

Utility Solid Waste Activities Group

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January 25, 2007

VIA HAND DELIVERY AND ELECTRONIC SUBMISSION

EPA Docket Center
Docket ID No. EPA-HQ-OPA-2006-0949
1301 Constitution Ave., NW
Washington, DC 20460

Re: Comments on EPA's Proposal to Extend the Compliance Deadline for the July 2002 Spill Prevention Control and Countermeasure Amendments, Docket No. EPA-OPA-2006-0949, 71 Fed. Reg. 77357 (Dec. 26, 2006).

Dear Sir or Madam:

The Utility Solid Waste Activities Group ("USWAG")¹ submits these comments in support of EPA's proposal (71 Fed. Reg. 77357 (Dec. 26, 2006)) to extend the deadline to July 1, 2009 for facilities to amend and implement their Spill Prevention, Control, and Countermeasure ("SPCC") plans to comply with the 2002, 2006 and forthcoming SPCC amendments.

Since the promulgation of the July 17, 2002 SPCC amendments (67 Fed. Reg. 47042 (July 17, 2002)), EPA has issued a number of clarifications and regulatory amendments to clarify confusing provisions and to streamline unnecessarily burdensome aspects of the SPCC program in response to the concerns and uncertainty expressed by much of the regulated community. In order to provide regulated

¹ USWAG was formed in 1978, and is an informal consortium of approximately 80 energy industry operating companies and associations, including the Edison Electric Institute ("EEI"), the National Rural Electric Cooperative Association ("NRECA"), the American Public Power Association ("APPA"), and the American Gas Association ("AGA"). EEI is the principal national association of investor-owned electric power and light companies. NRECA is the national association of rural electric cooperatives. APPA is the national association of publicly owned electric utilities. AGA is the principal national association of natural gas utilities. Together, USWAG members represent more than 85% of the total electric generating capacity of the U.S., and service more than 95% of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

owners/operators with enough time to amend or implement plans to comply with the 2002, 2006 and subsequent amendments and recent interpretive guidance, EPA has committed to providing adequate time to allow regulated facilities to develop and implement SPCC plans in accordance with *all* applicable guidance and regulations. In order to provide this reasonable compliance timetable, EPA has had to extend the date of compliance with the 2002 and subsequent amendments on four separate occasions. See 68 Fed. Reg. 1348 (Jan. 9, 2003) (interim final rule extending deadlines by 60 days); 68 Fed. Reg. 18890 (April 17, 2003) (final rule extending deadlines by 18 months); 69 Fed. Reg. 48794 (Aug. 11, 2004) (final rule extending deadlines by 18 months); 71 Fed. Reg. 8462 (Feb. 17, 2006) (final rule extending deadlines by 14 months).

On the same day that this proposed extension was issued, EPA published its final rule providing relief from SPCC regulations to small facilities, oil-filled operating equipment, motive power containers, and mobile refuelers, as well as amending the animal fats and vegetable oil requirements and extending the compliance deadlines for farms. 71 Fed. Reg. 77266 (Dec. 26, 2006). EPA has also committed to issuing its "loose ends" rule to, among other things, provide a definition of the term "loading rack," reduce burdens for vegetable oil and animal fats, address issues unique to farms and the production and exploration industries, provide additional relief to very small facilities, and as we have urged, eliminate dual, multi-agency regulation of emergency diesel generator tanks at nuclear power stations.

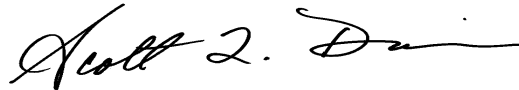
As USWAG and other industry groups have maintained and EPA has long-supported, the regulated community should not be expected to dedicate resources to develop and implement SPCC plans for aspects of the regulatory program that are slated to be amended in the forthcoming rulemaking. It is both appropriate and necessary that the deadline for complying with the 2002 and subsequent amendments be deferred until after the promulgation of the "loose ends" rulemaking. EPA has frequently stated that the regulated community should have 12 months between the promulgation of any final rule providing relief from the 2002 amendments and the deadline for compliance. USWAG supports EPA's proposal to implement that commitment.

Unfortunately, given the uncertainties of the rulemaking process and the inability of EPA to guarantee promulgation of the "loose ends" rule by a date certain, the proposal to defer the compliance deadline to a specific date creates the real possibility that yet another extension after this one will be necessary to provide the regulated community with the promised 12 month compliance period. EPA can avoid this needless repetition of compliance extension rulemakings by simply tying the proposed deadline to promulgation of the final "loose ends" rule or, in the event that EPA unexpectedly decides not to go forward with the rule, 12 months after publication of a notice in the *Federal Register* terminating that rulemaking. We know of no legal barrier to EPA linking the new compliance deadline to the completion of another rulemaking aimed at amending the rules for which compliance has been temporarily deferred.

Also, as EPA stated in the 2004 and 2006 final extension notices (see 69 Fed. Reg. at 48796; 71 Fed. Reg. at 8463), we ask EPA to reaffirm in the preamble to the final compliance extension that the new compliance deadline applies to “new or more stringent compliance obligations” imposed by or subsequent to the July 2002 SPCC amendments and not to provisions in the amendments that provide regulatory relief to regulated facilities. USWAG members have often found that EPA regional inspectors are unsure which parts of the 2002 amendments are in effect and which parts are being deferred, and a statement that this extension *only* applies to the new or more stringent obligations imposed in the 2002 and subsequent amendments will be helpful to clarify this confusion.

We appreciate the opportunity to comment on the proposed deadline extension, and look forward to continuing to work with EPA staff on these critical issues. If we can be of further assistance, please contact USWAG Executive Director Jim Roewer (202-508-5645; jim.roewer@uswag.org), or USWAG counsel, Bill Weissman (202-861-3878; william.weissman@dlapiper.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott L. Davis". The signature is fluid and cursive, with a long horizontal stroke at the end.

Scott L. Davis
Chairman, USWAG Policy Committee