

February 9, 2006

VIA E-Mail and MAIL

Docket Center (EPA/DC)
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue
Washington, D.C. 20460

Re: Oil Pollution Prevention: Spill Prevention, Control, and Countermeasure (SPCC) Plan Requirements-Amendments; 40 CFR Part 112; EPA-HQ-OPA-2005-0001

Ladies and Gentlemen:

Late last year, EPA requested comment on, among other things, a proposed compliance alternative option for small facilities covered by the SPCC rules. 70 Fed. Reg. 73524, *et seq.* (December 12, 2005). In addition to separately filed industry-specific comments, the undersigned offer the following joint comments and suggestions.

SPCC rules presently require all covered facilities to hire Professional Engineers (PEs) to review, certify, and periodically reevaluate their SPCC plans. Certifying PEs must:

1. Assert familiarity with the Part 112 SPCC requirements;
2. Personally visit and examine facilities or send agents as substitutes;
3. Prepare SPCC plans in accordance with good engineering practices, taking into account applicable industry standards and Part 112 requirements;
4. Establish procedures for required inspections and testing; and
5. Ensure suitability of the plans for facilities.

PE certification at best promotes compliance, but is not a measure of it. For small facilities, many of whom are owned or operated by small businesses, PE-certified plans are expensive (\$2,500-5,000+). Moreover, PE certification costs are ongoing given the five-year review requirement and the need to amend plans if significant facility changes are made.

The proposal would allow certain “qualified” covered facilities the option of SPCC plan self-certification. Specifically, such “qualified” facilities must:

1. Have a total oil storage capacity of between 1,321 and 10,000 gals,
2. Have had no reportable (§112(b)) oil discharges for the longer of 10 years prior to initial self-certification, or since becoming subject to the SPCC plan rules,
3. Not deviate from the requirements of §112.7(a)(2), except with respect to security and container integrity testing, and
4. Not make environmental equivalence or impracticality determinations.

The proposal responds in part to the alternative small facility regulatory structure set out in the SBA’s Office of Advocacy report entitled *Proposed Reforms to the SPCC Professional Engineer Certification Requirement: Designing a More Cost Effective Approach for Small Facilities* (6/04). It also responds to a detailed tiered regulatory structure submitted to EPA on January 20, 2004, by several trade associations representing small business.

The proposal should be expanded to include the adoption of SBA’s Tier I option for facilities with 1,320-5,000 gallon oil capacities. “Qualified” facilities in this range wouldn’t have to develop written SPCC plans, but would be governed by all applicable substantive provisions of the rule. Facilities seeking to avail themselves of this alternative would create a one-time, self-certification record to be kept onsite for ready inspection. See, Attachment A. Note that several EPA programs (e.g., hazardous waste, underground storage tanks, motor vehicle air conditioning) use self-certifications, including the SPCC program’s facility response plan provision governing applicability of the substantial harm criteria.

The proposed 10-year clean discharge history qualifier for small facilities should be eliminated. This concept was borrowed inappropriately from an EPA proposal on oil-filled operational equipment. Among other things, such a look-back makes no sense given the rule’s three-year recordkeeping requirement. Notably, the record in this rulemaking shows that less than one percent of all reportable spills involve facilities with regulated capacities of 10,000 gallons. or less. Alternatively, only a three-year look-back should be considered and only for discharges required to be reported to the NRC that actually reached navigable waters.

“Qualified” facilities, whether in Tier I or Tier II, should be able to hire a PE to conduct environmental equivalence or impracticality determinations without triggering a requirement to develop a full-blown, PE developed and certified SPCC plan.

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The final rule or preamble thereto should clarify that the small facility alternative takes effect immediately upon publication and that qualified facilities have until October 31, 2007, to comport with the 2002 rule changes.

The rule should also clarify that Tier I and Tier II "qualified" facilities are not subject to the five-year plan review/reevaluation requirements set out in § 112.5(b) or (c), but that they are subject to potential Regional Administrator imposed controls and to revisions occasioned by facility changes. 40 CFR §§ 112.4 and 112.5(a).

On behalf of our members, we thank EPA for its consideration of this matter.

Respectfully Submitted,

American Forest and Paper Association
American Trucking Associations, Inc.
Automotive Oil Change Association
Automotive Service Association
Copper and Brass Fabricators Council
Independent Lubricant Manufacturers Association
National Association of Fleet Administrators
National Automobile Dealers Association
National Federation of Independent Business Legal Foundation
National Paint and Coatings Association
Printing Industries of America/Graphic Arts Technical Foundation
Specialty Graphic Imaging Association
Synthetic Organic Chemical Manufacturers Association

cc. Mr. Kevin Bromberg, Office of Advocacy, Small Business Administration

Certification For Qualified Facilities with Total Oil Storage of 5,000 Gallons or Less

Facility Name: _____

Facility Address: _____

As a Responsible Corporate Official (40 CFR 122.22), I hereby certify under penalty of law that measures have been taken at this facility to prevent discharges of harmful quantities of oil into or upon the navigable waters of the United States or adjoining shorelines.

I further certify that:

- This facility meets the criteria for a Qualified Small Facility set out in 40 CFR 112.3(h).¹
- I, or my agent, have reviewed and understand the requirements of 40 CFR 112.
- I, or my agent, have visited and examined the facility. *bulk & bulk storage manufacturing.*
- This certification is prepared in accordance with sound industry practices and standards. *below 2 bullets.*
- Procedures for any required inspections and testing have been established.
- Appropriate secondary containment for bulk storage containers is in place.
- Appropriate security measures are in place.
- Preparations for responding to potential spills and leaks have been made.
- Procedures specific to any oil filled operational equipment have been established.
- The facility does not meet the Substantial Harm Criteria in Appendix C, 40 CFR Part 112.
- This certification will be kept on file at the facility.

I have personally examined and am familiar with the information submitted in this document and, to the best of my knowledge, I believe that the information is true, accurate and complete.

Signature: _____

Title: _____

¹ New section to be added to define Tier I Qualified Facilities. Alternatively, this could be accommodated by modification of proposed section 112(g).



**National Rural Electric
Cooperative Association**

4301 Wilson Boulevard
Arlington, VA 22203-1860

June 22, 2006

Mr. Joe O. Neuhoff, III, Director
Office of Energy and Environmental Industries
U.S. Department of Commerce
1401 Constitution Ave., N.W., Room 4053
Washington, D.C. 20230

Dear Mr. Neuhoff:

Thank you for the opportunity to meet with you and your staff on June 14, 2006 to consider the economic impacts of the proposed changes to the SPCC program. As was discussed at the meeting, your office is seeking, on a quick turn-around basis, information that will help the Department of Commerce estimate cost savings if EPA were to exempt facilities with an oil storage capacity of less than 5,000 gallons from the need to develop an SPCC plan.

NRECA has data from a small, random sample of electric distribution co-operatives that may be helpful. As shown in the attached analysis, we estimate that electric co-operatives could save on the order of **\$50 million** if EPA decides to exempt facilities under 5,000 gallons from the SPCC program (the "Three - Tier Approach"). Furthermore as we stressed at the meeting, the risk of a release to navigable waters from oil-filled electrical equipment is exceedingly small. This is well documented in the rule-making record for the SPCC program. There is a clear opportunity here to eliminate unnecessary regulatory cost burdens and help protect the competitiveness of American businesses without significant loss of environmental protection.

What is most striking from the small sample of data available to us is that a large percentage of the co-operative facilities are clustered in the lowest tier, below 5,000 gallons. All of the substations in the survey had an oil storage capacity from 0 to 10,000 gallons, but only 6% of the substations had an oil storage capacity from 5,000 to 10,000 gallons. Based on discussions with many cooperatives, we believe that this trend would hold for the large majority of rural electric cooperatives, suggesting that a very large number of low risk facilities could be excluded from unnecessary regulatory burdens by exempting facilities under 5,000 gallons.

8,660
substations

As to risk, the record clearly shows that it is low for these facilities. In their letter to Mr. Thomas Dunne, Acting Assistant Administrator of EPA, dated June 10, 2004, the Small Business Administration notes that EPA has already recognized that "millions of electrical units are covered by the current rule, with potentially very minor risk." In their December 1991 comments the Utility Solid Waste Activities Group (USWAG) estimated a 0.003 percent per year discharge rate to navigable waters from oil-filled electrical equipment. A comment in the record from the American Petroleum Institute (API) Coalition, *White paper: Electrical Equipment, April 2, 2003* states:

"The burdens imposed by the rule's regulation of oil-filled electrical equipment remain significantly disproportionate to the low level of risk and exceptionally positive spill history associated with such equipment. The risk of discharge of oil from electrical equipment is significantly below that of tanks. Electrical equipment is often constructed of heavier and more corrosion resistant steel than are tanks and is built to resist greater pressure differentials, including full vacuum.

"Additionally, electrical equipment is essentially self-monitoring because a loss of dielectric fluid leads to failure of the device and an interruption in electrical power transmission. Finally, substation electrical equipment is often surrounded by a gravel bed that provides significant restriction to movement of any oil that maybe released. Published data show the rate of discharge of oil into navigable water from electrical equipment is less than one one-hundredth of one percent; yet the requirement for containment and/or diversionary structures or equipment imposes significant costs at a large number of facilities shown to pose extremely low levels of risk."

We hope this information from the record and our brief analysis is helpful. We would be willing to discuss developing a more formal questionnaire to collect data from a wider range of co-operative facilities; however I'm sure you appreciate the difficulty in collecting data from over 900 companies in a limited amount of time. In the meantime we would note our hearty agreement with the SBA Office of Advocacy's belief that the SPCC rule can be refined to exclude facilities or units containing oil that **do not contribute to the problem the SPCC rule is intended to address**, without diminution of the environmental benefits. If you wish to discuss this further please do not hesitate to call me at 703-907-5739.

Sincerely;

/ s /

James F. Stine

Attach: Cost Analysis

Copy to: Ms. Rachel Halpern, DOC
Mr. Kevin Bromberg, SBA
Mr. James Roewer, USWAG
Ms. Theresa Pugh, APPA

Estimate of Electric Co-operative Savings Under Three - Tier Approach

Basis: **Random sample consisting of 34 electric co-operatives.**

Number of substations with oil storage 10,000 gallons or less = 385

Number of substations with oil storage 5,000 gallons or less = 363

That is, 94% of the substations in the random sample had oil storage below 5,000 gallons.

Under a two-tier rule, all 385 substations would potentially be affected.

Under a three-tier rule only 22 substations would be affected.

Estimate of Cost Savings :

Electric cooperative network is comprised of:

- 865 distribution co-operatives (65 Generation and Transmission co-ops are not included in this analysis)
- Serving 37 million customers in 47 states
- 2,400,000 miles of line

Primary assumptions:

- Random sample of only 34 electric cooperatives is reasonably representative of a universe of 865 co-operatives
- Cost of preparing an SPCC plan is \$6,000
- 94% of all substations would be excluded under 3-tier approach
- Avg. no. of substations is 11.3 per co-op, based on random sample

Cost impact on Electric Cooperative Network under Two Tier approach:

Cost = (Number of substations affected) X (Cost per substation)

= (No. of co-ops) X (avg. no. of substations per co-op) X (Cost per sub)

Cost = (865) X (11.3) X \$6,000 = **\$58,647,000**

Cost impact on Electric Cooperative Network under Three Tier approach:

Cost = (52) X (11.3) X \$6,000 = **\$3,525,600**

Total Estimated Savings for Electric Cooperatives under a Three Tier Approach:

\$58,647,000 - \$3,525,600 = **\$55,121,400**