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SUBJECT: SPCC Compliance Deadline for Bulk Plants

ISSUE: EPA Issues Proposed Rule to Extend SPCC Compliance Deadline

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EXECUTIVE SUMMARY: PMAA has learned that the U.S. EPA will publish a proposed rule this week to extend the current November 10, 2010 compliance deadline for SPCC plan revision and implementation for one year. The EPA is proposing to extend the SPCC compliance deadline to November 10, 2011. This is good news for petroleum marketers who are still working on compliance efforts. The EPA said an extension is appropriate due to ongoing uncertainty surrounding EPA's regulatory review and year long delay of final SPCC amendments that we first published in December 2008 but not made effective until January 2010. The delay was caused by a regulatory freeze imposed by President Obama upon taking office of all pending Bush administration rulemakings. If the proposed rule is finalized, it will be the seventh deadline extension of the final SPCC rule since its original effective date on August 16, 2002. PMAA will submit written comments in support of the extension.

EPA PROPOSED ONE YEAR EXTENSION OF CURRENT SPCC COMPLIANCE DEADLINE

The EPA is set to issue a proposed rule on August 3, 2010 that would extend the upcoming SPCC compliance deadline for one year. If the proposed rule is approved as expected, the new compliance deadline for SPCC plan revision and implementation would be November 10, 2011. This will mark the seventh time the SPCC rule has been extended since August 16, 2002, the original compliance deadline set by the EPA. The many extensions over the past eight years were due largely to an array of clarifying amendments made by the EPA to the 2002 rulemaking. Though many of these amendments are confusing, they do add significant compliance flexibility for petroleum marketers with bulk plant facilities. This last extension was the result of a yearlong regulatory freeze imposed by President Obama of all pending rulemakings issued the last days of the Bush Administration in 2008.

The current proposed rule to extend the SPCC deadline was itself significantly delayed and final publication threatened by political backlash resulting from the BP oil spill in the Gulf of Mexico. Fortunately, the EPA decided to remove offshore facilities from the rule and keep the proposed deadline extension intact for onshore facilities such as bulk plants.

The deadline extension does not remove any regulatory requirement for bulk plants that were in operation before August 16, 2002. These facilities must maintain and continue implementing an SPCC plan in accordance with the SPCC regulations then in effect. This means, for a facility operating before August 16 2002, existing SPCC's must be maintained until revised plans are implemented no later than November 10, 2011 – if the proposed rule is finalized - or by November 10, 2010 if the proposed rule extending the compliance deadline is not finalized. Bulk plant operations coming into operation after August 16, 2002 must have an SPCC plan fully implemented by the final compliance deadline as determined under the proposed rule.

It is important to note that, unlike past proposed rules to extend the SPCC deadline, this current proposal invites comment on the appropriateness of a shorter deadline extension than the one year proposed by the EPA. PMAA will submit written comments supporting a full one year extension of the SPCC deadline extension.