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<<Comments to OMB re SPCC ver 2.doc>>

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Ms. Lorraine Hunt
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Comments of the General Electric Company
on 2004 Draft Report to Congress
on the Costs and Benefits of Federal Regulation
69 Fed. Reg. 7987 (February 20, 2004)

Dear Ms. Hunt:

In the 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulation,¹ OMB requests nominations of promising regulatory reforms relevant to the manufacturing sector. In particular, OMB requests comments suggesting specific reforms to rules, guidance documents, or paperwork requirements that would improve manufacturing by reducing unnecessary costs, increasing effectiveness, embracing competitiveness, reducing uncertainty, and increasing flexibility.

In this spirit, GE proposes regulatory reform concepts for the Spill Prevention Control and Counter Control (SPCC) regulations under the Clean Water Act. 40 CFR Part 112.1 to 112.15. The SPCC program is managed by the US Environmental Protection Agency, Office of Emergency Prevention, Preparedness and Response².

¹ The 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulation, available at http://www.whitehouse.gov/omb/inforeg/regpol-reports_congress.html. 69 Fed. Reg. 7987-88 (February 20, 2004).

² Information on the SPCC program is available at <http://www.epa.gov/oilspill/index.htm>.

In GE's opinion there are two fundamental flaws with the SPCC regulatory concept:

1. the scope of the rule is overly broad, capturing many small facilities with de minimus or no potential for an oil spill to the navigable waters of the US, and
2. the rule does not incentivize environmentally beneficial investments.

GE's proposal would operate to tailor the scope of the rule and incentivize environmentally beneficial investments, thereby reducing the impact of the current regulation and increasing its effectiveness. Furthermore, we believe that the benefits of this proposal would accrue most readily to small facilities or enterprises.

The Purpose and Objective of the SPCC Regulation:

The purpose of the SPCC regulation is "To prevent discharge of oil into navigable waters of the United States or adjoining shore-lines as opposed to response and cleanup after a spill occurs."³ To accomplish this objective, EPA has promulgated prevention, planning, control and countermeasure based regulation. These prevention and countermeasures are supposed to only apply to certain facilities. However, we will demonstrate that two of the three facility criteria are illusory and result in an overly broad regulatory scope.

"Before a facility is subject to the SPCC rule, it must meet three criteria:

- 1) it must be non-transportation-related;
- 2) it must have an aggregate aboveground oil storage capacity greater than 1,320 gallons or a completely buried storage capacity greater than 42,000 gallons; and

³ A Facility Owner / Operators Guide to Oil Pollution Prevention, Environmental Protection Agency EPA 540-K-02-006 OSWER 9360.8-52 October 2002 Remedial Response Oil Program Center

- 3) there must be a reasonable expectation of a discharge into or upon navigable waters of the United States or adjoining shorelines.”⁴

Illusory Criterion 3 – “there must be a reasonable expectation of a discharge into or upon navigable waters of the United States or adjoining shorelines.”

At first blush this criterion appears restrictive, but it is a low hurdle. The minimum discharge needed to satisfy this criterion is the amount of oil needed to create an oil sheen. So long as ANY unit operation or storage container on your facility can create an oil sheen on a nearby river, creek, stream, or stormwater swale, this criterion has been met. Furthermore when making this “reasonable expectation” determination, one may NOT consider any “manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge” of oil. This determination must be based solely upon consideration of the geographical and locational aspects of the facility such as land contour and drainage. Therefore if one had been concerned about protecting the environment and invested money to create a containment structure to restrain and contain oil – that concerned citizen must assume that the investment (e.g., building, device or structure) does not exist.⁵

We believe that if EPA would simply change this policy, businesses would be strongly motivated to protect the environment from oil sheens and spills. This policy change would align the interests of the facility and the environment and facilities would

⁴ Id at page 2.

⁵ Picture in your mind an oil fuel tank placed in the basement of a building. The basement has neither floor drains nor sumps. Now envision this building sitting on the top of a hill and located at the bottom of the hill is a stream. Under EPA’s policy, one must assume that the building does not exist. Without the building, the fuel tank is located on top of the hill and in the event the tank should leak, it is “reasonable” to expect that the oil spill could reach the stream.

be strongly motivated to relocate, contain, or dike bulk oil storage units. Furthermore, since it takes only a single unit to bring the whole facility into the rule, the facility would focus its resources on that unit or units with the greatest potential to cause an oil sheen. Finally, under our proposal a facility relying upon manmade features would need to document their rationale and certify the integrity of the features installed to contain oil.

It is worthwhile to note that this concept has been applied by EPA under the Clean Air Act Risk Management Program (RMP). Under RMP a facility may consider passive mitigation (including manmade structures) when developing worst-case release scenarios of highly hazardous substances. RMP, therefore, has established an incentive for industry to invest in and construct manmade structures to protect humans and the environment.⁶ The SPCC rule provides no such incentive.

Illusory Criterion 2: aboveground oil storage capacity greater than 1,320 gallons. The operative terms in this criterion are “oil” and “storage capacity.” EPA has defined oil as “oil of any kind or in any form” and refused to prepare a definitive list of oils regulated under this regulation. Essentially the test is whether the material or substance can produce an oil sheen. Any material that can produce an oil sheen is an oil covered by the SPCC regulation.⁷ Under this approach, EPA has stated that asphalt is an oil.

When one combines an expansive definition of oil with storage capacity, it becomes easier to count the entities not covered by this rule, than the entities captured under the regulatory scope. For example, a fast food restaurant with a 400-gallon grease trap, a household-sized 550 gallon fuel tank, a half-filled 55 gallon drum of

⁶ Under RMP, facilities **may consider passive mitigation systems (including manmade structures)** in performing “the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.” (40 CFR 68.25(h))

⁷ There is no EPA approved oil sheen test.

vegetable oil, and a 350 gallon waste container has 1,355 gallons of oil storage capacity and therefore meets the aboveground storage capacity threshold.⁸

Huh? How can this be?

The grease trap is an oil water separator⁹ mandated by the local wastewater treatment facility to collect oil and grease. The capacity of the grease trap is engineered to allow sufficient time for oil to separate from the water discharge and float to the accumulation chamber. Most of the capacity of the grease trap, therefore, is filled with water containing small concentrations of oil. Yet under the rule the full capacity of the grease trap is counted. Furthermore even though the grease trap is typically installed below ground, it is considered under the SPCC rule to be an above ground tank.¹⁰

The capacity of the household-sized 550 gallon-tank of fuel oil is readily understood and restaurants in the North and Northeastern parts of the US would typically have two 550-gallon tanks.¹¹

⁸ Although the fast food restaurant has 1,355 gallons of oil storage capacity, the actual amount of oil is closer to 600 gallons (assume the 550 gallon fuel tank is full, plus 28 gallons of vegetable oil, plus some grease in the grease trap).

⁹ oil water separators are considered storage treatment units under the SPCC rule. “Some flow through treatment such as oil/water separators have a storage capacity within the treatment unit itself. This storage capacity is subject to the rule” 67 FR 47068.

¹⁰ Grease traps and oil water separators are good examples of how environmentally beneficial equipment and investments increase rather than diminish a facility’s regulatory burden. Installing larger or more oil/water separators to protect the environment from an oil sheen, increases a sites regulatory burden under the SPCC regulation.

¹¹ At a small GE facility in Northeastern US, we had two 550-gallon fuel oil tanks stored inside a building below ground floor, plus some other oil storage units. The oil tank storage area did not have any floor drains, sumps, or doorway openings to the outside. In order to fall below the 1,320 capacity limit, the site removed one of the 550 gallon tanks. This act minimized capacity below SPCC requirements, but increased the number of fuel oil deliveries to the site, and the possibility of a fuel shortage during the winter months. This act transfers the risk of an oil spill from the fixed facility to the transport of oil.

Since the waste container contains food scraps, greasy paper plates, and soiled napkins, under the rule, this waste container is a “bulk storage container” and the full capacity of the unit is counted. Under the SPCC rules, a “bulk storage container” means any container used to store oil, and “oil” is oil of any kind and in any form. Therefore, a “bulk storage container” is any container used to store oil of any kind and in any form.

Assuming that an “oil” spill from any unit [please ignore all manmade features] could cause an oil sheen, this facility would be subject to the SPCC regulation. Furthermore, the waste container would be subject to mechanical integrity inspections and secondary containment requirements.

Under GE’s proposal, environmentally beneficial investments (e.g., grease traps and oil water separators) would be excluded from the capacity determination. EPA should encourage investment in units designed to collect oil for proper storage, handling and disposal. However, under the current regulation, the incentive is to undersize the grease trap to avoid the SPCC rule.

Conclusion

EPA should modify the SPCC applicability provision 40 CFR 112.1(d)(1)(i) to permit facilities to consider engineered features and devices that would restrain or contain oil and preclude or prevent an oil spill to the navigable waters in making a “reasonable expectation” determination.

EPA should modify the SPCC regulation and allow facilities to exclude from the capacity determination “bulk storage containers” that are located in or protected by engineered features or devices that would restrain or contain oil and preclude or prevent an oil spill to the navigable waters.

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EPA should modify the SPCC regulation and exclude from the capacity determination grease traps and oil / water separators and their associated piping.