

U.S. Court of Appeals Blocks New OSHA Fertilizer Rules Because of Improper Rulemaking

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The Occupational Safety and Health Administration failed to go through the proper rulemaking process before mandating retailers to implement new stricter storage standards for anhydrous ammonia fertilizer, the U.S. Court of Appeals for the D.C. Circuit has ruled. *Agricultural Retailers Association and the Fertilizer Institute v. OSHA*, No. 15-1326 (D.C. Cir. Sept. 23, 2016).

The three-judge panel said it was not ruling on the merits of the case, only that OSHA must go through a formal notice and comment rulemaking process if it wants to enforce stricter standards.

Following the 2013 explosion at the West (Texas) Fertilizer Company manufacturing facility, OSHA in July 2015 announced it would regulate retail sellers of farm fertilizer such as anhydrous ammonia under the same standards as manufacturers. The change was scheduled to take place October 1, 2016. The Agricultural Retailers Association and the Fertilizer Institute opposed the decision.

The appeals court vacated OSHA's 2015 memo, which withdrew a long-standing exemption for "retail facilities" from strict Process Safety Management hazardous materials reporting standards for anhydrous ammonia. Now, the stricter standards are suspended, pending formal rulemaking procedures.

Steve Nelson, president of the Nebraska Farm Bureau, said of the Court's decision, "Today's action by the U.S. Court of Appeals for the D.C. Circuit forcing the Occupational Safety and Health Administration (OSHA) to go through a formal rulemaking process before applying stricter standards to retailers of anhydrous ammonia fertilizer is a mark on the win column for Nebraska farmers and fertilizer suppliers."

He added, "Since OSHA reversed its long-standing policy of exempting anhydrous ammonia retail facilities from extensive federal regulations in July of 2015, Nebraska Farm Bureau and others have challenged the flawed logic OSHA used to justify additional regulations on fertilizer suppliers which ultimately would drive up fertilizer costs for Nebraska farmers and could possibly limit access to anhydrous ammonia fertilizer product."

Nelson also said, "The fertilizer industry estimates the rule could cost fertilizer suppliers in the neighborhood of \$100,000 per facility which would ultimately translate to higher costs for farmers. Today's court action will force OSHA to go back to the drawing board to justify their actions, and hopefully mark the beginning of the end for this unwarranted regulatory burden."

Please contact Jackson Lewis to discuss the implications of this ruling.

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