

April 3, 2009

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WP-04-03-09

### **EPA - SPILL PREVENTION, CONTROL AND COUNTERMEASURE PLANS**

**EXECUTIVE SUMMARY:** The EPA issued a press release on March 30, 2009 announcing an extension of the effective date for certain regulatory relief provisions designed to simplify and reduce the costs of compliance with the agency's SPCC plan revision and implementation requirements for bulk plants. This latest change to the SPCC regulations does not extend the July 1, 2009 compliance date for SPCC plan revision and implementation.

### **EPA ANNOUNCES DELAY FOR CERTAIN SPCC REGULATORY RELIEF PROVISIONS:**

EPA is changing the effective date of SPCC regulatory relief provisions that were issued in a final rule on December 5, 2008. The effective date of these regulatory relief provisions is changing from April 4, 2009 to January 14, 2010. As a result of this final rule, bulk plant owners and operators who are currently revising and implementing SPCC plans cannot use the following regulatory relief provisions to meet the July 1, 2009 SPCC compliance deadline:

**New Definition of "Facility"** – Gives bulk plant owner or operators discretion in determining which contiguous or non-contiguous buildings structures, parcels etc. make up the "facility" for purposes of compliance with the SPCC rule.

**New Definition of "Loading Rack"** – Narrows the range of equipment EPA considers a "loading rack" for purposes of providing sized secondary containment and exempts loading racks from secondary containment requirements servicing USTs.

**Simplified Plans for Bulk Plants Under 10,000 Gals; Tier I Facilities** - Establishes streamlined compliance procedures for small bulk plants under 10,000 gallons of aggregate capacity with no single storage tank greater than 5,000 gallons. Allows use of an SPCC template.

**Simplified Hybrid Plans for Bulk Plants Under 10,000 Gals; Tier II Facilities** - Establishes a "hybrid" simplified compliance approach for bulk plants with total aggregate tank capacity under 10,000 gallons but with a single tank capable of storing over 5,000 gallons. Allows owner to self certify SPCC plans.

**Security Requirement Amendment** - Allows an owner or operator of a bulk plant to tailor security measures to specific characteristics and location of the bulk plant facility. Fencing entire facility may not be required.

**Secondary Containment for Parked Cargo Tank Vehicles Amendment** - The final rule eliminates the sized secondary containment requirements for cargo tank vehicles containing product that are parked at bulk facilities between deliveries (generally overnight). Eliminates the current requirement that these trucks be parked within secondary containment structures.

The effective date of the December 5, 2008 SPCC regulatory relief provisions were changed to give the EPA more time to conduct a regulatory review of the rule that was issued during the final days of the Bush Administration. President Obama ordered a regulatory review of all such rules shortly after taking office. According to the EPA, none of the SPCC amendments that concern bulk plants are controversial and are unlikely to change under the regulatory review.

This latest SPCC rule does not change the July 1, 2009 compliance deadline for SPCC plan revision and implementation. However, the EPA is considering an extension of the SPCC plan revision and implementation deadline. Until that change is made, bulk plant operators must revise and implement SPCC plans no later than July 1, 2009

### **SENATE HEARING ADDRESSES THE RFS "BLEND WALL" DILEMMA**

This week the Senate Environment and Public Works (EPW) Committee Subcommittee on Clean Air and Nuclear Safety held a hearing to address the Environment Protection Agency's renewable fuel standard. Testifying before the Subcommittee included: Charles Drevna, President, National Petrochemical and Refiners Association; Kelly Tiller, Director of External Operations, University of Tennessee Office of Bioenergy Programs; Michael McAdams, President, Advanced Biofuels Association; Nathanael Greene, Director of Renewable Energy Policy, Air & Energy Department, Natural Resources Defense Council, and Blake Early with the American Lung Association.

Although the Senate EPW Committee Ranking Member James Inhofe (R-OK) was not in attendance, he did submit his

opening statement for the record which said, “This overly aggressive ethanol mandate has also led to consumer backlash in parts of the country. In my home state of Oklahoma, one convenience store chain experienced a 30 percent drop in fuel sales once they began selling fuel blended at E-10 levels.”

In response to a question from Ranking Member of the Subcommittee David Vitter (R-LA), it appeared that not one witness knew the full effects that mid-level ethanol blends could pose to current vehicle fleets, small engines, and the existing fuel dispensing infrastructure.

Witnesses Blake Early and Charles Drevna expressed concerns with the current RFS in regards to the corn ethanol mandate. Both witnesses urged the Subcommittee to direct EPA not to act on mid-level ethanol blends until further studies are completed. They also questioned the validity of DOE’s only completed study on the effects mid-level ethanol blends pose to vehicles and small engines. Drevna said that if the ethanol community is so certain that mid-level ethanol blends pose no problems with non-FFVs, marine engines, and small power equipment, then they should accept the full liability if mid-level ethanol blends destroy non-FFV engines.

EPA submitted written testimony for the record. EPA’s written statement highlighted three potential pathways to address the RFS’s “blendwall” issue: pursue expanded use of flex fuel vehicles (FFVs) and E85 refueling infrastructure; pursue expanded use of non-ethanol renewable fuels which are not affected by the blending limitations; and, raising the current ten percent ethanol limit to higher levels. EPA is working with DOE to evaluate the impacts of the use of higher ethanol blends for highway vehicle fleets and non-road equipment, and expect to complete the testing over the course of the next year. Most strikingly, EPA indicated that it will soon issue a Federal Register notice to take comments on Growth Energy’s E15 waiver application. Current law directs EPA to take action on waiver requests within 270 days of receipt.

In 2007 the renewable fuel standard was expanded to require the motor fuel supply to include 36 billion gallons of ethanol and advanced biofuels by 2022. EPA has the authority to raise the allowable renewable fuel blend level but it must first consider conflicting Clean Air Act provisions. Earlier this week PMAA sent a letter to the Subcommittee highlighting several concerns in regards to the storing or dispensing of higher ethanol blended fuels. Under current regulations, gasoline can only have up to ten percent ethanol content; however, no existing fuel dispensing system has been UL certified for ethanol blends above E10.

PMAA will continue to work with the Congress on the myriad issues and concerns the proposed increased blend wall present.

### **HOUSE PASSES FDA REGULATION OF TOBACCO BILL**

Yesterday the House of Representatives passed the “Family Smoking Prevention and Tobacco Control Act” (H.R. 1256), by 298 – 112 to give the FDA authority to regulate tobacco products. Representative Steve Buyer (R-IN) offered a substitute amendment which would have created a separate “Tobacco Harm Reduction Center” in the Department of Health and Human Services instead of having FDA oversee tobacco regulation. The Buyer amendment would have been a considerable improvement compared to H.R. 1256 because it did not include some of the most onerous and unnecessary restrictions on the distribution and sale of tobacco products while still regulating the tobacco industry. However Buyer’s amendment failed by a vote of 142 – 284.

H.R. 1256 includes provisions that would allow the FDA to regulate sales of tobacco on Native American lands and regulate internet tobacco sales, but it still has problems for retailers. H.R. 1256 would punish retailers if the packaging, labeling or advertising for tobacco products are found to be out of compliance with regulations that are to be determined by the FDA. Retailers are rarely involved with any of those decisions and should not be punished for manufacturers’ mistakes. Also, H.R. 1256 does not limit itself only to additional federal regulation. State and local laws are not pre-empted meaning the bill does not prohibit states or localities from enacting additional measures on the sale, distribution, possession, exposure and access to tobacco products.

H.R. 1256 includes certain protections for retailers. A provision would protect retailers from accidental sales of tobacco to minors by a “good faith” clause. A retailer would be protected if the retailer adopted and enforced a written policy about sales to minors, informed employees of relevant laws, established punishments for employees who violate that law and require employees to verify a purchaser’s age using a government-issued photo-ID or an electronic scanning device. Additionally the legislation would clarify that a retailer cannot be held liable for a violation if a minor presents a false government ID. Additionally, the bill would allow retailers to sell non-prescription smoking cessation products. User fees on tobacco products will fund the measure expected to total \$5.5 billion over ten years. The legislation would allow the FDA to regulate or reduce nicotine levels but not eliminate nicotine entirely.

The bill now moves to the Senate, which is expected to have the votes to adopt the House language in a straight majority vote count. However, Senator Richard Burr (R-NC) may block the bill when it comes to the Senate floor which would then require 60 votes to pass the measure. If the Senate obtains the necessary 60 votes for passage, it will then be sent to the

President for his signature. President Obama is likely to sign the legislation since he cosponsored tobacco regulation legislation when he was in the Senate.

PMAA will continue efforts in the Senate to oppose FDA regulation of tobacco retailers.

### **SENATE BANKING COMMITTEE DELAYS ACTION ON UNFAIR INTERCHANGE FEES**

The Senate Banking Committee approved S. 414 the "Credit Card Accountability Responsibility and Disclosure Act of 2009," this week by a vote of 12-11. The bill would deal with consumer credit card issues by amending the Consumer Credit Protection Act (PL 90-321) to ban abusive credit practices, enhance consumer disclosures and protect underage consumers, but the language does not address the broad reaching and serious consumer issue of excessive interchange fees. PMAA and the Merchants Payments Coalition have been communicating with Congress to pass legislation to address unreasonable interchange fees. In particular, retailers asked their Senators to include interchange fee language in this credit card accountability bill.

Although the Committee denied requests to include interchange fee language in S. 414, remarks were made regarding the need to pass interchange fees legislation by Chairman Christopher Dodd (D-CT) who remarked, "Credit Card interchange fees deserve our Committee's attention."

As for the House effort, PMAA is making a targeted grassroots effort focused on members of the House Financial Services Committee to have language addressing interchange fees included in the "Credit Cardholders' Bill of Rights" (H.R. 627) authored by Congresswoman Carolyn Maloney (D-NY). The House Financial Institutions and Consumer Credit Subcommittee will hold a mark-up on H.R. 627 tomorrow morning.

### **BILL WOULD PROVIDE INCENTIVES FOR NATURAL GAS VEHICLES**

On Wednesday T. Boone Pickens along with Congressmen Dan Boren (D-OK), John Larson (D-CT) and John Sullivan (R-OK) introduced the "New Alternative Transportation to Give Americans Solutions (NAT GAS) Act," H.R. 1835, which would expand the use of natural gas in our nation's fuel supply. The bill extends the alternative fuel credits for natural gas used as a vehicle fuel for 18 years and extends and increases the natural gas refueling property credit from \$50,000 to \$100,000 per station.

The bill would also make all natural gas-fueled vehicles eligible for a credit equal to 80 percent of the vehicles' incremental cost. Another provision would create a new tax credit for auto manufacturers that produce natural gas and bio-fuel NGVs equal to the lesser of 10 percent of basis of the vehicle or \$4,000. Finally, the bill would provide grants for light and heavy-duty natural gas vehicles and engine advancement.

### **PMAA WRITES SENATORS ON ETHANOL BLENDING BARRIERS**

In advance of a Senate hearing reviewing the national ethanol and biodiesel blending mandates, PMAA sent a letter to the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety highlighting an important petroleum retailer barrier to storing or dispensing higher ethanol blends. The Subcommittee will hold an oversight hearing Wednesday, April 1, 2009 on EPA's implementation of the Renewable Fuels Standard (RFS). The standard was expanded by the "Energy Independence and Security Act of 2007" (P.L. No. 110-140), which requires the motor fuel supply to include 36 billion gallons of ethanol and advanced biofuels by 2022.

The Subcommittee will also address "indirect" land use in regards to the production of ethanol, and if it poses additional environmental concerns. Ethanol's lifecycle greenhouse gas emissions (GHG) have come into question because the land that is cleared to grow crops increases GHG emissions.

EPA has the authority to raise the allowable renewable fuel blend level but it must first consider conflicting Clean Air Act provisions. PMAA's letter to the Subcommittee highlights that under current regulations, gasoline can only have up to ten percent ethanol content and that no existing fuel dispensing system has been UL certified for ethanol blends above E10.

### **RESERVE YOUR ROOMS NOW FOR PMAA'S WASHINGTON CONFERENCE AND DAY ON THE HILL**

PMAA's annual Washington Conference and Day on the Hill will be held in our Nation's Capitol of Washington, DC from May 13-15. The meeting will begin with a welcome reception including PAC silent auction on the evening of May 13th. On the morning of May 14th, marketers will head to Capitol Hill for visits with their Congressional delegations. The PMAA Board of Directors will meet on May 15th.

If you plan on attending PMAA's Annual Washington Conference and Day on the Hill, now is the time to make your room reservation. The Washington Court Hotel is currently sold out; however, please note that we have secured other options for

you: Room With a View at 1.800.780.4343. Please notify Susan Isard at [sisard@pmaa.org](mailto:sisard@pmaa.org) if you have already made a reservation at The Washington Court Hotel but no longer need it as she is keeping a wait list.

For those who have hotel reservations, please be sure to complete a registration form at <http://www.pmaa.org/meetings/pmaa.asp> at your earliest convenience. Complete conference schedule ([http://www.pmaa.org/userfiles/file/Washington Conference/2009/Conference Schedule 2\(1\).pdf](http://www.pmaa.org/userfiles/file/Washington%20Conference/2009/Conference%20Schedule%202(1).pdf)) and hotel information ([http://www.pmaa.org/userfiles/file/Washington Conference/2009/Hotel Information 2.pdf](http://www.pmaa.org/userfiles/file/Washington%20Conference/2009/Hotel%20Information%202.pdf)) is available for planning purposes. Please make your plans now to attend this productive forum to meet with your members of Congress!

### **2009 WPMA POST-CONVENTION TOUR - HUBBARD GLACIER CRUISE**

Many have been asking where our next WPMA Travel Adventure will be. We have found an absolutely incredible cruise aboard Celebrity Cruise Line's ultra-luxurious ship Infinity, sailing from Seattle, Washington through the spectacular Inside Passage to Alaska, June 12-19, 2009.

Reservations must be made within the next 30 days, or as long as space lasts. WPMA has only a certain number of staterooms available on a first come-first serve basis. Call Chris Lambert at Destinations, Inc. at (801) 446-5000 or toll free at 1-800-748-4777 for more information and to book your reservations.

### **2010 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA**

Start planning now to attend the 2010 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 16-18, 2010.

### **SAVE THE DATES FOR THESE UPCOMING EVENTS IN 2009**

June 9-11, 2009 – MPMCSA Convention, Trade Show & Golf – Hilton Garden Inn, Missoula, MT

June 18, 2009 – UPMRA Golf Classic – Wasatch Mountain State Park, Midway, UT

June 23-25, 2009 – WOMA Convention and Golf Tournament – Suncadia Resort, Cle Elum, WA

July 29-30, 2009 – IPM&CSA Convention and Golf Tournament – Sun Valley Resort, Sun Valley, ID

August 30-31, 2009 – NMPMA Convention and Golf Tournament – Embassy Suites, Albuquerque, NM

September 20-22, 2009 – UPMRA Convention and Golf Tournament – Courtyard Marriott, St. George, UT

**Petro Pete: "A candidate is someone who gets money from the rich and votes from the poor to protect them from each other."**

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