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Minnesota Crop Production Retailers

REGULETTER

EPA Proposes to Update RMP Requirements

Prompted by President Obama's Executive Order 13650, EPA is proposing to revise its Risk Management Program (RMP). This proposed rule addresses what appears to be 10 of 19 potential changes the agency sought information on in their July 2014 Request For Information. Citing the RMP requirements have been successful in reducing the number of accidental releases, the agency has focused their efforts on incident investigation, coordination with local emergency responders and third-party compliance audits designed to target those facilities that have accidental releases. Noticeably absent from this proposed rulemaking is the addition of newly regulated substances to the RMP list such as ammonium nitrate and propane. EPA may propose listing additional regulated substances in a separate action. At first glance, EPA proposes to revise the RMP requirements by:

- Adding/expanding certain data elements.
- Requiring third-party compliance audits for facilities that have incidents.
- Supporting OSHA's PSM coverage on RMP applicability.
- Requiring a Safer Technology & Alternatives Analysis for processes within NAICS codes 322, 324 and 325.
- Requiring periodic emergency drills/exercises to test a facility's emergency response program.
- Increasing awareness and importance of facility siting.
- Requiring periodic coordination and sharing of information with local responders.
- Adding/expanding requirements associated with incident investigation.
- Proposing the public disclosure of facility information.
- Streamlining certain RMP requirements.

At this time, it appears EPA passed on requiring detection equipment, worst case scenario quantities for nurse tanks, basing off-site

consequence analysis on acute exposure guidelines and changing to a "Safety case" regulatory model. The existing Program Levels 1, 2 and 3 remained unchanged. EPA reported that in the last 10 years more than 1,500 accidents were reported by RMP facilities. These accidents are responsible for causing nearly 60 deaths, some 17,000 people being injured or seeking medical treatment, almost 500,000 people being evacuated or sheltered-in-place and costing more than \$2 billion in property damages. Visit: <https://www.epa.gov/rmp/proposed-changes-risk-management-program-rmp-rule> to download a copy of the Proposed Rule. The public will have 60 days from publication in the Federal Register to submit written comments online at www.regulations.gov or by mail. (Asmark Institute)

"No Intention of Withdrawing WOTUS"

According to EPA's Gina McCarthy EPA Chief Administrator Gina McCarthy testified Thursday that the EPA has no intention of withdrawing its proposed Clean Water Rule, also known as the Waters of the US (WOTUS). McCarthy testified at a House Agriculture Committee hearing Thursday where she also said the EPA has "a collaborative spirit" with federal agencies associated with farming. "EPA is working every day with the USDA and the NRCS to see how we can advance their mission as a way to advance our own," McCarthy told committee members during questioning. There is nearly unanimous opposition in agriculture to the water rule, which many say is a regulatory overreach. The rule remains on temporary hold under a federal court ruling. (Asmark Institute)

U.S. Congressional Fertilizer Caucus is Established

A U.S. Congressional Fertilizer Caucus was officially formed earlier this month by

Representatives Dan Newhouse (R-WA) and Kathy Castor (D-FL). Newhouse is a farmer and past Director of the Washington State Department of Agriculture, and Castor has several fertilizer facilities in her district, including the Port of Tampa which is among the busiest fertilizer ports in the country. Newhouse and Castor say that the Caucus is "being established to educate policymakers and stakeholders about the important role fertilizers play in the agricultural sector, being responsible for 50 percent of global food production, conserving land and feeding our nation and world." (Asmark Institute)

Court Settlement: EPA to Write Spill Prevention Rule

Heralded as significant news, EPA is agreeing in a settlement with citizen groups to write a major new chemical plant safety rule. EPA will put in place new safeguards to help protect communities from dangerous chemical spills at tens of thousands of industrial facilities nationwide, under the terms of a legal settlement approved by a federal district court in New York. The agreement is meant to strengthen protections as called for by Congress more than four decades ago. Visit: <https://www.documentcloud.org/documents/2714720-2-16-16-Haz-Mat-Consent-Decree.html> to read the legal settlement.

The settlement with EPA, approved by the federal district court for the Southern District of New York, requires EPA to begin a rulemaking process immediately and to finalize spill prevention rules within three and a half years. The forthcoming protections will cover over 350 hazardous chemicals, and will apply broadly to tens of thousands of industrial facilities across the country. There are thousands of hazardous substance spills

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each year from industrial facilities that are not subject to any hazardous substance spill prevention rules, according to United States Coast Guard data from the last ten years.

The chemical involved in the Freedom Industries spill in West Virginia is not listed as a hazardous substance under the Clean Water Act ... and thus would not be covered under the hazardous-substance regulations plaintiffs seek in this case. But the Freedom Industries spill brought to national attention the broader threat posed by the lack of spill-prevention regulations for chemical storage facilities like above-ground storage tanks.

The U.S. Chemical Safety Board is examining this EPA rulemaking issue as part of its broader investigation of Freedom Industries. In October of 2013, at the request of the company, consultants performed a review of the tank terminals located in Charleston and Nitro. The evaluation was conducted and approved by an API- 653 and 570 certified inspectors, who also was credentialed as a National Association of Corrosion Engineers (NACE) Certified Corrosion Technologist. The review notes that the substances stored in tank 396 are considered "non-hazardous" by EPA and are therefore not regulated by the federal Spill Prevention Control and Countermeasure Plan (SPCC) rule. The review further notes that the tanks have "been maintained to some structural adequacy, but not necessarily in full compliance with API-653 or EPA standards." API-653 is considered the prevailing voluntary good practice for aboveground storage tank (AST) inspection, repair, alteration and repair, and was developed to establish a uniform national program that assists state and local governments in AST regulations.

EPA is moving forward with proposing a chemical spill prevention rule to address hazardous substances under the Clean Water Act and soliciting public comment on such a proposal. The language from the legal settlement states: No later than 18 months after the Court's entry of this Consent Decree, EPA shall sign (and within 15 days thereafter transmit to the Office of the Federal Register) a notice of proposed rulemaking pertaining to the issuance of the hazardous substance regulations. No later than 14 months after publication of the proposed Hazardous Substance Regulations ... EPA shall sign (and within 15 days thereafter transmit to the Office of the Federal Register) a notice taking final action following notice and comment rulemaking pertaining to the issuance of the Hazardous Substance Regulations. (Asmark Institute)

DOT New Medical Examiner Paperwork Implementation

DOT has announced a 120-day grace period during which Medical Examiners may use either the current or the newly revised versions of the Medical Examination Report (MER) Form and Medical Examiner's Certificate (MEC). This grace period is from December 22, 2015 until April 20, 2016. Copies of the new forms are available at:

- Medical Examination Report Form can be found here: <https://www.fmcsa.dot.gov/regulations/medical/medical-examination-report-form-commercial-driver-medical-certification> (for Commercial Driver Medical Certification)
- Medical Examiner's Certificate can be found here: <https://www.fmcsa.dot.gov/regulations/medical/medical-examiners-certificate-commercial-driver-medical-certification> (for Commercial Driver Medical Certification)

What This Means to You:

- After April 20th, carriers must only accept the new medical certification forms.
- Already in effect for CDL drivers, a new Medical Examiner's Certificate may only be used in the Driver Qualification file for 15 days; a new MVR must be run to validate the new medical certification. For Non-CDL drivers, the medical certification is not tied to the license and the medical certification form will be used in the Driver Qualification file.
- Carriers should be scheduling physicals at least 45 days prior to a certification expiring, as medical examiners can now put an exam on a 45-day hold while they collect additional medical information; if the old certification expires during this period, drivers must be placed out of service.

Visit: <https://www.fmcsa.dot.gov/medical/driver-medical-requirements/medical-applications-and-forms> to review the DOT's webpage on this subject. (Asmark Institute)

Braking Requirements for Ag Equipment Under Review

The American Society of Agricultural & Biological Engineers (ASABE) Machine Systems (MS) recently reviewed the work of a small task force of braking system experts. This group compared the current requirements in ASAE S365.9, which are 15-years-old, to more current braking requirements from regions of the world that have taken into consideration ever-increasing equipment weights and faster towing speeds. The committee reports that S365.9: (1) Has no provision to allow towing of a light-weight ag vehicle without brakes at speeds exceeding 20 mph; (2) Has no

distinction between commodity trailers with variable transport loads and implements with fixed transport loads; (3) Does not address how the brake system interfaces between towing vehicle and the towed vehicle; (4) Has no provisions to warn the operator that the brake system has failed; (5) Does not clearly address requirements for combination braking systems (hydrostatic & friction brakes); and (6) Increases complexity for manufacturers and users due to the misalignment with other standards around the world. The committee expects it will take several years to write the standard. Voluntary compliance by manufacturers could be applicable in 2018 or 2019. (Asmark Institute)

REMINDER: It's Time to Register With ResponsibleAg

Almost 2,000 facilities have registered with the ResponsibleAg Certification Program, with 154 facilities already receiving their certification. We encourage you to register your facilities today and support the program. The explosion of the West, Texas retail facility in April 2013 marked a low point in the public and regulatory agencies perception of the fertilizer industry. The industry was criticized for not having an organized effort to assist retail dealers in understanding and complying with existing federal regulations. Help is in place now. For more information and to register, go to: www.responsibleag.org.

Become a ResponsibleAg Auditor or Attend to Learn More.... Asmark Institute is seeing several organizations credential one or more of their employees to perform their own audits. Many others are signing up for the training to become contract auditors or to learn firsthand about ResponsibleAg - they want to see how it works - so they will be ready for their audit. More than 140 people have already participated in the training, with more than 84 choosing to become credentialed by ResponsibleAg. To become a ResponsibleAg auditor, the first step is to attend the training. Registration is open and two classes are offered per year. The next class will be on September 13-16th. Visit: <https://www.responsibleag.org/Training/> to register. This is the only course scheduled for the remainder of 2016, so register soon to reserve your seat. (Asmark Institute)

