

Reguletter

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. 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. Go to: <http://www.epa.gov/emergencies/content/spcc/> for more information about the SPCC final rule. (Asmark Institute)



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. (Asmark Institute)

EPA Releases Frequently Asked Questions Document on the Pesticide Container and Containment Rules

The Environmental Protection Agency's (EPA) Office of Pesticide Programs issued a new Frequently Asked Questions (FAQs) document about the pesticide container and containment regulations on December 30, 2009. The FAQs address concerns regarding one-way valves, the label deadline, sub-registrants (and the label requirements), portable containment structures, and anchoring or elevating stationary tanks. Enter: <http://www.mmsendl.com/ls.cfm?r=43557532&sid=8301774&m=899061&u=ARAI&s=http://images.magnetmail.net/images/clients/ARAI/attach/EPAContainerFAQs123009.pdf> into your web browser to read the new FAQs. EPA also posted this information on their website: <http://www.epa.gov/pesticides/regulating/containerquestions.htm>.

If you have any questions regarding the new FAQs, contact Jim Thrift in the ARA office at (202) 457-0825 or jthrift@aradc.org. (EPA)

CSA 2010

Comprehensive Safety Analysis 2010 (CSA 2010), is a new DOT initiative to improve the effectiveness of the Federal Motor Carrier Safety Administration's (FMCSA) compliance and enforcement programs. It's designed to reduce commercial motor vehicle crashes, injuries, and fatalities while providing increased efficiency for FMCSA and states. The key features of CSA 2010 are to; 1) Increase the opportunity to have contact with more carriers and drivers, 2) Use more and better data to improve performance measurements for identifying high risk carrier and driver behaviors, and 3) Apply a wide range of interventions to correct these high risk behaviors before they become chronic and habitual. **Warning:** Data is being collected now that will affect you and your drivers when CSA 2010 is launched in July 2010. CSA 2010 will monitor both the carrier and driver safety performance and assign safety ratings as appropriate based upon the data they receive. (Asmark Institute)

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. Contact Jessi at (952) 253-6081 or jessi@mcpr-cca.org if you are interested in ordering. (Asmark Institute)

IRS Announces 2010 Standard Mileage Rates

The Internal Revenue Service issued the 2010 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes. Beginning on January 1, 2010, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) is: 50 cents per mile for business miles driven; 16.5 cents per mile driven for medical or moving purposes; and 14 cents per mile driven in service of charitable organizations. Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates. (Asmark Institute)

NPDES

Court Decision Puts NPDES Permits In-Play for retailers by potentially requiring a NPDES Permit for each field they make application. A three-judge panel of the 6th Circuit Court of Appeals vacated an EPA rule that allowed pesticides to be applied to U.S. waters without a Clean Water Act permit. Our industry benefitted from the November 27, 2007, EPA-issued final rule, which stated that pesticides applied in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are exempt from the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permitting requirements. The recent court ruling held that pesticides and any residue are pollutants requiring NPDES permits if they reach waters of the U.S. As it stands today, compliance could be required as early as 2011. (Asmark Institute)

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. (Asmark Institute)

Reminder!! As always; if you have any regulatory compliance questions please contact Jessi at 952-253-6081.

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