

**P M A A M E M O R A N D U M**

**DATE:** July 30, 2002

**TO:** PMAA Board, PMAA Executive Committee, PMAA State Association Executives

**FROM:** Laura Tague, Director of Regulatory Policy

**SUBJECT: Action Needed on SPCC Rule**

In 1973, EPA issued a "SPCC" (Spill Prevention Control and Countermeasure) rule to mandate that oil storage facilities have a spill plan in place, thus preventing a discharge of oil into navigable waters. *The rule required the development of a detailed plan, which was required to be updated every three years and certified by a professional engineer.* Over the last 11 years, EPA has considered numerous revisions of the rule, and with each new proposal, PMAA expressed serious concern about the impact on independent marketers. While making some improvements over eleven years, *EPA issued a final rule on July 17, 2002, which becomes effective on August 16, 2002. Marketers will have six months to revise their existing SPCC plans, with full implementation of the new plan by August 16, 2003.* While a number of very onerous proposals were not included in the new rule, PMAA and FPMA have identified several new requirements that could be problematic for marketers. Most of the changes that EPA adopted in the new rule involved changing the word "should" to "must." EPA claims that this was a minor editorial revision; however, many interpreted the use of the word "should" in the old regulations to be suggestions rather than requirements.

**NEW SIGNIFICANT PROVISIONS OF SPCC RULE 2002**

1. **Bunkered tanks and partially buried tanks are considered above ground and are subject to the rule.** The threshold for these tanks is a capacity of more than 55 gallons.
2. Facilities that have **one discharge of more than 1,000 gallons in a single discharge, or more than 42 gallons in each of two discharges within a twelve month period,** are required to notify EPA and possibly revise their plans.
3. **Secondary containment must be provided for the entire capacity of the largest compartment in a tank plus sufficient room for precipitation.** If a Professional Engineer certifies that it is not "practicable" from an engineering standpoint to provide such containment, a facility may be exempt from this requirement if they can provide equivalent environmental protection and justification for the deviation.
4. **The new rule requires facilities to review their plans once every five years.** The plan must be updated to include more effective discharge prevention technology if such technology has been field-proven and will significantly reduce the likelihood of a discharge.
5. A **security fence** must be built with locked and/or guarded entrance gates when the facility is unattended.
6. **Lighting** must be installed around the bulk plant sufficient enough to assist in the discovery of discharges when it is dark by both the facility personnel, and the general public.
7. A facility must provide some type of **engineering practice to avoid discharges** such as alarms, pump cutoffs, or gauges, and regularly test such devices.
8. **Annual discharge prevention training** is only required for "oil handling employees" under the new rule.
9. The new rule requires a **visual inspection** to be combined with another integrity testing technique on a regular basis and **when material repairs have been done.** It also requires **frequent inspections of the outside of containers for signs of deterioration, discharges or accumulation of oil inside diked areas.**  
*The new rule requires any new or replaced buried piping to have corrosion protection such as wrapping, coding, or cathodic protection.*
10. The revised rule **explicitly allows deviations from most of the rule's substantive requirements** (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend your Plan.

## **WHAT FACILITIES ARE REQUIRED TO COMPLY?**

As mentioned previously, the rule is meant to prevent discharge into navigable waters. A key concern for PMAA members is the definition of “navigable waters” in the new rule. *The new rule expands the definition to include interstate wetlands, intrastate waters that are or could be used for industrial purposes by industries in interstate commerce, tributaries to any waters that meet the definition of navigable waters, and wetlands adjacent to any waters meeting the definition.* PMAA and FPMA are concerned that this expansion of the term navigable waters will mean that many more facilities will fall under the rule.

**ABOVEGROUND** - The rule applies to **facilities with an aboveground storage capacity of 1,320 gallons or more.** *Partially buried tanks are considered to be aboveground under the rule, however, only containers with a capacity of 55 gallons or greater are counted toward the 1,320 gallon threshold, a change that will affect some lube oil marketers.*

**UNDERGROUND** - As in the previous rule, **facilities with underground storage capacity of more than 42,000 gallons are required to comply,** which had the effect of exempting most gas stations from the requirements. However, EPA has gone a step further with *the new regulation, completely exempting underground tank facilities where all tanks and piping are buried.*

**CLOSED TANKS** - Closed tanks were never required to be included in the SPCC, however, while the old rule required these closed tanks be removed, **the new rule no longer requires closed tanks be removed.** *However, all liquid must be removed from the tank, all lines and piping must be disconnected, valves must be closed and locked and signs must be posted stating that the tank is closed, with the date of closure.*

## **ACTION REQUEST FOR STATE ASSOCIATION EXECUTIVES:**

PMAA needs information from the state associations to determine the estimated financial impact on small business and the jobber class of trade. We believe it is likely that EPA underestimated the financial consequences to small business and possibly violated the Regulatory Flexibility Act of 1980. We need each state association to advise us on the projected compliance costs for the marketers in their state.

## **PMAA NEEDS ESTIMATES OF THE FOLLOWING:**

1. How many bulk plants are currently in operation?
2. How many lubricant warehouses exist?
3. How many plants currently provide secondary containment that will hold at least the maximum capacity of any single compartment of a tank car or tank truck (including precipitation)?
4. The projected per plant cost of constructing expanded secondary containment to comply with the above regulation.
5. Are loading areas & tanks are generally fenced? How many are not fully fenced & please estimate a per plant cost for new fencing.
6. How many bulk plants are adequately lighted so that any oil discharge could be visually detected? Please estimate a per plant cost of expanded lighting.

**Once having secured the above data from the state associations, PMAA will be able to perform a reasonable cost analysis. The cost analysis will also be based on the answers provided by EPA to our July 25, 2002 letter. PMAA will explore all legal and legislative options to ease the regulatory burden unjustifiably imposed on small business.**

## **ACTIONS NEEDED BY MARKETERS:**

While PMAA and FPMA explore avenues for challenging onerous parts of this rule, marketers must move forward on compliance efforts. *Marketers should designate an employee to become thoroughly familiar with the SPCC regulations and begin efforts to adopt new plans by February 16, 2003.* EPA has indicated a willingness to be flexible on this deadline if a marketer can demonstrate a good faith effort to comply. Ultimately, each bulk plant operator will need to contract with a professional engineer to approve the new spill plan. *The SPCC regulation in its entirety is available on line at <http://www.epa.gov/oilspill/spccrule.htm> and for your convince a [summary of the New Spill Prevention Control and Countermeasure Rule](#) is located in the FPMA Web Library* FPMA will provide new and relevant information as it becomes available.