



Indiana State Department of Agriculture  
Governor Michael R. Pence  
Lt. Governor Sue Ellspermann, Secretary of Agriculture and Rural Affairs  
Ted A. McKinney, Director

November 12, 2015

The Honorable Thomas Perez  
Secretary  
United States Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Dear Secretary Perez:

I write to share my concerns regarding the Process Safety Management of Highly Hazardous Chemicals and Application of the Retail Exemption (29 CFR 1910.119(a)(2)(i)) memorandum released on July 22, 2015 by the Occupational Safety and Health Administration (OSHA). I strongly urge OSHA to withdraw the memorandum and conduct a formal rulemaking process with input from industry stakeholders if such changes are considered in the future.

The July 22<sup>nd</sup> memo drastically expands the number of agricultural retailers that will need to comply with the Process Safety Management (PSM) program. Since 1992, agricultural retailers were considered exempt from PSM if the facility "derived more than 50% of its income from direct sales of highly hazardous chemicals to the end consumer." Many agricultural retailers sell anhydrous ammonia directly to farmers (end consumer) for nitrogen applications and, therefore, were exempt. According to the July 22<sup>nd</sup> memo, "only facilities, or the portions of facilities, engaged in retail trade as defined by the current and any future updates to sectors 44 and 45 of the NAICS [North American Industry Classification System] Manual may be afforded the retail exemption." Many agricultural retailers are classified as NAICS Code 424910 (Farm supplies merchant wholesalers) and would now be required to comply with PSM.

The 2013 incident in West, Texas is cited as the genesis for the July 22<sup>nd</sup> memo; however, the policy change would not address the events that occurred at West, Texas since anhydrous ammonium did not play a role in the incident. Agricultural retailers handling anhydrous ammonia already encounter several federal regulations that relate to safety. Many in the industry believe this change does not improve safety and could create unintended consequences, such as trucks having to haul anhydrous ammonium at greater distances.

Another concern is the costs associated with PSM compliance. OSHA estimates the cost at \$2,160 per facility or \$10.4 million nationally. I have heard from retailers in my state that their costs could be between \$20,000 and \$30,000, with some companies paying significantly more. Indiana has more than 200 agricultural retailers, so it is clear why I am deeply concerned about the large fiscal impact. National agricultural groups predict the costs to be well over \$100,000,000 nationally. At a time when grain prices are low, additional costs for inputs creates further financial stresses for farmers and agribusinesses. In some cases, it could put some retailers out of business.

Issuing a memo that immediately repeals a long-established exemption that could cripple an entire industry and does not address the articulated safety concerns is the incorrect process. Industry engagement is critical. Their input and engagement can provide valuable information regarding the feasibility and costs for implementing safety requirements. Therefore, I respectfully request that OSHA immediately withdraw the July 22<sup>nd</sup> memo on the Process Safety Management of Highly Hazardous Chemicals and Application of Retail Exemption and conduct a formal rulemaking process that will appropriately engage industry stakeholders if changes are considered in the future.

Sincerely,

A handwritten signature in black ink that reads "Ted A. McKinney". The signature is fluid and cursive, with a large loop at the end of the last name.

Ted A. McKinney  
Director, Indiana State Department of Agriculture