



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

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February 10, 2006

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VIA E-Mail and MAIL
Docket Center (EPA/DC)
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue
Washington, D.C. 20460

Treasurer
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CHS Inc.

**Re: Oil Pollution Prevention: Spill Prevention, Control, and
Countermeasure (SPCC) Plan Requirements-
Amendments; Docket ID No. EPA-HQ-2005-0001**

Second Vice President
Ronald M. Powell
Moroil Technologies

Dear Sir or Madam:

Immediate Past President
James A. Taglia
Nor-Lakes Services
Midwest, Inc.

The Independent Lubricant Manufacturers Association ("ILMA") submits the following comments on the Environmental Protection Agency's ("EPA" or "Agency") proposed rule to make certain regulatory burden reductions for its Spill Prevention, Control and Countermeasure ("SPCC") requirements. 70 Fed. Reg. 73523 (December 12, 2005).

Executive Director
Celeste M. Powers, CAE

General Counsel
Jeffrey L. Leiter

Introduction of ILMA

ILMA, established in 1948, is a national trade association of 139 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 15 years in EPA's various SPCC rulemakings. The Association also hosted visits to several members' facilities in the Baltimore, Maryland area for SPCC program staff in the early 1990s.

EPA Should Adopt SBA's Tiered "Small Facility" Alternative

EPA proposes to allow the owners and operators of facilities that store less than 10,000 gallons of "oil," who meet other qualifying criteria, the option of self-certifying their SPCC Plans in lieu of review and certification by a Professional Engineer (PE). Even though ILMA members' facilities would *not* meet the eligibility criteria for a "qualified facility" because of the amount of oil storage capacity, the Association nevertheless is very interested in the proposed amendment because, if promulgated, it would streamline compliance for many ILMA members' customers. It also would increase the availability of PEs to ILMA members and other owner/operators with larger, more complex oil storage capacities at their facilities.

While ILMA applauds the Agency for its good-faith attempt to reduce regulatory compliance burdens on the owners and operators of small facilities, EPA's proposal falls short of what is needed. ILMA urges EPA instead to adopt the multi-tiered structure

option presented by the Small Business Administration's ("SBA") Office of Advocacy and considered by the Agency.

The rationale for the adoption of the multi-tiered structure is simple and in reality is not different than EPA's rationale for including an "environmental equivalence" determination in 40 CFR §112.7(a)(2) as part of the 2002 SPCC amendments. The multi-tiered structure provides the Agency with an equal level of protection of navigable waters and adjoining shorelines from oil pollution while reducing regulatory burdens on small facilities. As EPA has recognized, the "equivalence" is not a mathematical calculation, but rather is related to achieving the same desired result – that is, environmental protection.

For facilities between 1,320 and 5,000 gallons, developing and implementing an SPCC Plan (either with or without a PE) is not likely either to increase compliance rates or the effectiveness of a spill prevention strategy. As an initial matter, most small facilities, especially given the cost of petroleum products today, have little incentive to spill or discharge oil (this should apply to any facility, as well). Moreover, if catastrophic spills or discharges get beyond the "four corners" of facilities with storage capacities between 1,320 and 5,000 gallons, they likely are the result of vandalism or other criminal acts and are routinely addressed immediately by local emergency response agencies. ILMA could find no National Response Center data that suggest that facilities in SBA's first tier pose an unreasonable risk to human health and the environment.

In addition, ILMA believes that most facilities between 1,320 and 5,000 gallons likely store oil in drums, small bulk containers, and small aboveground storage tanks. These storage vessels are predominantly shop fabricated, so the risk of failure from internal corrosion should be extremely low. It also is highly probable that these storage vessels are routinely inspected through daily or frequent use. As a result, EPA should have a high degree of confidence that there is adequate, equivalent protection by not requiring a SPCC Plan.

The second tier in the SBA proposal – that is, owners and operators of facilities with oil storage capacities between 5,000 and 10,000 gallons would be subject to the self-certification approach for SPCC Plans set forth by EPA in the December 12 proposed burden reduction, although ILMA suggests below some modifications to the eligibility criteria. ILMA supports the justification set forth by the Agency in allowing these facilities to self-certify their SPCC Plans.

ILMA expects that associations representing PEs will oppose EPA's proposal, arguing that the Agency is allowing non-engineers to design and implement engineering controls. ILMA disagrees. Much like the facilities between 1,320 and 5,000 gallons, the facilities in the second tier are likely to have relatively simple oil storage operations using

shop-fabricated drums, small bulk containers and small aboveground storage tanks. There simply is not a lot of “engineering” that has to be performed at these facilities, thus leading one to question the “value added” by the PE.

ILMA, in addition to these comments, has signed onto a multi, small business associations letter to EPA as part of the subject rulemaking, endorsing the SBA tiered approach for small facilities.

EPA Should Eliminate or Modify the Reportable Discharge History Criterion

EPA has proposed a 10-year (or since becoming subject to SPCC regulations if the facility has been in existence less than 10 years) “clean” reportable discharge criterion to qualify for the small facility exemption and oil filled operational equipment alternative. The Agency’s rationale for the criterion is to keep “risky” facilities from obtaining regulatory relief. While EPA states that it has relied on a proposal from the Utilities Solid Waste Activities Group (“USWAG”) in proposing the 10-year “past history,” ILMA believes that the Agency has misinterpreted USWAG’s recommendation. Accordingly, ILMA supports USWAG’s comments to be filed EPA on this particular issue.

EPA should eliminate or modify the reportable discharge history criterion. The Agency instead should relate the exemption to the overall risk associated with the qualifying facility. As opposed to any reportable release for discharges set forth in 40 CFR §112.1(b), EPA, for example, could use its own determination of “risk” contained in 40 CFR §112.4 – that is, facilities that have more than 42 gallons of oil in each of two discharges as described in 40 CFR Part 110 in any 12-month period must submit information to the Regional Administrator within 60 days of the date of discharge. While ILMA does not believe that discharges that exceed the 42 gallons threshold above *per se* constitute an environmental risk, particularly at facilities designed to handle those discharges, such alternative risk criterion is a better indicator of a facility owner or operator’s ability to develop an implement a self-certified SPCC Plan.

If EPA decides to retain the reportable discharge history, ILMA recommends that the time period be reduced from either ten to three years or five years. The shorter time frames are consistent with regulatory record retention requirements and many EPA or state permits (e.g., storm water discharge permits).

ILMA also is concerned that that the reportable discharge criterion is a one-time determination. For example, if the owner or operator of a facility had one reportable discharge, regardless of cause, in the 10-year period after the effective date of the SPCC amendment, it would never be able to qualify for the small facility exemption. EPA should clarify in the final rule that any time frame for the eligibility criterion is a

“rolling” one – that is, the facility could qualify for the regulatory burden reduction if it remained “clean” for the duration of the required time period.

EPA should take into account discharges from natural disasters, vandalism, and other events beyond the facility owner or operator’s control in finalizing the reportable discharge history criterion. To the extent that such causes explain the discharge, they are not indicative of the owner or operator’s good prevention practices that the Agency is relying upon to establish eligibility for the criterion.

EPA Should Expand the Exemption for Mobile Refueling

The Agency’s proposed exemption for mobile airport refuelers from specifically-sized secondary containment requirements under 40 CFR §112.8(c) (2) and (11) should be expanded to mobile operations at non-transportation industrial and similar facilities. For example, many ILMA members operate mobile lube dispensers on construction sites. Notwithstanding that such construction sites are normally subject to storm water and other discharge controls, requiring sized secondary containment for such mobile equipment is not practicable for safety and security reasons, as it would entail grouping in many instances large pieces of heavy equipment in a relatively confined area or placing barriers that impede the ability of such equipment to move about the site. ILMA believes that the risk of spills or discharges actually will increase, especially on busier sites.

EPA Should Allow a Deviation for Listing All Operational Equipment in a SPCC Plan

EPA should modify its requirement that a facility owner or operator list each piece of oil-filled operational and manufacturing equipment in the SPCC Plan and identify each piece of equipment in the facility diagram. ILMA believes that this is an unreasonable burden, especially for larger or more complex manufacturing facilities, and does not provide increased benefits as far as good prevention practices. EPA should allow the owner or operator to describe generally the areas and types of operational equipment, along with how the facility will meet the containment requirements in 40 CFR §112.7(c).

EPA Should Adopt SBA’s Alternative for Tank Integrity Testing

ILMA endorses SBA’s approach to allow qualifying facilities to use periodic visual inspections for shop-fabricated aboveground storage tanks. As an initial matter, ILMA questions whether the current SP001 standard is an accepted industry standard. For example, ILMA understands that the SP001 standard does not address aboveground fiberglass tanks. EPA should not rely entirely on the current SP001 standard in allowing alternatives to tank integrity testing.

EPA Should Consider Further Burden Reduction for Integrity Testing of Certain Tanks

EPA has asked for suggestions for areas of further SPCC rulemaking. ILMA requests that the Agency consider flexibility in the area of integrity testing for aboveground storage tanks that are secondarily-contained and that are indoors. ILMA believes that visual inspections of these tanks are appropriate and sufficient for compliance with the integrity testing requirement. The Association suggests that flexibility be provided for indoor aboveground storage tanks up to 30,000 gallons. ILMA is not aware of any National Response Center data indicating that such tanks pose an unreasonable risk to the environment.

Further, the Association's members have not indicated that internal corrosion and subsequent failure is a problem with these indoor tanks used to store oil. In fact, some members commented that the tanks are situated indoors, in part, to avoid the issues that would lead to failures. At the same time, these tanks are located inside diked areas with the four walls of the building, so that any releases of oil would be contained and readily detected. Moreover, these tanks undergo frequent, if not daily, visual inspections.

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ILMA appreciates this opportunity to submit these comments. The Association would be happy to respond to any questions its comments may have raised.

Sincerely,



Celeste M. Powers, CAE
Executive Director

cc: SHERA Committee
Jeffrey L. Leiter, Esq.
Adam B. Cramer, Esq.