

Approved March 20, 1991  
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Jim Allen at  
Chairperson

10:10 a.m./~~pm~~ on March 7, 1991 in room 423-S of the Capitol.

All members were present ~~except~~

Committee staff present: Raney Gilliland, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee:

Senator Allen called the Committee to order and called for action on SB 203 which would place aquaculture under the definitions of agriculture. The Chairman called attention to amendments suggested by Senator Karr who had requested the bill.

Committee discussion and comments included that aquaculture should not be placed within the laws of corporation farming law statutes and thus it was suggested that no action be taken, at this time, on the amendment to K.S.A. 17-5903 as requested by Senator Karr.

Senator Brady made a motion that the Committee approve the amendment to K.S.A. 47-1402 by adding the words, "aquatic organisms" and that within SB 203 the word "fish" be changed to "aquatic organism". Motion was seconded by Senator McClure. Motion carried.

Senator Brady made a motion the Committee recommend SB 203 favorably for passage as amended. Seconded by Senator Montgomery. Motion carried.

The Chairman called attention to information provided the Committee (attachment 1) concerning SB 279. The information explained that the State of Illinois had seen the proposed SB 279 and had approved the wording and that an identical bill has been presented to the Illinois Legislature. The Chairman called for action on SB 279.

Committee comments noted that SB 279 would become effective upon publication in the Kansas Register.

Senator Harder made a motion that SB 279 be recommended for passage; seconded by Senator Sallee; motion carried.

The Chairman turned Committee attention to SB 308 and noted the listing provided for the Committee of persons opposing SB 308 and also SB 322 (attachment 2).

Senator Lee made a motion the Committee amend SB 308 so as to read that the County Commissioners may set the cost of chemicals sold to be between 50% and 100% of the cost to the county for the chemicals and that cost is to include the cost of handling and storage. Senator Brady seconded the motion. Motion carried.

Senator Sallee made a motion the Committee recommend SB 308 favorable for passage as amended. Senator Lee seconded the motion. Motion carried.

The Chairman called for Committee action on SB 323 and noted that it had been suggested that the bill be amended to be correct when a federal soybean check-off should become effective.

Senator Daniels made a motion that staff amend SB 323 so that it will be worded correctly should a federal soybean check-off become effective;

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,  
room 423-S, Statehouse, at 10:10 a.m. ~~XXX~~ on March 7, 19 91

the amendment would allow for the state to keep one-half of the check-off fees and that the state, since a refund upon request is in place would continue to make refunds of the check-off paid if requested. Motion was seconded by Senator Sallee. Motion carried.

Senator Montgomery made a motion the Committee recommend SB 323 favorable for passage as amended. Seconded by Senator Sallee; motion carried.

The Chairman turned Committee attention to SB 322 and information provided the Committee (attachment 3) from the State Board of Agriculture concerning federal regulations about bulk chemicals and containment requirements and other related information.

Committee comments suggested that counties should get out of the chemical selling business and let professionals handle those sales.

Senator Montgomery made a motion that the Committee recommend SB 322 favorable for passage. Senator Doyen seconded the motion. Motion carried.

Senator Allen called for Committee action on minutes.

Senator Daniels made a motion the minutes of March 5 be approved. Senator Harder seconded the motion. Motion carried.

Senator Allen declared the Committee adjourned at 10:50 a.m.





# KANSAS VETERINARY MEDICAL ASSOCIATION, INC.

712 South Kansas Avenue, Topeka, Kansas 66603, (913) 233-4141

FAX: (913) 233-2534

Dr. Russell Frey  
President  
2113 Blue Hills Road  
Manhattan, Kansas 66502

Dr. Steve Mosier  
President-Elect  
3301 Elm  
Hays, Kansas 67601

Dr. Mike Whitehair  
Vice President  
902 N. Olive Drive  
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Dr. Terry Turner  
Trustee-At-Large  
909 Stone Street  
Great Bend, Kansas 67530

Dr. Frank Fishburn  
Treasurer  
Rt. 7, Box 242F  
Manhattan, Kansas 66502

Catharine A. Deever  
Executive Director  
712 South Kansas Avenue  
Topeka, Kansas 66603

March 5, 1991

Senator Jim Allen, Chairman and  
Members of the Senate Committee on Agriculture  
1st Floor, State Capitol  
Topeka, Ks. 66612-1594

Dear Senator Allen and  
Members of the Senate Committee on Agriculture:

Attached is correspondence from Greg Dennis, an attorney who provides legal services to our association, and H.W. Hannah, the attorney representing the Illinois State Veterinary Medical Association. Parties involved have waived our privileged communication so that you may be informed that the veterinarians of Illinois are satisfied enough with the intent and language of Senate Bill 279 that they are having that bill revised for their own purposes and introduced for consideration by the Illinois Legislature.

Respectfully yours,

Catharine A. Deever  
Executive Director

*Senate agriculture committee*

*3-7-91*

*attachment 1*

MAR - 5 - 91 TUE 9:09

**PERRY & HAMILL**  
Attorneys at Law  
4650 College Boulevard, Third Floor  
Post Office Box 7933  
Overland Park, Kansas 66207  
Phone: (913) 491-5500  
Facsimile: (913) 491-3341

**FACSIMILE TRANSMISSION  
COVER SHEET**

TO: Catharine A. Deever,  
Kansas Veterinary Medical Association, Inc.,

PHONE NO.: 233 - 4141

TELEX NO.: 233 - 2534

FROM: Gregory M. Dennis

FILE NOS: P&H: 90-4281.010-GMD YOURS

NOTES: Dear Catharine: Please find attached a copy of a letter received today from Mr. Harold W. Hannah, author of the "Legal Brief" in the A.V.M.A. Journal regarding the proposed Kansas veterinarian-client privilege before the Legislature. I thought Mr. Hannah's comments that he felt the Kansas Bill was "properly worded" and that he was going to be passing it on to the Illinois State Veterinary Medical Association's Legislative Committee for inclusion in its possible revisions to the Illinois Practice Act might be of some interest to you and maybe of some assistance in seeking to have the Kansas Bill become law. There can be no doubt that Mr. Hannah's credentials in the area of veterinary law are very impressive and his comments on the proposed Kansas law should be of some value.

=====

DATE: March 5, 1991

We are submitting two pages (including this transmission cover sheet).

If you have trouble receiving or sending during business hours, please call (913) 491-5500 and ask for Communications Center. Our facsimile number is (913) 491-3341 and is available to receive any responses or other trans- from you twenty-four (24) hours a day, seven days a week.

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H. W. HANNAH  
LAWYER  
TEXICO, ILLINOIS 62889  
TELEPHONE 618 266-7291

March 1, 1991

Gregory M. Dennis  
Perry & Hamill  
P O Box 7933  
Overland Park, KA 66207

Dear Gregory:

It was thoughtful of you to send to me the proposed Kansas legislation providing for a Veterinarian-Client Privilege.

I have read the proposed addition carefully and feel that it is properly worded. If you have any questions about its wording, I would like to have them, because I'm going to pass this on to our Illinois State Veterinary Medical Association legislative committee which will be considering revisions to our practice act. As you may know, Illinois has a sunset law which terminates all professional licensing acts every ten years. Our veterinary medical practice act expires on Dec, 31, 1993, so the folks in our Association will be busy studying the current law to see if any changes or additions should be made before it is submitted to the legislature for reenactment.

Sincerely,

*Hank*  
H. W. Hannah

HWH/vch  
cc: Eve Larocca, ISVMA



COUNTY WEED DIRECTORS ASSOCIATION OF KANSAS

Dear Senator Allen:

We feel that you may want to know of other Counties that support the testimony given on Tuesday March 5th in opposition to Senate bills 322 and 308. The following people oppose these bills.

*Mark W. [Signature]* PRES. C.W.D.A.K.

NAME	COUNTY	TITLE
<i>Dave [Signature]</i>	Anderson	Noxious Weed Director
<i>Dick [Signature]</i>	EIK	Noxious Weed Dir.
<i>Raymond [Signature]</i>	Doniphan	Com.
<i>Howard [Signature]</i>	Rice	County Comm.
<i>James R. [Signature]</i>	Rush	Noxious Weed Dir.
<i>Vic [Signature]</i>	Cherokee	Noxious Weed Director
<i>Mark L. [Signature]</i>	Pawnee	Weed Dept.
<i>Al [Signature]</i>	Pawnee	Noxious Weed Director
<i>Jonathan D. [Signature]</i>	Sumner	Noxious Weed Director
<i>Kay [Signature]</i>	Barton	Administrative Assist
<i>Terri [Signature]</i>	Rush	Noxious Weed Asst Dir.
<i>JIM TOIPHAM</i>	WILSON	County Comm.
<i>Bill [Signature]</i>	Wesell	Noxious Weed Director
<i>Cecil [Signature]</i>	CHEROKEE	Noxious Weed Director
<i>W. [Signature]</i>	Butler	Noxious Weed Director
<i>R. [Signature]</i>	GREELEY	Noxious Weed Director



## COUNTY WEED DIRECTORS ASSOCIATION OF KANSAS

Dear Senator Allen:

We feel that you may want to know of other Counties that support the testimony given on Tuesday March 5th in opposition to Senate bills 322 and 308. The following people oppose these bills.

NAME	COUNTY	TITLE
Stan A. Boor	Ellis	Director
Jim Becker	Rock	"
Dennis H. Kleib	Woodson	"
Larry Lovistall	Neosho	"
Pat Robinson	Labette	Director
Carl Pomeroy	Keany	Director
Steve Pounds	Republic	Director
Dennis Houley	Ellsworth	Director
Phil Osborn	Marshall	Max. Weed, Director
Lynne Brittain	Marion	Commissioner
Van Heina	Lincoln	Director
Randy Barten	Dickinson	Director
Thomas A. Deters	Wesley	Director
Wayne Lysham	Geary	Director
Marvin Stetson	Johnson	Director
H. A. ...	...	Director

COUNTY WEED DIRECTORS ASSOCIATION OF KANSAS

Dear Senator Allen

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NAME	COUNTY	TITLE
Joe Brunk	Sedgewick	Director Alex Wood Dept.
Mike J. Faison	Meade	Director
Doug Dunder	Gray	Director
Steve Watts	Deer	weed Director
Bill Seese	Leone	weed Director
Mike Kernal	Leone	asst weed Director
Bill Young	Anderson	Chowan Co. Comm.
Ed Sapp	Lawrence	weed Director
Don Carr	Wearmouth	county commissioner
Rod Rodentech	Trego	county Weed Director
Bob Boben	Wallace	Weed Director
Michael [unclear]	FINNEY	sales rep.
David Wapshill	Greenwood	weed Director
Dave Street	MITCHELL	weed Director
James L. Miller	Norton	weed Director
Fred Hirsch	Mitchell	Co. Commission
Leland Zerbe	morris	W. D.

## COUNTY WEED DIRECTORS ASSOCIATION OF KANSAS

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NAME	COUNTY	TITLE
<i>Dennis Patton</i>	Riley	Director, Riley Co. Weed Dept.
<i>Jim Cusemus</i>	Crawford	Director weed Dept.
PAUL PATTON	SCOTT	DIRECTOR WEED PPT
<i>Lev H. Beaman</i>	Rice	Weed Director
<i>Cliff Carsh</i>	WABAWSEE	weed Director
<i>Ray Hawkins</i>	Kingman, K	Director County Weed Dept.
<i>Walter J. Harbert</i>	Kingman K	Commissioner
Ronald D. Thomas	Cloud	Weed Director
<i>Gailor E. Tyrell</i>	Clay	Noxious weed DIRECTOR
<i>Gene L. Barnett</i>	Jewell	County Commissioner
<i>Charles J. Helbleit</i>	Wess	Director Ness Co. Weed Dept.
<i>Bary Anschutz</i>	Russell	Director Russell Co. Weed Dept.
<i>Bruce Patton</i>	Kiowa	weed SUPERVISOR
<i>Ronald Kunsford</i>	Barber	Weed Director
<i>N. Cleve McMillin</i>	Stafford	Weed Director
<i>Ronald D. V. Lee</i>	Rawlins	Weed Director
<i>D. D. D. /</i>	ii it	weed Director

COUNTY WEED DIRECTORS ASSOCIATION OF KANSAS

Dear Senator Allen:

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NAME	COUNTY	TITLE
Laurel Stephens	Abraham	Director
Doris Bradford	allen	Director
Termon C. Wendelken	Clay	County Commissioner also KAC Board member
Arthur Deutscher	Trego	County Comm.
Lewis McWhorter	Hodgeman	Commissioner
Earl Quatz	Pharos	Director
Robert H. Raleigh	Marion	Director
Bob Ogden	FRANKLIN	Director
Harvey Henderson	Ottawa	Director
Clay Wittmore	JACKSON	DIRECTOR
William A. Jacques	Clark	Director
Dary Rentsch	Sheidan	Director
Edwin Wally Foster	Rees	Director
Roy Patton	Noway	Director
Jan Schroy	McPherson	Director
Ch. ... Jones	Smith	Director

## COUNTY WEED DIRECTORS ASSOCIATION OF KANSAS

Dear Senator Allen:

We feel that you may want to know of other Counties that support the testimony given on Tuesday March 5th in opposition to Senate bills 322 and 308. The following people oppose these bills.

NAME	COUNTY	TITLE
Kenneth Haddock	Hager	Weed Director
J.D. Harper	Montgomery	Co Comm
Bruce VanDusen	Montgomery	Weed Director
Leo Williams	Osage	Weed Director
Jay Burns	Hodgeman	Weed Director
Reiner Bueschell	Pottawatomie	Weed Director
Joe Towne	Miami	County Commissioner
Lawrence G. Gumbert	Miami	Co. Commissioner
R. W. Allen	SALINE	County Commissioner
Charles W. Haskall	MIAMI	WEED DIRECTOR
Martin Lewis	Shelburne	Weed Director Helper
Russell Towne	LYON	DIRECTOR
Tom Butts	WAB.	ASSIST. DIRECTOR
Mike Stutz	Stevens	Director
Leslie Stalmaker	Butler	Director Helper
Don Brant	Crawley	Director
Gary Cooper	Cheyenne	Director
Ron Rogge	Logan	Director



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 4 1991

MEMORANDUM

OFFICE OF  
PESTICIDES AND TOXIC SUBSTANCES

SUBJECT: Amendment to the July 11, 1977 Enforcement Policy  
Applicable to Bulk Shipment of Pesticides ~~by~~

FROM: John J. Neylan III, Director *John J. Neylan III*  
Policy and Grants Division  
Office of Compliance Monitoring

TO: Addressees

Attached is an amendment to the July 11, 1977 Enforcement Policy Applicable to Bulk Shipment of Pesticides. We appreciate your timely response to the January 18, 1991 draft amendment. The amendment allows repackaging of any quantity of pesticides into containers which hold greater than 55 gallons or 100 pounds provided all conditions of the July 11, 1977 policy and the amendment are met.

Because of the need for better information on the extent of cross contamination and either benefits or problems resulting from the Bulk Policy including the amendment, we are interested in information from the States and Regions regarding results of inspections at dealers which fill containers under the Bulk Policy. Inspections to assure compliance with the conditions of the Bulk Policy should be part of dealer inspections. Regions are requested to make sure inspections address this as part of ongoing activities. We will be providing you with specific reporting guidance at a later date. We are also interested in receiving feedback from the States and the Regions on the extent this amendment is achieving its intended effect of reducing the number of containers being used and subsequently disposed of.

We have also attached a report by the State of Iowa on the results of last year's Iowa Pilot Project. A number of cases of cross-contamination were identified.

Please note that upcoming regulations proposed under section 19 of FIFRA will likely allow the use of smaller size containers for refilling while at the same time imposing new requirements on all containers and bulk storage sites.

If you have any questions concerning this amendment, please contact David Stangel of my staff at PWS 398-8295.

Attachments

Printed on Recycled Paper

Senate Agriculture Committee  
3-7-91  
attachment 3



**Amendment to the July 11, 1977 Enforcement Policy  
Applicable to Bulk Shipment of Pesticides**

The July 11, 1977, Bulk Policy is hereby amended to allow repackaging of any quantity of pesticides into refillable containers, provided:

1) the container is designed and constructed to accommodate the return and refill of greater than 55 gallons or 100 pounds of the product; and

2) either: (a) the containers are dedicated to and refilled with one specific active ingredient in a compatible formulation, or (b) the container is thoroughly cleaned according to written instructions provided by the registrant to the dealer prior to introducing another chemical to the container in order to avoid cross-contamination; and

3) all other conditions of the July 11, 1977 policy are met.

This amendment does not preclude States or territories from developing more stringent restrictions to this policy or from disallowing the application of this amendment/policy and taking appropriate state enforcement action for violations.

Repackaging in accordance with this policy does not exempt the repackager from the Child Resistant Packaging Rule, 40 CFR 187, Subpart B, if applicable.

Footnote 1 on page 1 of the July 11, 1977 policy is amended by the deletion of the first sentence.

Rationale

EPA is amending the July 11, 1977, policy to address the changes that have taken place in the distribution of pesticide formulations that could be applied in greatly reduced quantities. The Agency is concerned with the difficulties of container disposal which is becoming a growing problem in many areas. By placing no lower limit on the quantity of pesticide that may be introduced into refillable bulk containers, the Agency will significantly reduce the number of containers requiring disposal and will minimize leftover pesticide product that results from sales in predetermined quantities.

All other provisions of the policy remain in effect as a means of safeguarding product integrity and accountability of the parties involved. The Agency remains concerned with the issue of cross contamination and is thus requiring that the bulk

containers either be dedicated to a particular active ingredient which is compatible to other formulations with the same active ingredient, or that registrants involved in the bulk shipment and transfer of pesticides provide the dealer with written instructions to follow for cleaning the container prior to introducing another pesticide into the container.

RECEIVED

JAN 4 1991

BOARD OF AGRICULTURE  
DIV. OF PLANT HEALTH

QUESTIONS/ANSWERS CONCERNING BULK PESTICIDES  
REPACKAGING AND CUSTOM BLENDING

Question: What is "bulk pesticide"?

Answer: For purposes of the EPA bulk policy, "bulk" has been defined as any volume of pesticide greater than 55 gallons or 100 pounds held in an individual container.

Question: Why did EPA develop a bulk policy?

Answer: EPA recognized that manufacturers and distributors of pesticides preferred to handle pesticides in bulk rather than in small individual containers for the following reasons: the need to properly dispose of excess numbers of containers is eliminated; less warehouse space is required; labor and handling costs are reduced; and inventories can be more accurately controlled. In the interest of energy and resource conservation and of improved safety measures in pesticide handling, EPA developed a bulk policy to permit dealers to repackage and sell pesticides in bulk without having to register the repackaged product, PROVIDED the dealer met several conditions. The bulk policy is therefore an exemption from the FIFRA Section 3 registration requirements.

Question: What conditions must the dealers meet?

Answer:

- (1) register each of the repackaging sites owned or operated by him as a "pesticide-producing establishment";
- (2) obtain written authorization from the product's registrant to repackage the pesticide and use the registered label;
- (3) place the dealer's EPA-assigned establishment number on the product's label, *and the net contents;*
- (4) provide product's label and labeling to the end-user;
- (5) keep records as required by Section 8 of FIFRA (shipping and receiving, sales, etc.); and
- (6) report annually to EPA the types and amounts of pesticides produced (repackaged) by him. The EPA annual report is mailed to the company headquarters of the registered establishment by certified mail, usually in November or December.

Question: Why does EPA say that I am a producer if all I do is transfer the pesticide from my bulk container to the minitank?

Answer: The word "produce" has been defined by EPA as "...to manufacture, prepare, propagate, compound or process any pesticide...or to repackage or otherwise change the container of any pesticide or device."

Question: Can the dealer sell 56 gallons of pesticide in a 55-gallon container?

Answer: No. This practice does not meet DOT requirements.

\* { Question: As a service to the customer, can the dealer dilute the pesticide according to label directions?

Answer: No. Any change to the pesticide formulation -- including the addition of water -- will require full product registration. A dealer who performs this service is subject to nonregistration charges and the imposition of civil penalties.

{ Question: If a dealer purchases a pesticide in bulk and uses all the pesticide through custom application work, must he be registered as a pesticide-producing establishment?

Answer: No. A custom applicator is simply applying the product (not repackaging it).

Question: What if the dealer custom applies AND sells pesticides in bulk quantities for someone else to apply?

Answer: The dealer must register as a pesticide-producing establishment, but must report to EPA only those pesticides which are repackaged in bulk.

Question: Who can grant authorization for a dealer to repackage in bulk?

Answer: ONLY the basic registrant of the pesticide can authorize a dealer to repackage its product and use its label.

Question: What penalties are assessed for not complying with the bulk policy?

Answer: Penalties of up to \$5000 per charge can be assessed for failing to comply with any of the terms of the bulk policy, and for violating any other provisions of FIFRA.

Question: A customer returned a partially used pesticide for credit. Can I resell the unused pesticide?

Answer: The dealer cannot lawfully sell a pesticide which has been opened and partially used. Only if a bulk pesticide, packaged in a sealed minitank, is returned can the dealer lawfully resell the pesticide, and that may be done only if the registrant of the bulk pesticide permits it. The dealer must keep in mind, though, that under the bulk policy statement, he must sell more than 55 gallons or 100 pounds of the pesticide. If smaller amounts are needed, prepackaged containers should be sold.

Question: Can a customer return for credit unused pesticides?

Answer: Unused pesticides purchased in bulk may be returned if the registrant of the bulk pesticide and the dealer agree that a return is acceptable. Again, the bulk policy statement permits sale of bulk pesticides only in quantities of more than 55 gallons or 100 pounds.

Question: How can one obtain information on diking around bulk pesticide tanks?

Answer: The Midwest Agricultural Chemicals Association (MACA) has developed model regulations which incorporate diking and secondary containment recommendations for the Midwest. You may wish to request a copy from Dr. Ev Waller, MACA, P.O. Box 2125 Northside Station, Sioux City, Iowa 51104-0125, Phone: 712-277-7380. The National Fertilizer Solutions Association (NFSA) also publishes suggested guidelines in a pamphlet entitled On-Site Product Containment Guidelines for Fluid Fertilizers and Agri Chemicals". You may obtain a copy by writing Mr. Burleson Smith, NFSA, 339 Consort Drive, Manchester, Missouri 63011 or by calling 314-256-4900. The cost of the pamphlet is \$14.50. Also, your state environmental agency may have specific requirements or guidance and a number of state fertilizer and agricultural associations have recommendations which are state-specific.

Question: At the end of the season a dealer has a few gallons of registered pesticide remaining in his bulk tank. He wants to clean out the tank for a new product next season. What are his options for disposing of the leftover pesticide?

Answer: Depending, of course, on the amount of pesticide remaining in the tank, the dealer may (1) dispose of it according to label directions; (2) return it to the manufacturer; or (3) apply it at the recommended diluted rate to a site named on the label.

Question: A dealer sells repackaged pesticide in bulk to a customer. Because of adverse weather conditions, the grower is unable to use all of the pesticide for the desired use, such as the stage of plant growth prevents use of the product. Can the customer return the remaining products to the bulk repackager?

Answer: The registrant of the bulk pesticide and the dealer must agree to accept the remaining pesticide. The purpose of the bulk policy is to permit sale of pesticides repackaged in bulk quantities greater than 55 gallons or 100 pounds. Any record of sale which shows a credit that would not meet this minimum amount must document the reasons why the pesticide was returned, i.e., the reasons the pesticide could not be used.

Question: When can a dealer reuse mini-bulk containers?

Answer: When the tank is used to contain the same pesticide it previously contained, and container labeling does not prohibit such reuse. The residue remaining from a previously packaged pesticide could result in illegal tolerances or could cause damage to the crop to which it is applied. The registrant's written authorization may give you specific instructions on reuse of mini-bulk containers.

Question: A bulk pesticide dealer owns several branch locations and repackages pesticides at each of those locations -- is each facility required to be a registered establishment?

Answer: Yes.

Question: A bulk pesticide dealer owns several locations and one of those locations runs short of its bulk supply. Can dealer A transfer pesticide in bulk to dealer B for resale by dealer B?

Answer: Yes. Records should reflect a bulk transfer to the branch location. If the bulk pesticide is being transferred to dealer B for repackaging purposes (i.e., dealer B will transfer the pesticide to the customer's tanks), then dealer B must comply with the bulk pesticide policy. Dealer B must be registered with EPA as a bulk pesticide producing establishment, have written authorization from the registrant to repackage the pesticide, provide a copy of the end-use label to the customer, and place the EPA-assigned establishment number on the pesticide container. Reports must be filed annually with EPA concerning the types and amounts of bulk pesticides repackaged.



Question: Can a customer come up to a bulk facility and put 250 gallons of a product in his own application equipment?

Answer: Any transfer of bulk pesticide is the responsibility of the dealer. Regardless of whose container the pesticide is packaged into, whether the dealer's or the customer's, and regardless of who does the transferring, the dealer must be registered as a pesticide-producing establishment, must comply with the recordkeeping and reporting requirements of all producers, and have written authorization from the registrant to use the registered label.

Question: If a company owns several bulk pesticide producing establishments, must each establishment have written authorization from the registrant?

Answer: Yes, and a copy of the written authorization must be maintained at each establishment.

Question: How long must I retain the written authorization?

Answer: For the period the authorization covers.

Question: A dealer sells a pesticide in bulk to an applicator who applies it to three or four places. The dealer individually bills the landowners. What must the dealer do to comply with EPA regulations?

Answer: If the pesticide is classified as a restricted use pesticide (RUP), the dealer must comply with the governing RUP sales recordkeeping requirements and EPA's bulk repackaging policy, as described above. If the pesticide is not classified as an RUP, the dealer must comply only with EPA's bulk repackaging policy. In both cases, to show the actual transfer of the pesticide (to the applicator) was in an amount greater than 55 gallons or 100 pounds, the dealer should indicate on the individual invoices the related tickets. It is the dealer's responsibility to be able to provide documentation that the repackaging transaction to each applicator was actually for an amount greater than 55 gallons or 100 pounds. This procedure will allow for split billing, a common practice.

Question: If a registrant sells bulk pesticide to a dealer and the product is being stored in the dealer's holding tank, whose establishment number should appear on the holding tank?

Answer: The registrant's establishment number should be on the holding tank.

Question: If a dealer transfers pesticide in bulk to the customer's mini-bulk tank whose establishment should appear on the mini-bulk tank?

Answer: The dealer's establishment number.

Question: A dealer uses some pesticide from a 55-gallon container in his custom application work. What can he do with the rest of the pesticide?

Answer: He must use it in his future applications. It cannot be sold.

Question: What is a "custom blend?"

Answer: A custom blend is a mixture of a pesticide (s) and fertilizer(s), a mixture of end-use formulations derived from registered pesticides, or a mixture of animal feed and feed-through pesticide(s) (if the pesticide used in the blend bears directions providing for use of the product in such a blend), which are prepared according to the specifications of the user for use by the user.

Question: Why did EPA need to establish a custom blend policy?

Answer: FIFRA requires that all pesticide products be registered and that facilities where pesticides are produced be registered establishments. "Produce" is defined as manufacturing, preparing, propagating, compounding, processing, or repackaging any pesticide. The blending of a pesticide with feed or fertilizer constitutes repackaging in that the pesticide is changed from its packaged container into another form.

Because EPA recognized the constraints upon the blender to comply with product and establishment registration requirements, and in view of the extent to which this practice is used, the Agency decided to exempt custom blenders from certain requirements of product and establishment registration PROVIDING certain conditions are met. The Agency's custom-blend policy is really an exemption from registration requirements.

Question: What conditions must be met in order to be exempted from product registration requirements?

Answer: (1) The blend is prepared to the order of the user and is not held in inventory by the blender; and (2) the blend is to be used on the customer's property (including leased or rented property); and (3) the pesticide(s) used in the blend bears end-use labeling directions which do not prohibit the use of the product in such a blend, or the blend is recommended in writing by an appropriate State or Federal Agency official; and (4) the blend is prepared from registered pesticides; (5) the blend is prepared in a registered establishment; and (6) the blend is delivered to the user together with (a) a copy of the end-use labeling of the pesticide(s) used in the blend, and (b) a statement specifying the composition of the mixture.

Question: What must the custom-blender do to comply with establishment registration requirements?

Answer: If the entire production is confined to custom blending activities, the custom blender must only register with its EPA regional office as a pesticide-producing establishment. The custom blender is not required to file annual production reports or place the establishment number of his facility on the blended products, as other producers must.

Question: Does EPA consider mixing of a diluent with a pesticide (no fertilizer) as a custom blend?

Answer: Not at the present time. Preparing a pesticide for sale or distribution with a diluent is beyond the scope of the Agency's custom blend policy and is not permitted. Doing so will subject the user to product registration requirements since he will be changing the pesticide from its original state.

Question: Can I add diluent to a custom-blend product (pesticide AND fertilizer blend) in order to make it a ready-to-use mixture?

Answer: Yes, if the diluent is added to the mixture according to the pesticide's label directions.

Situation: A father/son ag chemical dealership has been reorganized so that the son owns the fertilizer business and the father owns the pesticide business. The father intends to lease bulk pesticide storage tanks from his son and maintains full ownership of the bulk pesticides stored in these tanks. The son also runs a custom crop spray ag service.

Question 1: Assuming the father has an EPA establishment registration allowing for repackaging bulk product, does the son have any responsibility to EPA, since he owns but leases the tanks to his father?

Answer: Assuming the bulk repackaging will be done at the father's establishment and the son will not be doing any bulk repackaging, only the father need to comply with the bulk policy.

Question 2: Can the son fill his sprayers with product from his father's bulk tanks in a purchase-as-needed basis, assuming the quantity metered into the sprayers is 55 gallons or less?

Answer: ~~No. Quantities must be of amounts greater than 55 gallons or 100 pounds.~~

~~— See new rule —~~

Question 3: Could the situation described in question 2 be considered as a custom blend, if the son metered product from his father's bulk tanks and completed the tank mix with fertilizer or water from his own facilities?

Answer: No. A custom blend (which cannot be held in inventory) is prepared specifically by the custom blender for use by the customer.

Situation: An ag chemical dealer ships a 110-gallon minibulk tank of herbicide to Farmer A who uses 30 gallons of product and ships the remainder to Farmer B who uses 50 gallons of product and ships the remainder to Farmer C who uses the remaining 30 gallons. The dealer bills each farmer separately.

Question: Is this practice considered acceptable within the bulk repackaging guidelines and policies?

Answer: No. Such a practice would be considered a circumvention of the bulk policy. Farmers A and B would be distributing an unregistered pesticide and subject to civil penalties. Since the dealer has fulfilled his requirements of complying with the bulk policy (by shipping an amount greater than 55 gallons), his records would have to reflect this. If his records show "sales" of less than 56 gallons to each customer, he could be charged with a violation of the bulk policy.

Situation: Dealer A owns three bulk tanks and Dealer B owns three bulk tanks located at the same site. Each dealer's tanks will hold products from different manufacturers.

Question: Dealer A wants to repackage bulk products from Dealer B's bulk tanks and vice versa. Is this practice acceptable? If yes, what conditions do both dealers need to meet in order to legally repackage product from each other's bulk tanks?

Answer: No. It is assumed the establishment where the tanks are stored is owned and registered to only one of the dealers. Additionally, the written authorization to repackage pesticides would cover only one of the dealers and the situation as described would not allow for accountability of the product.

Situation: Dealer A has met the requirements for repackaging bulk pesticides.

Question: Can Dealer A repackage product into minibulk tanks and sell these to Dealer B for resale purposes?

Answer: If Dealer B is not repackaging the product (i.e., will be distributing Dealer A's repackaged product) then such a transaction would be in compliance with the bulk policy. Dealer B cannot repackage the product and then distribute it.

Question: A dealer sells 60 gallons of a bulk pesticide to a farmer (and complies with all the requirements of the bulk policy). The farmer uses the product but finds he needs another 30 gallons to complete the application. Can the dealer make a sale of only 30 gallons of a bulk pesticide to the farmer?

Answer: The Agency recognizes that it may not always be possible to calculate exactly the amount of pesticide needed for a particular job. In keeping with the Agency's concept of minimizing pesticide and pesticide container disposal problems, the Agency would allow this practice under certain conditions. The dealer must show (through written documentation) that the second sale was actually to complete an initial sale and application of a bulk pesticide. The dealer should document why the second repackaging was necessary and to what application site it was applied. The second sale would have to be made within a reasonable amount of time so there would be no doubt that it was to complete an initial transfer and application.

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