

January 11, 2006

Mr. Stephen L. Johnson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: Docket ID No. EPA – HQ - OPA – 2005 - 0003**

Dear Administrator Johnson:

The Agriculture Coalition on the Spill Prevention, Control and Countermeasure (SPCC), which includes organizations representing farmers, ranchers, farmer cooperatives, livestock operations and related agribusinesses, requests that the U.S. Environmental Protection Agency (EPA) issue a formal statement suspending compliance with the SPCC rule given the uncertainty that surrounds the applicability of the 1973 rule [FR Dec. 11, 1973, Vol. 38, No. 237, Parts I & II]. Also, the coalition strongly urges that all agricultural facilities – farms, farmer cooperatives and other agribusinesses – be granted an indefinite extension of compliance until more information can be gathered by the EPA on the unique nature of our industries, our needs, our history of spills and how those spills were addressed.

While the coalition has been working in good faith with EPA for three years, since the promulgation of the 2002 rule, much uncertainty still surrounds the applicability, deadlines, costs to implement, and definitions of both farm and agribusiness. Although we are pleased with some of the changes EPA has initiated in regard to the 2005 SPCC Proposed Rule, outstanding issues do remain. EPA's 2005 Proposed Rule grants farms with 10,000 gallons or less of storage AND a spill plan, in accordance with the 1973 SPCC rule, an indefinite extension of compliance deadlines. Farms with 10,000 gallons or less and without a plan or farms with more than 10,000 gallons of storage will not be afforded the indefinite compliance extension deadline. The relief provided by this indefinite extension is minimal as most farming facilities were unaware that the SPCC rule even applied to them. Also, we maintain that if EPA, in its own words, "believes that the unique characteristics of farms pose particular challenges to SPCC compliance and that further consideration of the requirements as they relate to farms is warranted," that consideration and further investigation should be applied to farms of all size. For more than 30 years EPA has apparently not regarded these facilities as within the enforcement universe. As stated by an EPA official of the Oil Program Office, at the December 12, 2005, stakeholder briefing "*Inspection and compliance was relegated primarily to large oil storage and processing sites and distribution terminals with direct access to navigable waters or facilities that had a spill directly impacting a waterway.*" Given this, we continue to believe that a formal suspension of enforcement for all farms as well as cooperatives and other agribusinesses is appropriate until more information can be gathered.

The Agency's own analysis concludes that EPA is lacking sufficient data to impose these costly regulations on many segments of agriculture. However, a USDA study estimates that, in the case of production agriculture, there is a spill history of less than one percent. The same study also estimates that EPA's rule could cost farmers as much as 4.5 billion dollars. Delaying compliance dates for all of agriculture, including farmer cooperatives and other agribusinesses, is fair, consistent, and will give the Agency time to gather additional data to the extent needed to determine if agriculture needs regulating and if yes, how best to regulate different segments within

the industry.

EPA has acknowledged that its data estimating the cost of implementation and the number of operations subject to the rule is much larger than the Agency originally concluded. This will have a dramatic impact on the Agency's ability to enforce the rule as well as the educational effort by the Agency and stakeholders in informing regulated operations of the rule. Also, current data on our industry will help define a more relevant threshold trigger. EPA stated that a 10,000-gallon trigger was established to remain consistent with those in other regulations related to oil discharges, like the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP). The NCP was developed in 1968 as a response to a massive oil spill from the oil tanker *Torrey Canyon* off the coast of England. Revisions to the NCP, of which the most recent was finalized in 1994, were again in response to a massive spill, this time the *Exxon Valdez*. Given its unique characteristics and lack of any significant spill history, the agriculture industry cannot be compared to the spills of huge oil tankers. Before any rule is applied to our industry, EPA must evaluate the threat (if any) we present and establish rules applicable to the industry, which includes appropriate triggers.

We have previously suggested a tiered approach with regard to the establishment of triggers and various requirements. While the 10,000-gallon trigger is certainly better than the current 1,320-gallon threshold, we are greatly concerned that it still appears to be based on an aggregated amount. Again, we want to emphasize that to the extent it applies to farms it should be based on a site-by-site approach, and not simply aggregated for the entire farm. This is because farms are generally comprised of multiple fields and parcels that are noncontiguous and/or nonadjacent and that often have several fueling sites.

The agriculture coalition will continue to work with EPA on creating a rule practical and relevant to our industry. However, real data on today's agricultural businesses, whether they be farms, farmer cooperatives or other agribusinesses, must be collected and analyzed. We can then work with EPA to encourage compliance for all our affected members; to inform, educate, and train as necessary.

We reiterate our request that EPA alleviate the uncertainty surrounding this rule by formally suspending enforcement of all agricultural facilities and by extending indefinitely compliance deadlines for those facilities. We would welcome an opportunity to discuss this further at your convenience.

Sincerely,

Agribusiness Association of Iowa  
AgriBusiness Association of Kentucky  
Agricultural Retailers Association  
Agri-Mark, Inc.  
Alabama Cattlemen's Association  
Alabama Crop Management Association  
Alabama Farmers Cooperative, Inc.  
Alabama Farmers Federation

American Corn Growers Association  
American Crystal Sugar Company  
American Farm Bureau Federation  
American Soybean Association  
Arizona Cattle Feeders' Association  
Arizona Cattle Growers Association  
Arkansas Cattlemen's Association  
Blue Diamond Growers

California Association of Wheat Growers  
California Cattlemen's Association  
California Dairies, Inc.  
California Rice Commission  
CHS Inc.  
CoBank  
Colorado Farm Bureau  
Colorado Livestock Association  
Corn Producers Association of Texas  
Dairy Farmers of America  
Dairylea Cooperative, Inc.  
Dairy Producers of New Mexico  
Farm Credit Council  
Florida Cattlemen's Association  
Florida Farm Bureau Federation  
Georgia Agribusiness Council  
Georgia Cattlemen's Association  
GROWMARK, Inc.  
Idaho Cattle Association  
Idaho Grain Producers Association  
Illinois Beef Association  
Illinois Corn Growers Association  
Illinois Farm Bureau  
Indiana Beef Cattle Association  
Indiana Grain and Feed Assn  
Indiana Plant Food & Ag Chemicals Assn  
Institute of Shortening and Edible Oils, Inc.  
Iowa Cattlemen's Association  
Kansas Agricultural Retailers Association  
Kansas Association of Wheat Growers  
Kansas Cooperative Council  
Kansas Corn Growers Association  
Kansas Farm Bureau  
Kansas Grain Sorghum Producers Association  
Kansas Livestock Association  
Kentucky Cattlemen's Association  
Kentucky Corn Growers Association  
Kentucky Farm Bureau  
Kentucky Small Grain Growers Association  
Land O' Lakes, Inc.  
MFA Incorporated  
Michigan Agri-Business Association  
Michigan Cattlemen's Association  
Michigan Corn Growers Association  
Michigan Farm Bureau  
Michigan Milk Producers Association

Mid America CropLife Association  
Minnesota Crop Production Retailers  
Mississippi Cattlemen's Association  
Missouri Agriculture Industries Council, Inc  
Missouri Cattlemen's Association  
Missouri Corn Growers Association  
Montana Agricultural Business Association  
Montana Stockgrowers Association  
National Agricultural Aviation Association  
National Association of Wheat Growers  
National Barley Growers Association  
National Cattlemen's Beef Association  
National Corn Growers Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Farmers Union  
National Grange  
National Grape Cooperative Association, Inc.  
National Milk Producers Federation  
National Sorghum Producers  
Nebraska Cattlemen  
Nebraska Cooperative Council  
Nebraska Wheat Growers Association  
Nevada Cattlemen's Association  
New Jersey Farm Bureau  
New Mexico Cattle Grower's Association  
North Carolina Cattlemen's Association  
North Carolina Farm Bureau  
North Dakota Stockmen's Association  
Ocean Spray Cranberries, Inc.  
Ohio Cattlemen's Association  
Ohio Corn Growers Association  
Ohio Farm Bureau Federation, Inc  
Oklahoma Agribusiness Retailers Association  
Oklahoma Cattlemen's Association  
Oklahoma Farm Bureau  
Oklahoma Wheat Growers Association  
Olive Growers Council of California, Inc.  
Oregon Cattlemen's Association  
Oregon Wheat Growers League  
Producers Cooperative Oil Mill, OK  
South Carolina Cattlemen's Association  
South Carolina Farm Bureau Federation  
South Carolina Fertilizer and Agrichemicals  
Association  
Southern Crop Production Association

South Dakota Association of Cooperatives  
South Dakota Cattlemen's Association  
South Dakota Corn Growers Association  
South Dakota Wheat Inc  
South East Dairy Farmers Association  
Southern States Cooperative, Inc.  
Soybean Producers of America  
Sun-Maid Growers of California  
Tennessee Cattlemen's Association  
Tennessee Farmers Cooperative  
Tennessee Farm Bureau Federation  
Texas & Southwestern Cattle Raisers  
Texas Cattle Feeders Association  
Texas Farm Bureau  
Texas Wheat Producers Association  
The Fertilizer Institute  
United Egg Producers  
USA Rice Federation

US Canola Association  
U.S. Custom Harvesters, Inc.  
US Rice Producers Association  
Utah Cattlemen's Association  
Virginia Small Grain Association  
Washington Association of Wheat Growers  
Washington Cattle Feeders Association  
Washington State Council of Farmer  
Cooperatives  
Welch's  
West Central  
Western Plant Health Association  
Western United Dairymen  
Wisconsin Fertilizer & Chemical Association  
Wyoming Ag Business Association  
Wyoming Stock Growers Association