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SPCC Expansion

The Environmental Protection Agency and the U.S. Army Corps of Engineers jointly proposed a rule April 21 that would bring under federal jurisdiction all tributaries of streams, lakes, ponds and impoundments as well as wetlands that affect the chemical, physical and biological integrity of larger, navigable downstream waters. The agencies are accepting comment on the proposed rule until July 21, 2014. PMAA will file comments opposing the proposal.

“The EPA and Corps are proposing to expand the jurisdiction of the Clean Water Act to include nearly every damp patch of land in the United States,” Committee Chairman Sam Graves (R-MO) said in a statement.

Graves termed the proposed rule a “regulatory overreach,” saying this “means small businesses and landowners may need costly permits and face lengthy delays for ordinary activities on private property.” The change could also increase the number of PMAA member bulk plants subject to SPCC rules because they currently do not impact navigable waters.

PMAA News

Update from Washington, DC

Bank of America Predicts Five-Year Wait for US to Lift Crude Export Ban

Bank of America (BOA) has reported that short of a collapse in oil prices, the federal government will not lift the ban on crude exports for at least five years. A 1975 law that followed the Arab oil embargo prevents most overseas U.S. crude exports. Short of repeal, the government could grant more permits for exports to Canada or Mexico. Congress has held several hearings on the subject and there will be more to come as crude oil supplies reached its highest level since the 1930s resulting from the shale oil boom in North Dakota and Texas.

According to the Energy Information Administration, crude inventories rose to 397.7 million last week, the highest since 1931, along with crude oil production reaching 8.36 million barrels per day, the most since January 1988. Additionally, since the southern leg of the Keystone XL pipeline became operational, crude oil supplies are now reaching the Gulf Coast from Cushing, Oklahoma at record levels. While this is great news, it has resulted in a supply glut of crude oil in that region and there isn't enough refining capacity to refine the crude.

While many energy policy analysts are calling for a repeal of the U.S. crude oil export ban, some are arguing that the Jones Act should be revised or repealed because companies are finding it hard to locate Jones Act

compliant ships. The 94-year-old Jones Act only allows U.S. flagged and manned vessels to ship crude and refined product between U.S. ports. Thirteen tankers can haul crude domestically out of a global fleet of about 2,400, according to the U.S. Transportation Department's Maritime Administration. Analysts are arguing that allowing foreign-flagged vessels to transport the Gulf Coast crude oil to other parts of the country to be refined may help alleviate prices.

FDA Plans to Regulate E-Cigarettes

On April 24, 2014, the FDA announced that it plans to regulate the three billion dollar market for e-cigarettes as well as cigars to limit sales to minors, ban free samples, and require nicotine addiction warnings as well as ingredient lists. The public comment period will be open for 75 days. If the current proposal is finalized, it is likely to be heavily litigated because e-cigarettes have no tobacco content.

PMAA's Convenience Store Committee will be reviewing the proposal over the coming weeks and plans to submit comments.



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US Senate News

From SD Senator John Thune

U.S. Senators John Thune (R-S.D.), Ranking Member of the Senate Committee on Commerce, Science, and Transportation, and Amy Klobuchar (D-Minn.) today praised the committee's approval of their legislation to better prepare for propane and heating fuel shortages and regional supply disruptions. A slightly modified version of Thune and Klobuchar's Reliable Home Heating Act (S. 2086) was approved by the committee today on a voice vote. The bill would allow governors greater autonomy when they declare emergencies, without the need for the Federal Motor Carrier Safety Administration (FMCSA) to declare that a disaster exists beyond the existing 30-day declarations that are available to governors. The legislation would also require the Energy Information Administration to provide early warnings to governors if the inventory of residential heating fuel (propane, natural gas, and home heating oil) falls below the most recent five-year average for more than three consecutive weeks.

"With the extreme cold temperatures throughout South Dakota and many areas of the country, the last thing we should be doing is making it harder for governors and fuel distributors to address propane and other home heating fuel shortages," said Thune. "Eliminating the red tape for governors helps ensure that when propane and other heating fuel shortages arise in the future, governors have the autonomy to take the necessary steps to swiftly address the shortage. I applaud the committee for their swift action on the bill and will continue to work with my colleagues across the aisle to prepare for and prevent future shortages."

"The combination of reduced propane supplies and skyrocketing prices put an enormous strain on families in Minnesota and across the Midwest this winter," Klobuchar said. "This legislation will give governors new

tools and greater flexibility to address future propane shortages so Minnesotans aren't left out in the cold."

In late January, the FMCSA extended state emergency orders for 36 states providing regulatory relief for commercial motor vehicle operators transporting home heating fuels into areas experiencing propane and heating fuel shortages this winter. Commercial carriers were exempted from federal Hours-of-Service regulations to allow for greater delivery of home heating fuels. FMCSA extended the emergency orders for certain impacted states through March 15, 2014.

Under current federal law, the governor of a state can declare a state of emergency due to shortages of home heating fuel, which would provide a 30-day exemption from federal regulations for operators of commercial motor vehicles. At the conclusion of these 30 days, the exemptions will expire unless extended by FMCSA or otherwise addressed by a presidential disaster declaration. This legislation would give the governor of a state the authority to extend the state of emergency for two additional 30-day periods, for a total of 90 days without FMCSA action.



Summer Driving Season and E15 Rules and Regulations

I have been receiving many questions concerning E15 and the rules and regulations that govern selling this product. I have ask our national association, PMAA, to provide information. Special thanks to Rob Underwood from PMAA for providing the following clarification.

Here's a quick Summary for retailers to offer E15. (my understanding is that wholesalers only have to comply with the PTD requirements, that's it)

- Make sure your UST system equipment is compatible with E10 plus blends.
- Submit a request to EPA to adopt the MMP model, <http://www.epa.gov/otaq/regs/fuels/additive/e15/e15-mmp.htm> and/or RFA's [Misfueling Mitigation Plan](#).
- Join a fuel survey program such as the RFGSA E15 fuel survey program. To learn more about RFGSA go to <http://www.rfgsa.org/programs-list.html>
- Use EPA's E15 dispenser label.
- Contact state officials for more information regarding state regs. (each state varies)
- Suggest reading this [link](#) too. **"Becoming a Flex-Fuel Blender"**

+++Remember E15 can't be sold during the summer months due to RVP requirements. Under current federal law, the one pound waiver only applies up to E10, so conventional gasoline during the summer can have up to 10 RVP. E15 must satisfy this requirement through a statutory change under the Clean Air Act or refiners would have to make a lower RVP blendstock due to E15's higher RVP properties.

For more RVP Info, go to this link:
<http://www.ethanolproducer.com/articles/8222/e15-cracking-the-rvp-nut>
 OR
<http://www.epa.gov/otaq/regs/fuels/additive/e15/index.htm>
 OR
<http://www.epa.gov/otaq/fuels/gasolinefuels/volatility/standards.htm>

The following are specific answers to questions regarding the sales of E15.

1. If a marketer sells E15 through a blender pump, I believe they must have a blender license from EPA. Is this true?

- If the **retailer** is using a blender pump to blend an E10 tank with an E85 tank to make E15, they need to submit a request to EPA to adopt the [Misfueling Mitigation Plan \(MMP\)](#)

(See [Page 8 of this publication for the Introduction to MMP](#))

.....[Continued on Page 11](#)

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US DOT Motor Carrier Regulations

Ten Most Cited Violations at Roadside Inspections

New data released by the U.S. DOT's Federal Motor Carrier Safety Administration (FMCSA) reveals the 10 most frequently cited violations of federal hazardous material transportation regulations issued at routine roadside truck inspections. The data covers more than 154,000 roadside inspections performed in 2012 by the FMCSA. During this period roadside inspectors found more than 35,000 violations of federal regulations.

The most common violation was failure to have a copy of the carriers U.S. DOT HAZMAT registration certificate in the cab of the vehicle. All petroleum marketers operating a placarded vehicle must register with the U.S. DOT and pay an annual fee in return for a HAZMAT operating certificate. A current copy of the HAZMAT certificate must be kept on file at the marketers principle place of business. A copy of the certificate must also be kept in the cab of all placarded vehicles. Three of the top ten violations involved shipping papers. For example, it is a violation of U.S. DOT regulations to carry shipping papers in a clipboard with a metal cover unless the metal cover clearly states that shipping documents are kept inside (ex. "SHIPPING PAPERS CONTAINED INSIDE"). In addition, four of the top ten violations involved placard violations. These violations issued for missing, obscured or damaged hazardous material placards.

The following is the top 10 federal HAZMAT transportation violations issued in 2012:

	Regulation	Violation Description	# of inspections	# of violations	% of total violations
1	49 CFR 107.620	No copy of US DOT hazardous materials registration number	2,822	2,823	8.14%
2	49 CFR 177.834	Package not secure in vehicle	2,603	2,669	7.69%
3	49 CFR 172.516	Placard damaged, deteriorated, or obscured	2,119	2,419	6.97%
4	49 CFR 172.504	Vehicle not placarded as required	1,901	2,044	5.89%
5	49 CFR 177.817	No shipping papers (Carrier)	1,754	1,780	5.13%
6	49 CFR 177.817	Shipping paper accessibility	1,641	1,646	4.74%
7	49 CFR 172.602	Emergency response information missing	1,540	1,547	4.46%
8	49 CFR 172.502	Failure to provide carrier required placards	1,450	1,519	4.38%
9	49 CFR 172.200	Offering a hazardous material without preparing a shipping paper. (None at all)	1,009	1,032	2.97%
10	49 CFR 177.823	No placards/markings when required	912	1,005	2.90%

Marketers should audit their procedures to ensure that these regulatory requirements are being followed.

NPGA News

Propane Discussed During Quadrennial Energy Review Hearing

On Monday, April 21, the Department of Energy held a hearing to solicit input from energy stakeholders and the general public on the state of energy reliability, infrastructure and supply in the six-state Northeast region. It is the first in a series of hearings to be held around the country as part of the multi-agency "Quadrennial Energy Review" (QER) recently ordered by President Obama. It is based on similar quadrennial reviews already required for the nation's national security capabilities, diplomatic efforts and other matters.

Joe Rose, PGANE Executive Director, and Andy Ronald, Vice President at Crestwood, presented at the QER session in Providence, Rhode Island. Both Secretary Moniz and Melanie Kenderdine, Director of the Office of Energy Policy and Systems Analysis, were present during their panel. Rose called on the EIA to provide better data and Ronald highlighted the need for more primary storage capacity.

Future QER hearings will focus on infrastructure constraints related to Bakken, to be held in North Dakota; electricity transmission storage and distribution in the west, to be held in Portland, Ore.; petroleum product transmission and distribution, including carbon dioxide and enhanced oil recovery, to be held in Louisiana; and rail, barge, and truck transportation, to be held in Chicago.

OSHA Hearing on Extension of Crane Operator Certification Compliance Date

Occupational Safety and Health Administration (OSHA) has scheduled an informal public hearing to accept input on its proposal to extend the compliance date for crane operator certification.

On February 10, 2014, OSHA published its proposal to extend the current compliance date by a period of three years, from November 10, 2014 to November 10, 2017. OSHA plans to use the additional time period obtained through the proposed compliance date extension to work on a new rulemaking to address a variety of crane operator certification issues.

NPGA has continued to work with OSHA with the intent of modifying, or eliminating altogether, the requirements for third-party crane operator certification for the propane industry where cranes are used to deliver customer storage tanks. As part of our efforts, NPGA arranged for a site visit by OSHA officials to observe first-hand the crane usage for these types of industry applications, which was well-received by OSHA.

The public hearing is scheduled for May 19, 2014, at the agency's offices in Washington, DC, and NPGA is planning to participate to express support for the extension.



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Misfueling Mitigation Plan Introduction

The purpose of this Misfueling Mitigation Plan (MMP) is to set forth how the plan submitter will comply with the misfueling mitigation conditions established by the U.S.

Environmental Protection Agency (EPA or the Agency) in its October 13, 2010, and January 21, 2011, partial waivers allowing fuel and fuel additive manufacturers to introduce into U.S. commerce ethanol blends containing greater than 10 volume percent and no more than 15 volume percent ethanol (E15) for use in model year 2001 and newer light duty motor vehicles. The MMP, which is intended to reduce the potential of E15 being used in all engines, vehicles and equipment for which waivers have not been granted by the Agency, addresses the following required elements: E15 pump labeling, tracking of E15 through the supply chain through product transfer documentation, and implementation surveys of E15 content and labeling compliance.

Because this plan has been developed as a model plan, a company that wishes to use it must notify EPA in writing that the company seeks approval of the plan for the company's use in meeting the requirements for an MMP. Before deciding whether to approve a plan, EPA may seek additional information and/or misfueling mitigation measures as appropriate in view of the company's circumstances. EPA must approve a company's submission of this MMP before the company may use it to demonstrate its compliance with the partial waiver conditions.

For any company that adopts this plan, the words "plan submitter" herein should be read to refer to the company submitting the plan for its use.

This MMP includes sections addressing the following waiver conditions:

- **Labeling:** Reasonable measures for ensuring that any retail fuel pump dispensers that are dispensing a gasoline produced with greater than 10 volume percent ethanol and no more than 15 volume percent ethanol are clearly labeled for ensuring that consumers do not misfuel the waived gasoline-ethanol blend into vehicles or engines not covered by the waiver. October 2010 Approval, Section XII.4.a; January 2011 Approval, Section VII.4.a.

- **Product Transfer Documentation (PTD):** Reasonable measures for ensuring that product transfer documents accompanying the shipment of a gasoline produced with greater than 10 volume percent ethanol and no more than 15 volume percent ethanol properly document the volume of ethanol. October 2010 Approval, Section XII.4.b; January 2011 Approval, Section VII.4.b.

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- **Survey:** Participation in a survey of compliance at fuel retail dispensing facilities. The survey section of this MMP indicates that the plan submitter commits to participating in a survey that the submitter will separately submit for EPA approval as meeting the specific requirements for a survey plan. The section also describes additional retailer education and outreach efforts to support the survey. October 2010 Approval, Section XII.4.c; January 2011 Approval, Section VII.4.c.

The MMP also describes in a separate section a public education and outreach campaign, which is being undertaken as an additional, voluntary effort to aid a smooth transition to E15 (not formally a part of this MMP under the waiver conditions).

In satisfying the MMP requirements in the October 2010 and January 2011 partial waivers, this MMP utilizes elements of EPA's Misfueling Mitigation Rule. In establishing this Rule, EPA indicated that manufacturers may take account of elements of the regulations in satisfying corresponding MMP elements.

This plan includes the text of relevant provisions from the Misfueling Mitigation Rule published on July 25, 2011, for ease of reference. However, the plan is designed to take account of and help implement those Misfueling Mitigation Rule provisions as they exist when the plan is submitted for EPA approval and implemented. Plan submitters should be aware of any revisions that may have been made to those provisions as they submit and implement the plan.

The Misfueling Mitigation Rule published on July 25, 2011 contains the following definitions that may be relevant to this plan:

40_ CFR § _80.1500_ Definitions.

Blendstock for oxygenate blending means gasoline blendstock which could become gasoline solely upon the addition of an oxygenate.

Conventional blendstock for oxygenate blending means gasoline blendstock which could become conventional gasoline solely upon the addition of an oxygenate.

E0 means a gasoline that contains no ethanol.

E10 means a gasoline-ethanol blend that contains at least 9.0 and no more than 10.0 volume percent ethanol. *E15* means a gasoline-ethanol blend that contains greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol.

EX means a gasoline-ethanol blend that contains less than 9 volume percent ethanol where X equals the maximum volume percent ethanol in the gasoline-ethanol blend.

EXX means a gasoline-ethanol blend above E15 where XX equals the maximum volume percent ethanol in the gasoline-ethanol blend.

Survey series means the four quarterly surveys that comprise a survey program.

For complete Plan, please go to link on page 5 of this publication

Patricia Haberling
VP Customer Development



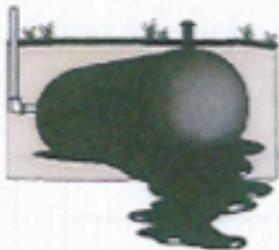
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Abandoned Tank Removal Program

Why should I consider getting my tank removed?



Tanks should be removed for two reasons. First, as tanks corrode, any petroleum that may still be in them will leak into our state's ground water. One gallon of gasoline has the potential to render one million gallons of water undrinkable. Leaks from tanks can also contaminate soil around the tanks and cause unhealthy gasoline vapors to seep into basements of private homes and businesses. Since these tanks are buried under several feet of soil, these problems can go unnoticed for years.

Second, the longer these old tanks remain in the ground, the more corroded they become. As the tanks become more corroded, there is an increased risk of the tank collapsing, and someone, or something, falling into the hole or tank.

What tanks will the state remove?

The state wants to remove every out-of-service underground storage tank that was used to store a petroleum product. Examples of petroleum products are gasoline, diesel, fuel oil, aviation fuel, waste oil, etc. The state will not remove petroleum tanks that may be inaccessible, such as beneath a building. The free tank removals do not apply to tanks that were in service for the sale of petroleum fuels on or after April 1, 1988. Also, non-petroleum tanks such as propane tanks, cisterns, and septic tanks are not eligible under this program.

How are the tanks removed?

All you need to do is give the state permission to dig up your tanks and do any necessary cleanup. After you give your permission, the Department of Environment and Natural Resources (DENR) will hire private contractors to remove any remaining product from the tank, remove the tank, and test the soil. The contractor will also remove piping and contaminated backfill around the tank. The contractor then fills the hole. The state pays for all the costs associated with removing the tanks from your property and any additional cleanup that is needed. However, the state does not pay to have the site resurfaced with new pavement, concrete, gravel, or grass.

What does the program cost me?

The best news associated with this program is that with the exception of resurfacing costs, it is free to the landowner! This is an opportunity that you cannot pass up if you own property with eligible underground storage tanks that are no longer in service.

The program is funded by DENR's Petroleum Release Compensation Fund (PRCF). This is a fund created in part to address environmental problems associated with spills from tanks. The money comes from a tank inspection fee imposed on wholesale distributors of petroleum fuels.

Is there a lien placed on my property by the state?

The answer is NO! When the program was first approved by the 2000 Legislature, the state was required to place a lien on the property for five years. However, a bill was introduced during the 2001 legislative session to eliminate the lien. The bill was approved by the legislature and, because of an emergency clause on the bill, went into effect immediately after it was signed.

How do I give my permission to have my tanks removed?

All you need to do is fill out the Tank Removal Form on the reverse of this sheet and return it to the address at the top of the form.

If I have questions, how can I get more information?

- Visit <http://denr.sd.gov/TankYank>
- Call the Abandoned Tank Removal Program at (605) 773-3296;
- E-mail at DENRINTERNET@state.sd.us; or
- Write to: Abandoned Tank Removal Program, Department of Environment and Natural Resources, 523 E. Capitol Avenue, Pierre, SD 57501



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.....Continued on Page 5

(it's not mandatory, but they have to register with EPA, see [link](#)) and [register with RFGSA](#).

2. How do they get that license?

- See answer to question #1.

3. Does the wholesaler delivering the product that is going to be blended into E15 have to also be a blender?

It's whoever creates the motor fuel. If a supplier is delivering pre-blended E10 or E15 from the terminal and thereby delivering it straight to the retailer, then the wholesaler is not the blender of record. However, if wholesaler is blending the gasoline and ethanol to make E15 at the rack or below the rack and then delivering that directly to a retailer then they must comply with the PTD requirements in the MMP. The wholesaler must also obtain a 637 M License. If the retailer is supplying pre-blended E10 to the retailer and the retailer is then using a blender pump to create E15, then the retailer must adopt a MMP.

4. If the wholesaler splash blends from the rack, do they need to be registered with EPA as a blender?

- No, they don't have to register with the EPA unless they want to take RINs. However, the wholesaler must comply with the PTD language (attached) as well as obtain a 637 M license (IRS). Once it gets to the retailer, the fuel has to be properly labeled. Again, if the retailer is using a blender pump to make an E15 blend, then they must adopt a MMP.

5. Who enforces E15 fuel?

- Ultimately, EPA has authority over E15 registration and IRS over tax owed.

6. How many hoses do I need on a blender pump?

Also, hose configuration. How many hoses if I sell regular unleaded with no ethanol, E10, a blend of at least E15 and E85 through a blender pump?

- See this [link](#), page 45 for more information.

It should be noted that SDL 37-2-34.1 requires blender pumps to have 4 hoses and they must dispense E10, a blend of at least E15 (most sell E20 or E30) and E85. And if you sell regular unleaded, you must use a different hose than you are using to dispensing the flex fuel.



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News from NACS

FDA Releases Proposed Rule on Electronic Cigarettes

Agency exercises its authority under the Tobacco Control Act to regulate e-cigarettes and prevent minors from purchasing the products

WASHINGTON – The U.S. Food and Drug Administration (FDA) has released a proposed rule that would prevent minors from purchasing electronic cigarettes and give the FDA authority over e-cigarettes, cigars, pipe tobacco, nicotine gels, hookah and dissolvables.

However, it could be another year before the restrictions take effect, reports Politico, as the public will have 75 days to comment on the proposal. The news source writes that e-cigarette companies welcome federal regulation and many support bans on sales of their products to minors.

“NuMark supports FDA extending the appropriate regulation over all tobacco products, including those containing tobacco-derived nicotine,” David Sutton, a spokesman for Altria Inc., whose subsidiary NuMark manufactures e-cigarettes, told Politico. “We think that this comprehensive regulatory framework ... can contribute to resolving many of the complex issues” surrounding e-cigarettes.

The FDA proposes including the additional items in several provisions that apply to regulated tobacco products, such as age and identification requirements to restrict sales to youths under 18 and prohibitions on free samples and vending machine sales.

These provisions would go into effect 30 days after the final rule is released.

The proposed rule does not include restrictions on online sales or television advertising. The FDA is also not banning flavoring, as many cigars and e-cigarette products come in flavors such as peach and cherry. Such restrictions would require separate rulemaking.

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) provides FDA with immediate authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco and smokeless tobacco. The Tobacco Control Act also permits FDA to issue regulations deeming other tobacco products that meet the statutory definition of "tobacco product" to also be subject to the Food Drug & Cosmetic Act (FD&C Act). This regulation is necessary to afford FDA the authority to regulate these products, which include hookah, electronic cigarettes, cigars, pipe tobacco, other novel tobacco products and future tobacco products.

An unpublished version of the proposed rule is available on the [Federal Register's website](#) (PDF).

On March 14, [NACS issued a statement of position](#) that encourages stores selling e-cigarettes to adopt, as a best practice, a policy of treating these products as age-restricted, subjecting them to the same age-verification procedures as those applicable to tobacco products.

EPA Administrator Discusses Renewable Fuel Standards

Administrator Gina McCarthy talked about the RFS during the annual meeting of the North American Agricultural Journalists this week.

WASHINGTON – The U.S. Environmental Protection Agency (EPA) defended its Renewable Fuel Standard (RFS) this week at the annual meeting of the North American Agricultural Journalists, Agri-Pulse reports.

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2014 Class Schedule

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 March 4-5 Aberdeen
 May 6-7 Rapid City
 July 8-9 Sioux Falls
 September 22-23 Deadwood
 November 4-5 Mitchell

Bobtail Delivery

Feb. 4-6 Pierre
 April 8-10 Aberdeen
 June 10-12 Rapid City
 August 5-7 Sioux Falls
 October 7-9 Rapid City
 December 2-4 Mitchell

4.1 Distribution Systems

May 20-22 Rapid City
 July 22-24 Mitchell

4.2 Distribution Systems

June 17-19 Rapid City
 August 19-21 Mitchell

Plant Operations

July 29-31 Mitchell

2014 - Locations

March 25 Sioux Falls Ramkota (1 -5 pm)
 March 26 Aberdeen - Dakota Event Center
 March 27 Mobridge Wrangler Inn

June 10 Rapid City Ramkota
 June 11 Mitchell Highlands Conference Center
 June 12 Brookings TBA

All other seminars 8 am to noon.

September 25 Deadwood - The Lodge
 September 26 Pierre Club House Inn

November 18 Rapid City Ramkota
 November 19 Sioux Falls Ramkota

To register: <http://denr.sd.gov/des/gw/tanks/TankOperatorTraining.aspx>

Orange indicates completed training courses.

.....Continued on Page 12

EPA Administrator Gina McCarthy addressed the agency's proposed changes to the RFS, saying that the final regulations would look different than the proposed one.

Currently, the proposal would slash total biofuel blending from 18.15 billion gallons (required for this year under the 2007 law that enacted RFS) to 15.21 billion gallons. The proposal also would lower the corn ethanol mandate from 14.4 billion gallons to just more than 13 billion gallons — under the 13.8 billion mandated for 2013.

The agency has been looking over more than 200,000 comments on the RFS changes, with the EPA estimating a final rule would be released later this spring or early summer. With the RFS dictating that volumes of biofuel blends and ethanol go up annually, "EPA has to make sure it is implementable," said McCarthy. "And that means taking into realities of the fuel market. One of those realities is the fuel blend wall."

Part of the concern has been lower demand for gasoline in the United States. "Gasoline demand had an impact in the

proposal and it will also be reflected in the final rule," she said.

In his remarks before the group, Agriculture Secretary Tom Vilsack added that it's important "for the public to understand that EPA started the RFS with an assumption that gas consumption would continue to increase." When consumption didn't increase as projected, "EPA responded to a changing situation."

NACS believes the RFS cannot be successfully implemented without revisions. NACS also believes that EPA has the authority to address this issue prospectively, beyond an annual basis, and should exercise this authority to set the renewable volume obligations based upon an assessment of the market's ability to produce the fuel and sell the fuel.

If EPA needs further clarification on this waiver authority, NACS believes Congress should act and move narrow legislation that makes clear that EPA has this authority and should use it under specific circumstances. NACS does not support repeal of the RFS and believes efforts to repeal the program will be unsuccessful.

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