



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

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March 5, 2009

EPA Docket
U.S. Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Docket ID No. EPA-HQ-OPA-2007-0584

Dear Sir or Madam:

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the Environmental Protection Agency’s (“EPA”) request for comments on its final rule, delaying by 60 days the effective date of the December 5, 2008 final rule that amends the Spill Prevention, Control and Countermeasure (“SPCC”) regulations. 74 Fed. Reg. 5900 (Feb. 3, 2009). As discussed more fully below, the Association urges the Agency to announce prior to April 4, 2009, a reasonable extension of the July 1, 2009 compliance deadline for SPCC plans to be revised and changes to those plans implemented.

Introduction of ILMA

ILMA, established in 1948, is a trade association of 299 member companies in North America, consisting largely of small businesses, ranging in size from fewer than 10 to more than 200 employees. Independent lubricant manufacturers by definition in the Association’s Bylaws 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 have been and are subject to the SPCC rule. ILMA previously has submitted comments on SPCC rulemaking changes, dating back to 1991.

EPA Should Allow the December 5, 2008 Amendments to Become Effective

While ILMA understands the reasons for the January 20, 2009, White House memorandum (“Regulatory Review”) and the Office of Management and Budget memorandum (“Implementation of Memorandum Concerning Regulatory Review”), the 60-day delay of the effective date of the December 5, 2008 SPCC amendments has the potential to create significant problems for regulated entities. If EPA takes no action by April 4, 2009, the December 5, 2008 SPCC amendments will take effect and regulated entities will have until July 1, 2009 to amend their SPCC plans and implement those

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changes. Even under the best of circumstances, three months is an insufficient amount of time for owners and operators of regulated facilities to bring their facilities into compliance. Accordingly, ILMA encourages EPA -- if the April 4, 2009 effective date is allowed to stand -- to extend the compliance deadline from July 1, 2009 until April 1, 2010 at the earliest.

ILMA sees no reason to delay further the effective date of the December 5, 2008 SPCC amendments other than to address the needed extension of the July 1, 2009 compliance deadline. Notwithstanding ILMA's desire to see a regulatory exclusion for indoor aboveground tanks from the periodic integrity inspection requirement, the Association supported EPA's December 5, 2008 SPCC amendments. EPA has worked with regulated entities and others since 2002 to provide increased clarity, to tailor SPCC requirements to particular industry sectors, and to streamline certain SPCC requirements for those facility owners or operators subject to the rule, all of which should result in greater protection to human health and the environment. EPA, therefore, should allow the December 5, 2008 SPCC amendments to take effect while the Agency decides on the requirements for produced water containers at oil production facilities and the criteria for identification of qualified oil production facilities eligible to self-certify their SPCC Plans.

The July 1, 2009 Compliance Deadline Must be Extended

As noted above, ILMA's primary concern is that EPA withdrew before publication in the Federal Register the extension of the compliance deadline from July 1, 2009 to November 20, 2009. The Agency properly recognizes that regulated entities need the additional time to understand fully the revisions to the SPCC rule, make the necessary changes to their SPCC plans, and implement those revisions. Accordingly, EPA should announce a compliance date extension prior to April 4, 2009.

Based on discussions with member companies, the compliance deadline should be extended past July 1, 2009. Because, the Association's members with affected facilities are not able to self-certify their SPCC plans, they must retain a registered professional engineer ("PE") to review and certify their revised SPCC plans. Depending on what changes are made to their SPCC plans and approved by the PE, these member companies may need to spend additional amounts to implement their revised SPCC plans at a time when the U.S. economy is in shambles.

ILMA member companies are not immune from the pains felt by the U.S. manufacturing sector from the worst economic downturn since World War II. There are fresh signs every day of weakness in sales of lubricants as the global financial crisis derails purchases of cars and factory machinery, forcing member companies to reduce output and cut jobs. Economic confidence has fallen to record lows, banks have tightened access to credit to manufacturers (including ILMA members) and unemployment is rising. While EPA believes that its revisions to the SPCC rule will reduce compliance costs for regulated entities over a 10-year period, ILMA's members and others will be required to expend sums now, especially to hire PEs, in order to come into compliance. EPA should recognize that such costs are not insignificant in today's economic climate, especially for small businesses. As a result, EPA should extend the compliance deadline to April 1, 2010 at the earliest in order to help regulated entities cope better with the necessary compliance costs.

It should go without saying that ILMA's requested extension of the compliance deadline will not harm human health or the environment, because neither a compliance deadline extension nor the December 5, 2008 SPCC amendments remove any regulatory requirement for owners or operators of facilities in operation before August 16, 2002, to maintain an SPCC Plan in accordance with the existing SPCC regulations.

EPA's SPCC Guidance for Regional Inspectors, while intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule, has been a valuable compliance assistance tool for owners and operators of regulated facilities. The Agency says on its website that "(t)he guidance is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments in a timely manner." An extension of the compliance deadline, as suggested here by ILMA, also will give EPA the necessary time to revise the guidance document and allow its use by the regulated community in revising their SPCC plans and implementing those changes.

Conclusion

Based upon the foregoing, ILMA urges EPA – prior to April 4, 2009 – to announce a reasonable extension of the compliance deadline for owners and operators of regulated facilities to update their SPCC plans based on the December 5, 2008 amendments and implement those changes. At a minimum, an extension of the compliance deadline to April 1, 2010 at the earliest is warranted.

ILMA appreciates this opportunity to comment.

Sincerely,



Celeste M. Powers, CAE
Executive Director

cc: ILMA Board of Directors
ILMA SHERA Committee
Jeffrey L. Leiter, Esq.
Adam B. Cramer, Esq.