

April 15, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: EPA-HQ-OPA-2007-0584; *Oil Pollution Prevention; Non-Transportation Related Onshore Facilities; Spill Prevention, Control and Countermeasure Rule*

Dear Administrator Jackson:

The undersigned organizations are extremely concerned with the latest delay in EPA's multi-year effort to streamline and facilitate compliance with the Spill Prevention, Control and Countermeasure (SPCC) program. EPA has completed neither the rulemaking efforts nor the necessary guidance to allow the owners and operators of hundreds of thousands of regulated facilities to develop and implement compliant SPCC plans. As discussed below, the Agency's recent actions have added to the confusion and uncertainty in the regulated community. Accordingly, we urge EPA to take expeditious steps to adopt new compliance dates and to allow at least the many noncontroversial portions of the December 5, 2008 SPCC final rule (SPCC II) to become effective immediately. We request a meeting with you or your staff to discuss this matter and potential solutions.

We applaud the regulatory reforms that EPA adopted in 2006 and 2008 to clarify, strengthen and streamline the SPCC rule, in part, in response to the overwhelming outcry following the issuance of the 2002 SPCC amendments. The Agency performed a prodigious amount of work over several years to improve this rule. As you may know, SPCC compliance deadlines have been deferred by EPA five times since 2003 because of the Agency's plan to correct the errors in the 2002 rule before requiring compliance.

Nonetheless, EPA's deferral of the effective date of the SPCC II rule with the possibility that the entire rule may be reopened has made it impossible for the regulated community to prepare for compliance. Although EPA has twice delayed the effective date of the SPCC II rule – from February 3, 2009 to April 4, 2009, and then again to January 14, 2010 – the Agency thus far has failed to move the current July 1, 2009 compliance deadline despite having proposed such an extension on November 26, 2008. Absent action by EPA to move the compliance date, owners and operators of existing facilities that were in operation on August 16, 2002 will have until July 1, 2009 to amend and implement SPCC plan changes made by EPA's 2002 and 2006 SPCC amendments,

but not the 2008 amendments. Until now, EPA and the regulated community had anticipated that compliance would be required on the same day for all three rules. Given EPA's deferral of the SPCC II effective date without changing the compliance date, simultaneous compliance with all SPCC amendments since 2002 has become impossible. The moving and uncoordinated regulatory landscape makes it difficult for regulated entities to plan and carry out their compliance preparations, especially in the current economic climate. As you can imagine, there is considerable confusion among our members as to their regulatory obligations under the SPCC program.

Because EPA has not been able to identify, within the 60-day time period contemplated by the Emanuel Memorandum, specific issues addressed in the final SPCC II rule that warrant reconsideration, large portions of that rule that were not questioned by anyone during the recent comment period cannot be implemented. Meanwhile, EPA has given itself nearly a full year to review all of SPCC II regardless of the lack of any controversy associated with much of that rule. According to the docket, 59 comments were received from a wide range of stakeholders, and the comments were overwhelmingly supportive of the final SPCC II rule.

We have several suggestions to offer for the path forward.

A. New Compliance Dates Should Be Established

The Agency has withdrawn its previously-announced, but not published, November 20, 2009 compliance deadline pending further EPA review. This leaves the current July 1, 2009 deadline in place. This date is fast approaching. In order to have the appropriate lead-time to amend and implement SPCC Plans pursuant to the now-delayed SPCC II rule, EPA should postpone the July 1, 2009 compliance deadline until 12 months after the publication in the *Federal Register* of a new final SPCC rule that either announces that the SPCC II rule as originally promulgated will become effective or that whatever changes EPA intends to make are promulgated. Also, so as to avoid future confusion between compliance deadlines and rule effective dates, we strongly recommend that EPA announce the compliance deadline and the effective date in the same *Federal Register* notice. In the event that the formal issuance of a new compliance deadline rule is further delayed, EPA should make a public announcement of its intent to push the compliance date back to April 2010 or later, to address the immediate problem with the July 1, 2009 deadline.

B. Set High Priority for Resolving the Status of SPCC II and Conclude Review of Noncontroversial Provisions Now

As noted above, there are many noncontroversial provisions in SPCC II that we believe are not seriously under review for rule changes (i.e., no comments were received or the comments that were received were carefully addressed by EPA in the final rule). EPA should set a high priority on determining which issues actually need review in the near term. By delaying implementation of the entire SPCC II, EPA may be thwarting the

very aim of the series of SPCC amendments since 2002 – to simplify and streamline the requirements, to improve understanding of the rules, and to increase compliance rates.

While some of us may have suggestions for changes in the SPCC II rule that we would present to the Agency if the rule were reopened, we all support the final rule as issued. Specifically, we support the following important provisions that drew little or no adverse comment and therefore should become effective without further delay:

- tailored requirements for Tier I and Tier II qualified facilities, including the streamlined SPCC template for Tier I facilities (§112.6);
- clarification of the definitions of “loading/unloading rack” (§112.7(g)) and “facility” (§112.2);
- clarification of integrity testing requirements by allowing all facilities to use well-established industry standards or the more flexible approach previously available only for small containers (§§112.8(c)(6) & 112.12(c)(6));
- streamlining of the facility diagram (§112.7(a)(3));
- streamlining of the security requirements (§112.7(g));
- clarification of the general facility containment requirements under §112.7(c) to codify existing EPA guidance on active containment measures as permissible under §112.7(c) and to clarify that containment is to address a typical failure mode and the most likely quantity of oil that would be discharged;
- exclusion of hot-mix asphalt and hot mix asphalt containers, and pesticide application equipment and related mix containers from the aggregate aboveground storage capacity ((§112.1(d)(2)(ii) and the exemption of hot-mix asphalt and pesticide application equipment and related containers from the requirements of the rule (§§112.1(d)(8) & (10));
- extending the current mobile refuelers’ exemption from sized secondary containment to other non-transportation-related tanker trucks that operate similarly to mobile refuelers (§§112.8(c)(11) & §112.12(c)(11));
- elimination of duplicative regulation of underground emergency diesel generator tanks at nuclear power stations consistent with prior EPA action that eliminated duplicative regulation of the general universe of underground storage tanks (§112.1(d)); and
- clarification of regulatory requirements for wind turbines (73 Fed. Reg. at 74294).

Overall, the SPCC amendments clarify, tailor, and streamline requirements for facility owners or operators that are required to prepare and implement an SPCC Plan to prevent the discharge of oil into or upon navigable waters of the United States. The December 2008 amendments are the result of a thorough and studied deliberative process dating back to 2002. These particular provisions would greatly facilitate understanding of the requirements and thereby significantly improve compliance by tens of thousands of facilities throughout the country. In particular, delay in providing the streamlined SPCC template postpones compliance activities at some of the smallest facilities where the potential for increased compliance and improved environmental performance may be at its peak.

C. Issue Guidance to Conform to SPCC I and II Revisions

In December 2005, EPA issued guidance to Regional Inspectors for the 2002 rule. This was very important and useful information provided not only to EPA inspectors, but also to the regulated community to facilitate compliance with the regulations. The Agency should update this guidance to incorporate the changes from SPCC I and II, as well as to address the numerous public comments EPA has received. The Agency should complete this update well in advance of the new compliance deadline, as well as offer the public an opportunity to comment on the guidance as revised to reflect the post-2002 regulatory amendments.

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We look forward to discussing these important issues with the Agency. Please contact Bill Weissman, representing USWAG at 202-344-4503 or weissman@venable.com, or Jeff Leiter, representing ILMA, at 202-386-7670 or jll@leitercramer.com.

Sincerely,

American Forest and Paper Association
American Public Power Association
American Petroleum Institute
Alliance of Automobile Manufacturers
Independent Lubricant Manufacturers Association
National Automotive Dealers of America
NORA, an Association of Responsible Recyclers
National Paint and Coatings Association
National Rural Electric Cooperative Association
Society of Chemical Manufacturers and Affiliates
Utility Solid Waste Activities Group

cc: Robert Sussman, Office of the Administrator
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