

# Congress of the United States

Washington, DC 20515

March 24, 2016

The Honorable Tom Cole  
Chairman  
House Committee on Appropriations  
Subcommittee on Labor, Health and Human  
Services, Education, and Related Agencies  
2358-B Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Rosa DeLauro  
Ranking Member  
House Committee on Appropriations  
Subcommittee on Labor, Health and Human  
Services, Education, and Related Agencies  
1016 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Cole and Ranking Member DeLauro:

We are writing to you today to urge inclusion of the attached legislative language in the FY 2017 Labor, Health and Human Services, Education and Related Agencies appropriations bill in order to prevent funds from being used to implement the July 22, 2015 Occupational Safety and Health Administration (OSHA) memorandum regarding anhydrous ammonia and the Process Safety Management (PSM) program until OSHA has carried out a formal rulemaking process.

The July 22 memo dispensed of a twenty-three year policy which excluded agricultural retail facilities from coverage under OSHA's Process Safety Management (PSM) program. As a result of this policy change, any agricultural retail facility not under the North American Industry Classification System (NAICS) 44 or 45, that stores or handles 10,000lbs or more of anhydrous ammonia or 15,000lbs of aqua ammonia, is now subject to PSM.

We are concerned that these changes will place a significant time and cost burden on America's agricultural retailers without providing them and other impacted stakeholders with an adequate opportunity to provide the Agency with input prior to the policy change. In addition, this new policy could lead to farmers having to travel longer distances to obtain anhydrous ammonia, an important crop nutrient utilized by farmers to grow many commodities. In fact, we have heard from agricultural retailers in some areas that are contemplating whether or not to stop carrying anhydrous ammonia altogether, causing farmers to either find alternative suppliers or purchase other types of fertilizer products in higher quantities in order to obtain the same amount of nitrogen content for their crops. This presents not only an economic burden but also an environmental challenge because farmers could be forced to use more fertilizer.

OSHA estimates that approximately 4,800 facilities will be affected by the new policy change, approximately 3,800 of these facilities are agricultural retailers. Industry estimates compliance costs to be approximately \$30,000 for initial compliance, \$12,000 for annual compliance, \$18,000 every 3 years for an audit. These estimates do not include the cost of potential upgrades which could easily exceed \$70,000 per facility if they are forced to replace a single anhydrous ammonia storage tank.

This request follows language that was included in the Joint Explanatory Statement, Division H of H.R. 2029, the Consolidated Appropriations Act, 2016. Unfortunately, despite the inclusion of

language which directed OSHA to commence with a formal rulemaking process, the Agency ignored Congressional intent and simply delayed enforcement of the memorandum until September 30, 2016 to coincide with the expiration of H.R. 2029.

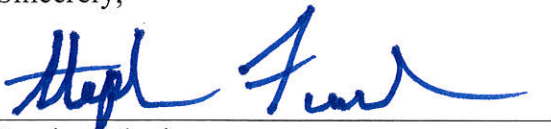
We appreciate the Committee's work on this issue so far. However, because OSHA has chosen to ignore Congressional intent in H.R. 2029, it is important that language directing OSHA to promulgate a formal rulemaking be included in the legislative text of the FY 2017 Labor, Health and Human Services, Education, and Related Agencies appropriations bill. The language below would require OSHA to promulgate a formal rulemaking regarding the safe handling and storage of anhydrous ammonia at agricultural retail facilities:

"The revised enforcement policy relating to the exemption of retail facilities from coverage of the Process Safety Management of Highly Hazardous Chemicals standard (29 CFR 1910.119(a)(2)(i)) issued by the Occupational Safety and Health Administration on July 22, 2015, shall not be enforced nor deemed by the Department of Labor to be in effect in fiscal year 2017, or future years, until: the Bureau of the Census establishes a new North American Industry Classification System code under Sector 44 or 45 Retail Trade for Farm Supply Retailers; the Secretary of Labor, acting through the Assistant Secretary of Labor for Occupational Safety and Health, has carried out all notice and comment rulemaking procedures and invited meaningful public participation in the rulemaking; and the Secretary, acting through the Assistant Secretary of Labor for Occupational Safety and Health, arranges for an independent third-party to conduct a cost-benefit analysis of such proposed rule, and the Secretary includes such analysis in the publication of the proposed rule."

We ask for your assistance in placing this important language in the FY 2017 Labor Appropriations bill in order to prevent funds from being used to implement the July 22, 2015 OSHA memorandum until the Agency carries out a formal rulemaking process.

Thank you for your time and consideration of this request.

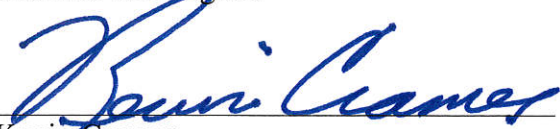
Sincerely,



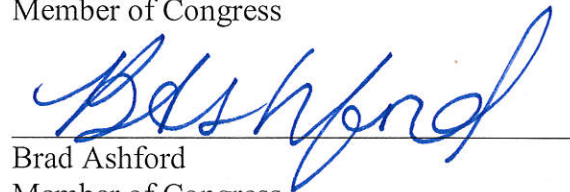
Stephen Fincher  
Member of Congress



Collin C. Peterson  
Member of Congress



Kevin Cramer  
Member of Congress



Brad Ashford  
Member of Congress

*Mike Bost*

Mike Bost  
Member of Congress

*Rod Blum*

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Tim Huelskamp  
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*Bob Gibbs*

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Lynn Jenkins, CPA  
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*Adrian Smith*

Adrian Smith  
Member of Congress

*Jackie Walorski*

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*Jim Costa*

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*Luke Messer*

Luke Messer  
Member of Congress

*Jeff Fortenberry*


Jeff Fortenberry  
Member of Congress

*Frank D. Lucas*

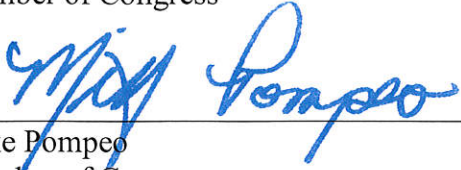
Frank D. Lucas  
Member of Congress



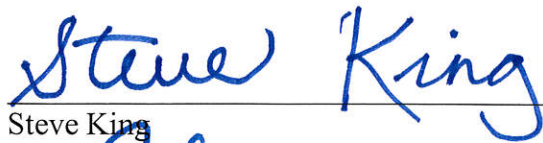
Darin LaHood  
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Member of Congress



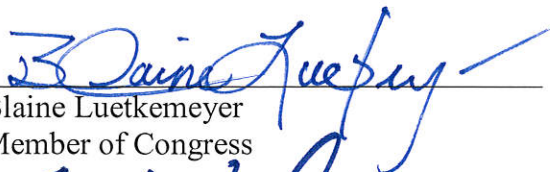
Cheri Bustos  
Member of Congress



Mike Rogers  
Member of Congress




Reid J. Ribble  
Member of Congress



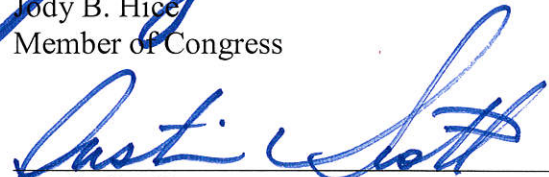
Blaine Luetkemeyer  
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Jody B. Hice  
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Filemon Vela  
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Susan W. Brooks  
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Dan Newhouse  
Member of Congress



Corrine Brown  
Member of Congress



Dan Benishek M.D.  
Member of Congress



Bill Flores  
Member of Congress



Steve Russell  
Member of Congress

A handwritten signature in blue ink, appearing to read 'M. Stutzman', written over a horizontal line.

Marlin A. Stutzman  
Member of Congress