CELLY SERVICES, INC.

Environmental, Health and Safety Services

News and Views

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NEW TIRES-OLD NEWS

The National Transport and Motor Vehicle Safety Act of 1966 (15 USC 1381) requires all manufacturers of tires to provide tire registration forms to every distributor and dealer of its tires which offer new tires for sale. The law also unequivocally and unambiguously requires each independent dealer selling new tires to provide tire purchasers at the time of sale with a tire registration form. Further the law requires that before giving the registration form to the tire purchaser, the dealer "*shall record in appropriate spaces*" information as follows:

- Tire I.D. number of the tire sold/leased.
- Distributor/Dealers name and address or other means of identification known to the tire manufacturer.

The customer then fills their name and address and mails the form to the tire manufacturer or to its designee. The law allows smaller dealers up to six months or up to 40 tires (whichever comes first) to mail the tire registration information to the tire manufacturer or its designee in the event the dealer decides to mail the cards after consumer information has been filled in.

Motor vehicle dealers who sell or lease a used motor vehicle with new tires are considered to be a tire dealer for the purposes of registration above. Also, each dealer selling a motor vehicle to first purchaser for purposes other than resale, that is equipped with new tires that were not on the motor vehicle when shipped by the vehicle manufacturer is considered a tire dealer as well and must comply with the registration requirements listed above. Compliance with registration by auto dealers is virtually non-existent. None of the dealerships CSI has contacted are even aware of this regulation.

Compliance can be achieved by simply requesting the registration card from the manufacturer or distributor and handing to the customer at the time of tire sale. A registration form for independent distributors and dealers with the tire registration number is enclosed.

Many tire manufacturers in the US, including Continental, Bridgestone, Firestone, etc. have made a central designee to receive the cards and store user identification that is utilized in the event of a recall. The designee is as follows:

CIMS Tire Industry Registration Center

P.O. Box 1000

Akron, OH 44309-1000

Phone (330) 794-9190

Registration cards are also available from CIMS for a fee of $150 for 5000 cards. CIMS staff has informed CSI that their card can be used for any tire manufacturer. This can be helpful if the dealership sells multiple tire lines. If CIMS is not the designated agency, as would happen in some cases, the cards must be forwarded to the manufacturer or its designee pursuant to federal law.

In summary, tire registration at the time of tire sale, whether through a sublet or in-house is a requirement under the law. Federal law aside, failure to register can bring liability when a tire is recalled and the consumer gets no information on the recall and is involved in a accident caused by tire failure. If the accident could have been avoided by notification to consumer and subsequent tire change, liability accrues for the dealership! (*Ref: 49CFR Ch. V § 574)*

OLD TIRES-NEW NEWS

California has enacted laws in 2000 that require the tracking of used tires from the generator to the end use facility. We have discussed the new regulations in our November 2000 and April 2002 newsletters.

As part of the year 2000 laws, the state has finally issued a Tire Program Identification (TPID) number that must be utilized on a CA Uniform Waste and Used Tire Manifest to be completed at the time of each shipment of used waste/used tires from the facility. The three-part manifest after proper completion requires the top copy to be mailed to California Integrated Waste Management Board (CIWMB) in Sacramento, a copy to be kept both by the generator and the hauler. The requirement of mailing a quarterly summary of manifests to CIWMB on a quarterly basis has been done away with as a copy of each manifest is mailed to CIWMB.

The TPID number, required to complete a manifest, has been issued by CIWMB to all tire sellers on the States' database. Dealers were informed of the TPID by a memo from CIWMB that was enclosed with the "Guidance Manual" sent by mail to dealers in June/July 2003. If the dealership has not received the TPID number or cannot locate the number, CIWMB and be contacted at (866) 896-0600. If a facility has not been assigned a TPID number, a TPID number request form must be completed and sent to CIWMB. These forms can be completed online as well. Forms are also available from CSI upon request.

There are no documentation or vehicle registrations required if the dealerships themselves transport 9 or fewer tires to the local tire store that presumably recycles the tires under state regulations described above. In summary, for all used and waste tire disposal, the dealership needs to undertake steps as follows:

- Use a CIWMB Tire Hauler (the tire hauler has a decal in the window).
- Complete a manifest with the dealership TPID number.
- Mail the top copy to the State and keep a copy for dealership records.

TAXES TAXES TAXES

California through its State Board of Equalization (BOE) assesses an annual "Generator Fee" on all hazardous waste generators generating in excess of 5 tons. A dealership that generated between 5 tons and 25 tons had a $163 fee in 2002. Last year, the BOE after visiting Cal-EPA database determined that many of the hazardous waste generators with valid EPA ID numbers were not registered for the fee. BOE requested that all generators of 5 tons or more of hazardous waste register with BOE by calling (916) 323-9555. Numerous dealers have questioned the basis and applicability of the fee, which we therefore seek to clarify.

The fee is applicable to all hazardous waste generated at a specific site (issued with the specific EPA ID number) irrespective of the final disposition of the waste or the document used for its disposal. The documentation part is important because the state currently has no tracking mechanism in place for non-manifest related hazardous waste disposal such as waste coolant or waste parts cleaning solvent. In essence, wastes disposed under a manifest are recorded at the State level but other wastes not under a manifest are not tracked by the state as yet. However, the obligation to pay taxes remains. We recommend that the dealership evaluate the volume of hazardous waste streams at the facility. If the aggregate of the hazardous waste generated for a year exceeds 5 tons (roughly 1500 gallons of fluid), then the dealership should register the site with the BOE at the phone number listed above. In California the hazardous wastes considered for the purposes of the fee calculations include parts cleaning solvent, waste parts cleaning solvent (petroleum or non-petroleum based), waste coolant, waste clarifier sludge, and waste lacquer thinner. *(Ref: Regulation 3000, DTSC, State of California)*

CHANGE THE PLAN

If your facility stores an aggregate of 1320 gallons or more of petroleum products in aboveground storage tanks, federal law mandates that a Spill Prevention Containment and Countermeasures (SPCC) Plan must be prepared for your facility. Further, a registered Professional Engineer (PE) who is familiar with the federal law and has reviewed the aboveground storage tanks at the facility must certify this plan. The petroleum products considered for purposes of the plan include fuel, motor oil, automatic transmission fluid, waste oil, etc., in aboveground tanks. This federal rule has recently undergone some revisions. They are as follows:

- Dealers now have up to February 18, 2005 to hire a PE to draft <u>amendments</u> to their SPCC.
- The 660-gallon tank threshold for SPCC requirements has been dropped. Only facilities with 1320 gallons aggregate or more of petroleum products stored in aboveground tanks are subject to the plan requirements. Also, containers with capacities of 55 gallons or greater are counted in the calculation of aboveground capacity.
- A PE must review plans once every 5 years (earlier it was every 3 years).
- All facilities becoming operational through August 18, 2003 must prepare and implement the plan no later than August 18, 2003.
- All facilities that become operational after August 18, 2003 must prepare and implement plans prior to commencing operations.
- The PE must certify only technical amendments, i.e., the PE certification is not required for non-technical amendments like changes to names and phone numbers. The dealership may make such changes in house and communicate them to the responsible individuals.

- The berms and dikes for aboveground tanks must be "sufficiently impervious" to contain the petroleum product in the tank. The earlier requirement of a holding period by the berms and dikes for 72 hours has been withdrawn.

Lastly, SPCC plan or no SPCC, any spill of oil can be a disaster. The dealership should be cognizant of potential leaks or spills from both used and new products, not only from tank rupture or leaks but also from overflow of these tanks and leaks in the dispensing/fill lines etc. If you need help in preparing the plan, please call CSI. *(Ref: 40 CFR 112 and Health and Safety Code, Chapter 6.67)*

TSUNAMI OVER STORMWATER

In recent years, stormwater management has become extremely important as EPA and local & state regulatory agencies have concluded that storm (drain) water picks up enough contaminants from parking lots and other industrial facilities and is a major source of pollution to our rivers and oceans. To comply with federal regulations adopted under the Clean Water Act (CWA) of 1972 and later published regulations by the US EPA in 1990, the California Water Quality Control Board (Board) now requires individual counties and cities to control the pollutant being discharged to the storm water. As part of this control, individual counties and cities are required to obtain permits that limit the discharge of contaminant to the stormwater receiving bodies such as rivers and canals.

Under the permitting regime adopted by counties and cities, certain listed industrial and commercial facilities are required to obtain storm water permits where contaminant limits are established for stormwater prior to its discharge. Certain construction facilities are also required to have permits. Auto servicing facilities, bodyshops and fueling stations are not required to obtain individual permits. However, as part of general pollution reduction and control conditions on the stormwater permits issued to municipalities and cities by the Board, the cities are required to inspect premises including auto dealerships for storm water run off.

All this means is that you have a new inspector and a new inspection protocol! The city of Carson, for example, has 1000 locations that must be inspected for compliance twice within a 5-year permit period. Board permit conditions require that the first inspection be completed by August 2004. Certain cities have hired independent consultants to conduct inspections and these consultants or city inspectors will issue "notice of violations" when they observe that dealerships are discharging pollutants to storm water. In case you have not had a visit as yet, it is time to get prepared.

First and foremost, ensure all your wastewater is discharged to the sanitary sewer system. This includes water from auto washing activities and shop floor cleaning activities. Next, ensure all tanks, drums, and machinery capable of discharging pollutants to storm water either by leak or rinse by rain are covered and if required have an embankment around them to contain discharges. Rinsing of automobiles on the lot by water alone is acceptable though certain cities have banished that procedure as well. Last and not the least, train your employees on Best Management Practices (BMP) for preventing pollutant discharge to storm water. Inspectors visiting the dealership will do visual inspection of premises and may demand training documentation for shop employees. Dealership should ensure that a responsible person such as the Service Manager accompany the inspector on premises and keep the employee training on BMP handy. BMP manual is available from CSI. *(Ref: CA State Water Resource Control Board/Water Quality Order No. 97-03-DWQ/US EPA Final Regulations published November 16, 1990)*

CLOSED LIPS SINK SHIPS

Recently the minimum penalty for failure to report a serious occupational injury, illness or accident to OSHA has been increased from $500 to $5,000. Both Fed-OSHA and Cal-OSHA require that all serious injuries or fatalities to employees from accidents related to work be reported to the nearest OSHA office. A serious injury or illness is defined as an amputation, disfigurement or an incident that leads to hospitalization of an employee beyond 24 hours. In California, the notification must be made within 8 hours to the nearest Cal-OSHA office by phone even if the injury/fatality occurs on a weekend. The phone number of the nearest Cal-OSHA office is available on the labor law poster placed on the employee notice board.

The new California law also specifies that an employer, officer, management official or supervisor who knowingly fails to report a death to Cal-OSHA or induces another to do so is guilty of a misdemeanor punishable by up to 1 year in jail, a $1,500 fine or both. If the violator is a corporation or LLC, the maximum fine is $150,000.

According to Cal-OSHA officials, 550 citations are issued each year for employers' failure to report accidents covered under this law and the new law is designed to dramatically reduce such omissions.

The new law, AB2837, has certain new provisions that require Cal-OSHA to notify the appropriate prosecuting authority when an industrial accident results in a serious injury/illness or death. An OSHA investigation following the report of a serious injury is a certainty and detailed description of the accident to OSHA may incriminate the dealership

leading to a criminal indictment. CSI, therefore, recommends that the employer is well served by contacting their lawyer and being prepared for an OSHA investigation. Requesting an OSHA inspector for a warrant in certain cases is a prudent policy as well. Details for reporting protocol were also discussed in great detail in our July 2000 newsletter. *(Ref: T8CCR342 Ch. 3.2, AB 2837 & Labor Code 6423)*

ONE FOR THE RECORD

South Coast Air Quality Management District (SCAQMD) has reduced the allowable volatile organic compounds (VOC) content in aerosol solvents and other solvent cleaning operations to 25 grams/liter (g/l) from the earlier level of 50 g/l. SCAQMD jurisdiction includes Los Angeles, Orange, Riverside Counties and the non-desert portion of the San Bernardino County. The reduction of the limit was addressed in our July 2002 newsletter as well.

For compliance, the dealership must review the Material Safety Data Sheets (MSDS) of the aerosol cleaners used in the shop area. The rule allows that the first 160 oz/day of aerosol cleaners utilized may have any level of VOC's. Beyond the 160 oz. limit, only aerosol cleaners with less than 25 g/l must be utilized. Dealership is obligated to keep records to demonstrate compliance with this rule to SCAQMD staff.

All aerosol cleaners including brake cleaners, carburetor cleaners, and parts cleaners are considered aerosol cleaners for the purposes of this regulation and must be included for the 160-oz/day analyses. The table top washers in the SCAQMD region are already utilizing the water based cleaners and as such should not be impacted by the reduction of the VOC content for the cleaning media to 25 g/l.

MAKE NO GOSSIP

Injury/Illness caused by office gossip is compensable under California's Workers' Compensation laws. In a ruling by the California Court of Appeals, the Atascadero Unified School District was held liable for injury/illness sustained by an employee as a result of office gossip. The court held that the 'gossip' about personal life is not part of employment relationship and thus a claim for emotional stress caused by office gossip is compensable.

To prevent a claim such as this, an employer must put a lid, a tight one, on all gossip at the workplace!

(Ref: Atascadero Unified School Dist. vs. Workers Compensation Appeals Board).

The article was authored by Sam Celly of Celly Services, Inc. Sam has been helping automobile dealers comply with EPA & OSHA regulations in California, Nevada, Arizona, Hawaii & Idaho since 1987. Sam received his BS & MS in Chemical Engineering followed by a JD from Southwestern University. Sam is a Certified Safety Professional & a Registered Environmental Assessor (CA). Your comments/questions are always welcome. Please send them to sam@cellyservices.com.