handle or Transport Fertilizer
Those hired to apply, handle or transport fertilizer for agricultural purposes within Indiana must become certified through the Office of the Indiana State Chemist and Seed Commissioner (OISC) by January 1, 2012. The new rule also requires certification for anyone applying manure from confined feeding operations. Certification exams are conducted at the Purdue University-based OISC, with exams available at remote testing sites starting in January 2011. A state law passed by the Indiana General Assembly in 2009 created the rule that mandated the certification, known as Category 14, said Leo Reed, the OISC's manager of certification and licensing.

DOT Launches New CSA Program
Have you reviewed the data DOT - CSA has on your company?
In a news release, DOT’s Federal Motor Carrier Safety Administration (FMCSA) stated they took a major step toward improving commercial truck and bus safety with the launch of the Compliance Safety Accountability (CSA) program. The centerpiece of CSA is the Safety Measurement System (SMS), which will analyze all safety-based violations from inspections and crash data to determine a commercial motor carrier’s on-road performance. The new safety program will allow FMCSA to reach more carriers earlier and deploy a range of corrective interventions to address a carrier’s specific safety problems.

“The CSA program will help us more easily identify unsafe commercial truck and bus companies,” said U.S. Transportation Secretary Ray LaHood. “Better data and targeted enforcement will raise the safety bar for commercial carriers and empower them to take action before safety problems occur.”

SMS uses seven safety improvement categories called BASiCs to examine a carrier’s on-road performance and potential crash risk. The BASiCs are Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances/Alcohol, Vehicle Maintenance, Cargo-Related and Crash Indicator. By looking at a carrier’s safety violations in each SMS category, FMCSA and state law enforcement will be better equipped to identify carriers with patterns of high-risk behaviors and apply interventions that provide carriers the information necessary to change unsafe practices early on.

Safety interventions include early warning letters, targeted roadside inspections and focused compliance reviews that concentrate enforcement resources on specific issues identified by the SMS. FMCSA will continue to conduct onsite comprehensive compliance reviews for carriers with safety issues across multiple BASiCs. And, where a carrier has not taken the appropriate corrective action, FMCSA will invoke strong civil penalties.

Click here to learn more about the new CSA program. Click here to see the new SMS.

Important Note: With CSA going into operation, carriers have a vested interest in each of the results of the various types of the roadside inspections the Federal Motor Carrier Safety Administration (FMCSA) has on file. These roadside inspections make up the bulk of the data used to score a carrier, and if they are not correct, the FMCSA will not score the carrier correctly — which could have devastating effects. Making sure the data is right is your responsibility!
Where do you find the data FMCSA has compiled on you? The FMCSA maintains several sites that a carrier can use to verify the data FMCSA has on file. The primary point is the system that is doing the scoring (http://ai.fmcsa.dot.gov/). Another way of getting to your data is the “portal” that provides carriers access to various FMCSA data systems (https://portal.fmcsa.dot.gov/).

The best source of in-house information is a carrier system for tracking roadside inspections. If a carrier does not have one, it is definitely something to consider!

What can a motor carrier do if the FMCSA appears to have incorrect data? If the outcome of a roadside inspection is different, you do not agree with the officer’s findings, an inspection is missing, or the driver or vehicle is not yours, the carrier should appeal using the DataQs system. DataQs is the system provided by the FMCSA to challenge data. (https://dataqs.fmcsa.dot.gov/login.asp).

**DOT Proposes Ban on Mobile Telephones**

DOT’s Federal Motor Carrier Safety Administration (FMCSA) has issued a notice of proposed rulemaking that would prohibit a commercial motor vehicle driver (CMV) from reaching for, holding or dialing a mobile telephone in order to conduct a voice communication while driving. The FMCSA's reasoning for the new rule is expressed by the following quote from their proposal: “Using a hand-held mobile telephone may reduce a driver’s situational awareness, decision making, or performance; and it may result in a crash, near-crash, unintended lane departure by the driver, or other unsafe driving action.” The new proposal would:

- Disqualify a driver from driving a CMV if they are found guilty of a state or local traffic law or city ordinance prohibiting or restricting the use of a hand-held device while driving a commercial vehicle.
- The disqualification would remain in effect for 60 days after a second conviction and for 120 days after three or more subsequent convictions within a three-year period.
- It would add to its list of “serious” traffic offenses any state law, local law or ordinance that would prohibit or restrict the use of any hand-held or mobile device while driving.

States that receive Motor Carrier Safety Assistance Program (MCSAP) grants from FMCSA will be required to adopt and enforce compatible rules applicable to both interstate and intrastate CMV drivers. Penalties for violations will be assessed to the driver and employers who require or allow drivers to violate the rule. Mobile telephone means a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission. FMCSA’s proposed rule defines using a hand-held mobile telephone as using at least one hand to reach for, dial or hold a mobile telephone to conduct a voice communication. The proposal does not include citizens band radios but would affect the recent regulation on texting by removing the dialing exception from the definition of texting.

The new proposal has not yet completely ruled out the use of hands-free devices but is asking the public for comments on whether or not the new rules should ban them along with hand-held devices. FMCSA will accept comments on this Notice of Proposed Rulemaking (NPRM) until February 22, 2010.

**KENTUCKY: Fines Begin January 1st for Texting While Driving (TWD)**

A reminder to all Kentucky drivers: Fines begin January 1, 2011, for anyone caught texting while driving (TWD) and for those under 18 who use a cell phone while driving. Violators will receive a fine of $25 on a first offense and $50 on each subsequent offense, plus court costs. In Kentucky last year, there were more than 57,000 crashes - and more than 200 fatalities -- attributed to driver distraction, inattention and cell phone use. For drivers over 18, the new law allows the use of global positioning devices and reading, selecting or entering a telephone number or name for the purpose of making a phone call. Texting is allowed only to report illegal activity or to request medical or emergency aid. Kentucky was the 22nd state to ban texting while driving. Currently, 30 states and the District of Columbia ban text messaging for all drivers. Twelve of these laws were enacted in 2010 alone. Click here for more information on distracted driving from DOT and click here for more information on Kentucky's law.

**Illinois EPA Finalizing NPDES Permit**

The Illinois Fertilizer and Chemical Association (IFCA), led by Jean Payne, President, reports the Illinois EPA (IEPA) is in the process of finalizing their state NPDES permit for pesticide applications as required by a
federal lawsuit last year. The ag industry groups, including IFCA, have and will continue meeting with IEPA to express serious concerns over the language in the Illinois permit. While the federal lawsuit requires pesticide applications made directly to water to obtain a NPDES permit, the draft permit applies very prescriptive requirements to all pesticide applicators, including detailed requirements regarding maintenance of pesticide application equipment. It also expands the scope of the permit to cover all waters of Illinois which could include drainage ditches, potholes, etc. It even mentions that seed treatments may be subject to permitting.

While pesticide residues that may reach waters from agricultural runoff are exempt, IFCA is learning that in order for pesticide applicators to be protected from civil lawsuits regarding pesticide residues that may show up in water, a custom application business may have to obtain a NPDES permit even if they are only performing routine agricultural pesticide applications. In other words, if you don’t get a NPDES permit, and an environmental activist group detects a pesticide residue in a drainage ditch or other water, they could sue a pesticide applicator if the applicator did not obtain a NPDES permit. It would be up to you to prove the residue came from runoff and not a spray boom passing over the ditch. On the other hand, if you decide to get a NPDES permit to protect yourself against civil lawsuits, you are stating that you may be applying agricultural pesticides to water, which in itself is a violation of the pesticide label — clearly a no win situation for our industry.

Note: IFCA is one of several State Associations working with CropLife America and the Agricultural Retailers Association to support their efforts to secure help from Congress to fix this mess by passing legislation that will clearly state that pesticide applications made according to the label instructions are NOT subject to Clean Water Act jurisdiction. The compliance date for the pesticide NPDES program is April 2011, so a lot needs to be done in the next few months to bring as much clarity and reason to this issue as possible for our industry. Illinois is one of the first “ag” states to come forth with their plans and IFCA is on the leading edge in providing this information.

New EPA Painting Regulations
U.S. EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) for Paint Stripping and Miscellaneous Surface Coating Operations, also referred to as the Subpart 6H rule goes into effect January 10, 2011. The new rule applies to body shops and other facilities that spray-apply chromium, lead, manganese, nickel or cadmium-containing coatings. Businesses subject to the new rule must paint in a booth with filters which are 98% efficient at collecting overspray. Coatings must be applied with high transfer efficiency equipment such as HVLP, HVLP-equivalent, electrostatic, airless or air assisted airless equipment. Paint guns must be cleaned by hand, in a fully enclosed gun washer or with other non-atomizing methods. Personnel must be trained on proper gun and booth operation, spray techniques and rule compliance. Businesses must submit both Initial Notification and Notice of Compliance Status reports. Initial Notifications are due by January 11, 2011. The Notice of Compliance Status is due by March 11, 2011.

Snow Dragon Uses Biodiesel to Improve Snow Removal
Minneapolis is using a mobile snow “melter” known as the Snow Dragon to remove snow at TCF Bank Stadium. The machine can melt 30 tons per hour, similar to the capacity of 20 dump trucks each carrying two loads of snow per hour. The equipment is also environment-friendly because it runs on biodiesel.

EPA Launches Website To Increase Transparency Of Regulatory Activity
EPA has launched a new website called Reg Stat that is hoped to enhance public understanding of its regulatory process and the number, type, and range of regulatory documents developed each year by the agency. The new website is part of the EPA's continuing efforts to enhance the accessibility and transparency of its regulatory activities. Reg Stat provides information on EPA documents published in the Federal Register between 2005 and 2009. It also provides in-depth information on rulemakings likely to be of most interest to stakeholders — those rules signed by the EPA administrator that substantively amend the Code of Federal Regulations. Users will be able to determine the number of rules signed by the administrator, how long it took to develop each rule, whether a rule underwent Executive Order 12866 regulatory review by the Office of Management and Budget (OMB) and the length of OMB review. Both summary graphics and searchable data tables are available.
An analysis of the data featured on Reg Stat shows that EPA publishes 1,700 to 1,900 documents in the Federal Register each year. Approximately 7 percent, or about 100, of those documents are rules that amend the Code of Federal Regulations and require the administrator's signature; the average time to publish these rules is 974 days. Click here to learn more about this website.

**Tax Compromise Signed Into Law - Contains Last Minute Tax Benefits**
President Obama signed into law legislation on December 17th extending and expanding important tax provisions. The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (H.R. 4853) includes, but is not limited to:

- Provides 100% depreciation bonus for equipment placed in service after September 8, 2010 and through December 31, 2011.
- For equipment placed in service after December 31, 2011, and through December 31, 2012, the bill provides for 50% depreciation bonus.
- Extends increased Section 179 expensing levels through 2012.
- Extends the 2001 and 2003 tax cuts for all taxpayers through 2012.
- Sets the estate tax exemption level at $5 million per person ($10 million per couple) with a top tax rate of 35%.

**Payroll Tax Cut, New Withholding Details Now Available**
The IRS has released instructions to help employers implement the 2011 cut in payroll taxes, along with new income-tax withholding tables that employers will use during 2011. The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 provides a 2% payroll tax cut for employees, reducing their Social Security tax withholding rate from 6.2% to 4.2% of wages paid. This reduced Social Security withholding will have no effect on the employee's future Social Security benefits. The new law also maintains the income-tax rates that have been in effect in recent years. Visit www.IRS.gov for more details.

**Violation History Transferable to Successor Company**
Distinct legal identities does not preclude citations for repeat violations according to an interpretation from the Occupational Safety and Health Review Commission (OSH RC). In a case before the OSHRC, the issue of whether or not an employer's legal identity precludes the Secretary of Labor from attributing violation history to the successor company was addressed. Specifically, OSHRC ruled that although the companies may have distinct legal identities, the successor company can be cited for a repeat violation, if the predecessor company had been issued a citation for the same violation in the past.

The issue was raised when a contractor that provides a variety of construction services, such as roofing, masonry and painting, was installing a metal roof on a town maintenance building without using fall protection and one of the workers was injured when he fell off the roof.

Following an inspection of the worksite, OSHA issued two citations to the successor company under the Occupational Safety and Health Act of 1970, one alleging a willful violation of 29 CFR 1926.501(b)(11) and the other a repeat violation of 29 CFR 1926.503(a)(2). OSHA based the alleged repeat violation on previous violations of the same or equivalent standard by the predecessor company, which was owned by a sole proprietor and ceased operations approximately six weeks prior to the formation of the new company.

OSHRC concluded that the statutory language in section 17(a) of the OSH Act is most reasonably read to permit, in appropriate circumstances, the Secretary's application of a “repeat” characterization to cases where the cited employer has altered its legal identity from that of the predecessor employer whose citation history forms the basis of that characterization. Such an interpretation is not only consistent with the Act’s purpose, but also ensures the effectiveness of its enforcement scheme.

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