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United States Government Accountability Office
Washington, DC 20548

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November 24, 2009

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: Environmental Protection Agency: Oil Pollution Prevention; Spill
Prevention, Control, and Countermeasure (SPCC) Rule--Amendments

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule--Amendments" (RIN: 2050-AG16). We received the rule on November 10, 2009. It was published in the *Federal Register* as a final rule on November 13, 2009, with an effective date of January 14, 2010. 74 Fed. Reg. 58,784.

The final rule makes technical corrections to the SPCC rule to provide increased clarity with respect to specific regulatory requirements, to tailor requirements to particular industry sectors, and to streamline certain rule requirements for those facility owners or operators who are required to prepare and implement an SPCC Plan. EPA is removing the following provisions: the exclusion of farms and oil production facilities from the loading/unloading rack requirements, the exemption for produced water containers at an oil production facility, and the alternative qualified facility eligibility criteria for an oil production facility.

This rulemaking marks the completion of the SPCC action proposed on October 15, 2007 (72 Fed. Reg. 58,378), finalized on December 5, 2008 (73 Fed. Reg. 74,236), and

for which EPA considered public comments again in February 2009 (74 Fed. Reg. 5,900). On April 1, 2009, EPA delayed the effective date of the December 2008 rulemaking from February 3, 2009, until January 14, 2010. 74 Fed. Reg. 14,736. EPA took this action to allow sufficient time to address the comments received on the February 3, 2009, notice. EPA recognizes that because of the changes in this action, and specifically provisions that have been removed from the December 2008 amendments, facilities may need additional time to comply with the SPCC amendments. Consequently, EPA will propose to extend the compliance date.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that EPA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicole Owens
Director, Regulatory
Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"OIL POLLUTION PREVENTION; SPILL PREVENTION,
CONTROL, AND COUNTERMEASURE (SPCC)
RULE--AMENDMENTS"
(RIN: 2050-AG16)

(i) Cost-benefit analysis

EPA analyzed the potential costs and benefits of this action. EPA estimates that the total cost savings for this action are approximately \$95 million on an annualized basis (2007 dollars). The total cost savings estimates range from a low of about \$92 million to a high of about \$100 million on an annualized basis (2007 dollars). These estimates are not necessarily additive, given that they do not account for interactions that might exist among the various components of the rule. EPA recognizes that the economic analysis is constrained by limited availability of data and information.

EPA states that the oil production sector and farms will benefit from multiple components of the 2008 and 2009 rules. Specifically, farms will benefit from the exemption of pesticide application equipment, the exemption of residential heating oil containers, the clarification to the facility diagram requirements, the streamlined requirements for Tier I qualified facilities, the final amendments to the security requirements, and the amendments to integrity-testing requirements. The total cost savings to farm owners and operators from these amendments are estimated at \$13 million on an annualized basis (2007 dollars). EPA also states the oil production sector will further benefit from a number of the revisions to the SPCC rules, including the clarification to the facility diagram requirements, the streamlined requirements for Tier I qualified facilities, the 6-month delay in SPCC Plan preparation and implementation, the alternative measures for flow-through process vessels and produced water containers in lieu of sized secondary containment requirements. The total savings to owners and operators of oil production facilities from all of the amendments that affect this sector are estimated at \$35 million on an annualized basis (2007 dollars).

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA certified that this final rule will not have a significant economic impact on a substantial number of small entities and has further concluded that this final rule will relieve the regulatory burden for small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA has determined this action does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA also determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On February 3, 2009, EPA requested public comment on the delay of the effective date and its duration and further comment on the regulatory amendments contained in the final rule amendments. 74 Fed. Reg. 5,900. EPA received timely comments, which are addressed in the final regulations. 74 Fed. Reg. 58,802.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The information collection requirements for this final rule have been submitted for approval to the Office of Management and Budget (OMB), and the requirements are not enforceable until OMB approves them. EPA estimates that approximately 623,000 existing facilities would be subject to the SPCC rule in November 2010 and would be expected to have SPCC Plans. In addition, EPA estimates that approximately 17,400 new facilities would become subject to the SPCC requirements during that year, resulting in a total of about 640,000 regulated facilities in 2010. The changes to the SPCC rule requirements will result in a decrease of approximately 1.3 million hours in reporting and recordkeeping burden and will reduce capital and operation and management costs by approximately \$7.5 million on an annualized basis.

Statutory authorization for the rule

EPA states the final rule is authorized by section 311(j)(1)(C) of the Clean Water Act. 33 U.S.C. § 1321(j)(1)(C).

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule is an “economically significant regulatory action” because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, the rule has been submitted to OMB for review.

Executive Order No. 13,132 (Federalism)

EPA has determined that this final rule does not have federalism implications.