

July 7, 2004

United States Environmental Protection Agency Docket Center  
1301 Constitution Ave., NW  
EPA West, Suite B-102  
Washington, DC 20460  
Docket ID No. OPA-2004-0003

Dear Sir or Madam:

Founded in 1919, the National Restaurant Association is the leading trade association for the restaurant industry. Representing more than 60,000 members and over 300,000 restaurant outlets in 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, the National Restaurant Association has always supported government enhancement to the environment. The restaurant industry has been and continues to be committed to protecting the environment by how it designs, constructs and operates the restaurants across the nation. As such, we have a direct and vested interest in the proposed the SPCC rule and wish to submit formal written comments for the record concerning the Docket No. OPA-2004-0003, Federal Register, Volume 69, Number 34104.

We appreciate the opportunity to comment on this rule and hope that our recommendations are considered as EPA addresses the problematic applications of the regulation beyond the original intent. We encourage EPA to adopt concepts to minimize these regulatory burdens upon small businesses such as restaurants and fully consider the unintended regulatory burdens this rule could place on small and medium size businesses.

An extension of the SPCC effective dates is needed for EPA to address the serious problematic provision of the current regulation due to the thousands of commercial enterprises (e.g., farms, airports, restaurants, gas stations, shopping malls, etc) and hundreds of thousands of facilities; which currently fall under this rule. Due to the broad array of facility types, one must question how practical the application of the regulation is upon the restaurant industry. And as of late, EPA has not provided solutions or guidance to the restaurant industry as to EPA's true intention in including the restaurant industry in the Rule.

The National Restaurant Association supports EPA's efforts to mitigate, and preferably eliminate, the imposition of unintended, unwarranted and unproductive regulatory consequences. Rather than subject the regulated community to known problematic regulatory provisions, the responsible Governmental approach is to extend the effective dates of the 2002 SPCC amendments. An extension leaves the existing regulation in place while EPA works through the problematic issues.

Another option for EPA to consider is an interim final regulation to suspend the application of the regulation to certain types of equipment and oil-bearing products (e.g., grease interceptors, piping, mobile portable containers, etc) or certain regulatory provisions. The Administrative Procedure Act (APA) permits the use of an interim final rule. Section 553(b) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment.

Lastly, EPA has designed the SPCC regulation to be overly broad in scope and without sufficient incentives to drive environmentally protective behavior. Four aspects of the SPCC regulation synergistically create a wide net of regulatory applicability. Included in this widely cast net are no risk and de minimus risk sites.

The four aspects are:

1. The requirement to ignore the existence of manmade features that would prevent oil spills from reaching the waters of the US;
2. A definition of oil that includes everything from petroleum to wax to asphalt and oily napkins;
3. EPA's refusal to adopt a de minimus oil concentration cutoff [e.g., less than 1%]; and
4. The requirement to measure storage capacity rather than actual quantities.

For example, these four aspects operate to make the SPCC regulation applicable to a family owned restaurant with a 550-gallon oil tank in the basement; a 500-gallon oil water separator in the ground; and a 300-gallon waste container in the parking lot for food and napkin wastes. Yet this restaurant is many standard deviations away from the types of facilities that gave rise to Congressional concern on oil spills. What risk does the industry pose to spills into navigational waters? It does not appear that the risk is significant enough to include the restaurants in this rule, when the major contributors of oil spills are not restaurants at all. As such, we would request that EPA incorporate an exemption for restaurants as there is no indication that the operations of the restaurant industry contribute significantly to oil spills in navigational waters.

In closing, the National Restaurant Association strongly believes that sharing information and expertise with partners is crucial to the success of the foodservice industry. While we have carefully evaluated the proposed rule, we are not yet confident that we fully understand the true intention of EPA by including the restaurant industry in this Rule and realize that if modifications are not made to this Rule, an unnecessary economic burden will be placed on the restaurant industry without providing much benefit to the environment.

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Thank you for the opportunity to submit these comments. Please feel free to call our Health and Safety Regulatory Affairs Department with any questions you may have regarding this issue, at (202) 331-5900.

Sincerely,

Steven F. Grover, REHS  
Vice President Health and Safety Regulatory Affairs