



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

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July 6, 2004

EPA Docket Center
U.S. Environmental Protection Agency
EPA West, Suite B-102
1301 Constitution Avenue, N.W.
Washington, D.C. 20460

Re: Docket No. OPA-2004-0003

Dear Sir or Madam:

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the Environmental Protection Agency’s (“EPA”) proposed rule to extend by one year the compliance dates for a facility to amend and then implement the changes to its Spill Prevention, Control and Countermeasure (“SPCC”) Plan. *69 Fed. Reg.* 34014 (June 17, 2004). While ILMA commends EPA for its proposal to extend the compliance deadlines for requirements imposed by the July 2002 changes to the SPCC regulations, the Association believes that the Agency’s proposed one-year extension is insufficient time for the regulated community, including ILMA members, to undertake the required actions to update and implement the changes to their SPCC Plans. ILMA suggests that the compliance deadlines be six months and one year, as appropriate, after EPA completes additional rulemakings the Agency indicated it will undertake to solve problems with the SPCC rule that arose with the 2002 amendments.

Introduction of ILMA

ILMA, established in 1948, is a national trade association of 142 manufacturing member companies, consisting largely of small businesses, ranging in size from fewer than 10 to more than 200 employees. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States’ lubricant needs and over 75 percent of the metal removal fluids utilized in the country.

A lubricant is a liquid or solid substance used to reduce the friction, heat and wear between solid surfaces. ILMA members manufacture automotive, truck, marine, aircraft and industrial engine oils; transmission fluids; hydraulic fluids; greases; general industrial oils; power equipment oils; process oils; metal removal, treatment, protecting and forming lubricants; and rolling oils.

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In order to manufacture a lubricant, ILMA member companies purchase oil and synthetic lubricant base stocks and a wide range of additives. ILMA member companies then compound and blend the base stocks with the correct additives in the proper proportions to produce a lubricant with the desired characteristics for a particular job.

ILMA members are diverse. A large proportion of our membership manufactures automotive lubricants for original equipment manufacturers and for the retail market, either under their own labels or through contract packaging arrangements. Many produce lubricants for metalworking and heavy industrial machines, while others supply lubricants for mining, textiles, food processing, electronics, as well as many other industries.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

Many ILMA members' facilities are subject to the SPCC program and the requirements to prepare and maintain SPCC Plans. ILMA, therefore, has actively participated for over a decade in EPA's various SPCC rulemakings.

ILMA Supports the Concept of Extending the SPCC Compliance Deadlines

ILMA agrees with the Agency's assessment that the current SPCC compliance deadlines (*i.e.*, August 17, 2004 and February 17, 2005) are "insufficient" for the regulated community to understand recent clarifications made by EPA to the SPCC rule and to include these clarifications in their SPCC Plans and then implement the changes. While EPA does not set forth any further discussion to support its assessment, there are at least three reasons why the current SPCC compliance deadlines should be extended.

First, the SPCC rule clarifications contained in a recent *Federal Register* notice discuss certain issues resolved by three court challenges to the July 2002 amendments. ILMA members, most of whom are small businesses, have to read and understand these SPCC rule clarifications. In some cases, as discussed below, EPA's clarifications are insufficient and require further action by the Agency.

Second, ILMA members have to rely on independent Professional Engineers (“PEs”) to prepare, review and certify their SPCC Plans. Many independent lubricant manufacturers have told the Association that the PEs they have contacted to assist them are reluctant to accept the engagement because they continue to have too many unanswered questions on the SPCC rule changes.

Third, EPA has acknowledged that further clarifications and, in some instances, further rulemakings are necessary to address a number of issues raised by and remaining from the July 2002 amendments. Additional time is necessary for ILMA members and other regulated entities to digest, incorporate and implement these further changes in their SPCC Plans.

For the above reasons, ILMA agrees with EPA that extensions of the current SPCC compliance deadlines are warranted and are necessary.

EPA’s Proposed One-Year Deadline Extensions are Inadequate

In its previous extension of the SPCC deadlines, EPA concluded that a minimum of six months was necessary for the regulated community to make the required changes to their SPCC Plans and then another six months to implement these changes. At a March 31, 2004 public meeting in Crystal City, Virginia, EPA discussed a number of issues that arose as a result of the 2002 amendments and subsequent litigation that require resolution by further Agency rulemakings and guidance. Further, the Office of Advocacy of the U.S. Small Business Administration (“SBA”) wrote to EPA on June 10, 2004, discussing some of the SPCC issues that require further rulemaking. (ILMA supports the comments of SBA in its June 10 correspondence.) If EPA keeps to its six-month “minimum,” such additional rulemakings would have to be completed by March 17, 2005. ILMA questions whether the Agency can keep to such a tight rulemaking schedule, unless issued as interim final rules.

ILMA specifically is concerned with the “integrity testing” issue, which was part of the settlement of the litigation with the Petroleum Marketers Association of America (“PMAA”). While EPA’s resolution of this issue with PMAA is a significant step forward, there are other issues related to integrity testing that require further clarification by EPA. For example, the question has been posed to the Agency about the efficacy of integrity testing indoor tanks with capacities of 30,000 gallons or less. ILMA members have a significant number of indoor tanks that are used for storage and blending. These tanks usually are mounted on concrete floors and have secondary containment in addition to the four walls and roof of the building. EPA has indicated that it is examining this issue, and the resolution is of critical importance to independent lubricant manufacturers.

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Accordingly, given the number of clarifications that EPA must still make by guidance and the issues that must be resolved by rulemakings, ILMA does not believe that the one-year proposed extensions of the SPCC deadlines are sufficient for the regulatory community to assure timely compliance with the 2002 amendments to the SPCC rule. In the alternative, ILMA suggests that the compliance deadline to amend SPCC Plans should be set six months after the completion of the necessary rulemakings, with the compliance deadline for implementation of SPCC Plan changes following by another six months.

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ILMA requests that EPA promulgate expeditiously the compliance deadline changes and any further clarifications and rulemakings to the SPCC amendments. For the above-referenced reasons, there will be no benefit to ILMA members and other regulated entities if the Agency uses up most of the proposed one-year period to make the additional, necessary "fixes" to the SPCC rule. ILMA appreciates the opportunity to submit its views on the Proposed Rule.

Sincerely,



Celeste M. Powers, CAE
Executive Director

cc: SHERA Committee
Jeffrey L. Leiter, Esq.