



Advocacy: the voice of small business in government

***Testimony of
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***U.S. Senate
Committee on Environment & Public Works***

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Washington, D.C.
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(SPCC) Regulations"

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates. For more information about the Office of Advocacy, visit <http://www.sba.gov/advo>, or call (202) 205-6533.

Chairman Inhofe, and Members of the Committee, good morning and thank you for giving me the opportunity to appear before you today. My name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small business before Federal agencies and Congress. Because the Office of Advocacy is an independent entity within the U.S. Small Business Administration (SBA), the views expressed here do not necessarily reflect the position of the Administration or the SBA.

In 2004, the Office of Management and Budget (OMB) and Federal agencies undertook a process designed to reduce the regulatory burden on U.S. manufacturers through 76 targeted regulatory reforms, including several reforms recommended by the Office of Advocacy. More than half of these reforms involved rules issued by the U.S. Environmental Protection Agency (EPA).¹

At present, EPA is pursuing some 42 suggestions for reform of environmental rules affecting manufacturers. The Committee has requested the Office of Advocacy's views on progress made by EPA on one of these reforms, the Spill Prevention, Control, and Countermeasure (SPCC) Rule.

SPCC Background

SPCC regulations were initially promulgated by EPA in 1973 pursuant to the Clean Water Act to prevent oil discharges into water. Generally, a facility that stores oil of any type in quantities above certain threshold levels is required to abide by a Spill Prevention, Control, and Countermeasure Plan.

Because of the complexity and cost of the SPCC program, many small businesses find it difficult to comply with the 1973 requirements and the new requirements adopted in 2002. For example, EPA requires covered facilities to prepare spill prevention plans that are certified by a professional engineer. The Office of Advocacy believes that this is a costly and unnecessary expense for firms with small-capacity storage tanks, and EPA's new proposal addresses this. EPA recognized that small volume tanks do not generally

¹ The 2004 initiative to improve manufacturing rules is the most recent in a series of regulatory reform efforts initiated by this Administration since 2001. OMB called for public nominations of rule reforms in the May 2001 and March 2002 Draft Reports to Congress. OMB received 71 and 316 nominations from the public, respectively. OMB did not issue a public call for nominations in 2003. OMB's latest report can be found at http://www.whitehouse.gov/omb/inforeg/2005_cb/final_2005_cb_report.pdf.

pose the same environmental risks that larger volume tanks do, nor do they often require complex plans.²

The stringency of some of the 2002 SPCC requirements prompted the agricultural community, electrical industry, airport community, construction industry, oil and gas producers, manufacturers, and others to raise issues regarding the adverse impacts of these regulations. The regulated entities were particularly surprised by the 2002 revisions, given that the stated primary purpose of the amendments was to reduce, and not increase regulatory burdens. In response to small business' outcry, the Office of Advocacy has worked extensively with EPA and the regulated communities to identify small business concerns related to this rule since shortly after the amendments were published in July 2002. The Office of Advocacy suggested reforms to the SPCC requirements in June 2004, including allowing facilities with an oil storage capacity below certain thresholds to use streamlined, less expensive requirements.³ We believe that overall SPCC compliance would improve with a simpler, less expensive program that is tailored to small facilities.

On September 17, 2004, EPA issued a Notice of Data Availability (NODA) requesting public comments on the Office Advocacy's suggested approach for facilities that handled oil below certain threshold amounts.⁴

EPA staff has worked to meet the challenge of reinventing a SPCC rule that has suffered from widespread confusion and dissatisfaction about its regulatory requirements. The Office of Advocacy supports EPA's efforts and is pleased with the improvements EPA made to SPCC requirements through guidance and the proposed revised regulatory requirements. Several of our June 2004 suggestions were used to formulate this proposal.

EPA Proposes to Amend SPCC Plan Requirements

After studying the criticisms of the regulations, and the responses to the two recent notices of data availability, EPA is proposing new amendments to the SPCC Rule.

² According to a 1995 EPA survey, facilities with total storage capacities of 5,000 gallons or less account for an estimated 48 percent of all facilities, but only 0.2 percent of oil discharged. In its own analysis of the 1995 survey, EPA noted that "facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs." U.S. EPA, *Analysis of the Relationship Between Facility Characteristics and Oil Spill Risk* (1996).

³ The June 2004 letter is located at http://www.sba.gov/advo/laws/comments/epa04_0609.pdf.

⁴ See 69 Fed. Reg. 56,182 (September 17, 2004). EPA also issued a NODA relating to a suggestion to modify the oil-filled equipment requirements. *Id.* at 56184.

We welcome EPA's proposal to amend the SPCC requirements, and the Office of Advocacy is supportive of the specific provisions for small facilities, airports, motive power, and oil-filled equipment. These amendments will provide relief for small businesses, while improving environmental protection by facilitating compliance by smaller firms.

Small Facility Proposal

SPCC regulations require that all SPCC Plans be certified by a professional engineer (PE) who attests that the plan has been prepared in accordance with good engineering practice.

Based on EPA's proposed amendment, SPCC Plan requirements will now allow hundreds of thousands of small firms to self-certify their SPCC plan in lieu of expensive PE review and certification. Facilities with oil storage of under 10,000 gallons that can provide adequate protection against discharges can now prepare and implement a SPCC Plan without the involvement of a PE. Model plans can be written by trade associations that can be readily adapted for a small facility, as was successfully done for the accidental release program under section 112 (r) of the Clean Air Act.

Integrity Testing

Another key issue addressed by EPA in the new proposal involves the integrity testing requirements for tanks and containers. Industry experts believe that integrity testing for small shop-built tanks and drums is unnecessarily expensive, and is not technically feasible for drums. At an Environmental Roundtable held by the Office of Advocacy in May 2004, the National Paint and Coatings Association noted that integrity testing just for their industry's tanks would cost \$20 million over a ten year period. The Office of Advocacy recommended that EPA allow visual inspection without the need for obtaining a costly PE certification for small tanks and containers under specified conditions.

The Office of Advocacy is pleased with EPA's proposal for additional flexibility in integrity testing by allowing facilities to consult and rely upon industry inspection standards for small facilities (under the 10,000 gallon threshold) without employing a PE. Using the Steel Tank Institute SP001 industry standard, visual inspection will be allowed

for all small facilities with tanks of up to 5,000 gallons. As discussed in the preamble to the proposal, EPA seeks comment on an alternative to extend this SP001 provision to all small facilities (under the 10,000 gallon threshold). We expect small businesses will support this provision and it will not present additional hazards because all small facilities are required to have release barriers and secondary containment.

Motive Power

We also welcome EPA's proposed elimination of "motive power" equipment from the scope of the SPCC rule. The agency decided that it did not intend to cover tanks that are used to provide motive power to tractors, forklifts, mobile cranes, and other mobile equipment. EPA realized that it did not make sense for the SPCC rule to cover retail dealerships selling tractors, or to include construction sites under SPCC. The agency found that it was not practicable to require containment around vehicles that regularly move about the site. This step will provide relief at thousands of facilities.

Airports

Owners and operators of airports objected to the burdensome and potentially dangerous requirements of secondary containment of mobile refuelers which operate at airports. The airport community has objected that such requirements raise serious safety and security concerns. EPA responded to this objection by proposing that the "sized secondary containment" (the catchment basin must be large enough to contain the capacity of the largest container) requirements be replaced by "general secondary containment" (no sized requirement). The agency has posed an alternative for comment that would limit SPCC requirements to active refueling operations, which EPA states is the most common source of airport spills. My office will continue to work with EPA on flexible alternatives.

Farms

The Office of Advocacy supports the proposed indefinite extension of the compliance date for farms pending additional study by EPA. With an estimated hundreds of thousands of farms subject to this rule (the largest universe of firms subject to SPCC), both the U.S. Department of Agriculture and EPA have expressed interest in a specific

examination of the number and type of oil tanks, the spill history, the proximity to U.S. waters, and other relevant issues to determine the appropriate course of action.

Oil and Gas Production Facilities

While the proposed small facility rule provides relief for hundreds of thousands of small facilities, the 10,000 gallon threshold does not provide relief for thousands of independent oil and natural gas producers. A large number of these producers and their associations supplied comments on the November 2004 notice of data availability, expressing support for a separate approach for these facilities that face unique SPCC problems. Issues unique to oil and natural gas production include the cost and impracticality of secondary containment around flowlines, and the lack of a wastewater exemption for produced water tanks.⁵ Small businesses in that industry are asking for EPA to propose additional changes for the oil and gas producers through rulemaking.

Asphalt

As a result of substantial concerns raised by the construction industry, we advocated for the exclusion of asphalt cement and hot-mix asphalt from all SPCC- related requirements in our June 2004 letter. The Office of Advocacy based this on the observation that both asphalt cement and hot-mix asphalt are solid-to semi-solid at normal outdoor temperatures, and would not flow very far before becoming solidified. This behavior was confirmed by an industry analysis of spill data provided to EPA in August 2004.⁶ Another approach would be for EPA to draft guidance that would advise facilities to rely on active measures to stop any spill from reaching navigable waters, based on the most likely spill scenarios as determined using sound engineering judgment, in lieu of the more expensive passive measures, such as secondary containment.⁷ We are hopeful that these options remain under consideration.

⁵ Produced water tanks contain water that was extracted from the oil/ water mixture is recovered from the ground using an oil/water separator.

⁶ The National Response Center – Analysis of Data 2000 -2003, National Asphalt Pavement Association, August 31, 2004.

⁷ An active measure requires an action by the facility to prevent a spill from reaching navigable waters, and a passive measure involves a permanent structure designed to prevent spills from reaching such waters.

Oil-Filled Equipment

The Office of Advocacy is supportive of EPA's proposed reduced requirements for oil-filled equipment. The proposal moves away from the more expensive secondary containment requirement and allows facilities to substitute an oil contingency plan and a written commitment of manpower, equipment and materials to expeditiously control and remove any oil that may be discharged. This provision reflects the fact that such equipment, unlike storage tanks, has a low spill rate. Such equipment rarely requires oil transfers, is generally corrosion-protected, and is frequently monitored and inspected for leaks.

The Office of Advocacy is Committed to Working with EPA to Complete SPCC Regulatory Reforms

On behalf of small business, my office commends EPA for listening to small business concerns while drafting these amendments.

The Office of Advocacy has worked closely with EPA and other entities to implement needed regulatory reforms. Our involvement has included holding roundtables to receive suggestions on needed reforms, working with small business representatives to hear their views, and completing a report in June 2004⁸ addressing small facility issues. Congress realized the importance of small business when the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA)⁹ were enacted into law. Under the RFA and SBREFA, we look for ways to reduce small business burdens without compromising the regulatory objectives intended by the regulating agency. We believe that EPA's regulatory reform efforts can achieve those same objectives.

Thank you for allowing me to present these views. I would be happy to answer any questions.

⁸ *Proposed Reforms to the SPCC Professional Engineer Certification Requirement: Designing a More Cost Effective Approach for Small Facilities*, (June 2004) by Jack Faucett Associates for the Office of Advocacy under contract SBAHQ-00-D-006.

⁹ Codified at 5 U.S.C. §§ 601-612.