

The Auditor's Digest

A quarterly newsletter addressing relevant EH&S issues



Parker & Associates, Inc.

STATES AGREE TO REDUCE GREENHOUSE GAS EMISSIONS

Eleven states in the Northeast and Mid-Atlantic regions have made a commitment to developing a Regional Low Carbon Fuel Standard. The purpose is to reduce greenhouse gas emissions from fuels for vehicles and other uses. The eleven states include all of the participants of the Regional Greenhouse Gas Initiative (RGGI) plus Pennsylvania. These states have agreed to work together to create a common fuel standard that aims to reduce greenhouse gas emissions on a technology-neutral basis.

This commitment was introduced by Massachusetts Governor Deval Patrick in June. He sent a letter to all of the member-states of the RGGI asking them to work with him on developing a region-wide Low Carbon Fuel Standard. Developing this new fuel standard will create a larger market for cleaner fuels, reduce emissions associated with global climate change, and support the development of clean energy technologies. All of the following states signed on: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

This fuel standard is market-based and technologically neutral. It is designed to address the carbon content of fuels by requiring reductions in the average lifecycle greenhouse gas emissions per unit of useful energy. This standard can be applied not only to transportation but to heating buildings, for industrial processes, and for electricity generation.

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Winter 2009

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NEW OSHA FIELD OPERATIONS MANUAL

Recently, OSHA revised its Field Operations Manual to provide OSHA Compliance Officers with a source of updated information and guidance. The goal of the change is to more effectively protect employees from occupational injuries, illnesses, and fatalities. This revised manual will be considered the guiding document for compliance officers.

The manual is designed to assist compliance officers in scheduling and conducting inspections, enforcing regulations, and encouraging improvements in workplace safety and health. The manual is also critical in modeling how compliance officers should inform employers about cooperative programs. This includes on-site consultation, strategic partnerships, and the Voluntary Protection Program.

"The new Field Operations Manual is a comprehensive resource of existing OSHA policy and procedural documents," said the Acting Assistance Secretary of Labor for OSHA Thomas M. Stohler. "It gives Compliance Officers important guidance in implementing OSHA's balanced approach to workplace safety and health: enforcement, education and training, and cooperative programs. The Field Operations Manual will also be a resource for employees and employers, giving them a consolidated reference on how OSHA expects workplaces to be made safe and healthy. This is part of OSHA's continuing commitment to make its standards and enforcement activities transparent and understandable to all parties."

This new Field Operations Manual encompasses OSHA's general enforcement policy and procedures for use by the field offices in conducting inspections, issuing citations, and proposing penalties.

EH&S Mardi Gras

In five weeks Mardi Gras will be on us. And we do need the party. The daily dose of bad news on nearly every front takes its toll. In fact the whole world would benefit from one day off to catch beads thrown from floats in a Mardi Gras parade. So let's do it. As the optimistic EH&S professionals we are, let's organize parades strategically located to do the most good. Hold them in places in special need of healing such as; Gaza City, Mumbai, Detroit, Bagdad, Tehran, Mogadishu, Tiananmen Square and Wall Street. The rules would be that for one day there would be no guns, no roadside bombs, no laser guided missiles, no suicide bombers, and everyone would be required to drink Hurricanes and dance. For just one day no lying and cheating would be allowed by Wall Street executives, brokers, bankers, and politicians. For just one day we would not pour a 300 billion dollar bailout down some banker's dark hole, yielding absolutely no benefits. Rather we would pour Hurricanes with abandon and see tangible though somewhat blurry glorious results. By golly we should do it.

For EH&S professionals a lot of planning and logistical work would be required. To get the revelers to dance you want them drunk but not blind drunk. For those of you with religious reservations, remember that it's not rum if they don't know it's rum. So you would have to insure that suppliers (smugglers) bring in quality (safe and tasty) and properly ("juice of the tall grass" as opposed to rum) labeled liquid refreshments. In Gaza City and Tehran most of the undercarriages for the floats are likely to be tanks or armored personnel carriers so some caution has to be exercised. Even without weapons and ammunition a poorly maintained or poorly driven tank veering into a crowd of revelers could spoil the parade. As good as it may be for international relations to have everyone (Palestinians, Hamas, Israeli Soldiers, Egyptians, Iranian spies, the CIA, and international reporters) in Gaza City, and Tiananmen Square, and Tehran naked for one day there are health and safety issues to consider. For those of you with religious reservations, remember it's not a sin for a Catholic to hug a Baptist, or a Jew to hug a Muslim, or a Maoist to kiss a Republican, or a CIA agent to sleep with a Hamas agent as long as you don't remember their name or if everyone agrees it never happened. The only unforgivable sin would be waking up with an AIG executive.

And here is the real benefit of the one day Mardi Gras celebration. As EH&S professionals seasoned in parading and Hurricane drinking and dancing we know that it can never end in just one day. Once you get them there they will like it and they won't want to stop. The suicide bomber will rethink his priorities and understand that perhaps four days of Mardi Gras is better than an eternity with some virgins who are unlikely to be virgins. Even in paradise virginity is rare. The CIA agent may find that information flows more freely with Hurricanes than it does with torture. Someone whose life has been devastated by the economic downturn may see that dancing in the streets is a sure cure for depression. As experienced EH&S professionals we know that the party will last four days and, by the grace of God, the recovery period will likely require three more.

EH&S support for the four days of partying and the three days of recovery will test even the most seasoned professionals. There are a lot of "supposes" to consider:

- Suppose late at night a disrobed reveler dancing on a roof falls into a 5,000 gallon vat of boiling seafood gumbo and no one knows he's missing until three days later when his graduation ring from the University of Alabama Law School is found in the bottom of an empty bowl. Is it a reportable incident? This is complicated. The world wouldn't suffer and few would miss the loss of an attorney, particularly one who likely cheered for the Crimson Tide. On the other hand there is the potential associated with tainted gumbo. This is where good planning pays off. If you've been smart enough to have the gumbo MSDS include as ingredients "a variety of varmints, bottom feeders, and trinkets" then you're in the clear.
- Suppose you were asked to calculate the emissions from 500,000 beer and gumbo consuming revelers. Who has done the modeling for such an event? Has EPA funded any related studies? What type of permit would be required? Keep in mind that while the partying may be only for four days, the emissions could carry on for another month.
- Suppose you've got great plans for the Mardi Gras parade in your community but you're short of the necessary cash to pull off a first class EH&S event. You're in better shape than you realize. Simply follow these steps: incorporate; then order all the supplies and services using a ten million dollar line of credit based on a financial statement audited by the thorough lads at Price Waterhouse; file bankruptcy; and then immediately apply for a government bailout. For those of you with religious reservations, remember, as our friends at Enron, AIG, and the Congress have shown us, it's not stealing if less than 300 billion dollars is involved.

Think of it. Seven days of no suicide bombings, no missiles into civilians homes, no torture, no lies from bankers or politicians, no dark hole bail outs, and no hatred from any pulpits. Let's get ready for Mardi Gras.

Laissez Les Bon Temps Roulez!



PRESIDENT OBAMA SELECTS NEW ENVIRONMENTAL TEAM

On December 15, 2008, President Obama selected his green team, a diverse group of environmentalists that will be an essential asset to environmental change in America. Obama's team is composed of four individuals with energy and environmental backgrounds for cabinet posts and agency heads. His Energy Secretary, Steven Chu, is a Nobel-prize winning physicist. His new Administrator of the Environmental Protection Agency, Lisa Jackson, is the former head of New Jersey's environmental department. The President has also selected Carol Browner, a former confidante of President Al Gore, to lead a White House council on energy and climate. Browner brings her numerous years of environmental experience to the new team. Currently, Browner is the longest-serving EPA administrator in history. To round out his team, President Obama has selected Sen. Ken Salazar, as leader of the Interior Department, which oversees oil and gas drilling on public lands and manages the nation's parks and wildlife refuges.

President Obama asserts that he selected a team that reflects his determination to tackle global warming quickly and develop alternative forms of energy. He vows to, "move beyond our oil addiction and create a new hybrid economy." He promises American citizens an aggressive approach to global warming and has plans to stimulate research of alternative energy sources through increases in government funding.

The President warns America that the dangers of being heavily dependent on foreign oil "are eclipsed by the long-term threat of climate change, which, unless we act, will lead to drought and famine abroad, devastating weather patterns and terrible storms on our shores, and disappearance of our coastline at home." Obama hopes his administration will reveal to Americans that economic development and environmental planning can thrive together. With this green team, Obama is well on his way to making a dramatic contribution to environmental change in America.

What is clear is that the new administration will take a markedly different path than that of the Bush Administration. Good or bad, we will see new policies and efforts aimed at making our country more energy dependent.

SPILL PREVENTION, CONTROL, AND COUNTERMEASURES (SPCC) RULE AMENDMENTS

On November 20, 2008, the Environmental Protection Agency amended current SPCC Requirements. The SPCC is a vital part of the Oil Pollution Prevention regulation (40 CFR part 112), that address specifications for spill prevention, preparedness, and response to oil discharges. Currently, SPCC regulations apply to owners or operators of non-transportation-related facilities that drill, produce, store, process, refine, transfer, distribute, use, or consume oil or oil products. Implementation of SPCC Requirements aids regulated facilities from emitting oil discharges that may contaminate navigable waters or adjoining shorelines. The modifications have been employed, in part, to make SPCC amendments more industry specific and to clarify past uncertainties.

The finalized amendment exempts hot-mix asphalt and hot-mix asphalt containers, residential heating oil containers, pesticide application equipment and related mix containers, underground oil storage tanks that supply emergency diesel generators at nuclear power generation facilities licensed by the Nuclear Regulatory Commission, intra-facility gathering lines subject to U.S. Department of Transportation's pipeline regulations, and produced water containers that do not con-

tain oil in harmful quantities.

One of the goals of the amendment was to also streamline SPCC requirements. Some of the revisions included creating a plan template for certain qualified facilities to complete and self-certify, extending "qualified facility" status to certain smaller oil production facilities, amending the definition of "facility" to clarify the flexibility associated with describing a facility's boundaries and amending integrity testing requirements for bulk storage containers to allow greater flexibility in the use of industry standards at all facilities.

The Environmental Protection Agency has also streamlined the SPCC requirement for qualified facilities. The owner and operator of a qualified facility is now given the option to self-certify his SPCC Plan and comply with other streamlined requirements. The revised rule designates a subset of qualified facilities ("Tier I qualified facilities") as those that meet the current qualified facilities eligibility criteria and have no oil storage containers with an individual aboveground storage capacity greater than 5,000 gallons. These facilities now have the option to complete a self-certified SPCC Plan template instead of

a full SPCC Plan. In completing this SPCC Plan template, Tier I qualified facilities will certify that the facility complies with a set of streamlined SPCC rule requirements. Any other qualified facilities will be deemed "Tier II qualified facilities".

There were some sector-specific changes including many to Oil Production Facilities. The revised rule modifies the definition of a production facility; extends the timeframe by which a new oil production facility must prepare and implement a SPCC Plan; establishes alternative criteria for certain marginal, oil production facilities to be eligible to self-certify an SPCC Plan as a qualified facility; and provides an alternative option for flow-through process vessels to comply with the general secondary containment requirements and additional oil spill prevention measures in lieu of sized secondary containment requirements among numerous other revisions.

For more information regarding these changes and the extended compliance dates, please see the SPCC website or EPA's website.

RAILROADS – NEW TANK CAR SAFETY RULE

As a result of several railroad accidents involving tank cars that caused fatalities, and the ongoing concern for terrorism, the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration has issued a new rule for tank car construction. The rule published in the Federal Register (74 FR 1770) on January 13, 2009, effective March 16, 2009, affects 49 CFR Parts 171, 172, 173, 174 and 179.

Elements of the Rule

The new rule applies to tank cars that transport Poison Inhalation Hazard (PIH) materials. The basic requirements are for the improved construction of tank-heads and puncture resistance shells built on or after March 16, 2009, and a maximum speed of 50 mph for all trains transporting PIH materials. The shell standards require the car to withstand an impact of 25 mph, and the tank-head must be capable of withstanding an impact at 30 mph. Tank car top fittings must be designed to survive a rollover at a velocity of 9 mph. In addition, given that the increased puncture resistance will equate to heavier cars, the gross weight of the car has been raised to 286,000 pounds.

The Association of American Railroads (AAR) standard S-286 is the existing standard for the design, construction, and operation of rail cars with gross weights between 263,000 and 286,000 pounds. 49 CFR Part

171 incorporates this standard to ensure that tank cars weighing up to 286,000 pounds are mechanically and structurally sound. Part 172 amends the Hazardous Materials Table to consolidate and update the special provisions that apply to rail tank car transportation of PIH materials. Part 173 addresses tank car pressure tests requirements and delineates authorized tank car specifications by PIH materials transported. Part 174 and Part 179.49 CFR 179.8 notifies state, local governments and tribes of the preemptive effect of the rule. The rest of Part 179 addresses tank car capacity and weight: 49 CFR 179.13 limits capacity to 34,500 gallons or 286,000 pounds gross weight on rail; 49 CFR 179.22 requires that tank cars manufactured on or after March 16, 2009, be marked with the letter "I" following the test pressure instead of the current "W" to identify cars built to the new construction standards; 49 CFR 179.102-3 requires tank cars to be equipped with top fitting protection to withstand a rollover at 9 mph, and tank jackets and supporting systems be capable of withstanding a 6 mph coupling without shift that results in damage to the nozzle.

Fleet Implementation and Cost

The proposed rule published in April 2008, put forward an eight-year implementation schedule that included design, development, and manufacturing in the first two years. A fifty percent fleet replacement was to occur in the following three years and the remaining fifty percent replacement in the next three

years. However, due to comments received by stakeholders this schedule was not adopted in the final rule.

Several shippers expressed that they have voluntarily upgraded their fleets over the last several years with additional safety features not required in the new rule, and thus the fleet implementation schedule proposed would effectively penalize them for these voluntary efforts. Other comments noted that given the multiple variables (e.g., size and age of fleet, shipment volumes, and cars available for purchase or lease, etc.) that the appropriate fleet replacement period should be considered on an individual fleet basis.

Therefore, the final rule allows tank car owners to prioritize the replacement of pre-1989 tank cars manufactured with non-normalized steel over those constructed with normalized steel when removing tank cars from operation that transport PIH materials. The government estimates that the cost to industry over a thirty year period will be approximately \$350 million, and that savings from potential property damage, casualties, litigation and environmental remediation will total about \$665 million.

TORONTO ADOPTING COMMUNITY RIGHT-TO KNOW LAW

Toronto is attempting to push through a precedent-setting community right-to-know bylaw. The medical officer of health is the main organizer of the proposed Environmental Reporting, Disclosure and Innovation Program. Should the bylaw pass, it will require a wide variety of businesses and City operations to report their use and release of twenty five hazardous chemicals. These reports will be public. The bylaw would phase in the reporting requirements starting January 1, 2010.

Some of these chemicals include benzene and fine particulates. An extensive list can be found in Schedule A of the bylaw. The public would be able to view the information by searching a database on a website. An additional goal of the program is to encourage businesses to reduce their use of hazardous chemicals through more efficient equipment and processes plus using alternative chemicals and recycling rather than disposal.

Public comment resulted in concerns about the reporting burden it would create as well as the limited value of the information to be collected. The Minister of Health determined that limited information is better than no information at all. There is a need to collect data from not just the larger corporations, but the smaller ones as well. Unfortunately, the federal and provincial laws only monitor the larger corporations. This bylaw would, in part, solve that problem.

Parker & Associates is an environmental, health and safety (EHS) management consulting firm that is recognized for quality work, exceptional service, and technical expertise that result in unsurpassed client loyalty.

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Since 1987, our firm has provided exclusive services to the corporate EHS departments of multinational companies in numerous industries. Parker & Associates originated as an EHS management consultant firm that works primarily with Fortune 500 companies and has maintained this vision over the years.

Providing quality and responsive EHS management solutions to the world's leading corporations.



NEW OSHA RESPIRATORY PROTECTION STANDARDS

The Occupational Safety and Health Administration (OSHA) has proposed revisions to the 1998 Respiratory Protection Standard regarding fit testing procedures. Under the current rule, two categories of respirator fit tests are allowed to be conducted. One revision allows for certain machine based fit tests to be conducted, which will facilitate quicker testing. Additionally, the overall required passing score will likely be increased.

Under the current rule, one allowable type of testing exposes facemask wearers to airborne agents to determine if agents are detectable, while the other type of testing measures how much of a test agent leaks into a respirator. More information can be found at the following link: www.osha.gov

EPA CONSIDERS CHANGES TO EPISODIC HAZARDOUS WASTE GENERATION REGULATIONS

The Environmental Protection Agency (EPA) is considering changes to occasional or "episodic" hazardous waste generation regulations. This applies to facilities that temporarily move into a higher hazardous waste generator status as a result of a planned event, such as construction and demolition projects or site remediation activities. Other planned events that may propel a facility into a higher status are post shelf life inventory removal, tank cleaning, process upsets, and equipment maintenance during a plant shut down.

Currently, episodic hazardous waste generators must comply with requirements depending on the amount of waste generated in that particular month for as long as the waste remains on the particular site. Therefore, a generator must continue to manage the hazardous waste based on the amount generated for that month. More information can be found at the following link: www.epa.gov
