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RULING PREVENTS ADVERSE ECONOMIC IMPACT ON FARMERS AND CONSUMERS

Phoenix, Ariz. (September 28, 2016) – The law firm of Gallagher & Kennedy announced today that the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) invalidated a U.S. Occupational Safety and Health Administration (OSHA) standard that could have put over 3,800 agricultural retail facilities across the country at risk of shutting down.

For 23 years, agricultural retail facilities that supply important crop nutrients to farmers were exempt from the OSHA Process Safety Management (PSM) Standard. This PSM Standard requires certain facilities handling large quantities of chemicals to develop rigorous and complex engineering, management, and emergency planning requirements for certain workplaces. But in July 2015, OSHA issued a memorandum rescinding that exemption for these facilities. Soon after, in September of 2015, industry groups sued over the major change stated in the memorandum.

Chris Leason of Phoenix-based law firm Gallagher & Kennedy, represented The Fertilizer Institute (TFI), the Washington D.C. trade association for the fertilizer industry, in the litigation. “This is a big win for the agricultural industry. These retail facilities are the backbone of America’s farming system, ensuring an affordable and abundant food system. The ruling will make it more difficult for OSHA to take similar actions in the future,” stated Leason.

Compliance costs were estimated at more than \$100 million, so if OSHA’s memorandum was not challenged, many of these small operations would have gone out of business, or passed their compliance costs onto farmers and in turn, to consumers. “Many of the facilities are small businesses with only a few employees, and could not handle the burden of complying with the PSM Standard in the tight time frame requirement,” Leason said. Noncompliance with the PSM Standard could also subject these businesses to civil and criminal penalties.

The Court agreed with TFI and other petitioners that OSHA side-stepped required notice and public comment rulemaking procedures set forth in the Occupational Safety and Health Act when it issued the memorandum, therefore leaving in place OSHA’s original conclusion that agricultural retail facilities are exempt, ensuring that these small businesses remain in business and able to provide necessary crop nutrients to farmers on a timely and cost-efficient basis.

About Gallagher & Kennedy

Established in 1978, Gallagher & Kennedy is an Arizona-based law firm with nearly 80 attorneys in offices in Phoenix and Santa Fe. Gallagher & Kennedy’s clients range from Fortune 500 companies to small businesses and individuals. The firm’s clientele includes Freeport-McMoRan Copper & Gold Inc., the Arizona Diamondbacks, Arizona Cardinals, Bank of America and MidFirst Bank. For more information, please visit www.gknet.com or call 602-530- 8000.