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**National Rural Electric  
Cooperative Association**

4301 Wilson Boulevard  
Arlington, VA 22203-1860

November 17, 2004

EPA Docket Center  
1301 Constitution Ave., N.W.,  
EPA West, Suite B-102  
Washington, DC 20460

Attention Docket ID No. OPA-2004-007, and  
Docket ID No. OPA-2004-008

Dear Sir or Madam;

The National Rural Electric Cooperative Association (NRECA) offers the following comments on the SPCC NODAs that EPA published at **69 Fed. Reg. 56182 and 69 Fed. Reg. 56184 (September 20, 2004)**. NRECA is the national service organization representing the interests of 930 consumer-owned, not-for-profit rural electric systems serving more than 35 million consumers in 46 states. NRECA's members own and maintain 2.3 million miles, or 43%, of the nation's electric distribution lines, covering three quarters of the nation's landmass. These systems own or operate a large amount of oil-filled electrical equipment affected by the SPCC rules. NRECA is a member of the Utility Solid Waste Activities Group (USWAG) and we support USWAG's comments on this issue as well.

1. **Interim Relief** -- NRECA strongly supports the request by the United States Small Business Administration Office of Advocacy (SBA) for interim relief as expressed in their June 10, 2004 letter to Mr. Thomas P Dunne of EPA. As EPA is aware and, as SBA points out, SPCC compliance problems for certain facilities including oil-filled electrical equipment are not sufficiently relieved by an extension of the effective dates of the 2002 SPCC amendments. Therefore we join SBA in recommending that EPA, pending completion of a further rulemaking, issue an interim final rule to provide immediate

regulatory relief for small facilities, oil-filled electrical equipment and the other related facilities identified in SBA's letter.

Electric utility owners of oil-filled electrical equipment and small facilities must incur significant costs to develop and implement SPCC plans under the existing regulations. As SBA's analysis shows, on a revenue basis, these burdens fall particularly hard on small businesses like electric cooperatives. As already stated in the record, many electric cooperatives are very small business with few employees - at least 158 rural electric cooperatives have 20 or fewer employees, and at least 30 such cooperatives have 10 or fewer employees.

Many commenters have shown that the costs of complying with the SPCC regulations are disproportionate to the low risk of releases from oil filled equipment and small facilities. We appreciate EPA's willingness to consider alternate regulatory approaches. But unless EPA provides interim relief for these facilities, burdens will only continue and even increase as the regulated community finds itself having to plan for compliance with regulations in place while recognizing that they may face significantly different regulations in the near future.

**2. Supporting Data and Information for Oil Filled Electrical Equipment -- NRECA agrees with how this equipment is characterized in the record (American Petroleum Institute (API) coalition, *White Paper: Electrical Equipment*, 4/2/03) :**

The burdens imposed by the rule's regulation of oil-filled electrical equipment remain significantly disproportionate to the low level of risk and exceptionally positive spill history associated with such equipment. The risk of discharge of oil from electrical equipment is significantly below that of tanks. Electrical equipment is often constructed of heavier and more corrosion resistant steel than are tanks and is built to resist greater pressure differentials, including full vacuum.

Additionally, electrical equipment is essentially self-monitoring because a loss of dielectric fluid leads to failure of the device and an interruption in electrical power transmission. Finally, substation electrical equipment is often surrounded by a gravel bed that provides significant restriction to movement of any oil that maybe released. Published data show the rate of discharge of oil into navigable water from electrical equipment is less than one one-hundredth of one percent; yet the requirement for containment and/or diversionary structures or equipment imposes significant costs at a large number of facilities shown to pose extremely low levels of risk.

**3. Alternate Regulations for Oil - Filled Electrical Equipment -- NRECA agrees with USWAG's most recent recommendation for using a three tiered process to regulate oil-filled electrical equipment as already stated in the record ( USWAG's March 14, 2003 Proposal, Document No. 9, Oil Filled Equipment NODA, incorrectly dated by EPA as Feb. 5, 2004):**

We recommend that EPA establish three regulatory tiers for individual pieces of oil filled equipment based on oil storage capacity. The first tier would consist of equipment below 1320 gallons. Equipment in this category would be exempt from SPCC regulations. The second tier would apply to what USWAG has proposed to define as a “qualified facility.” This tier would apply to equipment with storage capacity greater than 1320 gallons but not exceeding 20,000 gallons. In addition, to qualify for this tier,

- the equipment would have to be monitored or be subject to a rapid response program, such as the utility industry’s Supervisory Control and Data Acquisition system (“SCADA”), that would reasonably ensure that any discharge as described in § 112.1(b) would be expeditiously controlled
- the equipment must not have had a discharge as described in § 112.1(b) within the previous 10 years; and
- the facility must not have been directed by the Regional Administrator under § 112.1(f) to prepare and implement an SPCC Plan within the past 10 years.

A “qualified facility” would have the option of preparing an oil spill contingency plan consistent with Part 109 in lieu of preparing an SPCC Plan and would also be required to prepare a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful. The general provisions for compliance with applicable inspection and testing requirements (but not the integrity testing requirements for bulk storage containers), the record keeping, and the training requirements would apply to “qualified facilities.”

The third tier would apply to all equipment that is ineligible or has lost its status as a “qualified facility.” Such a facility would be subject to all the existing provisions of Subpart A of Part 112.

**4. Supporting Data and Information on “Small Facilities”** Electric cooperatives typically own a number of facilities that should be considered “small facilities” for purposes of regulation under SPCC. These facilities include office buildings, shop buildings, garages and storage buildings that are used to support construction and maintenance of electric transmission and distribution systems. These facilities often store small quantities of oil. Experience has shown that risks of releases from these facilities are very low and yet their costs for complying with the SPCC regulations are high. These facilities are accurately characterized in an SBA report that is already in the record and NRECA agrees with this characterization (US Small Business Administration. Prepared by Jack Faucett Associates, Inc., *Spill Prevention Control and Countermeasures (SPCC) Issues, Alternatives and Recommendations* (Draft Ver. 4). 9/30/2003):

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.

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. We estimate that at least 170,000 small business establishments, or 65% of all small SPCC regulated facilities, store less than 10,000 gallons of oil.

EPA did not adequately take into account the low level of risk associated with small facilities.

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 section 112.3(d) of the July 2002 rule 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.

If the costs [for PE Certification] 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.

**5. Alternate Regulations for Small Facilities** -- NRECA agrees with and supports the three-tiered regulatory alternative for small facilities that is already contained in the record (US 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):

Tier 1: 1,321 to 5,000 Gallon Facilities - No written plan required, but must implement compliance with all applicable substantive provisions of the rule.

Tier 2: 5001 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 3: 10,001 Gallons and Above Facilities -Written PE-certified plans.

NRECA agrees that the adoption of the tiered plan can reduce the impact on small businesses like electric cooperatives, improve the cost-effectiveness of the overall regulation, place small and larger facilities and firms on more equal footing and reduce potential shortages of registered Professional Engineers.

If you would like to discuss this issue further, do not hesitate to call Jim Stine, at 703-907-5739. Thank you for this opportunity to comment.

Sincerely

/ s /

James F. Stine  
Environmental Affairs

Copy to: Mr. Kevin Bromburg, SBA