

Data on Facilities that Handle Below a Certain Threshold of Oil ("Certain Facilities")

United States Environmental Protection Agency

INTRODUCTION

This document presents information the U.S. Environmental Protection Agency (EPA) has acquired that may be relevant in assessing whether alternate regulatory requirements would be appropriate for facilities subject to the Spill Prevention, Control and Countermeasure (SPCC) rule (40 CFR part 112) that handle oil below a certain threshold amount ("certain facilities"). EPA is making this information available for public review and comment as part of its process of considering alternative approaches that would ensure protection of human health and the environment from oil spills occurring at these facilities. This document can be found in EPA Docket No. OPA-2004-0007.

The information includes relevant portions of documents from a number of sources, including correspondence (letters, memorandums, white papers, email messages, etc.) submitted to EPA staff following the promulgation of the revised SPCC rule. Also included are relevant portions of comments entered into the following official SPCC rulemaking dockets:

Initial promulgation and subsequent proposed rules:

- OPA-1973-0001 (SPCC-1) Proposed Rule (July 19, 1973); Final Rule (December 11, 1973)
- OPA-1991-0001 (SPCC-1P) Proposed Rule (October 22, 1991)
- OPA-1993-0001 (SPCC-2P) Proposed Rule (February 17, 1993)
- OPA-1997-0002 (SPCC-7) Proposed Rule (December 2, 1997)

Extension of the compliance deadlines for the 2002 amendments:

- OPA-2002-0001 Proposed Rule (January 9, 2003); Final Rule (April 17, 2003)
- OPA-2004-0003 Proposed Rule (June 17, 2004); Final Rule (August 11, 2004)

Information from the rulemaking dockets is referenced with its docket document number at the end of the excerpt (e.g., OPA-2004-0003-0049). References for comments submitted to the 1997 and earlier dockets refer to the older docket numbering system (e.g., SPCC-7-2-23) to facilitate locating the document at the EPA Docket Center since electronic versions are not available online.

The excerpts below present ideas for new regulatory thresholds and definitions as well as alternatives that could potentially replace parts of existing regulations for "certain facilities." EPA is interested in receiving comments that can assist the Agency in assessing the merit of these alternatives. EPA is specifically interested in receiving any evidence, including data and analyses, related to claims made within this document. The Agency is soliciting comments only on the excerpted data referenced below.

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2. U.S. Small Business Administration. *Letter to Thomas P. Dunne, Acting Administrator for the Office of Solid Waste and Emergency Response, Re: Spill Prevention, Control and Countermeasure (SPCC) Rule; 67 Fed. Reg. 47042 (July 17, 2002); Recommendation for Adoption of Interim Final Rule.* 6/10/2004. (excerpt)
3. U.S. Small Business Administration. Prepared by Jack Faucett Associates, Inc. *Proposed Reforms to the SPCC Professional Engineer Certification Requirement: Designing a More Cost Effective Approach for Small Facilities.* 6/10/2004. (excerpt)
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5. Forest Resources Association, Inc. *Letter to David Evans.* 3/15/2004. (excerpt)
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7. National Society of Professional Engineers. *Comments on Proposed Revisions to Spill Prevention, Control and Countermeasures (SPCC) Plan Rule.* 7/7/2004. OPA-2004-0003-0049. (excerpt)
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10. American Feed Industry Association. *Letter to Superfund Docket #SPCC 7.* 2/2/1998. SPCC-7-2-23. (excerpt)
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- July 17, 2002, SPCC Rule Amendments. 1/29/03. OPA-2002-0001-0080. (excerpt)*
12. Automotive Oil Change Association. *Letter to Mr. David Lopez, Re: RIN 2050-AC62 Final Rule; Clarification of "Loading Rack."* 11/20/02. OPA-2002-0001-0025. (excerpt)
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 17. National Federation of Independent Business Legal Foundation. *Letter to EPA Docket Center, Re: Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; 40 CFR Part 112. 7/7/2004. OPA-2004-0003-0061. (excerpt)*
 18. Ohio Oil and Gas Association. *Letter to EPA Docket Center, Re: Oil Pollution Prevention: Non-transportation-related Onshore and Offshore Facilities, Proposed Rules. 12/23/91. SPCC-1P-2-58. (excerpt)*
 19. Pennsylvania Oil and Gas Association. *Letter to Superfund Docket, Emergency Response Division. 12/23/91. SPCC-1P-2-113. (excerpt)*
 20. Petroleum Marketers Association of America. *Letter to Superfund Docket, Emergency Response Division. 12/19/91. SPCC-1P-2-182. (excerpt)*
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III. Agriculture Sector

26. CHS Cooperatives. *Letter to U.S. EPA Docket Center, Subject: Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities Proposed Rule, January 9, 2003.* 1/29/2003. OPA-2002-001-156. (excerpt)
27. American Farm Bureau Federation, Agriculture Retailers Association, American Corn Growers Association, CF Industries, CHS, GROWMARK, Inc., MFA Oil, Montana Council of Cooperatives, National Cotton Council, National Council of Farmer Cooperatives, National Farmers Union, National Association of Wheat Growers, National Grape Cooperative Association, Oklahoma Agricultural Cooperative Council, South Dakota Association of Cooperatives, Southern States Cooperative, The Fertilizer Institute, The National Grange, USA Rice. *Letter to Ms. Marianne Horinko, Re: EPA Oil Pollution Prevention and Response Regulations (40 CFR 112; "SPCC Oil Spill Rule") - Amendments and Recommendations as it Potentially Applies to Agriculture.* 3/22/2004. (excerpt)
28. American Farm Bureau Federation, Agricultural Retailers Association, American Corn Growers Association, CHS, GROWMARK Cooperatives, MFA Oil, National Cotton Council of America, National Council of Farmer Cooperatives, National Farmers Union, National Wheat Growers Association, Southern States Cooperatives, The National Grange, USA Rice. *Letter to Ms. Marianne L. Horinko, Re: EPA Oil Pollution Prevention and Response Regulation (40 CFR 112; "SPCC Oil Spill Rule") — Amendments and Recommendations as it Potentially Applies to Agriculture.* 3/10/2004. (excerpt)

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I. Small Facility Alternative

1	U.S. Small Business Administration. Prepared by Jack Faucett Associates, Inc. <i>Spill Prevention Control and Countermeasures (SPCC) Issues, Alternatives and Recommendations (Draft. Ver. 4). 9/30/2003. (excerpt)</i>
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PROFESSIONAL ENGINEER CERTIFICATION

Background

The Environmental Protection Agency Spill Prevention, Control and Countermeasure (SPCC) regulation 40 CFR 112.3(d), requires certification of an SPCC Plan by a Professional Engineer (PE) for all facilities affected by SPCC requirements. The current SPCC rule requires a PE to certify that the facility operator's Plan follows good engineering practices by examining the facility and attesting familiarity with the provisions of the SPCC rule.

On July 17th, 2002 the EPA revised the current rule, allowing site visitation by an agent of the PE. This revision was adopted in response to concerns regarding the scarcity of certified PEs in relation to the number of facilities to be examined. Under the revised rule, the PE must assert:

1. familiarity with the SPCC requirements of part 112;
2. personal visitation and examination of the facility, or sending an agent as substitute (112.3(d)(1)(ii));
3. preparation of the plan in accordance with good engineering practices, including applicable industry standards and requirements of Part 112;
4. establishment of procedures for required inspections and testing; and
5. suitability of plan for the facility.

Although the revision addresses the issue of PE availability, it does not adequately address the necessity or cost of the certification process to small businesses. In response to the proposed rule, the American Petroleum Institute, industry members, and facility owners and operators have raised several concerns regarding the PE certification requirement to the EPA. Comments listed in the preamble to the section 112.3(d) discussion suggested that PE certification should not be required for small businesses. The basis for the assertion is that small facilities already have to submit detailed plans for review and approval by state or local laws prior to installation of tanks. For example, tanks in small facilities are required to have the Underwriters Laboratory Seal of Approval. Commenters were also concerned that the EPA did not fully account for the cost to a facility owner/operator for a visit to each facility before certifying a Plan.

In regard to the necessity of the requirement for small facilities with one to three tanks, it is questionable for two reasons. EPA's own research indicates (1) that small facilities are a low risk of creating a discharge that could reach navigable waters and (2) that written SPCC plans are not that effective in reducing risk. Yet EPA has ignored its own findings and has continued to defend the PE certification requirement for small businesses. In its response to comments, EPA stated:

"PE certification of all facilities, both large and small, is necessary because a discharge as described in §112.1(b) from any size facility may be harmful, and a PE review and certification of a Plan may help prevent that discharge."

The EPA also disagreed that small facilities need not have PE certification for SPCC Plans when the tanks are certified by the Underwriters Laboratory, considering that:

"A Plan consists of more than a certified tank. It also contains provisions for secondary containment, integrity testing, and other measures to prevent discharges. Those provisions require PE certification to ensure that they meet the requirements of the rule and that the Plan is effective to prevent discharges."

Again, these positions are not supported by EPA's own research. In its analyses of their 1995 SPCC survey, EPA noted,

"...facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs."

In looking at the data used to arrive at this conclusion, it can be seen that facilities with less than 10,000 gallons of storage capacity account for less than 0.2% of the total volume of oil spilled. Yet these facilities constitute a very large percentage of the total facilities regulated under SPCC. If we assume that the distribution of storage capacity across small businesses is the same as it is across all SPCC regulated facilities, we estimate that almost 170,000 small business establishments, or 65% of all small SPCC regulated facilities, fall into this category. These figures are probably low given the likelihood that facilities with low storage capacity constitute a relatively greater proportion of small businesses. EPA did not adequately take into account the low level of risk associated with small facilities.

Furthermore, in a study of the 1995 SPCC survey results EPA itself found that having a written spill prevention plan had no impact on risk. Actual spill prevention measures (e.g., secondary containment), on the other hand, were found to reduce risk. In other words, it's not clear that having a PE certified plan, or any written plan, is effective or the only way to minimize oil spill risk to the environment.

In response to industry's costs concerns, EPA asserted that PE certification costs should be lower for a smaller facility as a Plan for a small facility is likely to be less complicated than a Plan for a larger facility. To validate the assertion, the EPA provided the following analysis:

"In our Information Collection Request, estimated total costs for a new facility to prepare and begin implementation of a Plan, including PE certification costs, are \$2,201 for a small facility, \$2,164 for a medium facility, and \$2,540 for a large facility. This cost is incurred only in the year that the facility first becomes subject to the rule. This one-time cost incurred by a small facility is less than 1.5 percent of the average annual revenue for small facilities in all industry categories" (July 17, 2002 Federal Register, Section 112.3 (d) 47084).

There are two interesting points to note about the figures cited in this passage. First, there is negligible difference between the numbers despite EPA's claim that the costs should vary according to facility size. If the costs are divided by revenues to put them on a proportional basis, it is evident that the requirement places a much higher burden on small businesses than it does on large businesses. Second, EPA seems to imply that the cost is fairly small since it is not more than 1.5 percent of annual revenues. It should be noted that the cost in question refers only to the cost of developing the Plan and does not include all of the other costs associated with complying with the SPCC. It also does not take into account the cumulative regulatory costs faced by industry. Within this context, the percentage seems considerable.

There are several different aspects associated with the certification and recertification of SPCC plans. For small facilities, these include (1) preparing a cross-reference matrix between the old SPCC plan and the new SPCC plan, (2) developing a facility diagram, (3) reviewing the plan

every five years, and (4) amending plans with technical modifications. The EPA report “Economic Analysis for the Final Revisions to the Oil Pollution Prevention Regulation,” provides cost estimates for these activities on a per facility basis. These estimates are reproduced in the following table. Note that the figures are not additive since each aspect is applied to a different number of small facilities.

Cost Factor	Cost Per Small Facility
Cross-Reference Matrix	\$16
Facility Diagram	\$43
Review Plans	\$173
Amend Plans	\$67

EPA developed these estimates by estimating the hours that would be required to complete each task. These estimates were divided into three labor categories: Managerial, Technical, and Clerical. The estimates were then multiplied by corresponding labor rates and then added. For the hourly labor rates, EPA used \$48.95, \$32.60, and \$20.69 respectively. These rates include overhead which was estimated to be 17% of the wage. To develop a cross-reference matrix, EPA assumed that a technical person would be able to complete the task in ½ hour. EPA estimated that it would take 1.5 hours to develop a facility diagram for a small facility with two containers: 1 hour for a technical person and ½ hour for a manager. EPA's estimates to review an existing plan include 0.75 hours for a manager, 3 hours of technical person's time, and 0.75 hours of clerical support. In addition to the labor costs for reviewing the plan, EPA added \$22.50 for O&M. To amend an existing plan, EPA estimated that it would take ½ hours of management time and 1.3 hours of technical labor. These figures are based on estimates of what it would take to recalculate storage capacity for those facilities that receive a wastewater exemption under the revised rule.

We believe that these figures underestimate the actual costs that will be incurred. Both the hourly labor rates and the estimated number of hours to complete each task seem too low. In regard to the labor rates, the problem seems to be in the 17% overhead rate that was used. This should probably be closer to 117%. For example it is hard to imagine a technical person such as an engineer being charged out at less than \$50 per hour. Except for the cost of modifying a plan, we have used EPA's figures in our benefit calculations; this means that we have probably underestimated the actual benefits of our proposals and that our estimates should be considered lower bounds. In regard to the cost of modifying a plan, we obtained data that we feel is a more realistic estimate of the costs that will be incurred.

In EPA's economic analysis report, EPA seriously underestimated the cost burden that will be imposed on facilities that will have to revise existing SPCC plans to be in compliance with the revised rule. In the report, EPA assumes that most existing facilities have plans in good standing and will only have to incur a \$16 charge to comply with the revised rule: i.e., to develop a cross-reference matrix between their old plan, organized according to the previous rule, and the new SPCC regulations. (p. 41). However, at the SPCC Program Dialogue, the EPA indicated that almost all facilities would need to amend their existing plans to be in conformance with the revised rule. As all technical amendments require PE certification, a significant cost burden will be imposed on small businesses and industry in general. It should be emphasized that these costs were NOT taken into account in EPA's Economic Analysis.

We estimate that small businesses will have to spend almost \$390 million to recertify existing

plans. To develop this estimate, we first estimated the number of small SPCC regulated facilities. These SPCC regulated facilities are defined by the Small Business Administration as a small business. We used EPA's 1996 estimate of 267,880 regulated small businesses published in their Economic Analysis, Small Business Chapter, and then assumed a one-percent average annual growth rate in the number of facilities to develop an estimate for 2003 (287,204). Next, we had to adjust this estimate to take into account the fact that some small facilities would have amended their plans despite the new revisions. As a result, we reduced the figure by 10%, yielding 258,483 facilities. Third, we estimated the cost burden on each of these facilities. As noted above, EPA estimated the total costs for developing a Plan, including PE certification for a small facility to be less than \$2,201. PEs indicated to us that the costs to certify new plans for small facilities range between \$2,000 and \$3,500, with recertification costs averaging \$1,500. Finally, we computed the total cost for all small facilities by multiplying the \$1,500 recertification cost by the number of affected facilities.

In addition to these recertification costs, small businesses will spend almost \$40 million in terms of the time required to read and understand the revisions being made to the SPCC rule. This figure is the product of EPA's per unit cost estimate associated with this activity (\$130 or 3.5 hours), and the estimated number of small business regulated under the SPCC.

To summarize, small businesses incur compliance costs that are roughly equal to those paid by large businesses even though they present a lower oil spill risk. In addition, EPA has found that compliance with this requirement does not reduce a facility's oil spill risk.

Alternatives

As noted above, EPA did not seem to consider risk in formulating the SPCC requirements; rather, they used the "one size fits all" approach. In contrast, it is a prime tenet of the Regulatory Flexibility Act (RFA) that compliance costs by business size should correspond to the amount of risk. In regard to requiring PE certified written plans, we suggest using a tiered system similar to the approach used under the Resource Conservation Recovery Act (RCRA).

We envision three tiers or categories. The first tier would comprise facilities that handle very small volumes of oil. These facilities would be exempt from having to have a written plan and/or PE certification, but would have to adhere to all of the other SPCC requirements. Instead of a written plan, the facilities would submit to EPA a signed letter of notification that expressed an intent to comply with the SPCC. These would have to be resubmitted every five years. This tier is somewhat analogous to small quantity generators (SQG) of hazardous waste, which must adhere to specific regulations but are exempt from having to obtain a permit if their volume falls below a certain amount. The first tier could also be defined by a SQG status or the applicability of a Storm Water Protection Plan (SWPP) covering the oil storage areas of the facility. By evaluating the risk levels associated with storage capacity, EPA could set a threshold that would exempt facilities in the category from having to develop a written plan. As a first step in drafting that limit, we suggest setting the threshold at 5,000 gallons. This would exempt approximately 28.5% of small business establishments, which are responsible for less than 0.03% of the annual volume of oil spilled. These estimates were derived from the 1995 SPCC survey data used by EPA in its oil spill risk analysis.

In the second tier would be facilities with a slightly larger storage capacity. These facilities would be required to have a written SPCC plan but the plan would not necessarily have to be certified by a PE and a PE site visit would not be required. An owner/operator could develop his/her own plan, hire a PE to develop a plan, or choose to adopt a standard plan developed for his/her specific type of facility. Standardized plans would have to be developed by qualified persons and different ones would have to be developed for specific facility types. EPA may or may not want to approve each standard plan or the individuals developing them. Once a plan had been approved by EPA or developed by a qualified person, it could be adopted without any

further certification requirement. To adopt a plan, facilities would have to meet certain criteria in addition to falling below an oil handling threshold. They would have to conform to a standard facility design, utilize a standard operating procedure, and/or only handle 55 gallon drums (e.g., electric substations and an oil change/lubrication service provider that is part of a chain). Again, EPA could conduct a risk analysis to help set the thresholds for this category. As a starting point, we suggest that the tier be defined by firms with a storage capacity between 5,000 and 10,000 gallons. This would exempt approximately 35% of small business establishments, which are responsible for less than 0.17% of the annual volume of oil spilled. These estimates were derived from the 1995 SPCC survey data used by EPA in its oil spill risk analysis.

Finally, the third tier would be made up of all of the remaining facilities, who would have to have a written plan certified by a PE.

Benefit Cost Analysis

The cost burden of the PE certification requirement is fairly high and as shown above disproportionately impacts small businesses. We estimate that over 65,000 small businesses spend almost \$25 million each year developing, reviewing, and amending PE certified SPCC plans. Assuming EPA's \$2,201 estimate of the cost of a PE certification and a 1% growth rate in the number of SPCC regulated facilities, PE certification costs for new small facilities account for over \$6 million of this total. Moreover, within the next two years small businesses will probably spend almost \$390 million to recertify existing plans to ensure that they conform to the revised regulations.

On the other hand, the social and environmental benefits of the PE certification requirement are negligible when computed for small facilities. As noted above, EPA found in its own study that smaller facilities are less likely to spill oil and will spill smaller volumes of oil when they do so. In a different study cited above, EPA also found that having a written SPCC plan does not reduce the risk of an oil spill. Finally, some small facilities conform to a standard facility design and/or utilize a standard operating procedure. Having a PE visit and certify every single one of these sites, which are small and almost identical, provides very little environmental benefit.

Given these considerations, we have estimated costs and benefits for the proposed alternatives above. Both factors were computed using constant dollars, were developed over a thirty year forecast horizon, and were calculated relative to the revised SPCC regulations. A stream of annual net benefits was computed by subtracting annual costs from total annual benefits. We then calculated the present value of the net benefit stream using a 7% real discount rate. For Tier 1, we assumed a threshold of 5,000 gallons and that the costs and benefits would therefore accrue to 28.5% of the number of small businesses regulated under the SPCC. For Tier 2, we assumed that the costs and benefits would accrue to facilities with a storage capacity between 5,000 and 10,000 gallons – or 35% of the number of small businesses regulated under the SPCC.

For the Tier 1 proposal, the present value of the net benefit stream is almost \$200 million. This figure is itemized in Exhibit 1. As can be seen, we evaluated a number of different benefits. First we estimated the cost savings associated with not having to develop and certify an SPCC plan. We used EPA's \$2,201 estimate and multiplied this by the number of new Tier 1 facilities each year.

Next we assumed that Tier 1 facilities would not have to develop a facility diagram and estimated the resulting savings. EPA's data on hourly rates and the number of hours required to compose a facility diagram indicate that it would cost a small facility \$42.95. For the first year, we multiplied the number of existing facilities by this cost. For subsequent years, we multiplied the rate by the number of new facilities. Following EPA's lead, we assumed that 25% of all small facilities would already have a diagram and adjusted the number of affected facilities

accordingly.

We assumed that Tier 1 facilities would not have to develop a cross-reference matrix, yielding savings for those facilities in the first year. To estimate the savings, we multiplied the number of existing facilities in the first year by EPA's cost estimate (\$16) for developing the matrix.

We also assumed that Tier 1 facilities would not have to spend resources reviewing their SPCC plans every five years. Using EPA's data in the Economic Analysis, we estimated that on average it costs \$173 for a small facility to review its plan. This figure was multiplied by the estimated number of small Tier 1 facilities that would otherwise have to conduct a review each year.

Finally, we estimated the savings that would accrue as a result of not having to pay a PE to recertify technical modifications to an existing SPCC plan. We used our per unit estimate of \$1,500 and multiplied this figure by the annual number of new Tier 1 facilities that would otherwise be recertifying their plans.

The main costs for Tier 1 facilities is the cost involved with submitting the letter of notification and intent to comply. We assumed that it would cost \$16 to do this (or ½ hour of a technical person's time).

For the Tier 2 alternative, the present value of the net benefit stream is over \$225 million. The estimate is shown in Exhibit 2 along with supporting data. Many of the benefits are similar to those presented for the Tier 1 alternative. In regard to the costs of reviewing a plan, however, we assumed that firms would still have to spend some time doing this activity and reduced the benefit by 50%. We also deleted the benefit for not having to develop a facility diagram, assuming that firms would need one even for a standardized plan. On the cost side, firms would not have to submit a letter of intent so that cost was removed.

The two proposals will have differential impacts of the alternatives across industry sectors which are important to consider. These are shown in Exhibit 3. As can be seen, the greatest amount of relief would be provided to farms which constitute over 50% of the small business establishments regulated under the SPCC. If both proposals were adopted, 90% of the farms regulated under the SPCC would realize some type of cost savings. It should be noted that the electric utility figures severely underestimate the number of facilities that would be affected. This is due to an incorrect definition of an electric utility facility used by EPA in its Economic Analysis. In a separate report on electric utilities, we estimate that there are over 100,00 transformers and substations currently regulated under SPCC.

Recommendations

In regard to the PE certification requirement, we have seen that small businesses incur compliance costs that are roughly equal to those paid by large businesses even though they present a lower oil spill risk. In addition, EPA found that compliance with this requirement does not reduce a facility's oil spill risk. Taking this information into consideration, we have developed two alternatives to the PE certification requirement. Both alternatives could generate considerable cost savings for small business, with little to no risk to the environmental. Together, these savings would amount to almost \$15 million per year on average, or a net present value over \$400 million. We suggest that both alternatives be adopted.

Exhibit 1: Tier 1 Alternative to PE Certification													
Year	Number of Tier 1 Facilities					Savings					Cost	Net Savings	Net Present Value
	Total	New	Existing	5 Year Review	Recertifying	PE Certification	Facility Diagram	Cross Reference Matrix	Review Plan	PE Recertification	Letter of Intent		
0	81,853	0	81,853			\$ -	\$ 2,636,384	\$ 1,309,648	\$ -	\$ 110,501,592	\$ 1,309,648	\$ 113,137,976	\$ 113,137,976
1	82,672	819	81,853			\$ 1,801,585	\$ 26,364	\$ -	\$ -	\$ -	\$ 13,096	\$ 1,814,853	\$ 1,696,124
2	83,498	827	82,672	16,371	1,637	\$ 1,819,601	\$ 26,627	\$ -	\$ 2,824,421	\$ 2,455,591	\$ 13,227	\$ 7,113,013	\$ 6,212,781
3	84,333	835	83,498	16,371	1,637	\$ 1,837,797	\$ 26,894	\$ -	\$ 2,824,421	\$ 2,455,591	\$ 13,360	\$ 7,131,343	\$ 5,821,300
4	85,177	843	84,333	16,371	1,637	\$ 1,856,175	\$ 27,163	\$ -	\$ 2,824,421	\$ 2,455,591	\$ 13,493	\$ 7,149,856	\$ 5,454,591
5	86,028	852	85,177	16,371	1,637	\$ 1,874,737	\$ 27,434	\$ -	\$ 2,824,421	\$ 2,455,591	\$ 1,323,277	\$ 5,858,906	\$ 4,177,319
6	86,889	860	86,028	17,189	1,719	\$ 1,893,484	\$ 27,709	\$ -	\$ 2,965,642	\$ 2,578,370	\$ 1,323,413	\$ 6,141,792	\$ 4,092,535
7	87,758	869	86,889	17,197	1,720	\$ 1,912,419	\$ 27,986	\$ -	\$ 2,967,054	\$ 2,579,598	\$ 1,336,647	\$ 6,150,410	\$ 3,830,166
8	88,635	878	87,758	17,206	1,721	\$ 1,931,543	\$ 28,266	\$ -	\$ 2,968,480	\$ 2,580,838	\$ 1,350,014	\$ 6,159,114	\$ 3,584,660
9	89,521	886	88,635	17,214	1,721	\$ 1,950,859	\$ 28,548	\$ -	\$ 2,969,921	\$ 2,582,091	\$ 1,363,514	\$ 6,167,905	\$ 3,354,932
10	90,417	895	89,521	17,222	1,722	\$ 1,970,367	\$ 28,834	\$ -	\$ 2,971,376	\$ 2,583,356	\$ 1,390,777	\$ 6,163,155	\$ 3,133,036
11	91,321	904	90,417	18,049	1,805	\$ 1,990,071	\$ 29,122	\$ -	\$ 3,114,066	\$ 2,707,413	\$ 1,404,685	\$ 6,435,988	\$ 3,057,691
12	92,234	913	91,321	18,066	1,807	\$ 2,009,972	\$ 29,413	\$ -	\$ 3,116,963	\$ 2,709,931	\$ 1,418,732	\$ 6,447,547	\$ 2,862,788
13	93,156	922	92,234	18,083	1,808	\$ 2,030,071	\$ 29,707	\$ -	\$ 3,119,888	\$ 2,712,475	\$ 1,432,919	\$ 6,459,223	\$ 2,680,348
14	94,088	932	93,156	18,100	1,810	\$ 2,050,372	\$ 30,005	\$ -	\$ 3,122,843	\$ 2,715,043	\$ 1,447,248	\$ 6,471,015	\$ 2,509,571
15	95,029	941	94,088	18,118	1,812	\$ 2,070,876	\$ 30,305	\$ -	\$ 3,125,827	\$ 2,717,638	\$ 1,475,349	\$ 6,469,297	\$ 2,344,771
16	95,979	950	95,029	18,954	1,895	\$ 2,091,585	\$ 30,608	\$ -	\$ 3,270,062	\$ 2,843,038	\$ 1,490,103	\$ 6,745,190	\$ 2,284,829
17	96,939	960	95,979	18,979	1,898	\$ 2,112,500	\$ 30,914	\$ -	\$ 3,274,519	\$ 2,846,912	\$ 1,505,004	\$ 6,759,842	\$ 2,139,993
18	97,908	969	96,939	19,006	1,901	\$ 2,133,625	\$ 31,223	\$ -	\$ 3,279,020	\$ 2,850,826	\$ 1,520,054	\$ 6,774,640	\$ 2,004,372
19	98,887	979	97,908	19,032	1,903	\$ 2,154,962	\$ 31,535	\$ -	\$ 3,283,566	\$ 2,854,778	\$ 1,535,254	\$ 6,789,586	\$ 1,877,377
20	99,876	989	98,887	19,058	1,906	\$ 2,176,511	\$ 31,850	\$ -	\$ 3,288,157	\$ 2,858,770	\$ 1,564,235	\$ 6,791,054	\$ 1,754,937
21	100,875	999	99,876	19,904	1,990	\$ 2,198,276	\$ 32,169	\$ -	\$ 3,434,016	\$ 2,985,581	\$ 1,579,877	\$ 7,070,165	\$ 1,707,537
22	101,884	1,009	100,875	19,939	1,994	\$ 2,220,259	\$ 32,491	\$ -	\$ 3,440,112	\$ 2,990,881	\$ 1,595,676	\$ 7,088,066	\$ 1,599,870
23	102,903	1,019	101,884	19,975	1,997	\$ 2,242,462	\$ 32,815	\$ -	\$ 3,446,268	\$ 2,996,234	\$ 1,611,633	\$ 7,106,147	\$ 1,499,020
24	103,932	1,029	102,903	20,011	2,001	\$ 2,264,886	\$ 33,144	\$ -	\$ 3,452,487	\$ 3,001,641	\$ 1,627,749	\$ 7,124,408	\$ 1,404,553
25	104,971	1,039	103,932	20,047	2,005	\$ 2,287,535	\$ 33,475	\$ -	\$ 3,458,768	\$ 3,007,101	\$ 1,657,655	\$ 7,129,224	\$ 1,313,554
26	106,021	1,050	104,971	20,903	2,090	\$ 2,310,411	\$ 33,810	\$ -	\$ 3,606,332	\$ 3,135,396	\$ 1,674,231	\$ 7,411,717	\$ 1,276,264
27	107,081	1,060	106,021	20,948	2,095	\$ 2,333,515	\$ 34,148	\$ -	\$ 3,614,151	\$ 3,142,194	\$ 1,690,974	\$ 7,433,034	\$ 1,196,201
28	108,152	1,071	107,081	20,994	2,099	\$ 2,356,850	\$ 34,489	\$ -	\$ 3,622,048	\$ 3,149,060	\$ 1,707,883	\$ 7,454,564	\$ 1,121,183
29	109,233	1,082	108,152	21,040	2,104	\$ 2,380,418	\$ 34,834	\$ -	\$ 3,630,025	\$ 3,155,994	\$ 1,724,962	\$ 7,476,309	\$ 1,050,891
30	110,326	1,092	109,233	21,087	2,109	\$ 2,404,222	\$ 35,183	\$ -	\$ 3,638,081	\$ 3,162,998	\$ 1,755,840	\$ 7,484,644	\$ 983,236

\$ 191,164,405

Exhibit 2: Tier 2 Alternative to PE Certification											
Year	Number of Tier 2 Facilities					Savings				Net Savings	Net Present Value
	Total	New	Existing	5 Year Review	Recertifying	PE Certification	Cross Reference	Annual Review	PE Certification		
0	101,222	0	101,222			\$ -	\$ 1,619,557	\$ -	\$ 136,650,127	\$138,269,684	\$ 138,269,684
1	102,235	1,012	101,222			\$ 2,227,903	\$ -	\$ -	\$ -	\$ 2,227,903	\$ 2,082,153
2	103,257	1,022	102,235	20,244	2,024	\$ 2,250,182	\$ -	\$ 1,746,389	\$ 3,036,669	\$ 7,033,240	\$ 6,143,104
3	104,289	1,033	103,257	20,244	2,024	\$ 2,272,684	\$ -	\$ 1,746,389	\$ 3,036,669	\$ 7,055,742	\$ 5,759,587
4	105,332	1,043	104,289	20,244	2,024	\$ 2,295,411	\$ -	\$ 1,746,389	\$ 3,036,669	\$ 7,078,469	\$ 5,400,130
5	106,386	1,053	105,332	20,244	2,024	\$ 2,318,365	\$ -	\$ 1,746,389	\$ 3,036,669	\$ 7,101,423	\$ 5,063,217
6	107,450	1,064	106,386	21,257	2,126	\$ 2,341,549	\$ -	\$ 1,833,708	\$ 3,188,503	\$ 7,363,760	\$ 4,906,784
7	108,524	1,074	107,450	21,267	2,127	\$ 2,364,964	\$ -	\$ 1,834,581	\$ 3,190,021	\$ 7,389,567	\$ 4,601,851
8	109,609	1,085	108,524	21,277	2,128	\$ 2,388,614	\$ -	\$ 1,835,463	\$ 3,191,555	\$ 7,415,632	\$ 4,315,965
9	110,705	1,096	109,609	21,287	2,129	\$ 2,412,500	\$ -	\$ 1,836,354	\$ 3,193,104	\$ 7,441,957	\$ 4,047,932
10	111,812	1,107	110,705	21,298	2,130	\$ 2,436,625	\$ -	\$ 1,837,254	\$ 3,194,668	\$ 7,468,546	\$ 3,796,630
11	112,931	1,118	111,812	22,321	2,232	\$ 2,460,991	\$ -	\$ 1,925,482	\$ 3,348,081	\$ 7,734,554	\$ 3,674,631
12	114,060	1,129	112,931	22,341	2,234	\$ 2,485,601	\$ -	\$ 1,927,273	\$ 3,351,196	\$ 7,764,069	\$ 3,447,340
13	115,200	1,141	114,060	22,362	2,236	\$ 2,510,457	\$ -	\$ 1,929,081	\$ 3,354,341	\$ 7,793,879	\$ 3,234,183
14	116,352	1,152	115,200	22,383	2,238	\$ 2,535,562	\$ -	\$ 1,930,908	\$ 3,357,518	\$ 7,823,988	\$ 3,034,277
15	117,516	1,164	116,352	22,405	2,240	\$ 2,560,917	\$ -	\$ 1,932,754	\$ 3,360,726	\$ 7,854,397	\$ 2,846,795
16	118,691	1,175	117,516	23,439	2,344	\$ 2,586,526	\$ -	\$ 2,021,937	\$ 3,515,800	\$ 8,124,263	\$ 2,751,969
17	119,878	1,187	118,691	23,471	2,347	\$ 2,612,392	\$ -	\$ 2,024,692	\$ 3,520,591	\$ 8,157,675	\$ 2,582,511
18	121,077	1,199	119,878	23,503	2,350	\$ 2,638,516	\$ -	\$ 2,027,475	\$ 3,525,431	\$ 8,191,421	\$ 2,423,546
19	122,288	1,211	121,077	23,535	2,354	\$ 2,664,901	\$ -	\$ 2,030,286	\$ 3,530,318	\$ 8,225,505	\$ 2,274,421
20	123,510	1,223	122,288	23,568	2,357	\$ 2,691,550	\$ -	\$ 2,033,125	\$ 3,535,255	\$ 8,259,929	\$ 2,134,523
21	124,746	1,235	123,510	24,614	2,461	\$ 2,718,465	\$ -	\$ 2,123,312	\$ 3,692,074	\$ 8,533,851	\$ 2,061,037
22	125,993	1,247	124,746	24,658	2,466	\$ 2,745,650	\$ -	\$ 2,127,081	\$ 3,698,628	\$ 8,571,359	\$ 1,934,669
23	127,253	1,260	125,993	24,702	2,470	\$ 2,773,106	\$ -	\$ 2,130,888	\$ 3,705,248	\$ 8,609,242	\$ 1,816,093
24	128,525	1,273	127,253	24,746	2,475	\$ 2,800,837	\$ -	\$ 2,134,733	\$ 3,711,933	\$ 8,647,504	\$ 1,704,826
25	129,811	1,285	128,525	24,791	2,479	\$ 2,828,846	\$ -	\$ 2,138,616	\$ 3,718,686	\$ 8,686,148	\$ 1,600,416
26	131,109	1,298	129,811	25,849	2,585	\$ 2,857,134	\$ -	\$ 2,229,858	\$ 3,877,340	\$ 8,964,332	\$ 1,543,618
27	132,420	1,311	131,109	25,905	2,590	\$ 2,885,706	\$ -	\$ 2,234,693	\$ 3,885,746	\$ 9,006,145	\$ 1,449,362
28	133,744	1,324	132,420	25,962	2,596	\$ 2,914,563	\$ -	\$ 2,339,576	\$ 3,894,237	\$ 9,048,376	\$ 1,360,896
29	135,082	1,337	133,744	26,019	2,602	\$ 2,943,708	\$ -	\$ 2,244,508	\$ 3,902,813	\$ 9,091,029	\$ 1,277,861
30	136,432	1,351	135,082	28,076	2,608	\$ 2,973,145	\$ -	\$ 2,249,489	\$ 3,911,474	\$ 9,134,109	\$ 1,199,922

\$ 228,739,930

Exhibit 3

Differential Impacts of Alternatives Across Industry Sectors

Industry	Number of SPCC Regulated Facilities		Number of Facilities Affected by Tier 1 Proposal	Number of Facilities Affected by Tier 2 Proposal	Total Facilities Affected		
	1996	2003			Number	Percent of Total Affected Facilities	Percent of Total Regulated Facilities
Farms	140,606	150,749	61,053	74,621	135,674	74.5%	90%
Coal/Non-metallic Mineral Mining	1,764	1,891	340	416	756	0.4%	40%
Oil Production	7,592	8,140	458	560	1,017	0.6%	13%
Contract Construction	7,201	7,720	1,390	1,698	3,088	1.7%	40%
Food and Kindred Products	4,141	4,440	799	977	1,776	1.0%	40%
Chemicals and Allied Products	3,187	3,417	615	752	1,367	0.8%	40%
Petroleum Refining	1,564	1,677	113	138	252	0.1%	15%
Primary Metals	671	719	129	158	288	0.2%	40%
Other Manufacturing	15,238	16,337	2,941	3,594	6,535	3.6%	40%
Transportation	15,653	16,782	3,021	3,692	6,713	3.7%	40%
Pipelines	600	643	43	53	96	0.1%	15%
Electric Utilities	3,029	3,247	219	268	487	0.3%	15%
Petroleum Bulk Stations	9,075	9,730	657	803	1,459	0.8%	15%
Gasoline Stations/ Vehicle Rental	12,452	13,350	901	1,101	2,003	1.1%	15%
Fuel Oil Dealers	3,771	4,043	273	334	606	0.3%	15%
Health Care/ Education	5,047	5,411	1,948	2,381	4,329	2.4%	80%
Other Commercial Facilities	36,289	38,907	7,003	8,559	15,563	8.6%	40%
TOTAL	267,880	287,204	81,904	100,105	182,009	100.0%	63.4%

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2	U.S. Small Business Administration. <i>Letter to Thomas P. Dunne, Acting Administrator for the Office of Solid Waste and Emergency Response, Re: Spill Prevention, Control and Countermeasure (SPCC) Rule; 67 Fed. Reg. 47042 (July 17, 2002); Recommendation for Adoption of Interim Final Rule. 6/10/2004. (excerpt)</i>
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1. Three-tiered Regulatory Approach (After Completion of Full Rulemaking Procedures)

There are several hundred thousand farms, car dealers, construction sites and other “small” facilities with small amounts of oil storage, in excess of the current 1,320-gallon threshold. Such facilities are unlikely to need the services of a professional engineer, at a cost of up to \$7,000 to prepare an SPCC plan for a small facility. In our view, small facilities with simple layouts and tanks that are not interconnected (e.g. farms, car dealerships or construction sites) do not require site visits, nor the help of a professional engineer (PE). For such facilities, Advocacy recommends that EPA use a standardized plan. This change alone would save facilities more than \$500 million in consulting costs. Advocacy recommends that EPA establish a three-tier structure for small facilities in place of the PE certification requirement in a future rulemaking. The proposed alternative sets up a tiered structure based on a facility’s total regulated storage as follows:

- Tier I: 1,321 to 5,000 Gallon Facilities - No written plan required, but must implement compliance with all applicable substantive provisions of the rule.
- Tier II: 5,001 to 10,000 Gallon Facilities - Written plans required, but no PE-certification requirements. Collaborative EA/industry “best practices” model plans tailored to sectors having a significant number of similar small facilities.
- Tier III: 10,001 Gallons and Above Facilities - Written PE-certified plans.

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3	U.S. Small Business Administration. Prepared by Jack Faucett Associates, Inc. <i>Proposed Reforms to the SPCC Professional Engineer Certification Requirement: Designing a More Cost Effective Approach for Small Facilities.</i> 6/10/2004. (excerpt)
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Executive Summary

The Spill Prevention, Control and Countermeasure (SPCC) rules, administered by the U.S. Environmental Protection Agency (EPA), establishes procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. Currently, the SPCC rules require covered facilities to have professional engineers (PEs) review and certify SPCC plans and to re-certify any existing plans.

The cost of this PE certification is of particular concern to small facilities. The actual cost of PE certification and site visitation by itself poses a significant burden, and together with the actual physical requirements of SPCC and other environmental regulations, the combined costs can be prohibitive. Even more important to small businesses, the PE-certified written plan requirement places small facilities at a cost disadvantage in comparison to medium or larger facilities. Furthermore, the aggregate cost of PE certification of small facilities will cost in excess of \$500 million.

A PE-certified plan, or any written plan, is not effective in minimizing oil spill risk to the environment, according to the available research conducted by EPA. Instead, the available evidence suggests that alternative physical control measures provide more effective solutions to preventing spills.

The U.S. Small Business Administration's Office of Advocacy has a congressional mandate to seek improvement of federal programs that adversely affect small business entities. The SBA Office of Advocacy has worked to ameliorate the SPCC program's impact on small businesses since the final rule amending the regulations was published in July 2002. Nevertheless, through the continued inclusion of the requirement for PE certification, EPA has adopted a "one-size-fits-all" approach for each facility regulated under the amended SPCC rules.

The EPA held a Program Dialogue in March 2003 to investigate ways of reforming the SPCC amendments to reduce the burden on small businesses while preserving environmental quality. The Office of Advocacy suggests that these goals can be met while at the same time leveling the playing field for small businesses. The SBA alternative would replace blanket PE-certification requirements with a set of tiered requirements based on volume thresholds. These would be supplemented with collaborative outreach efforts designed to engage facilities that might otherwise elect not to comply due to high plan development and certification costs.

The proposed alternative sets up a tiered structure based on a facility's total regulated storage as follows:

- Tier I: 1,321 to 5,000 Gallon Facilities - No written plan required, but must implement compliance with all applicable substantive provisions of the rule.
- Tier II: 5,001 to 10,000 Gallon Facilities – Written plans required, but no PE-certification requirements. Collaborative EPA/industry "best practices" model plans tailored to sectors having a significant number of similar small facilities.
- Tier III: 10,001 Gallon and Above Facilities – Written PE-certified plans.

Costs at small facilities could also be lowered without increasing impacts on the environment by allowing blanket deviations for integrity testing for small shop-built tanks or double-walled tanks built to approved engineering specification (e.g., Underwriters Lab, ASTM). Compliance at temporary construction sites could also be streamlined by allowing SPCC plans to be combined with Storm Water Pollution Prevention Plans (SWPPP) and by allowing blanket deviations on some security requirements.

The adoption of the tiered plan can reduce the impact on small businesses, improve the cost-effectiveness of the overall regulation, place small and larger facilities and firms on more equal footing and reduce potential shortages of PEs.

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2 Costs of PE Written Plans

2.1 Costs of PE Certification

In proposing the current rule, the EPA defended the requirement for PE-certified written plans by providing cost estimates of hiring a PE for all facility sizes and comparing this cost to average annual revenues for small facilities. EPA stated that,

“In our Information Collection Request, estimated total costs for a new facility to prepare and begin implementation of a plan, including PE-certification costs, are \$2,201 for a small facility, \$2,164 for a medium facility, and \$2,540 for a large facility. This cost is incurred only in the year that the facility first becomes subject to the rule. This one-time cost incurred by a small facility is less than 1.5 percent of the average annual revenue for small facilities in all industry categories (July 17, 2002 Federal Register, 47084 Section 112.3 (d) 47084).”

According to research performed in support of this analysis, EPA’s cost estimates for small, medium and large facilities are slightly conservative. The costs for PE certification of a new plan for a small facility will be approximately \$2,500 to \$3,500, including site visitation. Recertifying the plan will cost approximately \$1,500. These amounts do not take into account the costs for implementing the plan which may produce significant cost obligations.

2.2 Costs and Impacts by Firm Size

Though these estimates are appropriate to small facilities, costs for PE certification for medium and large facilities are nearly comparable, ranging from \$2,500 to \$5,000, depending on the site. The costs of PE certification, although significant, are not prohibitive. However, small facilities face a disproportionately higher cost burden in complying with the regulation when compared to medium and large facilities. Large facilities earn an annual revenue of \$10 million or greater. Proportionately, the costs for PE certification for large facilities are not significant in relation to revenue, around 0.05 percent. In contrast, small facilities collect average annual revenues ranging between \$150,000 and \$7,000,000, according to the EPA report, “Economic Analysis for the Final Revisions to the Oil Pollution Prevention Regulation.” When considering that a high percentage of small facilities gross under \$500,000 in revenue, the costs of PE certification is proportionally higher, around 0.70 percent, when compared to the costs for PE certification and gross revenue for large facilities. Thus, small facilities can pay up to fourteen times more in relation to revenues than medium or large businesses to comply with PE-certification requirements.

2.3 Total Costs for Small Facilities

PE certification and recertification for small facilities will cost more than \$500 million. According

to the EPA Economic Analysis Report, there will be 3,476 new small facilities in addition to the 341,619 facilities that already exist. As mentioned previously, PE certification for small facilities cost between \$1,500 and \$3,500 depending on whether the plan is new or needs updating. A total of 341,619 existing facilities requiring recertification at \$1,500 would collectively cost \$512,428,500. For new facilities with new plans, PE certification will cost approximately \$3,000 for each site. If there are 3,476 new facilities that have to pay \$3,000 each, this amounts to \$10,428,000. Together the cost for all small facilities, both new and existing, will amount to \$522,856,500.

2.4 Costs and Standard Configurations

Facilities that have the capacity to store relatively small quantities of oil will often have standard and relatively straightforward storage configurations. One major set of such facilities might consist of a standard set-up that is typical across several industries. An example might be a simple single shop-built tank set-up. A second major set of such facilities might be associated with a single industry sector having a significant number of substantially similar small facilities. An example of this type of facility is “Jiffy-Lube.” In this case, a large number of facilities performing similar operations could be expected to have similar oil storage configurations.

In these cases there is a strong argument that there is no need for a site specific plan to be developed and little or nothing to be gained by a site visit. Since there is no existing evidence that the presence of the plans themselves reduces oil spills, it is likely that the diversion of these costs to other compliance activities will increase cost-effectiveness and environmental protection.

A middle ground, which would result in written plans at greatly reduced costs, might be to allow the use of model “best practices” plans. These could be developed through collaborative efforts between EPA and the potentially impacted /regulated industries. These model plans would be designed to be easily tailored to individual small facilities. In most cases these model plans, which would likely be designed by PEs, would include a simple facility diagram and that would be reviewed and amended, as necessary.

3 Benefits of PE-Certified Written Plans

3.1 Benefits of PE Certification

PE certification of written plans has been a requirement of SPCC rules since their inception in 1973. As such, this particular requirement predates many of the analytical requirements for current rulemakings such as the application of benefit-cost analysis and small business impact analysis requirements of the Regulatory Flexibility Act. Therefore, it is not a surprise that there is no empirical evidence that PE certification and written plans provide benefits that exceed costs.

There is a notable lack of evidence that the PE requirement provides overall benefits. The necessity of the PE-certified written plans requirement is questionable for two reasons, both of which are documented in EPA's own published research. First, small facilities have a low risk of creating a discharge that could reach navigable waters. Second, written SPCC plans have not been proven to be effective in reducing risk.

However, EPA has continued to defend the PE-certification requirement for small businesses. In its response to comments, EPA stated:

“PE certification of all facilities, both large and small, is necessary because a discharge as described in §112.1(b) from any size facility may be harmful, and a PE review and certification of a plan may help prevent that discharge.”

The EPA also disagreed that small facilities need not have PE certification for SPCC plans when the tanks are certified by the Underwriters Laboratory, arguing that:

“A plan consists of more than a certified tank. It also contains provisions for secondary containment, integrity testing, and other measures to prevent discharges. Those provisions require PE certification to ensure that they meet the requirements of the rule and that the Plan is effective to prevent discharges.”

These positions are not supported by EPA's own research. In its analyses of their 1995 SPCC survey, EPA noted,

“...facilities with larger storage capacity are likely to have a greater number of oil spills, larger volumes of oil spilled, and greater cleanup costs.”

In looking at the data EPA used to arrive at this conclusion, it can be seen that facilities with less than 10,000 gallons of storage capacity account for less than 0.2% of the total volume of oil spilled. Yet these facilities constitute a very large percentage of the total facilities regulated under SPCC. If we assume that the distribution of storage capacity across small businesses is the same as it is across all SPCC regulated facilities, we estimate that almost 170,000 small business establishments, or 65% of all small SPCC regulated facilities, fall into this category. These figures are probably low given the likelihood that facilities with low storage capacity constitute a relatively greater proportion of small businesses. EPA did not adequately take into account the low levels of risk associated with small facilities.

Furthermore, in a study of the 1995 SPCC survey results, EPA found that having a written spill prevention plan had no impact on risk. Physical spill prevention measures (e.g., secondary containment), on the other hand, were found to reduce risk. Based on available research, the evidence indicates that having a PE-certified plan, or any written plan, is not effective in minimizing oil spill risk to the environment. Moreover, the available evidence suggests that alternative control measures provide more cost effective solutions.

Certified written plans, by themselves, do not ensure leak and spill prevention or contingency planning. As evidenced by small facility compliance with EPA's small quantity generator, used oil, and underground storage tank rules, there is no nexus between the goal of prevention and written plans, certified or not.

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5 Proposed Reforms

5.1 Small Facility Alternative – Tiered Requirements

PE plan certification at best promotes, but does not guarantee compliance. Notably, the cost of PE-certified plans, estimated at \$2,500 to 5,000 or more, are expensive for small facilities, many of whom are small businesses. These are not just one time costs because of: 1) the five year review requirement and 2) the requirement that PE-certified plan amendments be made each time a modification is made to a regulated facility. Promoting compliance can arguably be achieved more cost effectively using collaborative outreach efforts designed to engage facilities that might otherwise elect not to comply due to high plan development and certification costs.

The following small-facility alternative can promote cost-effective compliance with the SPCC rule's substantive provisions, including the establishment of required procedures and employee training. This alternative sets up a three-tiered structure based on a facility's total regulated storage and requires a different set of requirements for each size category.

Tier I: 1,321 to 5,000 Gallon Facilities

Facilities in this range need not develop written plans, but must implement compliance with all applicable substantive provisions of the rule. Outreach efforts by EPA and the regulated industry will enhance compliance.

Tier II: 5,001 to 10,000 Gallon Facilities

Facilities in this range must have written SPCC plans, but these plans need not be PE certified. Instead, it is recommended that a collaborative effort between EPA and the regulated industry be undertaken that will result in model “best practices” plans designed to be easily tailored to individual small facilities in industry sectors having a significant number of substantially similar small facilities. Model plans, which may be designed by PEs, will include a simple facility diagram and will be reviewed and amended, as necessary, every ten years. Facilities must implement compliance measures consistent with their plans.

Tier III: 10,001 Gallon and Above Facilities

Requirements for this tier will remain consistent with the rule as promulgated. Facilities in this range must have and implement PE-certified plans.

5.2 Benefits and Costs of the Proposed Alternative

In assessing the benefits and costs of the proposed alternative, it is important to keep in mind that PE-certified plans will remain an option for all covered facilities and that all covered facilities must still comply with applicable substantive requirements, including:

- A. Making “reasonably expected to” determinations;
- B. Proper tank/piping/drum/containment design and installation;
- C. Spill, overfill, and leak prevention procedures;
- D. Spill, overfill and leak control measures and countermeasures;
- E. Routine tank/piping/drum/containment monitoring/inspection;
- F. Adequate security and proper tank/piping closure;
- G. Response coordinator designation and employee training;
- H. Contingency planning and substantial harm criteria certification;

The analysis instead should focus on the cost and effectiveness of compliance with these requirements for each tier of facilities as expenditures are shifted from the costs of developing plans to outreach, technical support and physical compliance expenditures.

The following paragraphs outline the benefits of the tiered approach which include reduced costs for written plans, increased expenditures on physical compliance, reduced volumes, and increased availability of PEs for larger facilities.

Cost Savings

The most obvious benefit of the alternative proposal is the reduction in costs of compliance and the minimization of impacts on small entities. The Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Enforcement Fairness Act (SBREFA) of 1996 seeks to encourage agencies to examine regulatory alternatives that minimize burdens of regulations on small entities and ensure a more level playing field. This alternative meets these objectives while protecting the environment.

Physical Compliance Expenditures

For Tier I and II facilities, expenditures that are currently spent on PE-certified written plans can be applied to such compliance expenses as new tanks, security measures, secondary containment (where necessary), etc. Reducing compliance costs can effectively result in increased rates of compliance, lower spill risks, and improved environmental protection. As

discussed above in Section 3, EPA studies have found that these types of expenditures are more cost-effective in reducing spill risk than written plans.

Reductions in Storage Volumes

The inclusion of a volume-based tier approach is likely to cause facilities to reduce or eliminate unnecessary oil storage. Facilities will have an incentive to reduce their storage volumes to qualify for the lower tier with its less stringent requirements. By way of analogy, the tiered approach in the hazardous waste generator rules serves as an incentive to minimize waste. In situations where facilities reduce unnecessary storage, benefits accrue to both the facility and the environment. The facility benefits in terms of reduced compliance costs, while the public benefits from reduced spills and spill risks.

PE Availability

A concern with the SPCC reforms is that there will be a shortage of qualified PEs to develop the large number of certified plans that the rule requires. The proposed alternative has the benefit of improving the supply of PE resources for larger facilities by reducing the demand for PEs at hundreds of thousands of small facilities nationwide over a short time period. This will have the side effect of improving the quality and lowering the costs of plans for larger facilities as the more qualified PEs will be available at lower cost because of reduced demand.

Reducing the number of certified plans and improving the availability of qualified PEs will ensure timely implementation and compliance with the SPCC regulations. Assuming EPA is able to provide adequate clarification on outstanding issues, compliance with the alternative approach should be achievable by early 2005.

6 Conclusion

The SPCC rules, particularly the requirements for written plans certified by a professional engineer, place a significant and disproportionate burden on the small businesses in the covered industries.

The options for burden reduction discussed in this report offer simple yet practical means to reduce the burden of SPCC compliance while at the same time maintaining or perhaps increasing environmental protection.

An examination of spill data shows that, currently, there are a significant number of facilities that experience minimal releases. The proposed options seek not only to minimize costs and to level the playing field, they also require that all facilities continue to be subject to the regulations and receive compliance assistance.

To balance cost reductions while maintaining environmental quality, this report considers regulatory alternatives that employ specific thresholds that simultaneously reduce costs and maintain or increase environmental protection.

A simple set of tiered requirements for written plans would result in substantial cost savings to small facilities with minimal effects on environmental quality. This tiered approach would result in a scheme where:

- Facilities with small amounts of oil storage would be exempt from having a written plan but would still be subject to all other requirements.
- A second tier of facilities would be required to have plans, but would rely on standard plans that would not be PE certified.
- The remaining facilities with larger storage capacities would still be subject to the

requirement for written plans.

The benefits of the tiered approach include reduced costs for written plans, increased expenditures on physical compliance, reductions in storage volumes, and increased availability of PEs for larger facilities. The adoption of the tiered plan can reduce the impact on small businesses, improve the cost-effectiveness of the overall regulation, and place small and larger facilities and firms on more equal footing.

4	Agricultural Retailers Association, American Bakers Association, American Forest and Paper Association, American Trucking Association, Automotive Oil Change Association, Independent Lubricant Manufacturers Association, National Association of Fleet Administrators, Inc., National Automobile Dealers Association, National Cotton Council of America, Synthetic Organic Chemical Manufacturers Association. <i>Letter to Mr. David Evans, Re: Small Facility Alternative to Professional Engineer Certification.</i> 1/20/2004. (excerpt)
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SMALL FACILITY ALTERNATIVE TO PROFESSIONAL ENGINEER CERTIFICATION

Background

EPA's Spill Prevention, Control and Countermeasure (SPCC) rules require covered facilities to have Professional Engineers (PEs) review and certify SPCC Plans and to re-certify any existing plans by August 17, 2004. 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 the Part 112 requirements;
4. Establish procedures for required inspections and testing; and
5. Ensure suitability of the plans for facilities.

PE plan certification at best promotes, but does not guarantee compliance. Notably, the cost of PE certified plans (\$2,500-5,000+) is expensive for small facilities, many of whom are small businesses. Moreover, these are not just one time costs because of the five year review requirement and to the extent PE certified plan amendments must be made each time SPCC regulated facility changes are made. Promoting compliance can be achieved more cost effectively using time-honored collaborative outreach efforts designed to engage facilities that might otherwise elect not to comply due to high plan development and certification costs.

Small Facility Alternative

The following small facility alternative will promote cost-effective compliance with the SPCC rule's substantive provisions, including the establishment of required procedures and employee training. The alternative sets up a tiered structure based on a facility's total regulated storage.

Tier I: 1321 to 5,000 Gallon Facilities

Facilities in this range need not develop (and periodically update) written plans, but must implement compliance with all applicable substantive provisions of the rule. Collaborative EPA/regulated industry outreach efforts will enhance compliance.

Tier II: 5001 to 10,000 Gallon Facilities

Facilities in this range must have written SPCC plans, but these plans need not be PE certified. Collaborative EPA/regulated industry efforts will result in model "best practices" plans designed to be easily tailored to individual small facilities in industry sectors having a significant number of substantially similar small facilities. Model plans, which may be designed by PEs, will include a simple facility diagram and will be reviewed and amended, as necessary, every ten years. Facilities must implement compliance consistent with their plans.

Tier III: 10,001Gallon and Above Facilities

Facilities in this range must have and implement PE certified plans.

Benefits of the Alternative Approach

Benefits of the tiered alternative approach outlined above include the following:

1. For Tier I and II facilities, money otherwise spent on expensive certified written plans can be applied to such compliance expenses as new tanks, security measures, secondary containment (where necessary), etc. Reducing compliance costs will effectively result in increased rates of compliance.
2. All covered facilities must comply with applicable substantive requirements, including:
 - A. Making "reasonably expected to" determinations.
 - B. Proper tank/piping/drum/containment design and installation.
 - C. Spill, overfill, and leak prevention procedures.
 - D. Spill, overfill and leak control measures and countermeasures.
 - E. Routine tank/piping/drum/containment monitoring/inspection.
 - F. Adequate security and proper tank/piping closure.
 - G. Response coordinator designation and employee training.
 - H. Contingency Planning and Substantial Harm Criteria certification.
3. A volume-based tier approach will cause facilities to reduce or eliminate unnecessary oil storage. By way of analogy, the tiered approach in the hazardous waste generator rules serves to incentivize waste minimization.
4. Frees up PE resources for larger facilities by eliminating the need for PEs at hundreds of thousands of small facilities nationwide over a short time period.
5. Assuming EPA is able to provide adequate clarification on outstanding issues, compliance with the alternative approach should be achievable by 2/18/05.

Other Important Considerations:

1. Most small facilities are subject to considerable state and/or local government oversight and comply with national and local fire codes regarding tank design, installation, and operation. Many facilities are covered by similar prevention, and response requirements set out in other EPA or OSHA rules, e.g. the small quantity generator hazardous waste rule.
2. Small facilities pose a lower risk of releases that significantly impact navigable waters.
3. Certified written plans, by themselves, do not ensure leak and spill prevention or contingency planning. As evidenced by small facility compliance with EPA's small quantity generator, used oil, and underground storage tank rules, there is nothing inherently special or necessary about written plans, certified or not.
4. PE certified plans will remain an option for all covered facilities.

...

5	Forest Resources Association, Inc. <i>Letter to David Evans. 3/15/2004. (excerpt)</i>
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...

Professional Engineer Certification – The EPA’s SPCC regulations (40 CFR 112.3(d)) require certification of an SPCC Plan by a professional engineer (PE) for all facilities affected by SPCC requirements. The Forest Resources Association supports the three tier alternative suggested by the U.S. Small Business Administration. Small facilities (Tier 1 – up to 5,000 gallons) need not develop (and periodically update) written plans that need to be PE certified, but must have procedure in place to prevent or control small spills that might occur. These procedures could be incorporated into each state’s Best Management Practices for conducting reforestation/harvesting activities.

...

6	National Automobile Dealers Association. <i>Presentation Slides: Small Facility Alternative SPCC Compliance, SBA Environmental Roundtable Meeting. 7/9/2004. (excerpt)</i>
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...

Small Facility Alternative:

The alternative sets up a tiered structure based on a facility’s total regulated storage.

Tier I: 1321 to 5,000 Gallon Facilities; no written plan; substantive compliance

Tier II: 5001 to 10,000 Gallon Facilities; plan, no PE certification

Tier III: 10,001 Gallon and Above Facilities; PE certified plan

Support for Option Tiers:

September 2003 JFA report for SBA found that within the next two years small businesses will spend almost \$390 million to recertify existing plans to ensure that they conform to the 2002 amendments.

JFA report states EPA’s own background documents indicate that small facilities are at a low risk of creating a discharge that could reach navigable waters and that written SPCC plans are not effective in reducing such risks.

Support for Option Tiers Continued:

The JFA Report concluded that,

“...it can be seen that facilities with less than 10,000 gallons of storage capacity account for less than 0.2% of the total volume of oil spilled. Yet these facilities constitute a very large percentage of the total facilities regulated under SPCC.”

(Note: More accurately, EPA clarifies that the EPA report cited by JFA states that the data was “inconclusive” regarding the effect on risk reduction.)

...

7	National Society of Professional Engineers. <i>Comments on Proposed Revisions to Spill Prevention, Control and Countermeasures (SPCC) Plan Rule. 7/7/2004. OPA-2004-0003-0049. (excerpt)</i>
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...

NSPE is aware that EPA has been recently urged by the Office of Small Business Advocacy at the U.S. Small Business Administration (SBA) to reopen the entire SPCC rule to remove the requirement that a professional engineer certify SPCC plans for smaller facilities. NSPE has recently sent a letter to SBA in opposition to this request. NSPE strongly believes the public health, safety and welfare would be adversely affected by such an action. While the Office of Advocacy's proposal may provide cost savings in the short run, small businesses have the greatest need for oversight and do not have the financial capability to incur cleanup costs in the case of a spill. We urge EPA not to reopen the SPCC rule and remove the PE certification requirement.

...

8	National Society of Professional Engineers. <i>Letter to Chief Council for Advocacy, Office of Advocacy, U.S. Small Business Administration. Re: Office of Advocacy's letter of June 10, 2004, to the U.S. Environmental Protection Agency on Proposed Revisions to Spill Prevention, Control and Countermeasures (SPCC) Plan Rule. 7/7/04. OPA-2004-0003-0051. (excerpt)</i>
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...

The first canon in the Engineers Code of Ethics states that “engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health, and welfare of the public.” First and foremost, NSPE believes that the Office of Advocacy’s proposal to exempt smaller facilities from inspection by a professional engineer violates an engineer’s ethical responsibilities to safeguard the public safety

...

...We disagree with your recommendation that EPA should overturn 30+ years of precedent to exempt small facilities.

In reality, smaller facilities would be less likely to have the expertise on staff to self-regulate to ensure that they are in compliance with the EPA SPCC regulations. Without the threat of regulation we question whether many smaller facilities might be tempted to cut costs and allow their fuel storage facilities to deteriorate. In addition, many small facilities, if they were not required to use the expertise of a PE, would not be aware of (and therefore would not implement) engineering controls such as secondary containment that reduce their exposure in the event of a release.

...

Finally, your exemption would have a profound, and detrimental, impact on the engineering industry, the vast majority of which is made up of small businesses. ...

The North American Industry Classification System code 54133 “Engineering Services” identified 43,540 engineering firms in the U.S. Of these, 39,086 have fewer than 20 employees. ...[Y]our recommendation would seriously affect the economic viability of many small engineering firms.

NSPE is willing to work with your office to develop cost-effective technical solutions to allow small business to comply with the EPA Oil Spill Plan requirements. Such approaches as standardized designs, can provide small firms with the ability to comply with minimal cost.

...

9	New England Fuel Institute. <i>Letter to David Evans, Re: Applicability of Program/Streamlined Program.</i> 4/19/2004. (excerpt)
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...

At the March 31 EPA public meeting, the Agency indicated that it was considering establishment of different standards or streamlined requirements for small facilities. EPA suggested that small facilities might be given the opportunity to use standardized plans prepared by industry or a trade association. EPA said it might choose to use a small business definition or use a gallonage cutoff.

The North American Industry Classification System defines a “small” petroleum bulk station and terminal as one with fewer than 100 employees. This definition appropriately reflects a bulk station with a few tanks and one small loading rack.

Accordingly, NEFI recommends that EPA adopt the “small business” definition cited above and allow heating oil dealers operating such facilities to follow a standard SPCC plan and dispense with the requirement that such plans be certified by a professional engineer. Such an approach will provide substantial protection from oil discharges but will not overwhelm the small businesses operating such facilities with significant costs.

...

II. Impact of SPCC Regulation on Small Businesses

10	American Feed Industry Association. <i>Letter to Superfund Docket #SPCC 7.</i> 2/2/1998. SPCC-7-2-23. (excerpt)
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...

...AFIA’s membership includes more than 700 companies and 3,000 individual establishments in all 50 states. Most of these firms are small businesses by federal definition.

...

11	American Public Power Association. <i>Letter to EPA Docket Center, Re: Comments on EPA’s Proposal to Extend the Compliance Deadline for the final July 17,2002, SPCC Rule Amendments.</i> 1/29/03. OPA-2002-0001-0080. (excerpt)
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...

Although the electric utility industry consists of companies with a wide range of total SPCC-regulated facilities, many companies are reporting they have in excess of 1,000 facilities. One APPA [American Public Power Association] member has to complete 18 SPCC Plans on behalf of approximately a dozen facilities in states that comprise a “Joint Action Agency.” ... Many of these companies are very small businesses with few employees - at least 1500 public power systems in the United States have 20 or fewer employees. Only a few dozen public power systems employ PEs now. ...

...

12	Automotive Oil Change Association. <i>Letter to Mr. David Lopez, Re: RIN 2050-AC62 Final Rule; Clarification of "Loading Rack."</i> 11/20/02. OPA-2002-0001-0025. (excerpt)
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...

...AOCA [Automotive Oil Change Association] members, virtually all of whom are classified as small businesses according to Small Business Administration size standards, provide automotive services with an emphasis on the provision of oil changes. NADA [National Automobile Dealers Association] represents 20,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ in excess of 1,000,000 people nationwide, yet more than 60% are small businesses as defined by the Small Business Administration. ...

...

13	Bartholomew County REMC. <i>Letter to EPA Docket Center, Re: Comment pertaining to SPCC compliance date extension as proposed in Federal Register Vol. 68, No. 6, January 9, 2003.</i> 2/7/03. OPA-2002-0001-0146. (excerpt)
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...

Electric Cooperatives are small businesses. Due to their size, we do not employ the staff necessary to perform the evaluation, development, and certification of the plans required under this requirement. Therefore, we must rely on the services of outside consultants and professional engineers to provide the expertise needed. ...

...

14	Coldwater Oil Company. <i>Letter to Mr. Stephen F. Heare, Re: Revisions to EPA Oil Spill Control Plans.</i> 7/16/1980. SPCC-3-58. (excerpt)
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...

I don't know if there is a break for small jobbers, but many of us in the range of five to ten million gallons a year, trying to survive in a rural area and distributing out of a bulk plant to small accounts, are having an exceedingly hard time passing along all the expenses we are incurring, not only in regulations but in general operations.

...

15	Holliday Environmental Services, Inc. <i>Letter to the U.S. Environmental Protection Agency, Re: Spill Prevention, Control and Countermeasure (SPCC) Plan Rule 40 CFR Part 112.</i> 1/19/03. OPA-2002-0001-0033. (excerpt)
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...

The 17 July 2002 40 CFR Part 112 revisions impose too severe an economic strain on small operators of onshore and offshore oil and gas operators. Small operators purchase leases from other small operators and major operators. In order for production to continue, the small operator must reduce operating costs. The 17 July 2002 SPCC Plan rule flies in the face of extending the production life of existing mature fields. The Agency must take a more reasoned position or oil and gas reserves will be plugged, abandoned and lost forever.

16	Indiana Statewide Association of Rural Electric Cooperatives Inc. <i>Letter to the EPA Docket Center, Re: Comment pertaining to SPCC compliance date extension as proposed in Federal Register Vol. 68, No. 6, January 9, 2003. 1/21/2003. OPA-2002-0001-0037. (excerpt)</i>
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...

Many Electric Cooperatives are small businesses. Due to their size, many electric cooperatives do not employ the staff necessary to perform the evaluation, development and certification of the plans required under this requirement. ...

...

17	National Federation of Independent Business Legal Foundation. <i>Letter to EPA Docket Center, Re: Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; 40 CFR Part 112. 7/7/2004. OPA-2004-0003-0061. (excerpt)</i>
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... NFIB Legal Foundation, a 501(c)(3) public interest law firm, is the legal arm of the National Federation of Independent Business (NFIB), which is the nation's oldest and largest organization dedicated to representing the interests of small business owners throughout all 50 states.

...

... Under the 2002 rule, numerous small facilities will be required to obtain professional engineer certified plans at an estimated cost of \$2,500-\$5,000+ per facility. ...

The SBA Office of Advocacy has proposed a number of regulatory reforms that EPA must consider. Among other things, the Office of Advocacy has suggested a three-tiered regulatory approach for small business. This sound scheme would allow facilities with less than 10,000 gallons of above ground storage capacity to invest their money in actual physical spill prevention control and countermeasure actions rather than on professional engineer consultants.

...

18	Ohio Oil and Gas Association. <i>Letter to EPA Docket Center, Re: Oil Pollution Prevention: Non-transportation-related Onshore and Offshore Facilities, Proposed Rules.</i> 12/23/91. SPCC-1P-2-58. (excerpt)
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...

... The OOGA [Ohio Oil and Gas Association] membership totals approximately 1400 members, the vast majority of which are small business entities. ...

OOGA's estimated compliance costs, shown generally on a per unit or per year basis, are summarized in the following table:

ESTIMATED COMPLIANCE COSTS

<u>Section</u>	<u>Activity</u>	<u>Est. Cost</u>
112.1(e)	Notification	\$19/unit
112.2(o)	Cost to permanently close tanks <ul style="list-style-type: none"> • steaming • sludge removal/disposal • exosimeter testing • placarding 	\$300/unit \$800/unit \$400/unit \$25/unit
112.3	Cost for registered professional engineer to prepare and review plan	\$150/unit
112.5(a), (c)	Cost of amending plan for modification	\$100/unit
112.7(a)(3)	(iv) Identifying potential spill pathways (vii) identification of countermeasures (vii) disposal of contaminated soil	unknown \$10/unit unknown
112.7(c)	Cost to demonstrate that existing containment structures are impervious to oil for at least 72 hours	\$1500/unit
	Cost to retrofit existing containment structures to meet impervious test	\$8000/unit
112.7(d)	Cost to integrity test tank every five years (estimated cost does not include loss of production during test)	\$10/unit
112.7(d) (cont)	Cost of annual integrity and leak testing of valves and pipelines	\$90/unit
112.7(f)(1)	Annual employee training New employee training (per employee)	\$500 \$200/ -ee
112.7(f)(3)	Annual SPCC briefing	\$500
112.9(c)(9)	Removal of contaminated soil	unknown
general	Record keeping	\$45/unit

OOGA submits that the above outlined costs would have a very significant economic impact

upon its membership. The Ohio petroleum industry is comprised of small entities that produce low volume wells. With average production of 6.5 MCF and 0.4 bbls per day per well, and assuming average product prices of \$2/MCF and \$20/BBL, the average Ohio well generates annual gross revenues of just over \$7,500.00. ...

...

19	Pennsylvania Oil and Gas Association. <i>Letter to Superfund Docket, Emergency Response Division</i> . 12/23/91. SPCC-1P-2-113. (excerpt)
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...

The state's petroleum industry consists of hundreds of independent small businesses, many of which are part-time operations, and a few large integrated corporations. The state's producers operate approximately 45,000 wells throughout 32 counties in western Pennsylvania. On the average, the state's oil and gas industry maintains roughly one full-time job for every twelve wells. Although they are small businesses, the independent oil and gas operator is the economic backbone of many of the Commonwealth's lesser developed counties. This is especially true in the state's northwestern quarter.

Oil and gas production remains in the hands of the small businessman in Pennsylvania largely due to the marginal economics of the enterprise. Virtually all the producing oil and gas wells in the state are classified as "stripper wells". The daily producing capacity of such a well does not exceed 10 barrels (bbl) of oil or 60 thousand cubic feet (mcf) of natural gas per day. In Pennsylvania, the typical oil well produces less than one-third of a barrel each day, and the typical gas well produces approximately 16 mcf daily. At today's wellhead price for oil and gas, the typical oil well grosses about \$5.66 a day while the average gas well earns a daily gross of \$35.43. With costs per well ranging from \$5.90 to \$15.10 per day, the net return from today's oil and gas production business in Pennsylvania is not significant enough to stimulate the interest of larger companies. For oil producers in Pennsylvania, the price of crude is so low relative to their operations costs that many independents have shut in many wells because they cannot produce a profit.

...

20	Petroleum Marketers Association of America. <i>Letter to Superfund Docket, Emergency Response Division.</i> 12/19/91. SPCC-1P-2-182. (excerpt)
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...

... PMAA [Petroleum Marketers Association of America] is a federation of 44 state and regional trade associations representing more than 11,000 independent petroleum marketers throughout the United States. These marketers sell over half the gasoline, 75 percent of the home heating oil, and 60 percent of the diesel fuel consumed in this country. Eighty-nine percent of PMAA's membership is classified as small businesses under size categories established by the Small Business Administration.

...

21	Petroleum Transportation and Storage Association. <i>Letter to EPA Docket Center, Attention: Docket ID No. OPA-2002-001 Spill Prevention, Control and Countermeasure Plans.</i> 1/29/03. OPA-2002-0001-0084. (excerpt)
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...

ECONOMIC IMPACT ON SMALL BUSINESS PETROLEUM MARKETERS

PTSA [Petroleum Transportation and Storage Association] remains concerned, however, that the EPA has not yet fully recognized the true impact the new SPCC regulations have on small business bulk plant operators. ...

...

Significant compliance costs:

As a result of the change in the SPCC regulations of the word "should" to "must" in the final rule, small business bulk plant operators are faced with costly facility upgrades that could easily surpass \$30,000 per site. Such an economic impact is contrary to the agency's assertion that the final rule would have no significant regulatory effect on small businesses. Add to the cost of constructing secondary containment at loading racks, expenses associated with plan amendment, erection of fences and installation of lighting, to name a few, it becomes apparent that this rule does in fact have a major economic impact on small businesses which was not adequately considered by the agency as required by the Regulatory Flexibility Act.

...

22	South Dakota Petroleum Release Compensation Fund. <i>Letter to Martha Wolf, Re: SPCC Rule.</i> 11/5/2003. (excerpt)
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...

The South Dakota Coalition urges EPA to recognize the burden that the revised SPCC rule creates for small businesses, especially small family farms. We also request that EPA either make changes to the rule or change its interpretation of parts of the rule so as to limit its negative impacts.

We believe that EPA grossly underestimated the impact of the SPCC rule on small businesses and virtually ignored the impact on small family farms. According to recent US Dept. of Agriculture figures, there are over 11,000 small family farms in South Dakota between 500 and 2,000 acres. Nearly all of these farms are subject to the SPCC rule because the 1,320-gallon threshold capacity is readily exceeded.

In South Dakota, farms typically have tanks to hold both clear diesel and dyed diesel fuel. Dyed diesel can only be used for farming purposes and is tax exempt. Clear diesel is necessary for fueling vehicles that travel the highways. Many farms also have a tank for gasoline and diesel #2 for winter operation. Other containers that contribute to the threshold tank capacity and are subject to the SPCC rule include mobile containers attached to pickup beds and drums for storing motor oil and hydraulic fluid.

As you can see, even in a small family farming operation, the SPCC capacity threshold is quickly reached. I find it hard to believe that the intent of Oil Pollution Act is to cast a regulatory net so broadly that it entangles the thousands and thousands of small family farms and other small businesses in the United States.

...

23	Steel Tank Institute. <i>Email to Mark Howard Re: Cost of SPCC Facilities with Small ASTs.</i> 6/24/2004. (excerpt)
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I forwarded the SBA analysis and Faucett paper to a PE friend of mine in California regarding the cost of an SPCC evaluation of a small tank facility. His response was unsolicited by me. Here it is:

“The SBA article mentions \$7000 as a cost for SPCC Plans! For the types of facilities being discussed, I generally do them for less than half of that amount. If you know anyone looking for PE assistance for small facilities let me know, or give them my name. I would love to get \$7000 each, but that is highway robbery. The biggest cost factors are location and number of facilities. If they are in clusters where I can allocate travel \$ over several SPCC Plans then I can get them done in the \$3000 to \$4000 range.”

...

24	Synthetic Organic Chemical Manufacturers Association. <i>Email to Kevin Bromberg, Re: Need SPCC Specifics. 1/7/2003. (excerpt)</i>
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...

Any small business just pulled into the SPCC regulation will not be expecting the cost for a PE to do the SPCC plan. For a simple facility it might cost \$2-3000. For a complex facility it could cost \$5-10,000.

...

25	Utility Solid Waste Activities Group. <i>Letter to EPA Docket Center, Re: Comments on EPA's Proposal to Extend the Compliance Deadline for the final July 17, 2002, SPCC Rule Amendments. 1/29/03. OPA-2002-0001-0092. (excerpt)</i>
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...

Although the electric utility industry consists of companies with a wide range of total SPCC-regulated facilities, many companies are reporting they have in excess of 1,000 facilities, often in multiple EPA regions. One USWAG member, for example, has more than 1,500 facilities in 11 states; another has 2,000 facilities in four states; yet another has over 3,100 facilities in roughly 30 states. We estimate that more than 100,000 utility industry facilities nationwide will require reassessment in light of the new amendments, whatever their final form. The requirement for individual site visits prior to certification of plans and the limited number of P.E.s familiar with the new amendments and/or available to write plan amendments makes meeting the proposed one year deadline highly doubtful. Specifically, meeting the deadline will be extremely difficult for our smaller utility companies with fewer regulated facilities, including the rural electric cooperatives. Many of these companies are very small businesses with few employees - at least 158 rural electric cooperatives in the United States have 20 or fewer employees, and at least 30 such cooperatives have 10 or fewer employees. Additionally, these limited numbers represent entire payrolls and not the even more limited number of P.E.s capable of certifying and amending SPCC plans. ...

...

III. Agriculture Sector

26	CHS Cooperatives. <i>Letter to U.S. EPA Docket Center, Subject: Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities Proposed Rule, January 9, 2003. 1/29/2003. OPA-2002-001-156. (excerpt)</i>
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...

REGULATION REQUIREMENTS: The July, 2002 final rule would require co-ops and farmers to add to oil (petroleum products, vegetable and animal fats) tank sites, costly fencing, lighting, engineer certification, secondary containment, comprehensive spill and control plans, and other requirements, by August 2003. The January 9, 2003 proposed rule might grant a one-year extension.

ISSUES:

- Lack of understanding of ag energy/co-op system.
- Extending the period before finalizing all aspects of the rule.
- Lack of accurate data on agriculture.
- Excluding family farms from the definition of "facility."
- Requiring a professional engineer and secondary containment.
- Costs for fencing, lighting, site certification are punitive and will result in farm and co-op closures.

OUR PURPOSE: To urge the EPA to extend the requirements for co-ops and farms for at least one year and to adequately address the burdens to which the July 17, 2002 final rule subjects farmers.

GENERAL: A general understanding of the agricultural cooperative system and its petroleum distribution system from refinery to the consuming family farm is important to have in order to appreciate the impacts of this rule. Below is our general description of those systems and some issues and concerns we have with the SPCC regulation and deadline extensions. Although we believe EPA only needs a short explanation to justify an extension, we have been asked by EPA to provide more details on the agricultural fuel supply system.

DESCRIPTION OF AGRICULTURE: Agriculture is structured around family farms and cooperatives. There are approximately 2 million farms in the United States. USDA's publication "Structural and Financial Characteristics of U.S. Farms, 2001 Family Farm Report," [hereinafter called Family Farm Report] reports that there are 2,064,709.

According to the National Council of Farmer Cooperatives (NCFC) – a DC-based trade association – nearly 2 million farmers belong to approximately 3,500 local agriculture (ag) cooperatives in the United States.

What is a cooperative? A cooperative (co-op) is a business organized, owned and controlled by the people who use its products or services. A co-op operates for the benefit of its member-owners. It takes advantage of economies of scale, combining buying power and strength in numbers to save money and return profits to its members. All net savings – after bills are paid and money is set aside for operations and improvements – are returned to co-op members. This is called patronage or dividends. Since they are a separate business entity, co-ops are governed under different federal and state legislation and rule, such as those by the Internal Revenue Service, than other types of businesses.

Farmers do more than just belong to co-ops; farmers actually own the local cooperatives and thus share in the profits and costs associated with both their own farm operations and local cooperatives. In turn, these 3,500 local cooperatives belong to and make up larger cooperatives – larger in the sense of number of farmer members, not necessarily revenue or

total assets.

These larger cooperatives are called regional cooperatives and have local co-op members and various facilities in many states. We, CHS Cooperatives (headquartered in St Paul, MN) are a regional cooperative, as is Farmland Industries (Kansas City, MO), Land O' Lakes (St Paul, MN), Agway (Syracuse, NY), Southern States (Richmond, VA), Countrymark (Mt Vernon, IN), and Growmark Cooperatives (Indianapolis, IN). Regional cooperatives do not own local cooperatives but act as collective suppliers of crop/animal inputs or/and purchasers of farmers' crops and livestock.

Rules such as the latest EPA SPCC rules hurt farmers doubly with: (1) requirements on tank storage within their farms and (2) at the co-ops of which they share ownership.

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ENERGY AND COOPERATIVES:

Refiner Co-ops. Since 1940, farmers, through their cooperatives, have owned petroleum refineries. By 1950, 20 refineries were operated by 13 regional cooperatives. The move into refining came with the decline in supply of petroleum products especially in rural areas because of World War II. In addition, seasonal variations of off road needs differing from on road needs often resulted in more costs to farmers if they bought fuels from other refiners. Rural America and agriculture needed more dependable supplies of diesel and propane (their primary fuels), which many other refiners were less interested in providing because urban America demanded more gasoline, home heating oil and natural gas. In recognizing the vital energy needs of agriculture, the federal government, when it had the Strategic Petroleum Reserve allocation program, allocated fuels to agriculture and refiner co-ops.

For several decades these refinery-owning cooperatives, that are called "refiner cooperatives" [refiner co-ops], were involved in oil exploration, crude oil production, refining, pipelines, wholesale and retail distribution, and farm sales.

Today, the refining system for agriculture is significantly different. There are only four refiner co-ops compared to the 13 refiner co-ops of 1950 and only four refineries compared to 20 from then. However, all of agriculture has been experiencing very depressed revenues over the past five years and many local and regional cooperatives are filing for Chapter 11 bankruptcy. For example, Farmland Industries, the largest ag cooperative in the United States (over \$9 billion in revenue) and the owner of the largest cooperative refinery at 110,000 bpd in Coffeyville KS, has filed for bankruptcy. Its 600,000 farmers and 1,200 local cooperatives will suffer significantly. Agway (Syracuse, NY) another regional cooperative and previous refiner co-op owner, and 7th largest (by revenue) regional, has also filed for bankruptcy.

None of today's refiner co-ops own any exploration or crude production assets.

Co-op fuel storage facilities. Current data on local co-op petroleum operations does not exist. However, in 1996 USDA published "Local Petroleum Operations" using 1993 data. This is primarily on co-ops, not farms.

Regional co-ops have set up a distribution system of pipelines, terminals, and bulk facilities to deliver fuels to local cooperatives or farms directly. The leading farm supplies handled by cooperatives in 1993 in terms of net business volume were petroleum products. Although not the sole fuel supplier for all farmers, local cooperatives are the dominant suppliers, providing about 41 % of all petroleum products.

In a 1993 survey by USDA to 4,244 co-ops, some 2,522 reported selling some type of

petroleum product. USDA captured the following info based on 738 completed surveys mostly from the co-ops in the plains states and Great Lakes states that have the greatest number of co-ops. Co-ops selling petroleum products were concentrated in 12 western states. Results show that small co-ops, more than large co-ops, rely heavily on petroleum for sales revenue, with petroleum sales averaging nearly 50% of their total farm supply sales. Nearly 90 percent of all cooperatives selling petroleum have some form of bulk delivery of gas and/or diesel. But two thirds of these co-ops have total sales of less than \$10 million. Nearly 70 percent of all cooperatives operate a service station and 89% have tankage and make bulk deliveries to farmers. These percentages are typical of the co-op system. Cooperatives in the northern regions of the US deliver more bulk fuel but only 14 percent of the co-ops did only bulk deliveries; most mixed both retail and bulk operations.

Because of our earlier marketing arrangement among three of the four refiner co-ops, called CountryENERGY and mentioned below, we feel we have some fairly reliable numbers on co-op tankage. Our initial estimate is that we serve about 1,100 co-ops with nearly 400 having at least one 660-gallon tank. We do not know how many co-ops exceed the 1,320-gallon trigger.

Farm Fuel Storage. Accurate data on fuel storage on farms is almost non-existent. We know of no USDA/DOE or EPA data that accurately depicts the sizes, types, and number of tanks on farms. We do not know the number of farms out of the nearly ~900,000 tanks we serve that have more than one 660-gallon tank or that exceed the 1,320-gallon trigger.

Whereas farms can range in size from part of an acre to many thousand acres, the largest ones are in the 12 western states mentioned above. The typical set up requires more than 1,320 gallons of fuel on the farm. However, the fuel is frequently not centrally stored, say near the farmhouse, but at locations across the farm. Many farmers own land as part of their farm that is not adjoining. It often makes no sense to centralize the fuel when farmers are working sections of their farm a mile or two away. Thus they decentralize their storage. The great majority of farmers have their coops deliver fuel to their farms. Petroleum delivery by co-ops is done by traveling to each farm's decentralized storage points, no matter how many there are on any given farm. Thus when there is no physical closeness or contiguous relationship between the storage tank sites most of the SPCC requirements become almost punitive.

DESCRIPTION OF CHS COOPERATIVES: CHS may soon be the largest refiner co-op in the United States after Farmland Industries' bankruptcy proceedings are done. On June 1, 1998 Cenex, Inc. and Harvest States merged and formed Cenex Harvest States Cooperatives. Cenex Harvest States is a producer-to-market cooperative system owned by 325,000 farmers, ranchers and their local cooperatives in over 18 states from the Great Lakes to the Pacific Northwest, and from the Canadian border into Texas.

Cenex Harvest States owns and operates a refinery in Laurel, Montana (capacity: 42,500 barrels per day) and also owns 74.5 percent of the National Cooperative Refinery Association (NCRA) refinery in McPherson, Kansas (capacity: 77,400 barrels per day). It owns and operates 1,200 miles of crude and product pipelines, eight terminals and nearly 1,200 retail petroleum outlets. There are 1,047 local co-ops that make up Cenex Harvest States.

For little over a year, beginning in September 1998, three of the four U.S. refiner co-ops, Cenex Harvest States Cooperatives, National Cooperative Refiners Association, and Farmland Industries joined together in a petroleum marketing venture, CountryENERGY, LLC. Through CountryENERGY, these three refiner co-ops sold fuels to nearly half of the farmers in the United States, over 900,000 of the 2 million. Under a cooperative system, these farmers own the refineries, local co-ops and their own farms. These farmers get a return on the earnings from their local co-op in the form of patronage. Unfortunately, patronage can be reduced if co-op earnings are low or capital expenditures are high. Because farmers own the co-op system, they must pay for the capital expenditures associated with any and all requirements this rule will put

on them, their local co-ops and the refiner co-ops.

Farmers and ranchers are heavily dependent on diesel fuel and diesel is the fuel stored in the larger fuel tanks. In FY99, the three refiner co-ops produced 1.35 billion gallons of distillates and CountryENERGY sold 1.09 billion gallons of that production. CountryENERGY bought the rest needed for farmers from other refiners and sold a total 1.56 billion gallons to co-ops as dyed (908 million gallons) and undyed (652 million). Some of that 652 million undyed fuel was dyed and resold by co-ops, for which we do not have data. However, according to USDA's 1993 data, 80% of the diesel fuel sold to local co-ops was used in farm production activities. These amounts were sold to about half the farmers in the United States but we have no data on the remaining 50%.

The co-op system supports local and long distance trucking because we must ensure that farmers and ranchers get their crops and livestock to regional distribution and transportation facilities; then to processing facilities; and finally to consumers in the United States and internationally. Co-ops must be and are at every link in the food-production system -truck, train, barge, rural electric co-ops, etc. To insure crops get from the farm to these facilities, two of the refiner co-ops supply a local co-op system of over 1,200 truck stops and retail outlets throughout 25 states.

COMMENTS ON THE JULY 17, 2002 FINAL RULE:

We have not yet seen the 1991 regulatory cost benefit analyses used in this rulemaking and how it did or did not address farms and co-ops, so we raise some issues without that benefit.

We will provide direct comments to the July 9, 2003 Final Rule on extending the Spill Prevention, Control and Countermeasures (SPCC) requirements but wish to take the opportunity now to address the July 17, 2002 rule since (1) the significance of the July 2002 rule on agriculture is finally being realized by co-ops and farmers; and (2) justification in our extension request to the January 2003 rule is based on our issues of the July 2002 rule.

EPA's final rule on SPCC, published in the Fed Reg, Vol 67, No. 137, July 17, 2002, page 47042-152, is a 112-page rule that sets the requirements for Oil Pollution Prevention and Response; Non-transportation-Related Onshore and offshore facilities.

The evolution of the SPCC rulemaking has been hard to focus on, as the rulemakings have been piecemeal and slow in coming with 15-16 publications in 1973, 1974, 1976, 1980, 1991, 1992, 1993, 1994, 1996, 1997, 1999, 2000, 2002, and 2003. The 2002 final rule included new decisions from issues left unresolved as far back as 1991. Most trade associations and companies no longer have the people or offices now that they had back in 1991, and as in our case, therefore have been caught off-guard with the 2002 final rule. Farmers and co-op managers, who are the ones who have to deal with all the regulations from all the state and federal agencies, certainly could not keep up with tracking and interpreting these changes. Most often they relied on their states.

As for addressing the concerns of agriculture in the 2002 final regulation, we lack confidence that agriculture was adequately analyzed before addressing farms in the 2003 rule. Farms are only addressed about six times and only in the preamble – on pages 47056, 47085, 47137, 47138, and 47103.

To highlight some concerns we would like to address issues on pages 47085, 47137 and 47138.

Page 47085. In addressing the costs for certification by a Professional Engineer (PE), EPA uses average annual revenue to estimate the cost of a PE, but may have ignored the great majority of farms that may be impacted, citing the impact only on the highest revenue family farms.

“...the average annual revenue for the smallest regulated facilities (under the current rule) ranges from \$150,000 to \$6,833,000) depending on the industry category. For example, farms with annual revenue between \$100,000 and \$249,999 have an average annual revenue per farm of \$161,430, and \$2,201 (the one-time cost to prepare and implement a Plan) represents only 1.36 percent of that annual revenue. Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all.”

A few issues here: (1) No citation in the FR is used to identify the source of these numbers nor national for picking this categorical range. However, if one refers to USDA's 2001 Family Farm Report, one can see how farms are categorized by revenue.

The range EPA uses above--\$100,000 to \$249,999-- is the same range in the Family Farm Report that USDA uses to classify some farms as "Small Family Farms." There are many more "Small Family Farms" that are smaller, could be negatively impacted and may be ignored in the analysis. Out of the 2,064,709 total farms in the U.S., only 171,469 farms (8.3%) fit that \$100,000 to \$249,999 revenue range. However, there are 1,697,732 more "Small Family Farms" that make significantly less revenue. In fact, 1,541,000 make less than \$50,000. It is upon these 1,541,000 that the July 2002 rule could place the greatest burdens.

(2) We would take exception to the comment above that "Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all," unless EPA has excluded them. Since this group that EPA cites represents the upper revenue end of "Small Family Farms", they in fact would be more likely to have to comply, not less likely.

(3) It is not clear if EPA is saying in the quote above that the smallest facilities that are regulated must make \$150,000 or more (see the quote). Certainly that would be a welcomed criterion.

Page 47137 on SBREFA. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) must be addressed in all regulatory rulemakings. For assessing the impacts on small entities, EPA defines farms and production facilities as "having less than \$500,000 in revenues or 500 employees, respectively." Of the 2,064,709 farms in the U.S. as reported in the Family Farm Report, (page 10), nearly 97% (1,996,838 farms) make less than the \$500,000 and therefore should have been incorporated in the analysis for SBREFA. We hope they were but are concerned that they were not.

Whereas EPA states that the changes in this new rule would exempt only 27,700 small farms; that number represents only 1.3% of all US farms. Without seeing data used by EPA, we are skeptical that the Administrator could certify this rule because EPA may not have accounted for the economic impact on nearly 2 million farms under SBREFA. Ag may have been underrepresented.

Page 47137-38 on the Unfunded Mandates Reform Act. The same issue of under representation concerns us relative to the Unfunded Mandates Reform Act (UMRA). The threshold for determining a mandate is set at \$100 million. Let us just take the costs of only a Professional Engineer (PE), disregarding for now fencing, lighting, secondary containment, etc, and let us use the estimated cost of a PE for a small facility as \$2,201 (page 67FR47084). If there are only 45,434 farms (\$100 million for costs/\$2,201 PE costs) that require a PE, then we think farms themselves may have exceeded the (UMRA) threshold. That means it would take

only 2.2% of the farms in the United States - 45,434 farms out of 2 million - to trigger the UMRA threshold. We have concerns that the ag community was not adequately addressed under the UMRA.

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Other Issues: (1) Physical layouts should have an impact. The particular nature of the family farm begs the question whether they should be excluded from complying with all or some of the requirements of the July 2002 regulation. Why must every new SPCC reg have to continue to apply every new requirement to every facility? All facilities are not alike. For example, should the facility that has 1,375 gallons have the same requirements as a facility of 120,000 gallons? I would think not.

Perhaps more differentiation among facilities could be made based on the layout of the facility - this is certainly a factor on farms. Case in point - wouldn't a 1-acre facility with a single 12,000 gallon tank be more liable a risk for a catastrophic spill than a 1-acre facility with ten 1,200 gallons that total 12,000 gallons? And wouldn't a 1-acre facility with ten 1,200 gallons be more liable a risk for a major spill than a 500-acre site with ten 1,200 gallons facility? Reason says yes.

(2) Private property protections. Farms are homes as well as businesses. Typically they are self-employed owners. We have seen no mention in any of the regulations addressing whether these issues should have an impact. They are just ignored and it is very questionable whether rules that apply to commercial entities should cover private homes.

Conclusion: ... We also believe all the requirements should not be applied to family farms.

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27	American Farm Bureau Federation, Agriculture Retailers Association, American Corn Growers Association, CF Industries, CHS, GROWMARK, Inc., MFA Oil, Montana Council of Cooperatives, National Cotton Council, National Council of Farmer Cooperatives, National Farmers Union, National Association of Wheat Growers, National Grape Cooperative Association, Oklahoma Agricultural Cooperative Council, South Dakota Association of Cooperatives, Southern States Cooperative, The Fertilizer Institute, The National Grange, USA Rice. <i>Letter to Ms. Marianne Horinko, Re: EPA Oil Pollution Prevention and Response Regulations (40 CFR 112; "SPCC Oil Spill Rule") - Amendments and Recommendations as it Potentially Applies to Agriculture.</i> 3/22/2004. (excerpt)
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Suggested definition of a farm/farming operation: A farming operation comprised of non-contiguous or non-adjacent agricultural lands shall not be considered a single "farm facility" regardless of whether such parcels of land are under common ownership or control. A farming operation shall be exempt from requirements under the rule if it does not have aggregate tankage in excess of 5,000 gallons at one or more sites that are separated by 500 yards or less. In the case of a farming operation comprised of non-contiguous or non-adjacent lands, aggregate tankage shall be determined separately for each field or parcel of agricultural lands.

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Tankage Threshold Triggers. There should be several triggers. EPA's current, single 1,320-gallon trigger is logically non-applicable to farms because of fuel tankage dispersment and the large areas many farms cover. A three-step threshold trigger is appropriate - (1) farms less than 5,001 gallons do not trigger any requirements; (2) farms with 5,001 to 12,000 gallons trigger some requirements; and (3) farms over 12,000 trigger all requirements. This is similar to the SBA Office of Advocacy's tiered approach for small facilities.

Professional Engineer (PE). A PE should only be required of the largest farms. The PE and plans requirements should be dropped for farmers and farm retailers with less than 5,001 gallons storage. Farming operations 5,001 to 12,000 gallons would have written plans but need not be certified by a PE. Farms with 12,001 or more gallons need both a plan and PE certification. Using a three step approach logically fits the nature of farming operations - spread out, remote, family owned, and low income. This is similar to the SBA tiered approach.

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Containment

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Tank Sizes. To start with the intent of SPCC, it is about large oil amounts and the likelihood of seepage into waters. Defining 'large' is an issue. The vast majority of farms have less than 5,001 gallons but farm consolidation is taking place and larger farms with greater tankage are growing in number. Most of those larger farms will put in tanks or do have tanks starting at that size. Even now, farms with several tanks, that may or may not exceed a 5,001 gallon capacity, are beginning to replace these groupings with single tanks either 2,000 or 5,000 gallons. Because the great majority of family farms have less than 5,001 gallons, this 5,001 number is a good standard/trigger for establishing applicability of some requirements. Farmers should be authorized to file, and EPA should be able to grant, exemptions for any farmer whose farm is between 5,000 and 12,001. A tank over 12,001 gallons should have containment.

Tank fueling efficiencies. Tank sizes for non-heating applications are generally in increments of 660, 1,000 and 2,000 gallons. EPA's SPCC rule would mean that two 660 gallon tanks would

be the limit at one “facility” before requirements are triggered. Equipment and machinery today have the volume and appetite to empty a tank every day (almost at one filling). In order to facilitate delivery from a wholesale bulk plant into farm storage on a daily basis during peak usage periods, farmers would incur substantially increased delivery costs.

Increased deliveries (3.8 times more into two 660’s than into a single 5,000) will also have an increased statistical probability of spill incidents, by a factor of 3.8. The point that we are making is that in order to deliver 5,000 gallons, it would take 3.8 times as many trips if the deliverer could only off-load 1,320 per trip as if they could off-load 5,000. Thus having a 5,000 threshold allows farmers the option of going to that level, which is more efficient for them and reduces the risk of oil spills from deliveries (due to fewer truck visits) and would improve truck safety (through reduced refueling trips).

Tank location. Most farms keep tanks close together near the machine shed area. These tanks are typically three or less in number. Those with large enough farms will have a tank further away but those tanks are almost always less than 2,000 gallons. There are exceptions. The needs for growing certain crops require 12,000 gallon tanks.

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28	American Farm Bureau Federation, Agricultural Retailers Association, American Corn Growers Association, CHS, GROWMARK Cooperatives, MFA Oil, National Cotton Council of America, National Council of Farmer Cooperatives, National Farmers Union, National Wheat Growers Association, Southern States Cooperatives, The National Grange, USA Rice. <i>Letter to Ms. Marianne L. Horinko, Re: EPA Oil Pollution Prevention and Response Regulation (40 CFR 112; “SPCC Oil Spill Rule”) — Amendments and Recommendations as it Potentially Applies to Agriculture. 3/10/2004. (excerpt)</i>
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Farming operations should be excluded from the requirements of this rule if (1) they do not have aggregate tankage in excess of 5,000 gallons at sites on agricultural land, whether contiguous or noncontiguous, under the control of the farmer and constituting a cohesive management unit, where the farmer provides active personal management of the operation, that are separated 500 yards or more; or (2) they do not exceed a “tankage trigger threshold” of greater than 12,000 gallon storage.

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