United States Senate

WASHINGTON, DC 20510

June 27, 2011

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

We are writing to you today with our concerns regarding the implementation timeline for the Oil Spill Prevention, Control and Countermeasure (SPCC) rule for farmers.

First we would like to thank you for finalizing the exemption of milk and milk product containers from the SPCC rule on April 12, 2011. We appreciate your attentiveness to the feedback you received from the agriculture community. We also appreciate your willingness to prevent the unintended consequences of the SPCC regulations, which would have placed a tremendous burden on the agricultural community.

We are writing to you today with our concerns regarding the implementation timeline for the SPCC rule for farmers. As you know, last year the EPA proposed extending the compliance date under the SPCC rule to November of 2011. We applaud EPA's current extension for farms that came into business after August of 2002. We also appreciate the efforts of EPA and USDA to inform farmers about the new guidelines -- in particular, USDA's new pilot initiative to help producers comply with the new SPCC rule. However, we remain concerned that EPA has not yet undertaken the outreach necessary to ensure that all farms have sufficient opportunity to meet their obligations under the regulation.

SPCC regulations are applicable to any facility, including farms, with an aggregate above-ground oil storage capacity of 1,320 gallons in tanks of 55 gallons or greater. To comply with this rule, farms where there is a risk of spilled oil reaching navigable waters may need to undertake costly engineering services, as well as infrastructure improvements, to assure compliance with the regulation. Despite setting stringent standards, the EPA has done little to make sure small farms can meet the requirements set forth in the SPCC rule.

We strongly believe farmers want to be in compliance with the rule, but in order to do so they will need a longer period during which EPA undertakes a vigorous outreach effort with the agricultural community. Currently, the farming community in many instances lacks access to Professional Engineers (PEs). We have heard from many farmers who cannot find PEs willing or able to work on farms. In some states, no qualified professional engineers have even registered to provide SPCC consultation. In others, fewer than five have registered. Without access to PEs, it will be impossible for farmers to become SPCC compliant.

Recently released draft guidance on waters of the United States by the EPA and the U.S. Army Corps of Engineers also appear to dramatically expand the agencies' authority with regard to which waters and wetlands are considered "adjacent" to jurisdictional "waters of the United States" under the Clean Water Act. Many farm and ranch families are worried that this guidance could now force them to comply with the SPCC rule, with very little time to do so. Additionally, the delay of compliance assistance documentation has put farmers far behind the curve in preparing for compliance. Had the information and documentation been available before the January grower meetings, the compliance process could have begun before the time intensive growing season.

Furthermore, EPA still needs to clarify exactly who is responsible for holding and maintaining the plan, as many farms are operated by people who do not own the land. EPA also needs to clarify how it plans to enforce the rule.

The last thing we want is for confusion or an overly burdensome rule to disincentivize compliance. Many farmers do not keep their tanks full during the entire year, and we have already heard from associations whose members are considering decreasing the size of their tanks so they will not be subject to SPCC compliance. This could eliminate their ability to buy fuel in bulk, thus increasing their costs and the costs of food production.

Small family farms have a natural incentive to prevent any possible oil spills on their property. No one wants more oil spills. In fact, the last people who want to spill oil are family farm owners. The impact of dealing with a costly clean-up could be devastating to the finances of a small farm.

We respectfully request that you re-consider the implementation deadline, continue to dialogue with the agricultural community to answer their questions, and ensure that the rule is not overly burdensome or confusing. We believe this will help avoid the rule's unintended consequences. We appreciate your attention to this important matter.

Sincerely,

James M. Inhofe
United States Senator

Kent Conrad
United States Senator























