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Minnesota Crop Production Retailers

REGULETTER

DC Circuit Reinstates PSM Ag Retail Exemption

The DC Circuit issued its long awaited decision (which can be found here: http://mcpr-cca.org/downloads/PSM%20DC%20Circuit%20Decision_9-23-16.pdf) addressing the legal challenge TFI and ARA undertook last year in opposition to the removal of the exemption from the process safety management (PSM) standard for ag retailers. As you recall, OSHA issued a memorandum in July 2015 effectively nullifying the long standing exemption from the PSM standard for ag retailers, which had been in place for many years. TFI and ARA cried foul and challenged the policy changes as being an illegal rulemaking that should have been considered only through a notice and comment process.

The court agreed. The decision was unanimous. The opinion states: "According to petitioners (TFI and ARA) the OSH Act required the agency to adhere to notice and comment procedures in promulgating its new definition. We agree with petitioners." In conclusion, the court states: "...we grant the petitions for the review and vacate OSHA's Memorandum for failure to abide by OSH Act procedural requirements." I don't believe they could have been clearer. This decision may impact future efforts by OSHA to make policy changes through guidance.

OSHA does have the opportunity to ask the three judge panel to reconsider its decision and also ask the full DC Circuit ("en banc" review) to reconsider the decision. Either request would need to be made in the next 45 days. Both are not very likely, considering the unanimous decision. Moreover, OSHA may be able to save face by claiming that they have

already initiated a rule to update the PSM program and may consider the applicability of PSM to ag retailers in that proceeding. (ARA/TFI)

New OSHA Ag-30 Course Launches - Registration Open

As OSHA ramps up its requirements for reporting and recording injuries and illnesses, it will be very important that MCPR members take every precaution they can to avoid workplace accidents and fatalities. Understanding the OSHA requirements will save your company money - but more importantly, it will reduce the number of injuries and it may even save lives. This training has been developed specifically to meet the needs of agribusiness and is designed for facility managers or assistant managers, safety and health coordinators, EHS staff and personnel with responsibilities for safety and health at the facility.

MCPR would encourage at least one person per facility receive this training. The course will be held at the Ford West Center for Responsible Agriculture and Brian Miller, with Miller Risk Management, will serve as the lead instructor on this course. Brian brings a wealth of knowledge and experience to this course. This training is recognized by OSHA, and upon successful completion, participants will receive a "30-Hour" training card from OSHA and a certificate from the Asmark Institute. The new OSHA Ag-30 course kicks off in November, so sign up today to reserve the class of your choice. Visit: <https://www.asmark.org/SignatureTraining.cgi> for more information, to register or to view other Signature Training courses available through the Asmark Institute. (Asmark Institute)

Obama Administration on Track to Publish 640-plus Major Rules by 2017

A "major rule" in federal government is one that costs the regulated industry at least \$100 million a year and triggers all kinds of secondary actions by the government and industry. The Obama Administration averaged 81 major rulemakings a year for the last seven-plus years, reports the American Action Forum (AAF). AAF goes on to say this White House is on track to publish 641 major rules by the time President Obama leaves office, with an estimated price tag of \$813 billion. (Asmark Institute)

WOTUS Federal Case to be Heard in Ohio Court of Appeals Disappointing States

The federal challenge to EPA's "Waters of the U.S. (WOTUS)" rulemaking brought by 10 states will be heard and decided in the 6th Circuit Court of Appeals in Cincinnati, Ohio, as an Atlanta District Court "deferred the case" citing duplication of effort. WOTUS has been under attack by agriculture, the petroleum industry, Congress and the states since it was first proposed several years ago. The rule seeks to expand EPA and U.S. Army Corps of Engineers regulatory authority under the Clean Water Act (CWA) in ways opponents contend lack legal justification. Congress has tried repeatedly to stop the rule, but has been unsuccessful. The decision is a disappointment to the state attorneys general as well as supporters of the rule, who argue they want to bring the case before the District Court,

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providing them a fallback to the Court of Appeals if they lose. Some argue the decision to keep the case in the 6th Circuit Court makes sense as it was that court which issued the national stay of the WOTUS rule in 2015. The 6th Circuit Court also ruled it has jurisdiction in the case and continues with preparations to hear arguments. It's expected the ultimate decision in the WOTUS legal battle will be made by the U.S. Supreme Court. (Asmark Institute)

Ethanol Falls Under Government Scrutiny: What Could This Mean for Corn?

EPA's Inspector General (IG) has determined that "EPA has not met certain statutory requirements to identify environmental impacts of renewable fuel standard." The IG, which conducts oversight over the EPA and investigates potential wrongdoings, found that EPA has not complied with the legal requirement to report to Congress every three years on the impacts of biofuels, nor have they analyzed or addressed any negative air quality impacts of the renewable fuel standard (RFS).

The IG recommends that EPA provide to Congress reports on the RFS, as required by law, and completes a study on the environmental impact of RFS. The EPA has agreed with each recommendation made by the IG and will allegedly have an RFS report to Congress by the end of 2017. The IG's determination gives RFS critics new ammo to attack the biofuel mandate. In particular, environmentalists who claim ethanol does not significantly decrease greenhouse gas emissions once land, water and other resources are factored into a cost-benefit analysis. Should the EPA's study show that ethanol increases or does not significantly decrease greenhouse gas emissions, the RFS could eventually be amended or eliminated, which would significantly decrease the demand for corn. (Asmark Institute)

Obama to Roll Out New Climate Change Measures

President Obama's administration has unfinished business fighting climate change, which the president called "one of the most urgent challenges for our time." "We know that 2015 surpassed the hottest year on record

— and 2016 is on pace to be even hotter," President Obama said in his weekly address. "There's still so much more to do. And if we keep pushing, and leading the world in the right direction, there's no doubt that, together, we can leave a better, cleaner, safer future for our children."

Obama said he plans on debuting new tools for combating climate change before he leaves office. "In the weeks and months ahead, we'll release a second round of fuel efficiency standards for heavy-duty vehicles. We'll take steps to meet the goal we set with Canada and Mexico to achieve 50 percent clean power across North America by 2025," Obama said. Visit: <http://thehill.com/blogs/blog-briefing-room/news/291296-obama-to-roll-out-new-climate-change-measures> to read more. (Asmark Institute)

U.S. Proposes Mandatory Speed Limiter Devices

The federal government is proposing that heavy-duty vehicles be equipped with devices that limit their speeds on U.S. roadways, but said the limiters will not be required to be tamper-proof. The proposal, announced on August 26th, discusses the benefits of setting the maximum speed at 60, 65 and 68 miles per hour, but said a final rule could differ depending on public input and vehicle tests to determine a speed limit for specific vehicle types. Comments on the proposed rule will be accepted for 60 days after publication in the Federal Register. The rule wouldn't be effective until three years after the final rule is published in the register. (Asmark Institute)

Atrazine Decision Could Cost Farmers \$2.5 Billion

A new report from EPA on atrazine could cost the industry \$2.5 billion in yield losses and increased input costs, at a time when net farm incomes are already in steep decline. EPA released its draft ecological risk assessment for atrazine in June 2016, as part of the re-registration process for the herbicide. If the recommendations included within the assessment stand, it would effectively ban atrazine. A 2012 economic analysis by the University of Chicago found that farming without atrazine could cost corn farmers up to

\$59 per acre. That's a staggering cost at a time when net farm income has already declined 55 percent over the past 2 years, according to USDA figures — and one that's bound to have repercussions across the entire agriculture industry. (Asmark Institute)

NIOSH Launches New Mobile App for Pocket Guide on Chemical Hazards

NIOSH developed a new mobile application (app) version of its Pocket Guide to Chemical Hazards. The app can be used on any device with a Web browser. The NIOSH Pocket Guide to Chemical Hazards has informed workers, employers and occupational health professionals about workplace chemicals and their hazards for over forty years. The Pocket Guide gives general industrial hygiene information for over 600 chemicals/classes and helps users recognize and control workplace chemical hazards.

The new app will provide this information at the fingertips. The new app contains all of the content from the Pocket Guide publication allowing for quick searches by chemical name, trade name or synonym, DOT number and CAS number. A user can also store chemical records as "favorites" for later use, and control which data about a given chemical are displayed for clarity in the field. No data is sent between the user device and NIOSH other than the initial download and updates, so no privacy concerns are present.

To install the mobile NIOSH Pocket Guide, visit the CDC website (http://www.cdc.gov/niosh/npg/mobilepocketguide.html?s_cid=3ni7d2NiUpdateNPG07142016) and click or tap the "DOWNLOAD the mNPG" link. The app will require about 5 Mb of storage space on the device, and can be bookmarked like a standard website, or optionally a shortcut to the app can be saved to your device home screen. Visit the existing NIOSH Pocket Guide for Chemical Hazards topic page here: http://www.cdc.gov/niosh/npg/default.html?s_cid=3ni7d2NiUpdateNPGmain07142016. (Asmark Institute)

