

December 26, 2008

Ms. Susan Bodine, Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW (5101T)
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OPA-2008-0546

Dear Ms. Bodine:

The Agriculture Coalition on the Spill Prevention, Control and Countermeasure (SPCC) rule [‘The Coalition’], which includes organizations representing farmers, ranchers, farmer cooperatives, livestock operations and related agribusinesses, submits the following comments on the U.S. Environmental Protection Agency’s [‘EPA’ or ‘Agency’] proposed rule amending the dates by which facilities must prepare or amend SPCC plans and implement those plans.

The Coalition strongly affirms that members of the agricultural sector, who grow this nation’s food and rely on well water from their property for their families’ needs, are highly motivated to ensure that their environmental practices are sound. These producers strive daily to ensure a safe environment for their children and the communities in which they live.

The Coalition has been working with EPA to ensure that any agency action regulating oil spill prevention and response take into account the uniqueness of the agricultural industry, be based on sound science, need and identified risk, and that final regulations be clear and allow time for education and implementation. While the coalition appreciates the ongoing dialogue with EPA and notes the improved options for agriculture contained in the final rule issued December 5, 2008 (73 FR 74236), we have concerns with the Agency’s proposed compliance deadlines for farms.

In discussions with both EPA and the U.S. Department of Agriculture (USDA), the Coalition was informed that following the issuance of a final rule, information was to be disseminated to the regulated community on compliance. No real data exists, however, on how long it truly takes an industry to fully understand and come into compliance with new requirements. Unofficial estimations from EPA and USDA for penetration of an industry sector with new regulatory requirements range from three months to one year for just a full understanding of new requirements, let alone reaching compliance. It should be noted, however, that many regulations issued by USDA arise out of highly anticipated and much debated legislation, such as the Farm Bill. Since USDA estimates that penetration can take up to a year, EPA should recognize that penetration and compliance may take even longer for a rule that has attracted little attention within the agricultural community.

While the EPA rulemaking of December 5, 2008 modified EPA regulations that have been in existence for more than 35 years and have a high compliance rate in the currently regulated sector, much of the agricultural sector has yet to even hear of the SPCC rules. Many other farmers or ranchers are understandably confused by its complexity and varying compliance deadlines. In this rulemaking, EPA is proposing two separate compliance dates for farms. Farms meeting the

qualified facility definition have a deadline of November 20, 2010. However, farms over the 10,000 gallon aggregate above ground storage capacity threshold must be in compliance by November 20, 2009, which is less than a year away. We fail to understand how the dual compliance deadline serves agriculture and the environment or clarifies the confusion that has existed around the SPCC rule and its application to farms.

There are stark, fundamental differences between the community that has lived under this regulation for decades and the agricultural community. Most farmers do not have the staff on hand to designate as environmental managers, nor can they afford to hire one. A 2009 compliance deadline provides less than adequate time for producers to develop SPCC plans, secure budgets (including budgeting for a professional engineer), and make necessary capital expenditures to comply with the final rule. Farms operate on loans and most 2009 budgets have already been established and funds dedicated to other crucial elements of the operation. The timing of the SPCC compliance deadline leaves producers with both technical and budget problems in meeting a 2009 deadline.

Since publication of the 2008 final rule, EPA has had modest communications with stakeholders and trade organizations. We appreciate that U.S. EPA Regions 5 and 7 are moving forward with a scheduled webcast seminar on January 13, 2009. This is a great tool for a “train the trainer” program but farmers are not likely to participate. The Agency expects short-term compliance yet there is no evidence of a compliance assistance program or education process in place. The purpose of all EPA rules is environmental protection through compliance, not through a generation of confusion.

To further complicate matters, we are quickly approaching a change in Administrations, which will likely slow down the creation and dissemination of education materials and outreach. In issuing the proposed rule, EPA should also provide a clear plan to pass along this information to our nation’s farmers, a sector of the economy that is vast, decentralized and with limited broadband access. Without a clear plan, we are not convinced that the Agency can adequately prepare guidance and mobilize specific outreach activities in a timely manner that will provide the farming community with the understanding and necessary tools to comply with the final rule.

Given the lack of knowledge, exposure and understanding of the SPCC rule within the agriculture sector and the Agency’s lack of a communication plan, we believe at a minimum, all farms (regardless of above ground storage capacity) should have the same compliance deadline. Furthermore, any agricultural deadline must be predicated on EPA conducting a successful and active national compliance assistance program for the agricultural community.

That said, we do not understand why the Agency provided a five-year time frame for the oil production industry to comply with the December 5, 2008 final rule. EPA stated in the final rule that “the agricultural community did not provide information that would lead the Agency to conclude that farms are sufficiently different to warrant further differentiation from other facilities that store oil.” The Coalition would remind EPA of the 2005 USDA study which found that data on oil spill on farms, cooperatives, and other agribusinesses is almost nonexistent. The Agency has failed to provide data or anecdotal evidence of agricultural spills to justify such a resource-intensive rulemaking and also failed to adequately justify the longer time period for the oil production industry that has a history of spills.

For simplicity, we call on the Agency to establish one compliance deadline for all industry sectors impacted by this final rule to avoid further confusion. Since the Agency sees no differentiation between the agriculture community's risk under SPCC compared to that of other covered facilities such as oil production facilities, we see no reason for differentiation in compliance deadlines. A compliance deadline of November 20, 2013 is recommended for both the agricultural community and oil production facilities.

Additionally, states should be given timelines to facilitate implementation and compliance *before* EPA enforcement can take place. This extra time will provide farmers and others the opportunity to work within their organizations and with appropriate government agencies, including USDA, regarding the development of guidelines that could be utilized to meet such requirements.

We also urge EPA to set up a hotline specifically for agricultural producers seeking information and clarity on the rule and how it applies to their operation. In anecdotal USDA examples, hotlines were operational for approximately two years in conjunction with other educational programs to ensure maximum compliance. The hotline allowed producers to inquire about deadlines, report issues and problems, and clarify requirements.

We encourage the Agency to continue coordinated efforts with USDA to ensure timely publication of information in local newspapers, purchases of radio time, mailing of information and meetings with leaders in local communities. We also appreciate EPA's coordinated efforts with the USDA Natural Resources Conservation Service (NRCS) and the Cooperative Extension Service on this issue.

In closing, the coalition stands ready to work with the Agency to help facilitate this educational process in our industry sector, and ask the Agency to establish a single compliance deadline of 2013 for all industry sectors impacted by the 2008 final rule. We are eager to continue our open dialogue with EPA on this important issue.

We thank you for this opportunity to comment and would be available to meet with you to discuss these matters further.

Sincerely,

American Farm Bureau Federation
California Dairies, Inc.
CHS, Inc.
Dairy Farmers of America
Kansas Cooperative Council
Maryland & Virginia Milk Producers
Cooperative Association, Inc.
National Association of Wheat Growers
National Cattlemen's Beef Association
National Corn Growers Association

National Council of Farmer Cooperatives
National Farmers Union
National Grange
National Grape Cooperative, Inc.
National Milk Producers Federation
South East Dairy Farmers Association
United Egg Producers
USA Rice Federation
Western United Dairymen