

BULK PESTICIDE STORAGE STEWARDSHIP COALITION

May 16, 2006

The Honorable Donald R. Arbuckle
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: EPA Pesticide Container and Containment Proposed Rules

Dear Acting Administrator Arbuckle:

On behalf of our respective organizations, we are writing to express deep concerns regarding the Environmental Protection Agency's (EPA) pending Container and Containment proposed rule, which is currently under review at the Office of Management and Budget (OMB). It is our understanding that the EPA will not be applying the proposed federal bulk pesticide containment storage rules in a way that treats all segments of America's agricultural industry in a fair and consistent manner. We respectfully request a meeting with you and other appropriate White House officials to discuss this important issue.

Fair and uniform regulations regarding pesticide container and containment rules as well as proper environmental stewardship is very important to U.S. agricultural retailers and agriculture in general. We hope it is important to President Bush and the OMB. As you may know, according to the U.S. Department of Agriculture's (USDA) Economic Research Service (ERS) 2002 census of agriculture, 1 percent of the total farms are over 5000 acres. Of this 1 percent or 21,000 farms 10.2 percent is harvested cropland. These are large operations that are handling or have the potential to handle as much or more pesticide product as mid-to-large size retailers. We have provided a reasonable and workable recommendation to the EPA that all bulk pesticide storage of 793 gallons or more be registered sites and have proper secondary containment if stored more than 14 days. We are also willing to discuss this area within interested users groups but this has not been met with any interest.

The attached article in USDA's *Amber Waves*, Volume 3, Issue 1, includes information from USDA's ERS 2002 Census of Agriculture that outlines interesting statistics and information regarding farm sizes getting larger. Also, the USDA-National Agricultural Statistics Service (NASS) data shows in 1992 there were 16,706 farmers that purchased \$50,000 or more crop protection chemicals and in 2002 there were 28,563 farms that purchased \$50,000 or more crop protection chemicals. This information shows that from 1992 to 2002 the number of farms purchasing \$50,000 worth of crop protection chemicals increased by 41.5%. During this same time frame agricultural chemical prices declined giving the grower's dollar more purchasing power.

The Honorable Donald Arbuikle
May 16, 2006
Page 2

EPA is in its final review of proposed container and containment regulations and we feel it is imperative that any regulations issued regarding container and containment rules should extend to all end users, including all producers that apply agricultural pesticides for compensation (i.e. either monetary or trading of services). The specific provisions of concern to Ag retailers and distributors regards the proposed EPA rules relating to secondary containment requirements covered under "Scope and Applicability" - Section 165.141 (This defines facilities covered by these sections of the rule) through "Administrative Standards" - Section 165.157. Included in these sections are new federal requirements that relate to bulk pesticide containment only. For example, "General Requirements for Containment Structures" - Sec. 165.146(a) (1) (2) and "Specific Requirements for Liquid Bulk Containment Structures" - Section 165.148(a) discuss types of containment structure Ag retailers would need to comply with.

We believe that these specific provisions be applied in a fair and even manner for the entire Ag sector. If not, then these provisions should be dropped from any final EPA rule and continue to allow the states to regulate this area as they have been doing for the past several decades without EPA oversight. Reasonable solutions to this issue are possible within the entire farm community and the EPA. All of us involved in production agriculture need to apply sound stewardship practices. Please contact ARA President & CEO Jack Eberspacher or ARA Vice President of Regulatory Policy & Corporate Relations Jim Thrift by phone at 202-457-0825 or e-mail at jack@arado.org or jthrift@aradc.org to arrange for a meeting time as soon as possible to discuss this matter.

ent 1/

Again, many thanks for your review and consideration of our request. We look forward to meeting with you on this important issue.

Sincerely,

Agricultural Retailers Association
Certified Crop Advisors
Chemical Producers and Distributors Association
National Agricultural Aviation Association

ARA Staff
The ARA Staff has over 65 years of
experience in the ag industry.

President & CEO

Jack Eberspacher
jack@aradc.org

Ex. 17

**Vice President, Regulatory Affairs
& Corporate Relations**

Jim Thrift
jthrift@aradc.org

Ex. 11

**Director, Legislative Policy &
Counsel**

Richard Gupton
richard@aradc.org

Ex. 16

Director, Communications

Stacy Mayuga
stacy@aradc.org

Ex. 13

Associate, Membership

Alida Malcom
amalcom@aradc.org

Ex. 10



AGRICULTURAL
RETAILERS
ASSOCIATION

(202) 457-0825

ARA policies, legislative
and regulatory positions
and other information can
be found by going to
www.agprofessional.com
and clicking on the ARA
icon.

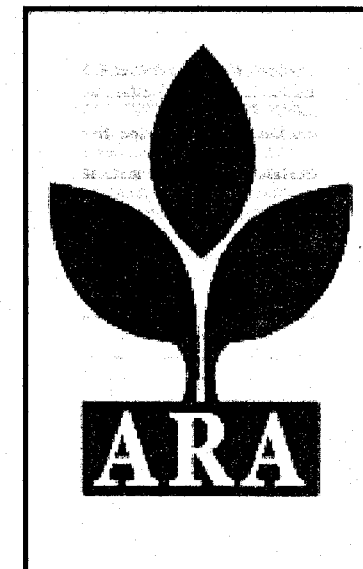
Or call our DC office.

1156 15th Street N.W.
Suite 302
Washington, DC 20005

Phone: 202-457-0825
Fax: 202-457-0864
Email: ara@aradc.org



AGRICULTURAL
RETAILERS
ASSOCIATION



*The National Voice of the Ag
Retailer*

www.agprofessional.com

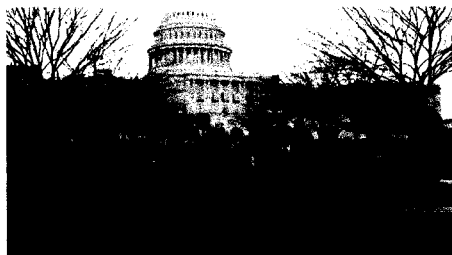
Who is ARA?

The Agricultural Retailers Association (ARA) is a not-for-profit trade association representing the interests of retailers across the United States on legislative and regulatory issues on Capitol Hill and government agencies

As the political voice of agricultural retailers, ARA not only represents its membership but also educates federal agencies and congressional members on the important issues affecting the industry.

ARA members range in size from family-held businesses to large companies with multiple outlet facilities. Retail facilities are located across the entire United States and provide important jobs in rural, as well as suburban communities.

ARA is governed by an executive committee and a 40 person Board consisting of members of retail facilities and manufacturers of crop protection chemicals, fertilizer and equipment.



ARA Board at National Capitol Building

What we do

ARA plays a critical role in managing both legislative and regulatory issues for Ag retailers in Washington, DC.

The landscape of crop input practices, technology developments and government regulations are constantly changing. Staying informed means staying ahead, and no other national association helps the retailer's business more than ARA.

Benefits of ARA Membership

* Public Policy Team

As a member of ARA you can concentrate on running your business while ARA serves as your eyes and ears on ag regulations and legislation. We keep you informed so you can make better business decisions

* ARA DC Office

ARA staff can directly assist members on specific business issues when they are affected by legislative or regulatory events. Members can call the DC staff at any time for both information and direct assistance. When in DC you are always welcome in our office.

* "Retailer Facts Newsletter"

"Retailer Facts" delivers the hot issues in Ag to members' e-mail or fax inboxes every Friday morning so they can stay up-to-the-minute on key issues in the industry. As a member, you can designate as many of your organization's employees as you wish to receive "Retailer Facts."

* Member Alerts

Member Alerts are special news releases that are sent only to ARA members. The Alerts notify members of legislative or regulatory decisions that directly affect their businesses. ARA members are the best lobbyists and the Alerts will sometimes ask them to make calls to legislators.

* Unlimited Access to Website

Access to the Members Only Sections of the website allows you to research newsletter archives, look up compliance regulations and white papers and stay up to date on legislative actions.

* Annual Conference & Expo

Provides members important educational programs, a first look at new technologies and networking among other retailers and representatives of manufacturers of crop protection chemicals, fertilizer and equipment.



1156 15TH STREET, NW • SUITE 302 • WASHINGTON, DC 20005
T 202.457.0825 • F 202.457.0864 • www.aradc.org

March 15, 2006

The Honorable Mike Johanns
Secretary of Agriculture
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250-1300

RE: EPA Pesticide Container and Containment Proposed Rules

Dear Secretary Johanns:

On behalf of our respective organizations, we are writing to urge you to weigh in with the Environmental Protection Agency's (EPA) Administrator Steve Johnson on the pending Container and Containment proposed rule. We are deeply concerned that the EPA may not apply the proposed federal bulk pesticide containment storage rules in a way that treats all segments of America's agricultural industry in a fair and consistent manner.

On March 1, 2006, the EPA issued a public notification in *Federal Register*, Vol. 71, No. 40, that states Section 25(a) (2) of FIFRA requires the administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the *Federal Register*. The Secretary of Agriculture has 15 days after receiving a copy of the final rule to make comment in writing regarding the draft final rule and the Administrator shall include the comments of the Secretary if requested by the Secretary.

Fair and uniform regulations regarding pesticide container and containment rules are very important to U.S. agricultural retailers and agriculture in general. We know it is important to you and the U.S. Department of Agriculture (USDA). According to USDA ERS 2002 census of agriculture, 1 percent of the total farms are over 5000 acres. Of this 1 percent or 21,000 farms 10.2 percent is harvested cropland. These are large operations that are handling or have the potential to handle as much or more pesticide product as mid-to-large size retailers. ARA has recommended to EPA that all bulk pesticide storage of 793 gallons or more be registered sites and have proper secondary containment if stored more than 14 days.

The attached article in USDA's *Amber Waves*, Volume 3, Issue 1, includes information from USDA's Economic Research Service 2002 Census of Agriculture, and outlines interesting statistics and information regarding farm sizes getting larger. As I understand from ERS this information was reviewed by you and your staff within the last two months. Also, the USDA-National Agricultural Statistics Service (NASS) data shows in 1992 there were 16,706 farmers that purchased \$50,000 or more crop protection chemicals and in 2002 there were 28,563 farms that purchased \$50,000 or more crop protection chemicals.

The Honorable Mike Johanns

March 15, 2006

Page 2

This information shows that from 1992 to 2002 the number of farms purchasing \$50,000 worth of crop protection chemicals increased by 41.5%. During this same time frame agricultural chemical prices declined giving the grower's dollar more purchasing power.

The (EPA) is in its final review of proposed container and containment regulations and we feel it is imperative that any regulations regarding container and containment rules should extend to all end users. The specific provisions of concern to Ag retailers and distributors regards the proposed EPA rules relating to secondary containment requirements covered under "Scope and Applicability" - Section 165.141 (This defines facilities covered by these sections of the rule) through "Administrative Standards" - Section 165.157. Included in these sections are new federal requirements that relate to bulk pesticide containment only. For example, "General Requirements for Containment Structures" - Sec. 165.146(a) (1) (2) and "Specific Requirements for Liquid Bulk Containment Structures" - Section 165.148(a) discuss types of containment structure Ag retailers would need to comply with.

We ask that these specific provisions be applied in a fair and even manner for the entire Ag sector. If not, then these provisions should be dropped from any final EPA rule and continue to allow the states to regulate this area as they have been doing for the past several decades without EPA oversight.

While EPA may regulate containment of bulk pesticide storage, your and USDA's leadership and interest is vitally important. Reasonable solutions to this issue are possible within the entire farm community and the EPA. All of us involved in production agriculture need to apply sound stewardship practices.

Again, many thanks for your commitment and leadership to agriculture.

Sincerely,



Agricultural Retailers Association
Certified Crop Advisors
Chemical Producers and Distributors Association
National Agricultural Aviation Association

CC The Honorable Merlyn Carlson
Deputy Under Secretary of Conservation
Natural Resources and Environment
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250-1300



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

APR 04 2005

Mr. Jack Eberspacher
President and CEO
Agricultural Retailers Associations
1156 15th Street, NW., Suite 302
Washington, DC 20005

Dear Mr. Eberspacher:

Thank you for your letter dated March 3, 2005, to Secretary Johanns, requesting Department of Agriculture (USDA) support in obtaining a comprehensive definition of agricultural commodities for the hours of service (HOS) exemption for delivery of agricultural commodities and farm supplies, and assistance with the on-farm bulk pesticide storage issue.

I am pleased to note that on March 10, 2005, the House approved highway bill H.R. 3, making the agricultural HOS exemption permanent and defining the terms "agricultural commodity" and "farm supplies." USDA has supported the exemption since it was first proposed over 10 years ago and made part of the National Highway System Designation Act of 1995.

With regard to the on-farm bulk pesticide storage issue within the farm community and the Environmental Protection Agency, I have asked Burleson Smith, Special Assistant, Pest Management Policy, Natural Resources Conservation Service to set up a meeting with the association leaders you identified.

Sincerely,

A handwritten signature in cursive script that reads "Bill Hawks".

Bill Hawks
Under Secretary
Marketing and Regulatory Programs



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

MAY 01 2006

Mr. Jack Eberspacher
President and CEO
Agricultural Retailers Association
1156 15th Street, NW., Suite 302
Washington, D.C. 20005

Dear Mr. Eberspacher:

Thank you for your letter of March 7, 2006, regarding the secondary containment of bulk pesticides. As you have mentioned, your concern about the handling of bulk agricultural chemicals is a matter of regulation under the authority of the Environmental Protection Agency (EPA). In addition to your comments, we have received information from others in agriculture and are carefully considering these views.

The Department of Agriculture (USDA) received an advance copy of the draft final rule from EPA for review under the provisions of section 25 of the Federal Fungicide, Insecticide, and Rodenticide Act (FFIRA). FFIRA section 25 review period has concluded and the rule is undergoing interagency review under the auspices of the Office of Management and Budget (OMB). We understand that the rule was received by OMB on March 6, 2006, and the 90-day review period should conclude no later than June 4, 2006.

Through rulemaking, the EPA proposed a minimum national standard for the secondary containment of bulk pesticides stored at agrichemical refilling establishments whose principal business is retail sale, commercial applicators who apply agricultural pesticides for compensation, and custom blenders. As the Agency indicated in their proposed rule, they were not aware of specific instances where on-farm handling of pesticides posed a similar potential risk as at commercial facilities, but would remain open to reviewing such data if it becomes available. While looking into this matter, USDA staff has not located such data indicating a remarkable history of on-farm incidents involving bulk storage of pesticides. Because of the longer storage times, and the expected higher volumes which are likely to be handled in commercial facilities throughout the year, it appears that EPA has proposed to direct their rulemaking on secondary containment of bulk pesticides to such facilities. USDA will encourage EPA to provide such uniform standards for the safe use, reuse, and refill of containers, as required by FFIRA section 19, across the States in order to avoid potential disparities in the agricultural supply sector as a result of differences in State laws which may impact interstate competitiveness.

Mr. Jack Eberspacher

Page 2

With regard to on-farm storage of pesticides, the Natural Resources Conservation Service (NRCS) provides funding to farmers through the Environmental Quality Incentives Program (EQIP) to install enhanced pesticide loading and storage facilities in order to protect against spills. NRCS cost-share funding allows farmers to install measures that help to protect against unintentional releases to the environment that might impact drinking water wells and other sources of water. As farm size increases, USDA will continue to encourage adoption of measures to protect soil and water resources through funding structures for proper storage and handling of pesticides.

Again, thank you for your concern and ongoing interest in protecting the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Johanns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Johanns
Secretary

ATTENTION

Farmers & Seed Dealers

Opportunity For You to SAVE

\$30.00 to \$50.00 per acre.

Farm Advantage, one of Iowa's fastest growing Agricultural Supply companies, is looking for Farmers/Seed Dealers who want to earn significant income marketing farm inputs.

- Chemicals
- Fertilizer
- Surfactants
- Fertilizer Storage Facilities
- Seed Corn
- Crop Insurance
- Seed Beans
- Complete Ag Financing

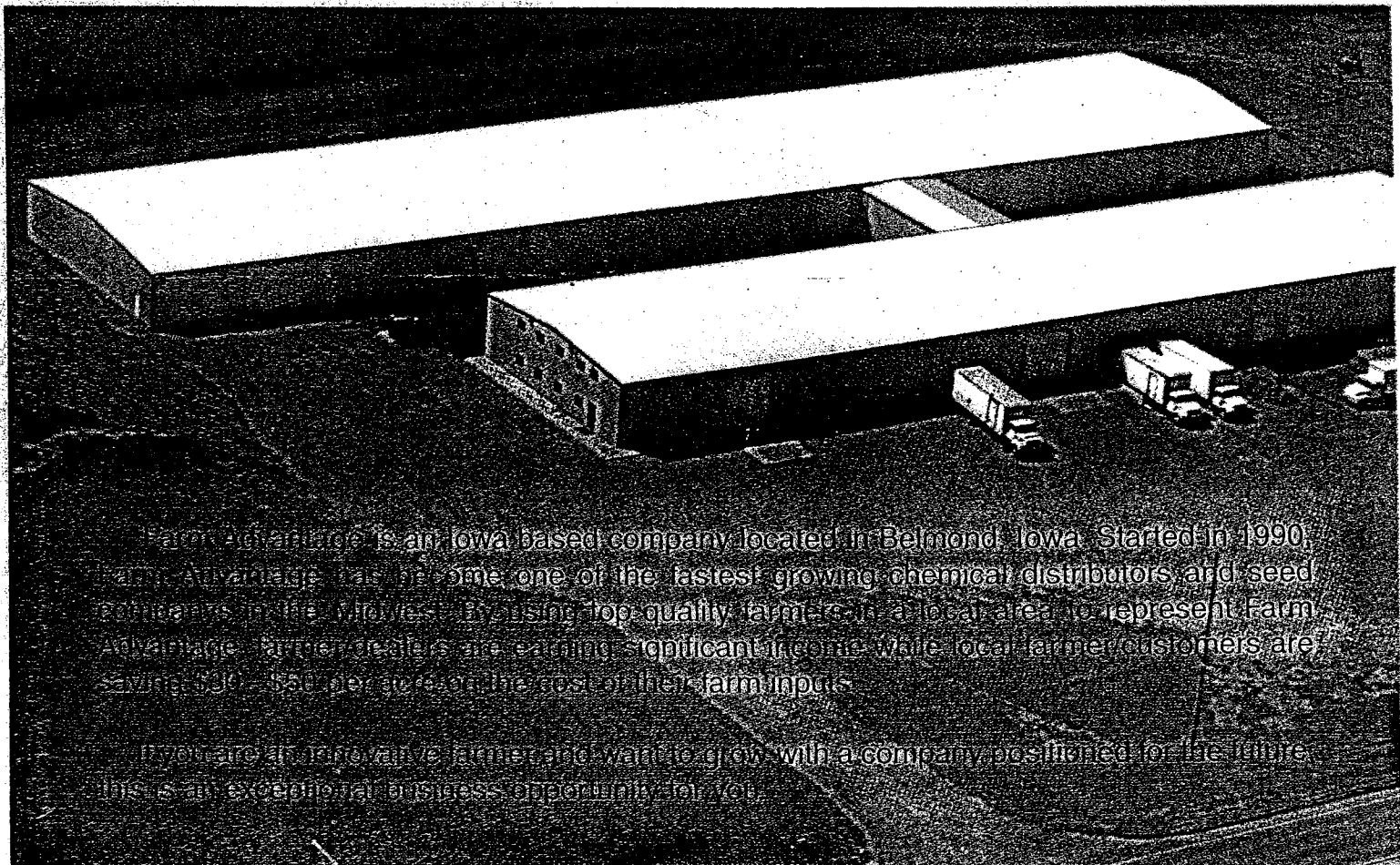
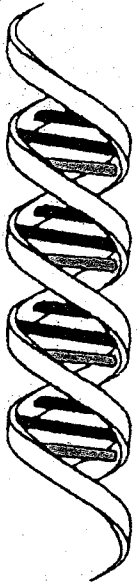
Income potential: \$20,000-\$50,000 or more annually part-time. We will help you become C.C.A. certified.

Farm Advantage

- *Leading the way in Agricultural Innovations*

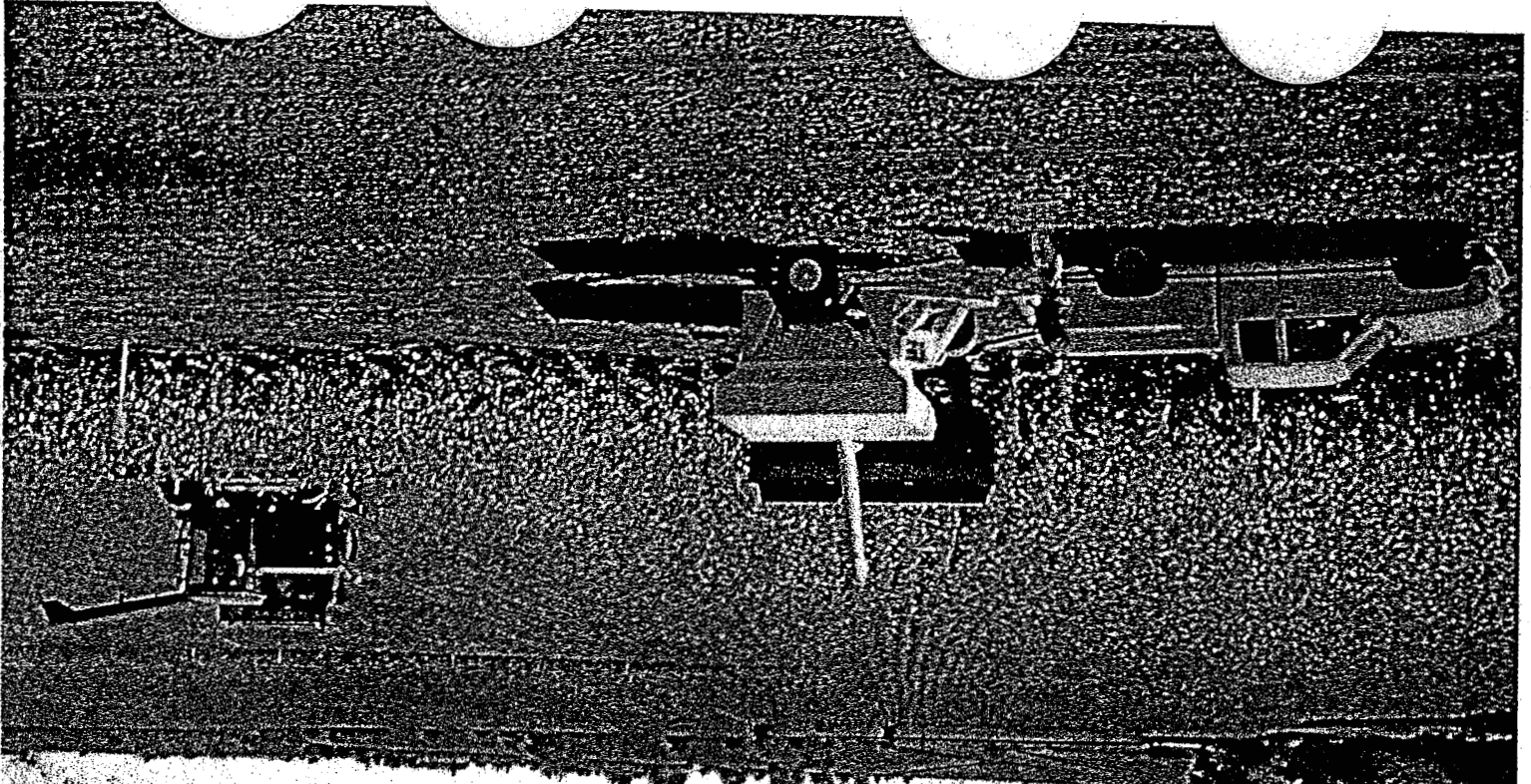
641-444-3344

Monday - Friday 8:00 am - 5:00 PM



Farm Advantage is an Iowa based company located in Belmont, Iowa. Started in 1990, Farm Advantage has become one of the fastest growing chemical distributors and seed purveyors in the Midwest. By using top quality farmers in a local area to represent Farm Advantage, farmer dealers are earning significant income while local farmer customers are saving \$30-\$50 per acre on the cost of their farm inputs.

If you are an innovative farmer and want to grow with a company positioned for the future, this is an exceptional business opportunity for you.



I saved \$30 - \$50/acre on my Seed, Chemical and Fertilizer while maintaining Yield and Performance!



FARM ADVANTAGE

1275 Highway 69
Belmond, IA 50521

U.S. Post

PRSR STD
US POSTAGE
PAID
FORT DODGE IA
PERMIT NO. 686

BULK PESTICIDE STORAGE STEWARDSHIP COALITION

April 21, 2006

The Honorable Steve Johnson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: EPA Pesticide Container and Containment Proposed Rules

Dear Administrator Johnson:

On behalf of our respective organizations, we are writing to express deep concerns regarding the Environmental Protection Agency's (EPA) pending Container and Containment proposed rule. It is our understanding that your agency may not apply the proposed federal bulk pesticide containment storage rules in a way that treats all segments of America's agricultural industry in a fair and consistent manner.

Fair and uniform regulations regarding pesticide container and containment rules as well as proper environmental stewardship is very important to U.S. agricultural retailers and agriculture in general. We hope it is important to you and the EPA. As you may know, according to the U.S. Department of Agriculture's (USDA) Economic Research Service (ERS) 2002 census of agriculture, 1 percent of the total farms are over 5000 acres. Of this 1 percent or 21,000 farms 10.2 percent is harvested cropland. These are large operations that are handling or have the potential to handle as much or more pesticide product as mid-to-large size retailers. We have provided a reasonable and workable recommendation to your agency that all bulk pesticide storage of 793 gallons or more be registered sites and have proper secondary containment if stored more than 14 days. ARA is willing to discuss this area within interested users groups but this has not been met with any interest.

The attached article in USDA's *Amber Waves*, Volume 3, Issue 1, includes information from USDA's ERS 2002 Census of Agriculture that outlines interesting statistics and information regarding farm sizes getting larger. Also, the USDA-National Agricultural Statistics Service (NASS) data shows in 1992 there were 16,706 farmers that purchased \$50,000 or more crop protection chemicals and in 2002 there were 28,563 farms that purchased \$50,000 or more crop protection chemicals. This information shows that from 1992 to 2002 the number of farms purchasing \$50,000 worth of crop protection chemicals increased by 41.5%. During this same time frame agricultural chemical prices declined giving the grower's dollar more purchasing power.

The Honorable Steve Johnson

April 21, 2006

Page 2

EPA is in its final review of proposed container and containment regulations and we feel it is imperative that any regulations issued regarding container and containment rules should extend to all end users, including all producers that apply agricultural pesticides for compensation (i.e. either monetary or trading of services). The specific provisions of concern to Ag retailers and distributors regards the proposed EPA rules relating to secondary containment requirements covered under "Scope and Applicability" - Section 165.141 (This defines facilities covered by these sections of the rule) through "Administrative Standards" - Section 165.157. Included in these sections are new federal requirements that relate to bulk pesticide containment only. For example, "General Requirements for Containment Structures" - Sec. 165.146(a) (1) (2) and "Specific Requirements for Liquid Bulk Containment Structures" - Section 165.148(a) discuss types of containment structure Ag retailers would need to comply with.

We ask that these specific provisions be applied in a fair and even manner for the entire Ag sector. If not, then these provisions should be dropped from any final EPA rule and continue to allow the states to regulate this area as they have been doing for the past several decades without EPA oversight. Reasonable solutions to this issue are possible within the entire farm community and the EPA. All of us involved in production agriculture need to apply sound stewardship practices.

Again, many thanks for your review and consideration of our views. We look forward to meeting with you in the near future for further discussions on this important issue.

Sincerely,

Agricultural Retailers Association
Certified Crop Advisors
Chemical Producers and Distributors Association
National Agricultural Aviation Association

Growing Farm Size and the

James MacDonald
macdonal@ers.usda.gov

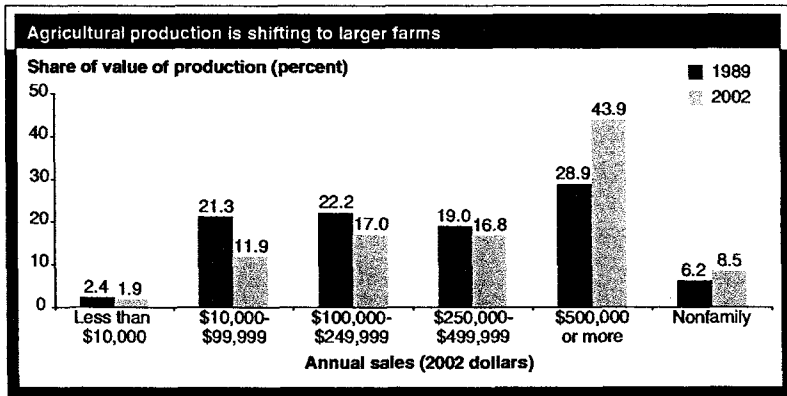
Robert Hoppe
rhoppe@ers.usda.gov

David Banker
dbanker@ers.usda.gov

Structural changes within the farm sector can alter how benefits from government commodity programs are distributed, even without changes in government policy. One element of change, the shift of agricultural production toward large family-operated farms, has had a sizeable impact on how government commodity program payments are spread among farm households. Data from USDA's Agricultural Resource Management Survey (ARMS) and its predecessor, the Farm Costs and Returns Survey (FCRS), were applied to a classification that sorts family farms among five size classes, based on annual sales expressed in 2002 dollars (using the Producer Price Index for Farm Products), with all nonfamily farms assigned to a sixth class.

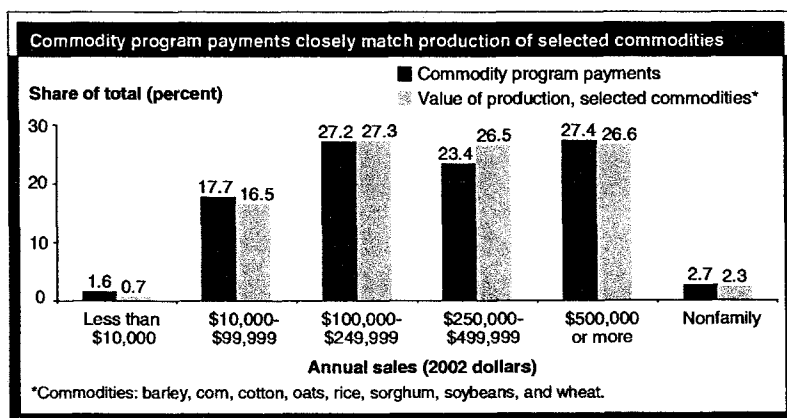
Agricultural production is shifting toward larger farms.

Farms in the largest sales class (at least \$500,000 in 2002 dollars) accounted for 43.9 percent of production in 2002, up from 28.9 percent in 1989, the earliest year with consistent data. There were 64,000 farms in that size class in 2002, up from 32,000 in 1989. The trend to larger farms is sectorwide, with production of poultry, livestock, and crops all shifting to larger operations. Large farms have lower costs of production, on average, and they may realize higher commodity prices as well. Because large family farms tend to be more profitable, their share of production is expected to continue to expand.



Commodity program payments are proportional to production of certain commodities...

Commodity program payments include all commodity and disaster assistance payments, and exclude environmental payments (such as those related to the Conservation Reserve Program). These payments are closely tied to a farm's production history for certain commodities. For example, family farms with sales between \$100,000 and \$249,999 received 27.2 percent of commodity program payments in 2002, and accounted for 27.3 percent of the value of production of eight selected commodities—barley, corn, cotton, oats, rice, sorghum, soybeans, and wheat.

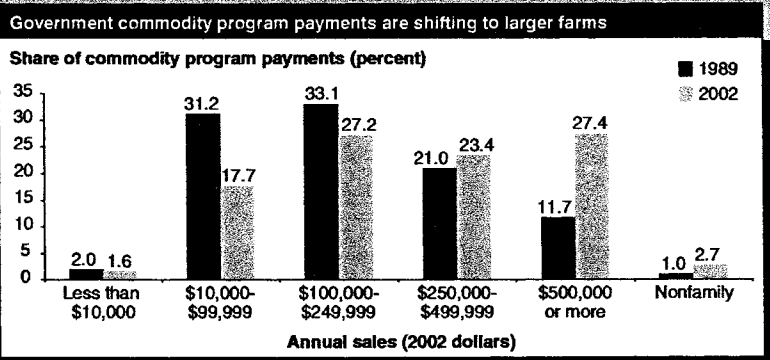


Unless otherwise noted, sources for charts are USDA, 1989 Farm Costs and Returns Survey and 2002 Agricultural Resource Management Survey.

Distribution of Commodity Program Payments

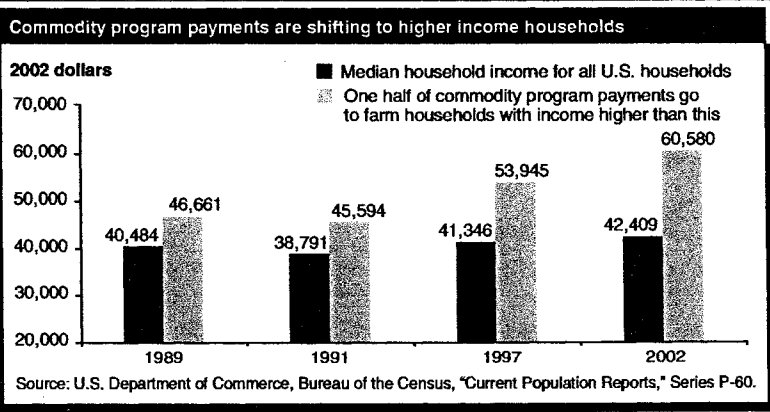
...And hence are shifting to larger farms...

Government commodity program payments shifted to the largest farms as those farms expanded their share of commodity production. Farms with at least \$500,000 in sales received 27.4 percent of all commodity program payments in 2002, up from 11.7 percent 13 years earlier.



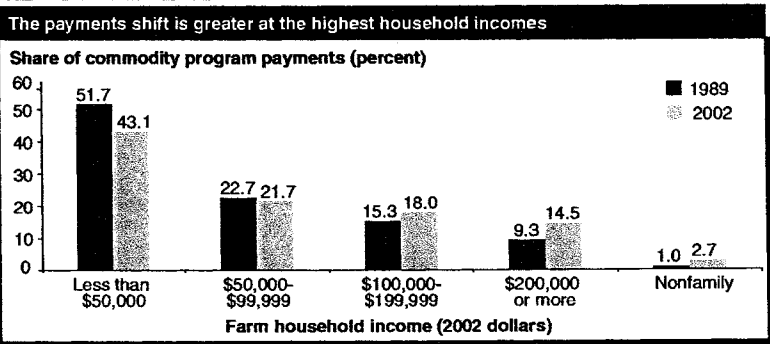
...And higher income households...

Operators of the largest farms earn higher household incomes, on average, than operators of other farms, so production shifts have caused commodity program payments to move to higher income households. In 1989, half of all commodity payments went to households with incomes below \$46,661 (in 2002 dollars), and half went to households with higher incomes. The median income among all U.S. households in 1989 was \$40,484. But by 2002, the farm household income that split the distribution of commodity program payments in half had risen sharply, to \$60,580. That growth was much greater than the corresponding growth in median U.S. household income (\$42,409 in 2002). No explicit change in farm policy drove this shift; rather, structural changes in farming altered the link between programs and beneficiaries.



...with the largest shifts at the highest incomes.

By 2002, farm households with incomes of \$200,000 or more (measured in 2002 dollars) received 14.5 percent of all commodity program payments, up from 9.3 percent in 1989, while households with incomes between \$100,000 and \$200,000, as well as nonfamily operators, also received larger shares of commodity payments. Households with incomes under \$100,000 saw their shares of total commodity program payments fall.



Congress of the United States
Washington, DC 20515

May 24, 2006

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Federal Building
Mail Code 1101 A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Mr. Johnson:

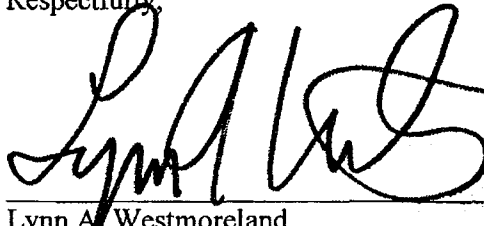
It has come to our attention that the Environmental Protection Agency is in its final review of proposed pesticide container and containment regulations. We raise serious concerns about the impact of this nationwide regulatory requirement on small businesses that serve the agricultural industry. Georgia agribusinesses have a strong stewardship track record and many take extra care in protecting the environment.

We know that it is important to you as administrator that EPA be fair and evenhanded in the development and implementation of regulations. Because of the diversity of agricultural production across the nation, we ask that the specific provisions be dropped from any final EPA rule and be utilized as recommendations for state regulatory authorities. The Georgia Department of Agriculture has the capability to manage this along with other related pesticide regulatory programs in our state. We believe that they should be allowed to continue offering containment recommendations, with EPA oversight and cooperation, or develop state specific pesticide container and containment regulations for state agricultural retailers and custom applicators.

Reasonable solutions to this issue are possible by fostering cooperative efforts among the agricultural community, state department of agriculture and EPA. We all agree that agribusinesses need to apply sound stewardship practices and this can best be accomplished at the state level.

Thank you for your attention to this matter and we look forward to your response.

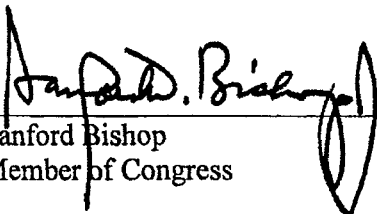
Respectfully,

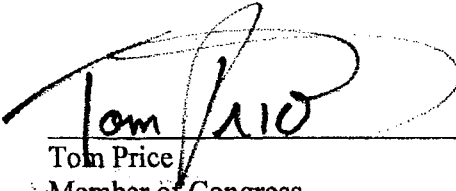


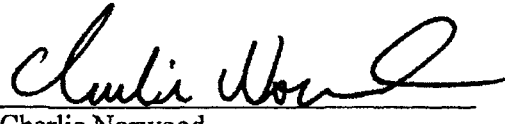
Lynn A. Westmoreland
Member of Congress

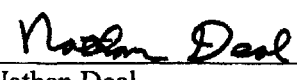


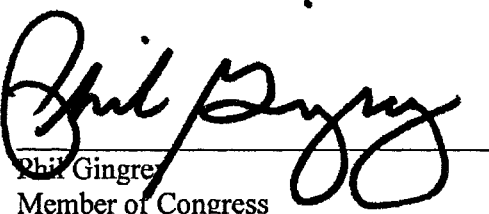
Jack Kingston
Member of Congress

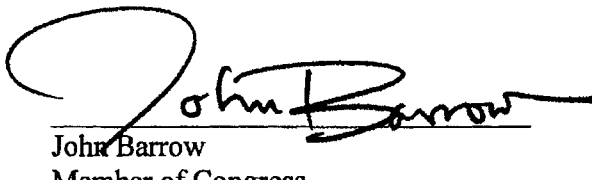

Sanford Bishop
Member of Congress



Tom Price
Member of Congress

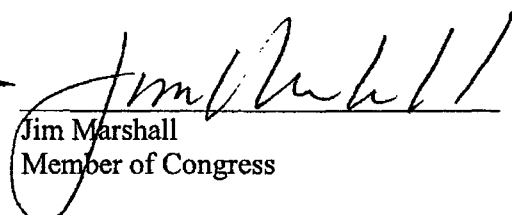

Charlie Norwood
Member of Congress



Nathan Deal
Member of Congress


Phil Gingrey
Member of Congress


John Barrow
Member of Congress


David Scott
Member of Congress


Jim Marshall
Member of Congress


John Linder
Member of Congress

BULK PESTICIDE STORAGE STEWARDSHIP COALITION

May 16, 2006

The Honorable Donald R. Arbuckle
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: EPA Pesticide Container and Containment Proposed Rules

Dear Acting Administrator Arbuckle:

On behalf of our respective organizations, we are writing to express deep concerns regarding the Environmental Protection Agency's (EPA) pending Container and Containment proposed rule, which is currently under review at the Office of Management and Budget (OMB). It is our understanding that the EPA will not be applying the proposed federal bulk pesticide containment storage rules in a way that treats all segments of America's agricultural industry in a fair and consistent manner. We respectfully request a meeting with you and other appropriate White House officials to discuss this important issue.

Fair and uniform regulations regarding pesticide container and containment rules as well as proper environmental stewardship is very important to U.S. agricultural retailers and agriculture in general. We hope it is important to President Bush and the OMB. As you may know, according to the U.S. Department of Agriculture's (USDA) Economic Research Service (ERS) 2002 census of agriculture, 1 percent of the total farms are over 5000 acres. Of this 1 percent or 21,000 farms 10.2 percent is harvested cropland. These are large operations that are handling or have the potential to handle as much or more pesticide product as mid-to-large size retailers. We have provided a reasonable and workable recommendation to the EPA that all bulk pesticide storage of 793 gallons or more be registered sites and have proper secondary containment if stored more than 14 days. We are also willing to discuss this area within interested users groups but this has not been met with any interest.

The attached article in USDA's *Amber Waves*, Volume 3, Issue 1, includes information from USDA's ERS 2002 Census of Agriculture that outlines interesting statistics and information regarding farm sizes getting larger. Also, the USDA-National Agricultural Statistics Service (NASS) data shows in 1992 there were 16,706 farmers that purchased \$50,000 or more crop protection chemicals and in 2002 there were 28,563 farms that purchased \$50,000 or more crop protection chemicals. This information shows that from 1992 to 2002 the number of farms purchasing \$50,000 worth of crop protection chemicals increased by 41.5%. During this same time frame agricultural chemical prices declined giving the grower's dollar more purchasing power.

The Honorable Donald Arbuckle
May 16, 2006
Page 2

EPA is in its final review of proposed container and containment regulations and we feel it is imperative that any regulations issued regarding container and containment rules should extend to all end users, including all producers that apply agricultural pesticides for compensation (i.e. either monetary or trading of services). The specific provisions of concern to Ag retailers and distributors regards the proposed EPA rules relating to secondary containment requirements covered under "Scope and Applicability" - Section 165.141 (This defines facilities covered by these sections of the rule) through "Administrative Standards" - Section 165.157. Included in these sections are new federal requirements that relate to bulk pesticide containment only. For example, "General Requirements for Containment Structures" - Sec. 165.146(a) (1) (2) and "Specific Requirements for Liquid Bulk Containment Structures" - Section 165.148(a) discuss types of containment structure Ag retailers would need to comply with.

We believe that these specific provisions be applied in a fair and even manner for the entire Ag sector. If not, then these provisions should be dropped from any final EPA rule and continue to allow the states to regulate this area as they have been doing for the past several decades without EPA oversight. Reasonable solutions to this issue are possible within the entire farm community and the EPA. All of us involved in production agriculture need to apply sound stewardship practices. Please contact ARA President & CEO Jack Eberspacher or ARA Vice President of Regulatory Policy & Corporate Relations Jim Thrift by phone at 202-457-0825 or e-mail at jack@aradc.org or jthrift@aradc.org to arrange for a meeting time as soon as possible to discuss this matter.

Again, many thanks for your review and consideration of our request. We look forward to meeting with you on this important issue.

Sincerely,

Agricultural Retailers Association
Certified Crop Advisors
Chemical Producers and Distributors Association
National Agricultural Aviation Association



AGRICULTURAL
RETAILERS
ASSOCIATION

September 13, 2004

Ms. Nancy Fitz
Field and External Affairs Division
Document Processing Desk (PM Team)
Office of Pesticide Programs (7504C)
U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460-0001

RE: Standards for Pesticide Containers and Containment,
40CFR Parts 156&165, June 30, 2004

Docket No. OPP- 20040049 Docket ID OPP-2004-0049

On behalf of the Agricultural Retailers Association (ARA), which represents the retail sector of the US agricultural industry, we are submitting comments concerning the Environmental Protection Agency's "Standards for Pesticide Containers and Containment" proposed rules. ARA commends EPA on re-opening the comment period for these important regulations and thanks EPA officials for extending the comment time period to allow interested parties adequate time to weigh in on this matter.

Background

Environmental protection in agriculture is a high priority for all good stewards. Agricultural retailers are dedicated to protecting the environment and already take appropriate safeguards to do so. The Federal Insecticide Fungicide and Rodenticide Act (FIFRA) sections 19(e) and (f) grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for "the design of pesticide containers that will promote the safe storage and disposal of pesticides." It is ARA's understanding that the EPA received no comments concerning end user storage during previous public comment periods.

End user bulk chemical storage is a growing practice that expanded in the early 1990's, and is expected to grow rapidly over the next few years. In many cases end users store as much as or more crop production materials than commercial retail dealers. The intent of handling products in bulk is to reduce the number of empty, one way, non-reusable containers, both at the reseller location and the end user location. The shift of crop protection products to bulk handling systems has in fact reduced containers and many of the related disposal issues. ARA supports this movement. However there is no logic in establishing federal regulations that do not cover all parties who store bulk products. It is environmentally unsound to allow chemicals to be stored with limited safeguards on a farm or non-retail site when the exact same amount of chemical is subject to heavy regulations and requirements when stored in similar quantities at a retailer site.

ARA's General Position on Containment

ARA believes that container and containment regulations should follow the product regardless of its location to maximize environmental safety and worker protection. All products covered under this regulation must comply with both federal and state containment and handling regulations. To ensure all products are covered under this regulation, ARA requests that a change be made to regulation section 165.141, which addresses "Who must comply." Presently those groups that are affected by the containment structure regulation are agriculture retailers, agriculture custom applicators, and agriculture custom blenders. The "who must comply" definition should be redefined to include "all those entities that store bulk crop protection chemicals". As reported on page 20 of the summer 2004 *Ag Professional* magazine, Kansas Agribusiness Retailers Association President Tom Tunnell states, "to protect our environment from opportunistic chemical brokers and end users who do not follow good stewardship practices, pesticide storage and containment rules need to follow the product regardless of its location. End users that handle large quantities of crop protection products must be required to provide the same level of stewardship that a commercial retail dealer must follow." ARA believes that Mr. Tunnell's position is valid and should also be of concern to the EPA.

Changing Industry Situation

By the close of 2006 approximately 70% of all crop protection chemicals, mainly herbicides, will not enjoy patent protection. This could present a significant marketing opportunity for non-traditional suppliers and chemical brokers. The end user customer could become a direct crop protection customer, but not have the appropriate facilities to handle bulk chemical volumes or be subject to the same strict regulations that would be required of Agricultural retailers. This situation would lead to increased environmental incidents as well as increased incidents of exposure to workers and others. The increased sales and corresponding volumes in off-patent brands recently led the University of Nebraska Institute of Agriculture and Natural Resources Cooperative Extension Weed Science Director Brady Kappler to state "The proliferation of glyphosate products into the Roundup Ready crop arena has taken the generic herbicide market to a different

level.” The proliferation in the number of EPA pesticide labels covering existing commercial products has expanded dramatically, creating both commercial opportunities and opportunities for market place and environmental confusion.

In a recent story published in *Pesticide and Toxic Chemical News* written by Lucy Ament, Paul Liemandt, manager of the Environmental Response and Enforcement Section within the Minnesota Department of Agriculture was quoted with the following:

“In Minnesota, as in many states, we at lead pesticide agencies are seeing product delivered to farm sites more frequently and in increasing large amounts. Because of that the nomenclature of ‘dealer’ verses ‘farmer’ seems to be a legitimate issue, so much so that in some instances the amount delivered to the farm exceeds what is delivered to a typical dealer site.”

An unregulated end user storage program could provide generic supplies a new opportunity for direct sales to end-users with no environmental safeguards. Allowing this practice to flourish would undoubtedly lead to increased environmental incidents.

Inconsistent State Regulations

While some industry leaders believe that containment rules should be applied at the state level, we have failed to see this happen. Only 20 states have any rules directed toward end user storage, and there has been little or no consistency on the rules between states. Both retailers and others who handle crop chemicals across state lines could be subject to very different regulations. The lack of national uniform regulations has lead to confusion among bulk handlers that operate across state lines. EPA needs to provide a uniform standard for pesticide handlers in all states to avoid further confusion and environmental incidents. It is worth noting that some states do have very effective containment and container regulations in place. ARA believes that EPA should allow those states with a proven long-term environmental track record to continue their regulations, or consider some aspects of their programs for a national regulation. A number of forward thinking states agencies have been proactive in addressing the environmental concerns surrounding bulk containment, ARA urges EPA to consider exemptions for those states who have already addressed the challenge.

Commercial Application Equipment Trends

Equipment technology developments in the handling and application of bulk agricultural chemicals have advanced dramatically. These new technologies coupled with the ever-expanding size of the US farm have led to end users becoming a dramatic growth sector of purchasers of commercial application equipment. Twenty to twenty five percent of all new large commercial application rigs and eighty percent of all used application equipment is currently purchased by end users most of who are farmers. The modern farm businessman, who understands return on investment, knows how to budget the initial costs and maintenance of commercial equipment. These commercial applicators are designed for high volume applications where bulk chemical handling is mandatory for

efficiency. This practice has only recently become widespread and, like bulk storage, is growing rapidly and will continue to do so over the next 5 –8 years, at least.

Environmental Concerns and End User Impact

Retailers are concerned about the growing number of non-regulated end users handling bulk chemicals on-site. An environmental incident at these locations would reflect poorly on the entire industry. An incident at any site reflects on the product released, the handlers and all of agriculture. Retailers are professionals trained in handling HAZMAT and they know the risks. Anyone less familiar with HAZMAT materials will likely have more lasting negative impact from any environmental incidents, as they tend to have less knowledge of safety, containment, and cleanup procedures. ARA believes that our members are good stewards and we believe that farmers are too. Retailers however, have had the opportunity over a period of time, to attend educational courses and seminars that have prepared them for many of the possible environmental issue that can happen. End users, in general, have not had to or partaken of this type of education.

Some end users feel that because land ownership is part of farming, farmers are better stewards because they have a vested interest in keeping their farm ground free of all possible contamination. Current statistics show that land ownership is not an integral part of farming; at least 58% of all US farmland is not farmed by the landowner. ARA believes that proper stewardship, at all levels, and is related to the business practices of the operator and not land ownership. There is a feeling held by some in the industry that a number of end users are using the current lack of regulation as a means to by-pass various parts of FIFRA requirements such as implementing dedicated containers, proper labeling, bulk packaging agreements, and load and rinse pads. The EPA has indicated that few on-farm environmental chemical incidents have occurred, or have at least been reported; therefore, there is no need to carry the regulations to end-users. ARA believes that a more accurate scenario is that since there is no established reporting system in place, and there is a general lack of FIFRA understanding among end users that there is no reason for end users to report incidents.

End-User Financial Impact Considerations

It is our understanding that EPA is considering the financial impact of this rule on the regulated community. It is ARA's position that extending the regulation will have a minimal financial impact to farmers, as end user bulk storage is not presently a widespread activity. Very few end users presently even utilize a bulk system and only the largest corporate farmers would even consider bulk chemical storage. Also, recent record farm incomes further suggest that the regulation will have a minimal financial impact. Farm income for 2003 was a record 68.6 billion, which is up 17.9 billion from 2002.

Farmland Contamination

To further support this position, ARA would like to bring to the attention of the EPA a situation of end user contamination that occurred on several farms near Lake Apopka, Florida in the late 1990s. As part of its due diligence prior to purchase of over 15,000 acres, the St. Johns River Water Management District (SJRWMD) found high levels of toxaphene and other pesticides on portions of the farmland, including on or near several airstrips, hangars and mix/load areas. As a condition of closing, SJRWMD demanded that the farmers take responsibility for remediation of their farmland. Although it was far from clear that any knowing (or even negligent) violations of law occurred, the owner's paid substantial sums for cleanup.

This case is an excellent demonstration of why good stewardship and safe practices are essential for the safety of farmers and their lands. It is likely that little or no contamination would have occurred if regulations existed governing safe storage and disposal of pesticides. Without these regulations, environmental incidents such as the ones which occurred near Lake Apopka are likely to continue to occur.

Regulatory Consistency

Those in government regulatory enforcement and in the regulated community continually ask for rule consistency, both in regulation and enforcement. At this moment in EPA history the proposed Spill Prevention, Control and Countermeasure (SPCC) Rule, 67 *Federal Register* 47042 (July 17, 2002), has received a compliance extension of 18 months. The proposed SPCC regulation will apply to all entities that store "fuels and oils," including farmers and a broad range of other previously non-regulated business segments. It is confusing that EPA would allow a double regulatory standard, especially considering the nature of the regulated products. SPCC covers "fuels and oils" and the proposed container and containment rules cover agriculture chemicals, which could have more detrimental impact in an environmental incident than fuels. Why is it that "fuels and oils" must have containment regardless of their location and that crop protection chemicals do not require containment for on-farm storage?

Summary

ARA's position is simple: the regulations need to follow the product, wherever its location; and whoever has product control also has responsibility to comply with all federal and state regulations, regardless of business segment. ARA believes that in our environmentally sensitive world having inconsistent application of regulations does not best serve the agricultural community and all Americans. ARA asks EPA to consider changing the application of this regulation to include all parties affected, and not ignore growing segments that can have dramatic environmental impact.

In his August 11, 2004 letter to EPA Oklahoma State Pesticide Coordinator Jim T. Criswell, wrote,

Regarding containment, EPA must address the issue of non-commercial firms (farmers and others) that have sizeable quantities of pesticide used or stored on their premises. Some farming and other operations can have similar uses and storage areas as commercial applicators. Such facilities should be under the same or very similar regulations as commercial agricultural applicators as the same pesticide products are involved. If containment is required for agriculture, there should be sound justification why it is not required for same pesticides used in other endeavors.

ARA strongly supports the position of Mr. Criswell.

EPA should solely enforce any final regulations. Private industry should not be placed with the burden of acting as an enforcement officer on behalf of EPA or other federal or state agencies related to this proposed regulation. Thank you for the opportunity to comment. If you need additional information or have questions regarding ARA's comments, please contact me by phone at (202) 457-0825 or by email at jthrift@aradc.org.

Sincerely,

James D Thrift
VP, Regulatory Policy & Corporate Relations



AGRICULTURAL RETAILERS ASSOCIATION

The National Voice of Ag Retailers
1156 15th Street, NW • Suite 302 • Washington, DC 20005 • Ph: 202-457-0825 • Fax: 202-457-0864 • www.agprofessional.com

June 15, 2005

Coalition Members

Jack Eberspacher
President and CEO
Agricultural Retailers
Association
(202) 457-0825

Jay Vroom
President and CEO
CropLife America
(202) 296-1585

Andrew Moore
Executive Director
National Agricultural Aviation
Association
(202) 546-5722

Warren Stickle
President
Chemical Producers and
Distributors Association
(703) 548-7700

Kirk Weih
Chairman of Government
Relations Committee
American Society of Farm
Mangers and Rural Appraisers
(303) 758-3513

Luther Smith
Executive Director
Certified Crop Advisors
667 S. Segoe Rd.
Madison, WI 53711
(608) 268-4977

Ms. Nancy Fitz
U. S. Environmental Protection Agency
Office of Pesticide Programs
401 M ST, SW
Washington, DC 20460

Dear Ms. Fitz:

RE: Follow-up comments to Docket ID no. OPP-2004-0049 Page 6787: 165.141

On behalf of the coalition members, I am submitting further comment on the pending Container and Containment Rule in final review at the Environmental Protection Agency (EPA). We agree that EPA regulations on bulk crop protection chemicals containment should follow the product regardless of the product's location. There should be no differential application of the law concerning product ownership or location. The only regulatory guideline should be volume of product and its timing in place as specified in the EPA Rule. As a collective group, the allied organizations propose that the containment regulations for bulk chemical storage extend to end users.

We believe the data that EPA has to justify cost/ benefits of containing bulk containers at "Ag retail" locations can and should be extrapolated to all locations where bulk tanks are located. The risk of leaks, spills, punctures and catastrophic failure causing environmental damage are similar for any long term storage facility. We believe well designed secondary bulk containment is essential to protect the environment for bulk storage tanks.

The Coalition group listed on this matter strongly proposes that *ALL* bulk pesticide products that are stored in containers that EPA defines as a bulk refillable container for 30 or more consecutive days must comply with containment requirements.

We thank you for your consideration.

Jack Eberspacher
President and CEO

Cc: Jon Scholl, EPA
Burlson Smith, USDA
Mike Johanns, Secretary, USDA
Jay Ellenberger, EPA

Steve Johnson, EPA
Rebeckah Freeman, AFBB
Jim Jones, EPA
Al Jennings, USDA

Supplying goods and services to our nation's farmers.



Containment Collaboration

IN my frequent travels to retail facilities, it's always gratifying to see the depth of planning and execution that has gone into crop protection and fertilizer containment in facilities across the country. It's clear that the wide majority of retail operations have taken their responsibility to the communities in which they operate, their employees, and the environment with the utmost seriousness.

So it's difficult for me to get my mind around the lack of a similar national movement for grower-based storage.

It makes clear and logical sense. Would grower-based storage be any less susceptible than retailer-based storage to accidental spillage or theft, just because it's on a farm and not at the retail outlet? Certainly quantities are different, but there should be standards, shouldn't there?

To me, the answer is an emphatic "yes" for several reasons. To the government and the country at large, there is no difference between an environmental disaster or theft of product from a farmer vs. a retailer. Any breach that shakes the faith of the nation or the government will at best generate bad publicity for our industry, and at worst result in unwanted federal and/or state regulations.

The issue is, how would regulation happen? The farmer, not unlike the retailer, does not appreciate regulation being shoved down his throat. However, he is willing to listen to reason and, if he has a say in its construction, is more willing to submit himself to some level of increased regulation.

Four years ago, the Illinois Fertilizer and Chemical Association (IFCA) was successful in getting the Illinois Farm Bureau to support on-farm containment regulations despite some initial resis-

tance. A key factor in the process — which took about two years to complete — was that farmers were fully included.

"The fact that containment is vital to ensure environmental protection, product security, and integrity, and to protect the owner from pollution liability was not the issue," says Jean Payne, IFCA president. "Farmers do not fight these regulations for these reasons. They fight them because they feel as if the regulations are being pushed upon them by others, and they feel as if they have little say in the matter."

It took IFCA getting its hands plenty dirty, working directly with the Department of Agriculture, and then directly with the rank and file of the state Farm Bureau membership to gain support and push the concept up to Bureau staff.

"Issues in farm organizations are driven from the bottom up, not the top down," says Payne. "Staff will almost always fight proposed regulations because the policy directs them to do so."

In the end, collaboration has resulted in a process that involves growers submitting containment plans to the state Department of Agriculture, which is enforcing the regulations. And while not perfect, the regulations laid the groundwork for future collaborations between growers and the retailers, says Payne.

"As industry consolidation continues, these relationships between individuals in the agribusiness industry and individual farm leaders will become even more important," says Payne.

Sure, it's frustrating. Believe me, I feel it too. But stewardship is a critical issue, and while collaboration can be difficult and time consuming, this issue is too important for the retail and grower communities to take their marbles and go home.

Grower groups need to be engaged in any discussion of increased regulation.