

SD OIL & LP GAS CHRONICLE NEWS

June 2017 Newsletter

The official publication
of the South Dakota
Petroleum and
Propane Marketers
Association

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June 2017

Congrats to Jerry and Susan Brick Chairman, National Propane Gas Association



NACS News

Update from Washington, DC

As you may have seen in earlier communications from NACS, the FDA's menu labeling rule has been delayed until May 2018, which is generally good news, and FDA has opened a comment period asking for businesses to suggest how the rule is a problem and how it can be fixed. **FDA announced on June 29, 2017, that it would extend the comment period for the interim final rule an additional 30 days to August 2, 2017, to allow more time for comments to be submitted.**

This is a critical opportunity to get FDA to consider changing the rule – and the more retailers FDA hears from, the better the chances are that the Agency will re-write the rule so it is more workable for businesses like yours.

As we've done on other issues, NACS has a letter template that we'd request you customize (beyond the generic personalization) to your business and detailed instructions on how to submit comments directly. I cannot stress enough how much of an impact customizing this letter, or even better yet writing your own, would have on this effort. When FDA receives multiple identical or near identical letters they often treat those as one comment rather than multiple. If you draft your own unique letter, even if it follows the points made in the template, that will have a greater impact than just using the template alone. If you would like someone at NACS to review your letter before you submit – or even submit for you – we'd be happy to help, please just let us know.

All the information (and the template) can be found here: <http://www.nacsonline.com/advocacy/Issues/Pages/Submit-Comments-MenuLabeling.aspx>

We cannot begin to stress how important it is for you to file comments. As of this morning, our opponents (the health groups and others that support the final rule) have filed a lot more letters than our side has. We need those in our industry like you to submit your concerns into this record! If you already filed comments, please let us know. There can be a delay in posting comments to Regulations.gov relative to when you submit them.

Thank you for your help with this! Please don't hesitate to reach out with questions.

Thank you,
Jon Taets, Director, Government Relations, NACS
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NPGA News

News from Washington, DC

NPGA Aggressively Pursuing Regulatory Rollbacks

OSHA - Crane Rule. NPGA continues to pursue relief from the Crane and Derricks in Construction regulation. During Propane Days, NPGA Members discussed with Members of Congress the costs of the regulation on propane marketers that already utilize CETP training to ensure safe delivery of propane tanks. While OSHA intends to publish a one-year delay of the compliance deadline for third-party certification of crane operators, NPGA is strategizing alternative exceptions that may exclude propane marketers from the third-party component or the rule as a whole. A White Paper that details requirements of the final rule is available through the membership portal of NPGA's website.

FMCSA - Modify the Short-Haul Exemption. NPGA proposed to FMCSA to expand the short-haul operation air-mile radius from 100 to 300 air miles. NPGA utilized cost estimates by FMCSA to calculate the potential savings of expanding the air-mile radius, which could be \$11 million annually. Savings are derived from less time and resources spent completing and maintaining Record of Duty Status reports. The current exemption defines short-hauls as driver operations within a 100 air-mile radius of the normal working location where the driver returns at the end of the workday.

DHS - Revisions to CFATS Software Require Submittal of New Top Screens. DHS began to implement, through an update to the Chemical Security Assessment Tool (CSAT) software, a revised tiering methodology for the Chemical Facility Anti-Terrorism Standards (CFATS) program. Collectively referred to as CSAT 2.0, the revisions change the information requested on Top Screen applications, Security Vulnerability Assessment applications, and Site Security Plan applications. As a result of these modifications, DHS will require any facilities that have previously submitted a Top Screen to submit a new Top Screen once the changes to the Top Screen, SVA and SSP applications have been implemented. Note that the requirement to submit a Top Screen will apply to those facilities that have previously been determined to be high risk as well as those determined not to be high risk. DHS will individually notify all chemical facilities of interest directly as to when the new Top Screens should be submitted using the revised CSAT Top Screen application.

PHMSA - Cylinder Requalification Rulemaking (HM-233F). NPGA secured an Enforcement Notice from the Pipeline and Hazardous Materials Safety Administration (PHMSA) that the agency will not take

continued on page 6

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enforcement action against the requalification of DOT-specification cylinders by volumetric testing according to a 12-year period, as previously authorized in 49 CFR 180.209(e). PHMSA will allow either a 12 or 10 year requalification period for volumetric expansion testing while the agency reviews NPGA's Petition to return the cylinder requalification period to 12 years. A copy of the Enforcement Notification is available through the membership portal of the [NPGA website](#) .

Jerry Brick Assumes Chairmanship; Denis Gagne Joins NPGA Officers

Jerry Brick, Propane Operations Manager of North Star Energy LLC in Aberdeen, South Dakota, assumed the role of Chairman of the National Propane Gas Association during the annual meeting of the NPGA Board of Directors on Monday, June 19, 2017. He brings a wealth of knowledge and experience to the role with more than 40 years of service in the industry. Jerry has served in numerous capacities on the NPGA Board of Directors including the South Dakota State Director, Executive Committee, and all officer positions. During his time as Chairman, he plans to focus on continuing unity and integration between NPGA, PERC, and the state associations and promoting propane as a clean, safe energy source. Jerry is looking forward to meeting with industry members during his travels to state association meetings.

The officer slate for 2017-2018 was also confirmed at the Board of Directors meeting. Chris Earhart, President of Dixie Gas & Oil in Verona, Virginia will serve as Chairman Elect, Randy Thompson, President and CEO of Thompson Gas, LCC, will serve as Vice Chairman, and Denis Gagne, Vice President Wholesale at Eastern Propane Gas, Inc. will serve as Treasurer.



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HR QUESTION ? of the month



Exempt employee on intermittent leave – pay hourly?

Question: We have an employee who is out on FMLA leave and now has been cleared to come back to work on an intermittent basis. Due to his serious health condition, he will be placed on intermittent FMLA leave. The employee was a salaried manager and now will only be able to work around 20 hours per week. Do we still need to pay him his entire salary or can we break that salary down into an hourly rate?

Response: When leave is taken intermittently (or on a reduced schedule basis) under the federal Family and Medical Leave Act (FMLA), the employer can, in fact, prorate an exempt employee's salary commensurate with the time worked. This is one of only a few very limited cases where an exempt employee's compensation can be prorated based on hours worked without destroying the salary basis of pay that is otherwise required for exemption classification. The other two scenarios where this is allowed is during the first and last weeks of employment. See the paragraph titled "Circumstances in Which the Employer May Make Deductions from Pay" at www.dol.gov/whd/overtime/fs17g_salary.htm

The FMLA Regulations address this directly at §825.206(a) which provide as follows: "If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) as a salaried executive, administrative, professional, or computer employee ..., providing unpaid FMLA-qualifying leave to such an employee will not cause the employee to lose the FLSA exemption. ... This means that under regulations currently in effect, where an employee meets the specified duties test, is paid on a salary basis, and is paid a salary of at least the amount specified in the regulations, the employer may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee...." See http://www.ecfr.gov/cgi-bin/text-idx?%20c=ecfr;sid=f60cac82476ea25c3294f2114da66cc6;rgn=div5;view=text;node=29%3A3.1.1.3.54;idn_o=29;cc=ecfr#se29.3.825_1206 for the full text of the Regulation.

We invite you to also review the Employer Guide to the FMLA which provides more plainly on page 58 that "[t]he employer may make deductions from the employee's salary for any hours taken as intermittent or reduced schedule FMLA leave within a workweek without affecting the exempt status of the employee." See <https://www.dol.gov/whd/fmla/employerguide.pdf>

Want to learn more about how to handle issues like this? [Click Here](#) to listen to our podcast about exempt employees compensation and FMLA.

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Getting Ready for the New EPA UST Regulations

By Brian Pottebaum, Director of Training Services, R&A Risk Professionals

The U.S. Environmental Protection Agency (EPA) has been working to strengthen the existing 1988 Federal UST Regulations for several years now. They have previously proposed the revisions to the existing regulations; however the changes have yet to be completely implemented in certain states, including the state of South Dakota.

The EPA implementation time frames require certain states and territories to be compliant with the new regulations no later than October 13, 2018. However, South Dakota has an approved state regulatory program through the Department of Environment & Natural Resources (DENR), therefore they have the authority to decide how and when they want to implement these new revisions, as long as the plan is approved by EPA and implemented no later than October 13, 2018. This means the revisions go into effect on that date chosen by DENR and then the operator has an additional 3 years to comply, which could put South Dakota into year 2021 for statewide operator compliance. This deadline only applies to the facilities regulated by the DENR, so all regulated facilities within South Dakota Indian Country are already in the 3 year process and must be fully compliant with the new rules by October 13, 2018.

EPA's proposal revises the UST technical regulation in 40 CFR part 280 by:

- Adding secondary containment requirements for new and replaced tanks and piping
- Adding operator training requirements for UST system owners and operators
- Adding periodic operation and maintenance requirements for UST systems
- Added requirements to ensure UST system compatibility before storing certain biofuel blends
- Removing certain deferrals (specifically for emergency generator tanks)
- Adding new release prevention and detection technologies
- Updating codes of practice
- Making editorial and technical corrections

Public comment period and stakeholder meetings are believed to begin later this year to determine how the department will move forward with these proposed revisions. Once approved, these revisions will be reflected within the South Dakota Administrative Rule 74:56 Storage Tanks and Remediation.

You may recognize that some of these regulations are already in place in South Dakota; this should help ease the transition if and when the rest of the revisions become effective. The operators in South Dakota have done an excellent job of making sure individuals are trained as Class A/B/C Operators. They have also done a great job of applying the secondary containment requirements with new installations and upgrades as part of the EPA Energy Policy Act that became effective January 1, 2009.

The proposed revision that will now have the most impact on the owners and operators in South Dakota will be "periodic operation and maintenance requirements for UST systems". This article will now focus on that new proposed regulation.



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NEW OPERATION & MAINTENANCE REGULATIONS

Walkthrough Inspections - [Proposed] owners and operators conduct monthly and annual walkthrough inspections which look at the following system components: spill prevention equipment; sumps and dispenser cabinets; monitoring/observation wells; cathodic protection equipment; and release detection equipment.

..... continued from page 9

This regulation will require a trained and knowledgeable individual to inspect and record their findings. Obviously if a deficiency is observed, the owner and/or operator will have to respond appropriately. Having access to all of these areas on a monthly basis could prove costly and dangerous in some situations. Some form of report will be required to document your compliance. Stay tuned for the DENR's interpretation and enforcement of this regulation.

Spill Prevention Equipment - [Proposed] in addition to the monthly checks as part of the walkthrough inspections, owners and operators must test basins every three years for liquid tightness or use a double-walled spill basin with continuous interstitial monitoring.

This requirement will likely involve a certified tester and specific protocol. Spill containment has long been a concern for regulators. It is designed to catch any spilled product during the delivery of fuel into the UST. Needless to say, this cannot be accomplished if the containment is either already filled with liquid or is impaired, therefore unable to capture and hold the spilled product. Routine inspections and maintenance are critical. Keeping a log of these inspections will also be required to document your compliance.

Overfill Prevention Equipment - [Proposed] owners and operators test device every three years to ensure equipment is set to activate at the appropriate level in the tank and will activate when regulated substances reach that height.

This requirement will also likely involve a certified tester and specific protocol. Failed overfill prevention equipment has been linked to several petroleum releases in recent years, so this requirement is being looked at very closely. Keeping records of these tests will also be required.

Secondary Containment Areas - [Proposed] in addition to the annual checks as part of the walkthrough inspections, owners and operators must test secondary containment every three years to ensure integrity or use specific continuous monitoring methods.

Like the spill basin testing, this requirement will also likely involve a certified tester and specific protocol. Failed secondary containment equipment has also been linked to several petroleum releases in recent years. Keeping records of these tests will be required as well.

Release Detection Equipment (including LLDs) - [Proposed] owners and operators test specific components annually to ensure equipment is operating properly.

Release detection equipment is already required under the current regulations, but functionality testing is left up to the manufacturer instructions. Again, several petroleum releases have been tied to improperly installed and/or malfunctioning equipment. Testing release detection equipment will ensure the equipment is operating properly and will detect a release quickly. The sooner you identify a leak, the better chance you have to reduce the severity of the damages.

Look for these changes to be coming in the near future. The sooner you prepare for them, the easier the transition will be for you. For more information on the proposed EPA revisions visit <https://www.epa.gov/ust/revising-underground-storage-tank-regulations-revisions-existing-requirements-and-new> .



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SDP2MA Helps Sponsor Freedom Celebration Again in 2017

In 2016, the South Dakota Petroleum and Propane Marketers Association was a sponsor for the Sturgis Buffalo Chip Freedom Celebration. I am pleased to announce that SDP2MA will once again help sponsor this important event, which honors our American Military heroes.

Again this year, Dick Vliem, SDP2MA Vice President, Lodgepole Store, Propane & Well Service LLC, Dave Kulish, SDP2MA Director, MG Oil Company, and Dawna Leitzke, Executive Director of SDP2MA will be riding on behalf of the association. Leitzke will also address the participants on behalf of the association.

We encourage any member to join us! Simply open the link and register yourself today.

<http://www.buffalochip.com/EVENTS/Military-Tributes/Freedom-Celebration>

This link also has a lot of information on the honorees, activities, and details of the day.

This below link introduces the 2017 Honorees.

<http://www.buffalochip.com/EVENTS/Military-Tributes/Bob-Hanson-Distinguished-Service-Award>

We hope to see you at this event on August 10, 2017!

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Trump Administration Has Moved to Redefine Protected Waters

June 28, 2017

WASHINGTON – Yesterday, the Trump administration's Environment Protection Agency (EPA) announced a [proposed rule](#) that would overthrow the 2015 Waters of the United States (WOTUS) regulation from the Obama administration.

The Obama administration's [WOTUS regulations](#), which went into effect in August 2015 but were later blocked by the Sixth Circuit Court, vastly expanded which waters are considered protected under the Clean Water Act.

The Obama-era regulations were met with opposition from the business and agriculture industries who felt that the regulations went too far and would drastically increase cost of permitting and compliance. For instance, any convenience store near or touching a protected water would face additional permitting and Clean Water Act requirements.

Opponents of the rule filed more than a dozen lawsuits challenging the rule in district courts and more than 20 petitions for review of the rule in federal appeals courts. Last February, the U.S. Court of Appeals for the Sixth Circuit decided that appeals courts had jurisdiction on matters related to the Clean Water Act and placed a nationwide stay on the rule. In January, the Supreme Court decided to hear the case, which does not examine whether the rule itself is lawful but the narrower legal question of where legal challenges to the WOTUS rule should be heard (i.e. in federal district or appellate courts).

In the coming days, EPA will formally publish a proposed rule that will rescind the current rule and replace it with previous language defining what constitutes "waters of the United States." This action has been expected since Trump signed an executive order in February requesting that the EPA and Army Corps of Engineers review the regulation. Subsequently, the EPA will initiate a notice-and-comment rulemaking to re-evaluate the WOTUS definition.

On the agency's decision, EPA Administrator Scott Pruitt stated, "We are taking significant action to return power to the states and provide regulatory certainty to our nation's farmers and businesses. This is the first step in the two-step process to redefine 'waters of the U.S.' and we are committed to moving through this re-evaluation to quickly provide regulatory certainty, in a way that is thoughtful, transparent and collaborative with other agencies and the public."

Please stay tuned to the *NACS Daily* for further updates.

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ADAM FARNER - Benchmarking Council Scholarship



Adam Farnar is from Winner, South Dakota. He is currently attending Lake Area Technical Institute for Aviation Maintenance Technology. In the recent years he developed a passion for the Aviation Industry which eventually allowed him to obtain a Commercial Pilot's Certificate. In his spare time, he enjoys hunting, fishing, flying, and being outdoors. After graduation Adam plans on being an Aerial Applicator and a Mechanic for General Aviation. He is very thankful for this scholarship that will help him further his education. Adam's Mother Kathy Farnar is the Payroll Clerk for Country Pride Cooperative.

ADAM NELSON - Trinity Containers Scholarship

Adam Nelson recently graduated as valedictorian of Hot Springs High School. He has lived in Hot Springs, South Dakota for his entire life. Next fall Adam will be attending the University of Colorado Boulder and majoring in applied mathematics and physics. He enjoys long distance running and biking, as well as camping, hiking, reading, and learning new things. Adam works at Wind Cave National Park in South Dakota and would like to work at other national parks in the future. His father, Richard Nelson, is an owner of Nelson's Oil & Gas, Inc. in Hot Springs, SD.



ALICIA PEEL - Sam and Ann McTier Scholarship



Alicia Peel is a recent graduate of Douglas High School in Box Elder, SD. This avid volunteer has been an active member in National Honor Society, Youth to Youth, Drama Club, Girl Scouts and Job's Daughters for the past several years, holding a variety of positions in each organization and club. She loves helping others and, like many individuals, hopes to one day change the world. Alicia is honored to have received the Sam and Ann McTier Scholarship as it will assist her in pursuing a degree in Chemical Engineering from South Dakota School of Mines and Technology this fall. Her father, Shawn Peel, is a Service Technician for AmeriGas Propane LP in Rapid City, SD.

BETHANY HALL - Maurice Deal Memorial Scholarship

Bethany is studying Cosmetology at the Tennessee School of Beauty; she is a senior at East Tennessee State University where she is finishing her degree in Psychology and Business. Hailing from Knoxville, Tennessee, Bethany considers this award an incredible blessing and plans to use it to complete her cosmetology certification in the pursuit of what she loves. She works a part-time job and enjoys photography. Bethany plans to keep her abilities current and modern as she continues her education as a cosmetologist. She hopes to have a very successful career and to always be of service of those in need. Her father, Dana Hall, is a Regional Sales Manager for TEECO Products Inc. in Rapid City, SD.



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2017 Training Programs

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| February 7-9 | 2.2/2.4 Propane Delivery | Pierre |
| March 7-8 | Basic Principles and Practices | Sioux Falls |
| April 4-6 | 2.2/2.4 Propane Delivery | Sioux Falls |
| May 2-3 | Basic Principles and Practices | Rapid City |
| June 6-8 | 2.2/2.4 Propane Delivery | Rapid City |
| July 11-12 | Basic Principles and Practices | Aberdeen |
| July 18-20 | 3.0 Basic Plant Operations | Mitchell |
| August 1-3 | 2.2/2.4 Propane Delivery | Aberdeen |
| August 8-10 | 4.1 Distribution Systems | Mitchell |
| August 29-30 | 4.2 Distribution Systems | Mitchell |
| September 25-26 | Basic Principles and Practices | Deadwood |
| October 10-12 | 2.2/2.4 Propane Delivery | Rapid City |
| November 1-2 | Basic Principles and Practices | Mitchell |
| December 5-7 | 2.2/2.4 Propane Delivery | Mitchell |



2017 UST Owner/Operator Training

| | |
|-----------------|-------------------------------|
| March 21 | Yankton Kelly Inn |
| March 22 | Sioux Falls Ramkota |
| March 23 | Rapid City Ramkota |
| May 3 | Rapid City Ramkota |
| May 4 | Pierre – Location TBA |
| Sept 5 | Sioux Falls Ramkota |
| Sept 6 | Watertown Event Center |
| Sept 7 | Aberdeen Ramkota |
| Nov 1 | Rapid City Ramkota |
| Nov 2 | Sioux Falls Ramkota |

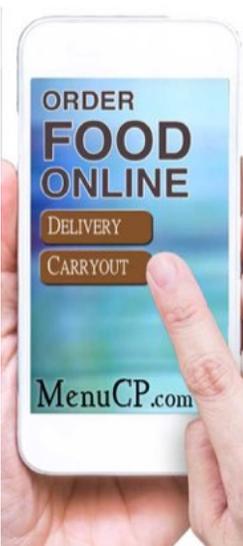
March 21 & Sept 5 classes: 1 - 5 pm.
 Remaining Classes 8 am to 12 noon.

Please go to the sdp2ma.com website. Class schedule will be posted under Education and Training.

Or visit SD DENR website:
 To register: <http://denr.sd.gov/des/gw/tanks/TankOperatorTraining.aspx>



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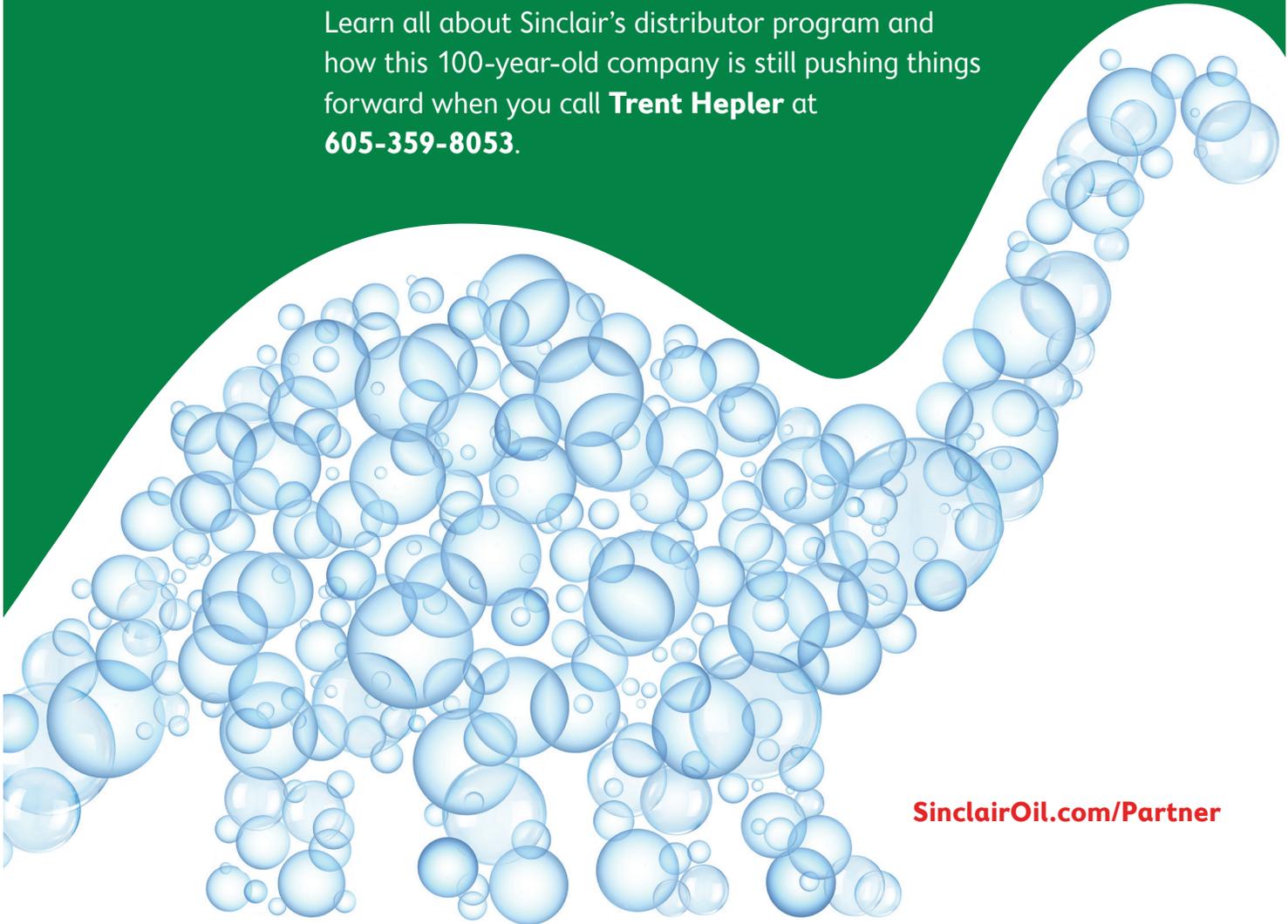


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