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US Government Issues Final, More Stringent Ozone Rule

WASHINGTON – Yesterday, the U.S. Environmental Protection Agency (EPA) formally published in the Federal Register its final rule to implement more [stringent air quality standards](#) for ground-level ozone. The updated standard will be effective on December 28, 2015.

Under the final rule, which had been released in early October in pre-publication form, the ozone National Ambient Air Quality Standards (NAAQS) will be lowered to 70 parts per billion (ppb), down from the current standard of 75 ppb. With the lower standard, more areas of the country will likely be designated as “nonattainment” areas, triggering federal and state regulations that could have a negative effect on the retail motor fuels market.

Ground-level ozone, often referred to as smog, is regulated by the EPA under the Clean Air Act (CAA). To protect public health and welfare, the CAA requires the EPA to periodically review and establish NAAQS for six air pollutants, including ground-level ozone. The previous ozone NAAQS was established in 2008 and was set at 75 ppb.

Last December, the EPA proposed to lower the standard to a range between 65 and 70 ppb. The agency also solicited comments on setting the standard as low as 60 ppb. NACS submitted comments to the EPA earlier this year highlighting the potential negative consequences that would result from a more stringent ozone NAAQS.

..... *continued on page 4*

PMAA News

Update from Washington, DC

House Transportation Committee Approves Highway Bill

On October 22, the House Transportation and Infrastructure Committee unanimously passed a six-year, \$325 billion "Surface Transportation Reauthorization and Reform Act of 2015." Language of particular importance for marketers is outlined below.

Withdraws PHMSA's Wetlines Proposed Mandate for Good

On January 27, 2011, the Pipeline and Hazardous Materials Safety Administration (PHMSA), issued a proposed rule regarding the transportation of gasoline in the external product piping (wetlines) on cargo tanks transporting flammable liquids. The proposed rule limited the amount of gasoline in each wetline to one liter. Transports usually have four wetlines – one per compartment. The proposed rule gave tank truck operators 12 years to retrofit existing tanks with bottom protection like steel rails or install purging equipment, and any trailer manufactured two years after the date of regulation would have to be equipped with in line purging devices or steel guard rails to shield the wet lines from impact.

PMAA led efforts to oppose the proposed rule and we are pleased the bill withdraws the 2011 wetlines proposed mandate. In the 2012 Highway Bill, PMAA saved marketers \$8,000 per transport by asking Congress to include a provision which prevented DOT from arbitrarily adopting a wetlines mandate until a Government Accountability Office (GAO) report was completed. In September 2013, the GAO cited that DOT did not have adequate information to determine whether a

wetlines device mandate was necessary to improve safety. To see PMAA's letter of support, click [here](#).

Safety Data Postings/FMCSA's Compliance, Safety, Accountability Program (CSA)

In a significant step forward for petroleum marketers, the committee approved language that requires DOT to commission a study on the accuracy of the CSA program and take steps to address problems in identifying risk and the use of crash data where a motor carrier was free from fault. Until the study and corrections are complete FMSCA would have to take down its safety scores for trucks and motor carriers. Similar language is included in the Senate highway bill.

Earlier this year, the Government Accountability Office (GAO) issued a critical report on the quality of the safety data used by the DOT to determine motor carrier safety. The GAO found that the safety data collected is not a reliable predictor of motor carrier safety. The CSA program uses data from enforcement activity, roadside inspections and accidents involving commercial motor carrier safety. The CSA program uses data from enforcement activity, roadside inspections and accidents involving commercial motor vehicles to set individual

..... [continued on page 3](#)



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motor carrier safety scores, which in turn are used to establish a predictive crash risk. Motor carriers with a predictive crash risk over a certain threshold are targeted for FMCSA intervention. Intervention begins with an initial warning letter followed by closer FMCSA oversight including targeted roadside enforcement and investigative safety audits. Carriers with the poorest safety ratings can be ordered out of service by FMCSA. The GAO report criticized the CSA data saying that of the 800 violations included in the motor carrier risk model, only two - speeding and failure to wear a seat belt, were reliable predictors of crashes. In addition, the CSA model was criticized for not including a sufficient amount of data on all carriers to establish a baseline risk for crashes. As a result, many motor carriers with no history of crashes have received a high predictive crash rate.

Financial Insurance Minimums

The bill requires the Federal Motor Carrier Safety Administration (FMCSA) to conduct a comprehensive study of passenger carrier industries' accident and claims histories before being permitted to proceed to radically increase minimum insurance rates. Click [here](#) to read PMAA's letter of support.

Gas Tax Alternative for States

Because Congress lacks the votes to pass a gas tax increase, the bill grants \$115 million towards a six year program that would allow states to demonstrate alternative methods to raise revenue for highways through a user fee. The grants will promote the safety and efficiency of commercial motor vehicle transportation including the safety of drivers and passengers, and the safe transportation of hazardous materials.

EV Charging Amendment Withdrawn

During the House Transportation Committee markup, Reps. Napolitano (D-

CA) and Jerry Nadler (D-NY), offered an amendment that would allow sales of EV charging stations and natural gas refueling infrastructure at highway rest areas. The amendment was ultimately withdrawn, but it could still be considered on the House floor. PMAA opposed the amendment and joined other associations in a letter expressing our concerns. Click [here](#) to read the letter.

Outlook on Highway Bill

Until the GOP elects a new Speaker and Congress finds a way to fund a highway bill, it will remain in limbo. The Senate's six year bill only guarantees enough funding for three years although it authorizes policy for six years. Congress will likely pass a short term policy extension to give them more time to finish a highway bill. Transportation policy expires in seven days. Meanwhile, Senate Environment and Public Works Committee Chairman Jim Inhofe (R-OK) has indicated that Congress will likely pass a six year bill with three years of guaranteed funding before the Thanksgiving holiday.



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Specifically, NACS stated that a more stringent ozone NAAQS could result in states adopting increased regulations on the retail motor fuels industry, including: the introduction of reformulated gasoline (RFG) in what are now conventional gasoline areas; more states and/or localities imposing lower Reid Vapor Pressure (RVP) requirements; and certain states retaining costly and unnecessary “Stage II” vapor recovery requirements. The combination of these actions could result in a more balkanized fuels market and higher retail fuel prices for consumers.

By October 2017, the EPA expects to designate areas of the country as either meeting or not meeting the new standard, referred to as “attainment” or “nonattainment” designations, respectively. For those parts of the country in “nonattainment” areas, states will be required to develop State Implementation Plans (SIPs) to demonstrate the regulatory steps it will take to attain the updated ozone standard. Through these SIPs, states may choose to implement new regulatory requirements on the retail motor fuels market, as described in NACS’ comments to the EPA. After the EPA’s designations, nonattainment areas will have between three and 20 years to reach attainment, depending on the severity of the nonattainment designation.

The final rule has faced significant controversy in Congress and among business and environmental groups. Business and industry groups have stated that the new standard is likely to cause substantial harm to the economy while environmental and health groups argue the final rule does not go far enough to cut down on the prevalence of ground-level ozone. While Republicans in Congress may seek to block or overturn the rule, such efforts would likely face a veto from the White House.

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NPGA News from Washington, DC

FMCSA Grants Encourage Commercial Driver Training for Veterans

The Federal Motor Carrier Safety Administration (FMCSA) announced nearly \$2.3 million in grants to enable schools to train more military veterans as commercial drivers. Funds for the Commercial Motor Vehicle - Operator Safety Training (CMV-OST) program were nearly doubled as part of the agency's efforts to encourage more individuals, especially veterans, to enter the commercial driving workforce. Awards were made to the commercial driving programs at 13 technical and community colleges in California, Georgia, Maryland, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia. The colleges utilize the grants to start or expand commercial driver training programs and increase scholarship opportunities. More information about the grants, including the list of awarded colleges, is available [here](#), and information about the CMV-OST grant program and application criteria is available [here](#).

Coupled with the agency's Military Skills Test Waiver Program, the grants can expedite driver training for veterans. The program allows all states to waive the skills component of the Commercial Driver License application for active or recent veterans with two years' experience operating military vehicles. Information about the Military Skills Test Waiver Program is available [here](#).



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The applications must be completed and all required documents must be received by February 15, 2016. Successful applicants will be notified by May 2016.

Brochures are also available for sharing. If you have questions about the scholarship program or wish to have publication information sent to you please contact Scholarship Foundation Manager, Joanne Casey, at 202-355-1328 or email her at jcasey@npga.org.

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October 28, 2015

Dear Fuel Provider,

As you will be delivering fuel oil and bulk fuels to South Dakota customers this fall, we applaud your efforts and support your valuable service. To that end, we offer the information below as guidance to be used in the unfortunate event that a fuel oil spill occurs during the delivery process.

Fuel Oil Spills (less than 25 gallons)

- Immediately contain the spilled product to the immediate area.
- Promptly: recover the contained product; excavate visibly impacted soils; recover impacted absorbent materials; and clean hard surfaces.
- Pay special attention to any spill that occurs along a foundation or in a home. Fuel is absorbed by concrete, wood, carpet, etc. and often causes long-term odor issues.
- Drum the recovered substances for appropriate disposal at the nearest permitted municipal landfill facility.

(Helpful Hint - Each truck should have a spill kit that includes a large bucket or small drum, shovel, and absorbent materials.)

Fuel Odors in a Building

- Notify a member of the DENR Spills Team at 605.773.3296
- Investigate for impacted substances and fuel penetration through structural components (window frames, walls, floors).
- Recover impacted substances, replace or otherwise seal structural components to prevent penetration and vapor production.
- Install fans, dehumidifier and take measures to vent odor from the structure.
- Continue air movement and dehumidification until odor has dissipated to property owner's satisfaction.

(Helpful Hint – Petroleum impacted material will continue to emit odors until it is removed. A KILZ type primer product often provides good sealant results if applied after area is cleaned.)

All Fuel Oil Spills (25 gallons or greater)

- Contact DENR's Spills Team at 605.773.3296
- See above sections depending on the impact.
- If the release impacts a residence or business, retain the services of an environmental consultant to verify cleanup with confirmatory sampling.

(Helpful Hints - American Engineering Testing Inc.; GeoTek Engineering & Testing Services; Leggette, Brashears & Graham Inc.; Terracon; and West Central Environmental Consultants all provide environmental consulting services in the South Dakota area).

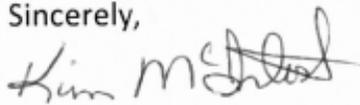
Fuel Oil Spills Impacting Residents (Sensitive Property Owners)

- See above sections.
- Carpets and draperies may need to be professionally cleaned.
- Direct an environmental consultant to perform air sample collection and analysis.
- Direct the consultant to provide the sample analytical results to this office.

(Helpful Hint - Sensitive Property Owners are best served by the excellent customer service of their fuel provider.)

It is our hope that the guidance above will address the majority of your spill events. Please feel free to provide a copy of this guidance letter to each of your delivery drivers. If you have any questions, please call the DENR Spills Team at 605.773.3296. We would be happy to talk you about South Dakota's spill response and reporting requirements.

Sincerely,



Kim McIntosh
Environmental Scientist Manager

Department of Environment and Natural Resources
 DENR Spills Team
 Kim McIntosh/Rick Lancaster/Kelsey Newling/Trish Kindt
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HR QUESTION ? of the month



Preparing documentation for a termination?

Question: One of my staff went almost 7 whole days without clocking in or out on our web-based time card system. She said it was her computer but it mysteriously started working the day after my accounting person pointed it out to her. We've been unhappy with her work performance and reliability (late almost every day). I want to start documenting for when we do let her go so there is no recourse for her to file. Her supervisor wants to try to avoid paying unemployment, if that is even possible. I have one item in her file already from last October that we had her sign regarding her tardiness. Do you have advice on what I should do to document to her file? She is not in any of the protected classes as far as I am aware. Does she have to sign the warning for it to be official or can I just tell her I put a note her in file?

Answer: We are delighted to offer general guidance in terms of how the employer should go about documenting an employee's performance and/or conduct issues. Generally, when documenting disciplinary action, the employer should (a) identify the performance or conduct that is unsatisfactory or deficient; (b) notify the employee of what needs to improve (and if there is a timetable, what that is -- although the employer should avoid any language that is or could be construed as contractual); and (c) what the consequences will be if the employee does not make and sustain the requisite improvement needed. Ultimately, a write-up or written warning should make clear that although it is intended to bring about necessary improvement so that the employee can remain a productive member of the organization, it should not deteriorate the at-will nature of the employment relationship (assuming it is already at-will and that there is not any other progressive disciplinary policy governing the situation), and that the employer can still terminate employment at-will (just as the employee can quit at-will, too).

The important thing to keep in mind is that when disciplinary action is issued, whether it is verbal or written, it should be clear and consistent with how the employer has addressed performance deficiencies or conduct issues in the past in similar situations, to avoid discrimination claims. The employee can and should be asked to sign written disciplinary documents and can receive a copy of it, with the original being placed in his or her personnel file. Employees who refuse to sign it can be disciplined or discharged if that is consistent with policy/practice; either way the employer can note "refused to sign" on the form or document if that is the case.

When it comes to eligibility for unemployment compensation benefits, generally, employees who are terminated for performance issues or simple policy violations may be awarded benefits. Determinations for an award of benefits, however, are made on a case-by-case basis by the hearing court officer.

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News from NACS

Washington DC Update

NACS Praises Menu-Labeling Legislation

WASHINGTON – The National Association of Convenience Stores (NACS) hailed legislation introduced today in the U.S. Senate, the Common Sense Nutrition Disclosure Act (S. 2217), as a thoughtful approach to providing the necessary flexibility and understanding of convenience store foodservice operations.

A provision included in the Patient Protection and Affordable Care Act, signed into law in March 2010, calls for a national, uniform nutrition-disclosure standard for foodservice establishments. Regulations implementing this provision, finalized by the U.S. Food and Drug Administration in November 2014, create rigid requirements that pose an unreasonable burden on convenience stores. The FDA's rules, set to take effect on December 1, 2016, do not recognize how convenience stores, grocery stores, delivery operations and other approaches to foodservice are different than restaurants. Further, the intent of law was designed for big chain restaurants with simple, standardized menus at all locations and Congress's intent was to ensure those menus provide clear, understandable nutrition information.

The bipartisan legislation introduced today by U.S. Senators Roy Blunt (R-MO) and Angus King (I-ME) codifies a less burdensome approach to menu labeling. For those convenience stores that would be covered by

federal menu-labeling requirements, the Common Sense Nutrition Disclosure Act provides more flexibility with compliance. The legislation also removes the potential for criminal penalties if a store or restaurant gives some customers larger servings than they expected. The Senate bill maintains but modifies FDA's menu-labeling regulations to provide nutritional information to customers in a more practical format, and to protect small businesses from overly burdensome costs and penalties.

“Convenience stores and their foodservice offerings vary greatly—even those that are part of the same chain—based largely on their location and customer base. S. 2217 provides retailers with the flexibility they need to communicate calorie nutrition information, and provides needed protections from unnecessary potential felony penalties on retail employees,” said Lyle Beckwith, senior vice president of government relations at NACS. “This legislation would also allow FDA to meet the objectives of the menu-labeling law without unnecessarily burdening retailers and confusing customers.”

NACS has been actively engaged with the FDA during the regulatory process, ensuring that the agency understands the convenience store industry's unique perspective on federal nutrition disclosure obligations.



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Bruce Alt
Marketing Representative

Reminder: Hazardous Communications Standard Deadline - December 1, 2015

In July 2015 (page 13), I published an article on “Proper Placarding for Split Loads of Gasoline and Diesel Fuel or Heating Oil”. This document addresses proper shipping names. This is part of the hazardous communications standards - GHS. The initial implementation of this standard was December 1, 2013. The next phase of implementation is December 1, 2015. On pages 11-14 is an overview of the regulation. At the bottom of the article are several additional sources of information.

FactSheet

Employers that have hazardous chemicals in their workplaces are required by OSHA’s Hazard Communication Standard (HCS), 29 CFR 1910.1200, to implement a hazard communication program. The program must include labels on containers of hazardous chemicals, safety data sheets (SDSs) for hazardous chemicals, and training for workers. Each employer must also describe in a written program how it will meet the requirements of the HCS in each of these areas.

Employers can implement an effective hazard communication program by following these six steps:

Step 1. Learn the Standard/Identify Responsible Staff

- Obtain a copy of OSHA’s Hazard Communication Standard.
- Become familiar with its provisions.
- Make sure that someone has primary responsibility for coordinating implementation.
- Identify staff for particular activities (e.g., training).

You may obtain a copy of the Hazard Communication Standard on OSHA’s hazard communication webpage at www.osha.gov/dsg/hazcom. The

provisions of the standard that apply to employers using chemicals in their workplaces are found primarily in paragraphs (e) written hazard communication program; (f) labels and other forms of warning; (g) safety data sheets; and (h) employee information and training. It is important that you become familiar with these provisions to determine what is needed for compliance in your workplace.

In order to ensure that you have an effective hazard communication program, and address all of the necessary components, responsibility for implementation of hazard communication should be assigned to someone to coordinate. The person designated for overall program coordination should then identify staff to be responsible for particular activities, such as training.



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Step 2. Prepare and Implement a Written Hazard Communication Program

- Prepare a written plan to indicate how hazard communication will be addressed in your facility.
- Prepare a list or inventory of all hazardous chemicals in the workplace.

Paragraph (e) of the standard requires employers to prepare and implement a written hazard communication program. This requirement is to help ensure that compliance with the standard is done in a systematic way, and that all elements are coordinated. The written program must indicate how you will address the requirements of paragraphs (f) labels and other forms of warning; (g) safety data sheets; and (h) employee information and training, in your workplace.

The written program also requires employers to maintain a list of the hazardous chemicals known to be present in the workplace. Using the product identifier (e.g., product name, common name, or chemical name) to prepare the list will make it easier for you to track the status of SDSs and labels of a particular hazardous chemical. Remember, the product identifier must be the same name that appears on the label and SDS of the hazardous chemical.

Step 3. Ensure Containers are Labeled

- Keep labels on shipped containers.
- Label workplace containers where required.

Chemical manufacturers and importers are required to provide labels on shipped containers with the following information: product identifier, signal word, pictograms, hazard statements, precautionary statements, and the name, address and phone number of the responsible party. Therefore, when an employer receives a hazardous chemical from a supplier, all of this information will be located together on the label; however, additional information may also appear.

As the employer, you are required to ensure that containers in the workplace are labeled. You may use the same label from the supplier or you may label workplace containers with alternatives, such as third party systems (e.g., National Fire Protection Association (NFPA) or Hazardous Materials Identification System (HMIS)) in addition to the other required information. Any container of hazardous chemicals in the workplace must at a minimum include the product identifier and general information concerning the hazards of the chemical. Whatever method you choose, your workers need to have access to the complete hazard information.

Step 4. Maintain Safety Data Sheets (SDSs)

- Maintain safety data sheets for each hazardous chemical in the workplace.
- Ensure that safety data sheets are readily accessible to employees.

Safety data sheets are the source of detailed information on a particular hazardous chemical. Employers must maintain copies of SDSs for all hazardous chemicals present in their workplaces. If you do not receive an SDS from your supplier automatically, you must request one. You also must ensure that SDSs are readily accessible to workers when they are in their work areas during their work shifts.



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This accessibility may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some employers keep the SDSs in a binder in a central location (e.g., outside of the safety office, in the pick-up truck on a construction site). Others, particularly in workplaces with large numbers of chemicals, provide access electronically. However, if SDSs are supplied electronically, there must be an adequate back-up system in place in the event of a power outage, equipment failure, or other emergency involving the primary electronic system. In addition, the employer must ensure that workers are trained on how to use the system to access SDSs and are able to obtain hard copies of the SDSs. In the event of a medical emergency, hard copy SDSs must be immediately available to medical personnel.

Step 5. Inform and Train Employees

- Train employees on the hazardous chemicals in their work area before initial assignment, and when new hazards are introduced.
- Include the requirements of the standard, hazards of chemicals, appropriate protective measures, and where and how to obtain additional information.

Paragraph (h) of the HCS requires that employers train employees on the hazardous chemicals in their work area before their initial assignment and when new hazards are introduced into the work area, and this training must be conducted in a manner and language that employees can understand. Workers must understand they are exposed to hazardous chemicals. They must know that labels and safety data sheets can provide them with information on the hazards of a chemical, and these items should be consulted when needed. In addition, workers must have a general understanding of what information is provided on labels and SDSs, and how to access them. They must also be aware of the protective measures available in their workplace, how to use or implement these measures, and whom they should contact if an issue arises.

Step 6. Evaluate and Reassess Your Program

- Review your hazard communication program periodically to make sure that it is still working and meeting its objectives.
- Revise your program as appropriate to address changed conditions in the workplace (e.g., new chemicals, new hazards, etc.).

Although the HCS does not require you to evaluate and reassess your hazard communication program, it must remain current and relevant for you and your employees.

The best way to achieve that is to review your hazard communication program periodically to make sure that it is still working and meeting its objectives and to revise it as appropriate to address changed conditions in the workplace (e.g., new chemicals, new hazards, etc.).



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Additional Information

See *Hazard Communication: Small Entity Compliance Guide for Employers That Use Hazardous Chemicals* for more detailed information on how to implement an effective hazard communication program. Additional information on the Hazard Communication Standard can be found on OSHA's Hazard Communication webpage at www.osha.gov/dsg/hazcom.

Effective Dates

The table below summarizes the phase-in dates required under the revised Hazard Communication Standard (HCS):

Effective Completion Date	Requirement(s)	Who
December 1, 2013	Train employees on the new label elements and safety data sheet (SDS) format.	Employers
June 1, 2015* December 1, 2015	Compliance with all modified provisions of this final rule, except: The Distributor shall not ship containers labeled by the chemical manufacturer or importer unless it is a HCS Compliant label	Chemical manufacturers, importers, distributors and employers
June 1, 2016	Update alternative workplace labeling and hazard communication program as necessary, and provide additional employee training for newly identified physical or health hazards.	Employers
Transition Period to the effective completion dates noted above	May comply with either 29 CFR 1910.1200 (the final standard), or the current standard, or both	Chemical manufacturers, importers, distributors, and employers

For more information please go to the following links:

OSHA Website:

<https://www.osha.gov/Publications/OSHA3695.pdf>

<http://www.npga.org/i4a/pages/index.cfm?pageid=1844>

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NPGA:

<http://www.npga.org/i4a/pages/index.cfm?pageid=1844>

You must log into NPGA to view this document.

If you would like OSHA to assist you, please contact OSHA Consultation Services located in Brookings, SD. (605 688-4101 at SDSU. Brochure can be found at this link: <http://www.sdstate.edu/engr/extension/services.cfm>

2015/2016 Training Programs

Please email the following address for registration forms for all classes: dawnaleitzkecloud@me.com or go online to <http://sdp2ma.com> and find registration forms in Education and Training.

2015 Class Schedule

November 3-4	Basic	Mitchell
December 1-3	Delivery	Mitchell

2016 Class Schedule

January 5-6	Basic	Pierre
Feb. 2-4	Delivery	Pierre
March 1-2	Basic	Watertown
April 5-7	Delivery	Watertown
April 12-14	4.1 Distribution Systems	Mitchell
May 3-4	Basic	Sioux Falls
May 10-12	4.1 Distribution Systems	Rapid City
June 7-9	Delivery	Sioux Falls
June 28-30	3.0 Basic Plant Operations	Mitchell
July 6-7	Basic	Aberdeen
July 19-21	4.2 Distribution Systems	Mitchell
August 2-4	Delivery	Aberdeen
August 9-11	3.0 Basic Plant Operations	Mitchell
September 19-20	Basic	Deadwood
October 4-6	Delivery	Rapid City
November 1-2	Basic	Mitchell
December 6-8	Delivery	Mitchell



2015 Class Schedule

November 3	Rapid City Ramkota	8 am to 12 noon
November 4	Pierre Club House Inn & Suites	8 am to 12 noon
November 5	Sioux Falls Ramkota	8 am to 12 noon

All other seminars 8 am to noon (except March 24).

JOHN HEPLER
ENERGY ACCOUNT MANAGER



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