



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

**President**

Ronald M. Powell  
Moroil Technologies

**Vice President**

Catherine C. Novak  
Eastern Oil Company

**Treasurer**

Paul Aylor  
Spectrum Corporation

**Secretary**

Todd Coady  
Hicks Oils & Hicksgas, Inc.

**Immediate Past President**

Anwer Hussain  
CHS Inc.

**Executive Director**

Celeste M. Powers, CAE

**General Counsel**

Jeffrey L. Leiter

July 30, 2009

Mr. Christopher Kirkpatrick  
Office of General Counsel  
Chemical Safety and Hazard Investigation Board  
2175 K Street, NW  
Suite 650  
Washington, DC 20037

***Re: Docket CSB-09-01; Advanced Notice of Proposed Rulemaking***

Dear Mr. Kirkpatrick:

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the Chemical Safety and Hazard Investigation Board’s (“CSB”) Advanced Notice of Proposed Rulemaking (“ANPRM”) to establish a regulation requiring accidental chemical releases be reported to the CSB or to the National Response Center (“NRC”). 74 Fed. Reg. 30259 (June 25, 2009).

***Introduction of ILMA***

ILMA, established in 1948, is a national trade association of 135 manufacturing member companies. 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 metalworking fluids (“MWFs”) utilized in the country.

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.

ILMA previously responded to CSB’s recommendation in the Third Coast Industries petroleum products facility fire (2002-03-I-TX-6).

***ILMA’s Response to CSB’s Request for Comment***

ILMA commends CSB’s goals in the ANPRM to create a reporting rule that helps improve the timeliness, completeness and accuracy of the information it now collects on chemical incidents. We also appreciate CSB’s interest in leveraging existing reporting requirements to help meet the Board’s needs and satisfy its statutory obligations under the Clean Air Act (“CAA”). Our hope is that, rather than “reinventing the wheel,” CSB’s regulatory efforts simply add a few strategically placed “spokes” that improve reporting on serious chemical incidents without creating a duplicative and, thus, unnecessary burden on the regulated community.

400 N. Columbus Street  
Suite 201  
Alexandria, VA 22314  
phone: 703/684-5574  
fax: 703/836-8503  
email: [ilma@ilma.org](mailto:ilma@ilma.org)  
web: [www.ilma.org](http://www.ilma.org)

### ***CSB Should Strategically Enhance Existing Reporting Requirements***

As CSB acknowledges in the ANPRM, the chemical industry and users are already subject to rather extensive reporting responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), where the release of a reportable quantity of any of several hundred listed substances or substances with certain hazardous characteristic requires an immediate report to the National Response Center.<sup>1</sup> The Emergency Planning and Community Right-to-Know Act (“EPCRA”) similarly requires companies to report hazardous chemical releases that may impact the public to Local Emergency Response and State Emergency Response offices. As the ANPRM also points out, workplace fatalities, including those caused by an accidental chemical release, must be reported to the Occupational Safety and Health Administration (“OSHA”) within eight hours.

The following hypothetical narrative illustrates how these reporting responsibilities are put into action when “Company X” experiences a 5,000-gallons spill of sulfuric acid that migrates off the company’s property in the Detroit metropolitan area:

1. Upon determining that the spill is in excess of a Reportable Quantity (“RQ”), Company X immediately contacts the NRC, Michigan Department of Environmental Quality (“MDEQ”), the Pollution Emergency Alert System (“PEAS”), and the Detroit Fire Department/LEPC. In this case, a call to the fire department covers the Local Emergency Planning Committee (“LEPC”) requirements.
2. Once the initial calls are made, there are additional notifications that go to the various police forces (state, county, and local), the water and sewer departments (if the release gets into the drainage system), the environmental response contractor(s), and any back-up contractors that Company X may have.
3. Depending on the circumstances, particularly if there are any injuries associated with the spill, hospitals, OSHA (state or federal), the health department, and the poison control center may also be contacted.
4. In addition to these external calls, Company X will also contact its own environmental/safety department, communications directors, and legal. It is worth pointing out that the NRC and EPCRA may not be the first call, if the RQ has not been determined or exceeded, as a company would most likely contact its environmental response contractor first and foremost so they may respond to the incident scene more quickly.

---

<sup>1</sup> As specified on EPA’s website, NRC reporting requires the following information:

- Name, address, and telephone number of the person reporting and the responsible party;
- Specific location of the incident;
- Date and time the incident occurred or was discovered;
- Name of the chemical/material released;
- Source and cause of the release;
- Total quantity discharged;
- Medium into which the substance was discharged;
- Amount spilled into water;
- Weather conditions;
- Name of the carrier or vessel, the railcar/truck number, or other identifying information;
- Number and type of injuries or fatalities;
- Whether an evacuation has occurred;
- Estimation of the dollar amount of property damage;
- Description of current and future cleanup actions; and
- Other agencies notified or about to be notified.

Attached as “Exhibit A” is a sample emergency “call tree” that further illustrates the scope of actions taken from the release of a RQ.

Considering these robust reporting requirements and the seriousness with which our industry takes these responsibilities, we were surprised to learn that the sole source of approximately two-thirds of the screened incidents at CSB come from media reports. 74 Fed. Reg. at 30260. We were also surprised to learn that, even when incidents are reported to the NRC, CSB tends to find out from media reports before anything is forwarded from the NRC to CSB. Id. at 30261. From our perspective, much of the problem appears to be suboptimal coordination between CSB and the NRC, let alone other federal, state and local entities that collect information arising out of chemical accidents. Rather than creating another extensive layer of reporting responsibilities to be shouldered by the business community, CSB’s efforts should focus on designing streamlined channels of communication between the federal, state and local entities that currently receive chemical accident reports, and CSB. ILMA also would be in favor of ensuring that such enhanced communication system is properly funded.

Though better coordination between the governmental entities will greatly help CSB attain the policy goals specified in the ANPRM, some limited modification of the “standard” chemical accident reporting protocol should be explored. Indeed, accidents that CSB is required to investigate under the Clean Air Act Amendments of 1990 (accidental releases resulting in a fatality, serious injury, or substantial property damage) could certainly arise out of a release that is less than a Reportable Quantity and thus would not trigger a NRC reporting responsibility. Similarly, a chemical accident resulting in a serious injury and hospitalization to a single person would not trigger immediate OSHA reporting responsibility under 29 CFR § 1904.39(a). A small reporting gap, apparently now being covered by the media, seems to exist for incidents that are covered by CSB’s jurisdiction, but do not trigger either NRC or OSHA reporting requirements. It is doubtful that any amount of coordination between governmental entities can cover this gap if the information never makes it into their systems.

Instead of creating a wholly new reporting system, ILMA instead suggests a targeted modification of the existing NRC reporting protocol. In addition to the current “triggers” for contacting the NRC and the types of currently required accident information, CSB should explore having those in the regulated community also contact the NRC when there is an accidental chemical release of less than a Reportable Quantity in instances that result in a fatality, serious injury or substantial property damage. As acknowledged in the ANPRM, these trigger terms need to be defined with great specificity and sufficient implementation guidance must be created to avoid any confusion as to whether a call to NRC needs to be placed.

***Reject Approach #1 and Develop a Hybrid Approach Using Elements of Approaches #2 and #3***

In the context of the three regulatory approaches described in the ANPRM, a hybrid of approaches #2 and #3 may be worth exploring. Approach #1 – requiring the reporting of all accidental releases is far too duplicative considering existing reporting responsibilities and seems not unlike swatting a fly with a hammer. We also fear such an approach would create major challenges for the CSB to sift through a great deal of information and then identify the most important accidents.

Approach #3, which merely empowers CSB to ask that a report be filed, seems to present challenges to CSB’s ability to get accident information in the first place. Approach #2 could generate helpful information for CSB, but it will work best if it is integrated into the existing NRC system, and not a stand-alone system that would need to be reconciled with the NRC system in the midst of a chemical accident. Elements of Approach #3, specifically enabling CSB to follow-up with a reporting person or business after CSB gathers information from the NRC would be helpful.

July 30, 2009

Page 4

The suggested hybrid approach would, of course, work best if the communication efficiencies noted above were also pursued.

***Conclusion***

ILMA appreciates the opportunity to submit the foregoing comments and trusts that they can help further sharpen the focus of CSB's laudable efforts at helping chemical activities in the United States safer for everyone.

Sincerely,

A handwritten signature in black ink that reads "Celeste Powers". The signature is written in a cursive, flowing style.

Celeste M. Powers, CAE  
Executive Director

Attachment (Exhibit A)

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

**Exhibit A: SAMPLE EMERGENCY RESPONSE NOTIFICATION CALL TREE**

<b>Regulatory Agency Contacts</b>		
<b>Agency</b>	<b>Phone No.</b>	<b>Description</b>
<b>National Response Center</b>	1-800-424-8802	Report a release of any material on the back of this sheet if the amount spilled is above the RQ and impacts the environment. <b>Notification must be within 15 minutes of determining an RQ is exceeded.</b>
<b>Michigan DEQ</b> <b>District Office (8 am – 5 pm)</b> <b>Pollution Emergency Alerting System</b>	1-800-292-4706 1-313-456-4700 1-800-292-4706	Report a release of any material on the back of this sheet if the amount spilled is above the RQ to the ground (dirt). <b>Notification must be within 15 minutes of determining an RQ is exceeded.</b>
<b>Detroit Fire Department / LEPC</b>	9-911	If an emergency cannot be handled by the facility or it will affect the neighborhood, call 911. This will satisfy notification to the Detroit Local Emergency Planning Commission. <b>Notification must be within 15 minutes of determining an RQ is exceeded.</b> “24-hour Pollution Emergency Alert System (PEAS)”
Detroit Water and Sewerage	313-267-6000 or 313-267-9000	Slug loading or discharge to the sewer. <b>Notification must be within 1 hour.</b>
Ambulance - AMR	9-911	If there is a need for medical assistance and/or any release in excess of the reportable quantity, contact 911.
Concentra Medical Clinic	734-425-4600	Any injured personnel are to be transported to the clinic (if not severe), or the nearest available hospital (or personal choice).
<b>FBI</b>	313-965-2323	Call in case of DOT HAZMAT shipment security problem (e.g. hijacked shipment, terrorist threat)
<b>Police / State Police / Sheriff</b>	9-911	Call in case of DOT HAZMAT shipment security problem (e.g. hijacked shipment, terrorist threat), or intruder or workplace violence
<b>xxxxxxx - SHE Manager</b>  <b>xxxxxxx – Sr. SHE Advisor</b>	000-000-0000 000-000-0000 cell 000-000-0000 cell	Call in case of fire, explosion, chemical release, fatality, hospitalization of 5 or more employees, or plant shut down
<b>xxxxxxx – VP and Corporate Counsel</b>	000-000-0000 000-000-0000 cell	Call in case of fire, explosion, chemical release, fatality, hospitalization of 5 or more employees, or plant shut down
<b>MIOSHA</b>	1-800-858-0397	<b>Call within 8 hours in case of fatality or hospitalization of 5 or more employees</b>
DTE Primary Electric Customer	313-235-1300	(if necessary)
DTE – Michcon Natural Gas	800-947-5000	(if necessary)
National Poison Control Center	1-800-222-1222	(if necessary)
City of Detroit LEPC Emergency Management	313-596-5562	(if necessary)
Detroit Health Department	313-876-4000	Submit a written report on the release of a RQ
Hazardous Materials Emergency Response Contractors XYZ Industrial Outsourcing ABC Environmental 123 Environmental	1-734-384-9200 1-586-469-0041 1-313-834-7055	Primary Back up  24 Hour HAZMAT TEAM Outside Emergency Contractor