

# Reguletter

*(continued from Capitol Update)*

for “non-agricultural pesticides” - this should raise approximately \$831,000.

- Pesticides that are sanitizers and disinfectants do not pay a fee on sales.
- Includes any agricultural pesticide that has Agriculture Worker Safety Requirements on the label.

In addition, you should know that the MDA announced at the ACRRA Board meeting on May 20 that the Commissioner is intending to reduce ACRRA surcharges as the balance in ACCRA account will be over the statutory required limit or 5 million at the end of the fiscal year. A hearing will take place to receive input after the next ACRRA meeting in July. With the surcharge reduction it is likely that, at least for a while, the fee increase and the surcharge decrease will result in a net “no change”.

MCPR will be providing much more information on the pesticide and fertilizer fee in the coming months to give you some time to adjust to these changes.

## **U.S. EPA Launches New RMP\*eSubmit**

U.S. EPA has started mailing notification letters to facilities with a Risk Management Plan (RMP) on file with the RMP Reporting Center. The letters are meant to announce the availability of the new web-based portal for the submission of RMPs in time for the next round of five-year updates. RMP\*eSubmit was posted live online on March 13th.

The steps a facility must follow to establish access to RMP\*eSubmit will be very similar to the process for registering with the Department of Homeland Security (DHS) to submit their Top-Screen. Both agencies use the government’s Central Data Exchange (CDX) portal. First, the certifying official will register to set up a CDX account. Then the certifying official will fill out an Electronic Signature Agreement (ESA) and mail it to the Reporting Center. The RMP Reporting Center will contact the certifying official in person before setting up their website access. As a result, the certifying official will receive an authorization code to pass along to their preparer. The preparer will

be able to access the RMP data for the facility and make any modifications or re-submissions. (Asmark Institute)

## **Final SPCC Rule Effective Date Delayed**

Originally signed on November 20, 2008, the Environmental Protection Agency (EPA) published what was supposed to be the final rule on December 5, 2008 concerning Oil Pollution Prevention, Spill Prevention, Control, and Countermeasure Plan (SPCC) Requirements. EPA’s actions were heralded as reforming the SPCC rule and contained provisions that would benefit retailers and other small businesses. The Office of Advocacy of the U.S. Small Business Administration released a statement saying they were encouraged that the EPA listened to small businesses and included those provisions in the reformed rule. The Obama Administration placed a stay on all rules to allow time to review last-minute regulatory rules passed under the previous administration.

U.S. EPA has published a “final rule; delay of effective date” on April 1st delaying the effective date of the final rule that amends the SPCC regulations promulgated in the Federal Register on December 5, 2008. The amendments will become effective on January 14, 2010. EPA additionally is requesting public comment on whether a further extension of the effective date may be warranted.

It appears the SPCC Rule has cleared the regulatory review period imposed by the Obama Administration, but may have unresolved details that industry will be faced with in the future months. All we know at this point is...stay tuned.

What to expect: The Asmark Institute was asked to partner with The Fertilizer Institute (TFI) 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 TFI and U.S. EPA to develop a web-based program, entitled mySPCC. U.S. EPA has conducted a preliminary review of mySPCC. Asmark, TFI and U.S. EPA will be meeting to finalize this tool in the near future, and it is believed that U.S. 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 2009, pending review and approval. MCPR will update our members when more information becomes available. (Asmark Institute)

### **Court Stay Grants EPA 2- 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 long-standing 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. (Asmark Institute)

### **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. Enter: <http://www.epa.gov/tri/indexcont.htm> into your web browser for more information on TRI. (Asmark Institute)

### **ISCD Sends Tier Ranking Letters**

On May 18th, the Department of Homeland Security (DHS) Infrastructure Security Compliance Division (ISCD) announced the release of final tier notification letters. Facilities which were tiered into a final Tier 1 received a final notification on May 18th via e-mail. The notification was sent to the facility submitter. According to the ISCD, there have been fewer facilities placed in Tier 1 than were preliminarily tiered into Tier 1. Preliminarily tier 1 facilities that have tiered out of the program after submitting a Security Vulnerability Assessment (SVA) were also notified on May 18th. Tier 2 notification letters will likely be released in June, after which, Tier 3 and 4 facilities will likely be notified on a rolling basis. To coincide with the release of final tier ranking letters, the ISCD will post the Site Security Plan (SSP) template and a final Risk Based Performance Standard (RBPS) guidance document on its Web site. (TFI)

*This information is believed to be reliable by MCPR, However, because of constantly changing government regulations, interpretations and applicability or the possibility of human, mechanical or computer error, MCPR does not guarantee the information as suitable for any particular purpose.*