



September 2, 2016

Dr. David Michaels
Assistant Secretary of Labor for
Occupational Safety and Health,
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Enforcement Extension Request of PSM Retail Exemption Memo

Dear Dr. Michaels:

We write to you to express our continued concerns with OSHA's rapidly approaching deadline to begin enforcement of the Process Safety Management Program (PSM) at agricultural retail facilities on October 1, 2016. While many facilities have worked hard to implement the elements of PSM, there are still a large number of facilities that will be unable to meet the deadline. Therefore, as requested in our letter to you dated September 23, 2015, we are again asking for an extension of the enforcement delay through July 2018.

As you know, agricultural retail facilities were previously exempt from PSM until the "retail exemption" memo was issued on July 22, 2015. We continue to believe that this policy change was issued improperly by sidestepping the public notice and comment rulemaking process and instead issuing a significant policy change via memorandum. Furthermore, while we are pleased with OSHA's recent decision to include the "retail exclusion" as part of the broader update to the PSM program, we urge the agency to withdraw the July 22 memo and allow the policy change to be addressed in the more open and transparent rulemaking process currently underway. Leaving the July 22 policy change in place during the rulemaking process seems counter-intuitive to an open and transparent process.

Since the July 22 memorandum was issued, agricultural retailers have been working diligently to come into compliance with PSM. As they explore the numerous elements required under the program, many facilities have posed technical compliance questions to OSHA. Unfortunately, they have yet to receive adequate answers to these important questions, leading to a great deal of uncertainty about whether or not their efforts will be in compliance with PSM.

In addition, overall compliance costs continue to be prohibitive for many agricultural retail businesses. On average, agricultural retailers are spending more than \$25,000 per facility in an effort to come into compliance with PSM. This is well above OSHA's initial estimate of \$2,000 per facility. These significant costs have already led some retailers to get out of the business of selling anhydrous ammonia altogether.

We would also remind the agency that any future actions by OSHA that impact the agricultural retail industry related to the PSM regulations should only be taken as consistent with Congressional intent. As you are aware, the Fiscal Year 2016 Omnibus Appropriations bill

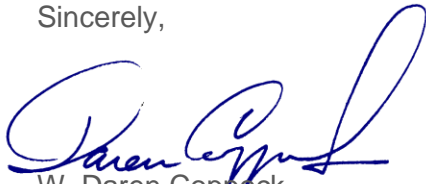
included language that prohibited enforcement of the “retail exemption” memo until a rulemaking was completed. Congress intends this language to be followed beyond Fiscal Year 2016. There is similar language in both the House and Senate Fiscal Year 2017 Labor HHS Appropriations bills. In addition, the “FARM Act”, bipartisan legislation introduced in the House and Senate, also requires a rulemaking from OSHA before implementing or enforcing this policy change.

As of this writing, there is also litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit regarding the legality of the enforcement memo. The Court is expected to issue its ruling in the near future. We strongly believe that it would not be prudent for OSHA to enforce PSM on agricultural retailer facilities prior to the court ruling. OSHA enforcing PSM prior to any court decision, or during the current Congressional prohibition, will only add to the confusion and uncertainty within the industry.

Lastly, as part of OSHA’s broad PSM rulemaking currently underway, the recently concluded Small Business Regulatory Enforcement Fairness Act (SBREFA) panel recommended “OSHA... require[s] [facilities affected by the ‘retail exemption’ memo] to comply with only those elements of the PSM standard that OSHA determines are appropriate for the storage and distribution activities...for anhydrous ammonia.” OSHA should seriously consider reducing the burdens of PSM on agricultural retailers and focus only on the elements that would actually add to a safer workplace for the storage and handling of anhydrous ammonia.

Thank you for your expedited review and consideration of an immediate extension of the compliance enforcement date. Please do not hesitate to contact Kyle Liske with ARA (kyle@aradc.org) if you have any questions.

Sincerely,



W. Daren Coppock
President & CEO
Agricultural Retailers Association



Chris Jahn
President
The Fertilizer Institute



Charles Conner
President & CEO
National Council of Farmer Cooperatives