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December 14, 2007

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

RE: Docket Number EPA-HQ-OPA-2007-0584

Dear Sir/Madam:

The Food Industry Environmental Council (FIEC) is pleased to submit these comments on EPA's October 15, 2007, proposed rule to amend certain provisions of the Spill Prevention, Control and Countermeasure (SPCC) rules. See 72 Fed. Reg. 58377 (Oct. 15, 2007). FIEC is a coalition of over 60 national food trade associations and companies that together represent food facilities across the country, contribute hundreds of billions of dollars in sales to the economy, and employ approximately 1.5 million people. FIEC members represent a large number of non-transportation-related onshore facilities nationwide that process, handle and ship non-toxic, non-corrosive animal fats and vegetable oils (AFVOs) and/or foods that contain those fats and oils. As a result, FIEC has a strong continuing interest in EPA's approach to regulating these substances in the SPCC program, as well as other aspects of the SPCC rules.

A. Issues Presented in the Proposed Rule

1. Loading/Unloading Racks

EPA's proposal would add a definition of loading/unloading rack to the SPCC regulations. FIEC supports EPA's effort to clarify that the requirements of 40 C.F.R. § 112.7(h) apply only to loading and unloading racks, rather than more broadly to loading and unloading areas. FIEC understands that EPA's draft definition, which includes a "loading/unloading arm," would not be read to include a flexible hose used in loading and unloading materials from a tanker truck or railcar. FIEC does not believe it is EPA's intention to encompass such equipment in the definition of loading/unloading rack, and requests that EPA confirm this view.

2. General Secondary Containment

The proposed rule would clarify that general secondary containment requirements are meant to address the most likely oil discharge from a facility, rather than the maximum potential discharge. Depending on the most likely quantity of oil that would be discharged, the owner/operator may determine that the appropriate method of secondary containment is a passive containment measure, such as curbing around the area or, if the likely quantity of oil is reasonably handled by spill kits, then such countermeasures may be used to prevent an oil discharge. FIEC strongly supports this clarification. At AFVO facilities, potential overflows or spills are the focus of SPCC plan containment and countermeasure selection, rather than catastrophic container failure. Moreover, since most AFs and some VOs solidify at ambient temperatures within yards of their storage containers, very limited containment measures would be required. Generally, such measures as spill kits or berms would be sufficient.

3. Facility Diagram

FIEC supports EPA's proposal to clarify that the facility diagram must include all fixed containers, but must indicate only the storage area for mobile or portable containers. As EPA acknowledged in its proposed rule, this revision will be particularly useful when the number of containers changes frequently at a facility. FIEC notes that under certain circumstances, a small container may be put into place and later moved; such a container should qualify as a mobile container. FIEC requests that EPA clarify this aspect of the proposed rule.

4. Definition of "Production Facility"

EPA proposes to amend the definition of an historical term in the SPCC rule, "production facility," as found in 40 C.F.R. § 112.2. The Agency's proposed definition is as follows:

> 'Production facility' means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and may be located in a single geographical oil or gas field operated by a single operator.

FIEC understands that historically, the term applies only to petroleum oil production facilities. However, the SPCC rule now, unlike when it was originally promulgated in 1973, explicitly covers AFVOs (and, hence, the facilities that produce them), as well as petroleum oil. Furthermore, facilities that produce vegetable oils use some similarly-termed items to those listed in the definition, including "storage facilities," "extraction" equipment and "piping."

To reduce the potential for misinterpretation of this term and the associated definition as inclusive of vegetable oil production facilities, FIEC recommends that EPA revise the definition to read as follows:

> 'Production facility' means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum oil, or associated storage or measurement, and may be located in a single geographical oil or gas field operated by a single operator.

5. AFVO Integrity Testing Provisions

EPA's proposal would provide greater flexibility in determining appropriate integrity testing measures for bulk AFVO storage containers subject to the applicable sections of the Food and Drug Administration (FDA) regulation at 21 C.F.R. part 110, Current Good Manufacturing Practice in Manufacturing, Packing or Holding Human Food, and that meet the following additional criteria: (1) are elevated; (2) made from austenitic stainless steel; (3) without external insulation; and (4) are shop-fabricated. FIEC welcomes EPA's efforts to provide some type of regulatory relief to AFVOs, since FIEC continues to believe that these substances are very different from petroleum oils in terms of toxicity and potential environmental impact.

a. Shop Fabrication

Although FIEC supports the Agency's attempts to provide regulatory relief to AFVO facilities, FIEC believes that the criteria in EPA's proposed rule are so limiting that many AFVO storage containers would not qualify for the provision. Most importantly, FIEC is aware that many AFVO facilities utilize partial field-assembled tanks. In many cases, large sections of the tanks are pre-fabricated in the shop, and then field-welded together in a few places. The tank may be fabricated in halves or in three or four pre-rolled sections, and then sent to the facility for final welding. These tanks are not assembled piece-by-piece in the field, and thus do not have the large number of welds that completely field-erected tanks might have. Nor do they have to be bolted together with air wrenches at the site, as would be the case with completely field-erected tanks. In addition, containers constructed via limited field welding of a few large, pre-assembled pieces are not necessarily the large capacity containers that EPA apparently seeks to exclude from the integrity testing provision. See, e.g., 72 Fed. Reg. at 58403 ("field-erected (i.e., field-constructed) containers can store much larger volumes of oil because individual pieces of the container can be transported to and assembled at the installation site, leading to much larger container capacities").

FIEC believes that these types of AFVO tanks should be covered by the proposed alternative integrity testing provisions, and requests that EPA modify the proposed rule to clarify that tanks that are pre-fabricated in sections, and then field-welded in a limited number of places, would qualify for the alternative provisions.

b. Elevated Tanks

FIEC is also concerned about EPA's other proposed criteria for the integrity testing provision: that tanks be elevated, made of stainless steel, and non-insulated. FIEC is aware that many food industry facilities use non-elevated tanks; these tanks comply with FDA requirements, which allow tanks to be positioned on pads as long as the area can be adequately cleaned and kept in good repair.

c. Stainless Steel

Many food industry facilities utilize carbon steel tanks. These tanks have been proven effective over many years, and food industry facilities have maintained good housekeeping practices with cooking oil and carbon steel equipment. Facilities have not encountered any substantive issues with "adulterated foods" in connection with the use of carbon steel tanks pursuant to 21 C.F.R. part 110. Moreover, since EPA's current SPCC guidance allows visual inspection for shop-built containers with a shell capacity of 30,000 gallons or less that are elevated with all sides visible, to require AFVO tanks to be made of stainless steel would impose a more stringent requirement on such tanks than currently applies to petroleum tanks. FIEC sincerely doubts that this was EPA's intention.

d. Insulation

Some AFVO products must be maintained at a specified temperature to ensure useable viscosity, which requires insulation on the outside of the tank in colder climates. For example, some facilities (e.g., meat processing and rendering facilities) often have a significant number of insulated tanks for solid-at-temperature AFVO that are in constant use. Insulated tanks can be visually inspected through access ports installed permanently in the insulation at key locations. Thus, EPA's proposed requirement that tanks be non-insulated to qualify for the alternative integrity testing provision is inconsistent with necessary industry practice and unnecessary to assure adequate inspection. Therefore, FIEC respectfully requests that EPA revise its AFVO alternate integrity testing criteria to permit jacketed tanks as long as there are sufficient access ports installed in key locations to observe an appropriate quantity of the exterior of the tank.

e. Summary

FIEC believes that visual inspection should be allowed for AFVO storage tanks. This type of inspection program has proven effective in the food industry, allowing potential leaks or spills to be detected early. Moreover, AFVO tanks are bottom-discharge, thus eliminating the buildup of water in the bottom of the tank and preventing corrosion from the inside out. In fact, research indicates that the principal corrosion mechanism for ASTs storing petroleum-based oils is the presence of sulfate-reducing bacteria associated with the significant amount of sulfur in petroleum-based oils (as high as 3.5%). AFVOs do not have a significant amount of sulfur present. The normal amount of sulfur in VOs is approximately

0.01%, and according to a 2002 University of Georgia study commissioned by the National Renderers Association (data which was accepted by EPA as part of a Clean Air Act variance), the maximum amount of sulfur in AF is typically 0.005%. Based on the internal corrosion differences between AFVOs and petroleum-based oils, we believe the inspection frequency should be extended for ASTs storing AFVOs. FIEC urges EPA to reconsider the qualifying criteria in the current regulatory proposal, which would exclude many, if not most, AFVO tanks from the proposed differentiated integrity testing provisions.

B. Other SPCC Issues

1. Mixtures

FIEC encourages EPA to clearly define the term "product mixtures," including AFVOs, as it relates to the SPCC rules. FIEC has repeatedly requested in its comments over the past 7 years for a clarification of this term. For example, how would a liquid product containing as little as one percent AFVO in the finished product be defined under the existing regulations? The feed industry manufactures nearly 5 million tons of liquid feed annually. Nearly 50% of this liquid feed contains 2-5% AFVO, with the primary ingredient being molasses and/or food manufacturing co-products. Without a clear definition of oil and product mixtures, much of this liquid production may be considered needlessly to fall under the SPCC rule. Likewise, milk has a similar content to many feed products with regard to fat levels, with fat contents ranging from less than 0.5% to approximately 3.6%. In mixtures where the properties of oil are no longer present due to the minimal concentration, we believe it is critical that EPA define such mixtures to be exempt from SPCC regulation. FIEC urges EPA to consider all "product mixtures" as the Agency further develops the rule and its applicability.

2. Terminology: "Discharge" Versus "Spill"

Although the SPCC rule's title is focused on spill prevention, the threshold for a facility to be subject to SPCC is whether a spill from a facility could reasonably be expected to discharge oil in quantities that may be harmful into "navigable" waters or adjoining shorelines. "Discharge" is a term of art in the Clean Water Act, whereas "spill" is undefined. Unfortunately, EPA interchanges these words throughout the rule. For example, in describing the secondary containment requirements for those hot-mix asphalt substances not eligible for the proposed exemption, EPA states:

> the secondary containment requirements of the SPCC rule may be satisfied if the secondary containment system, including walls and floor, are capable of containing the oil and are constructed so that any discharge from a primary containment system will not escape secondary containment before clean up occurs (§112.7(c)).

72 Fed. Reg. at 58382 (emphasis added). The Agency also interchanges the terms in EPA's Technical Background Document on AFVOs regulated by the SPCC rule (September 12, 2007), in which it describes the environmental effects of AFVO "spills." It is critical that the Agency clearly distinguish between the policy implications of discharges and spills in this rule, especially for those "spills" that do not have "discharge" potential.

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We appreciate having the opportunity to submit these comments. If you have any questions regarding the comments, please call Robert Garfield at (703) 821-0770.

Sincerely for the Food Industry Environmental Council,

Robert L. Garfield
Chairman