

TESTIMONY OF RICHARD OWEN

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On Behalf of the Agriculture Coalition on Spill Prevention Control & Countermeasure (SPCC)

Before the

Senate Environment and Public Works Committee

U.S. Senate

Washington, DC

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Mr. Chairman, members of the Committee, I am pleased to be here today representing the Agriculture Coalition on Spill Prevention Control and Countermeasure (SPCC). My name is Richard Owen, and I am a third-generation wheat farmer from central Montana. I farm 2200 acres of non-irrigated wheat, feed barley, malt barley, waxy barley and safflower in rotation. I also serve as a director for CHS, the country's largest farmer-owned cooperative, which is headquartered in St. Paul, Minnesota, and includes over 325,000 farmer owners.

The Agriculture Coalition, which includes organizations representing farmers, cooperatives, and related businesses, welcomes the Environmental Protection Agency's (EPA) continued efforts to address the concerns of agriculture as part of its December 2005, proposed rulemaking. However, we continue to have concerns with both EPA's existing regulations as well as this latest proposal.

In reviewing the history, we do not believe that the original EPA regulations, which became effective in 1974, were ever intended to apply to farms and ranches. Many farmers and ranchers in fact only became aware of such requirements when EPA issued its amended regulations in 2002.

Under EPA's existing 2002 regulations, any facility, including farms and ranches, as well as farmer cooperatives other agribusinesses, with aggregate storage of 1,320 gallons of oil (which is defined as oil of any kind) is required to:

(A) Have an amended oil spill prevention plan, certified by a professional engineer, by February 17, 2006; and

(B) Implement that plan by August 18, 2006. This includes: (1) develop an oil spill plan, and have it certified by professional engineer, (2) build secondary containment - such as berms or drain basins, (3) construct fences, (4) provide lighting, (5) employ monitoring devices, and (6) perform tank integrity testing and meet several other requirements. Imagine fencing whole farms or running wire to remote sites for monitoring across many miles to reach other small refueling sites.

According to a recent USDA study, which I would like to submit for the record, such requirements would impact nearly 70% of all farms and many farmer cooperatives and other agribusinesses. For farmers alone, the cost would be approximately \$4.5 billion. For many farmers, the burden of such additional costs would be devastating. Moreover, such requirements

are extremely impractical in many cases given the unique characteristics of farming in general. This is especially true for farms which are made up of multiple parcels and include lands that are noncontiguous and nonadjacent, and where you may have several tank sites. As part of its study, USDA found that 47% of the farms that responded in the survey have multiple sites, on average 6, which are located an average of 4.1 miles, not feet or yards, away from the main fueling sites. In addition, many agricultural fuel tanks do not stay full year-round as do industrial tanks for which this rule was originally designed. For example, fuel tanks for irrigation pumps stand empty many months of the year and during pumping operations are constantly being drawn down.

Finally, the same USDA study also found there is little justification for such requirements in view of the fact that agriculture has a spill history of less than 1 percent.

In my case, these regulations would also apply to me since the storage on my farm consists of 3,000 gallons of diesel fuel and 1,200 gallons of gasoline, which triggers EPA's current aggregate threshold of 1,320 gallons.

Given this history, the potentially huge cost, the difficulty with compliance due to the nature of agriculture and farming, and the lack of data to indicate there is a problem, we continue to believe a strong case can be made that farmers and ranchers should be exempt from such requirements. That said we have been working with the EPA in good faith for the past 3 years in support of a more workable and realistic approach to address the concerns of agriculture under the 2002 rule.

Specifically, we have recommended a separate definition for farms and ranches relating to the term "facility" be established - one that reflects their unique characteristics. A farm or ranch, including those comprised of multiple parcels and/or noncontiguous or nonadjacent lands, should not be considered a single facility under the regulations. Each field or parcel where tanks are located should be considered separately and not simply combined and aggregated.

We have also suggested to EPA a tiered approach to compliance, based on whether the amount of oil storage on a site specific basis exceeds a threshold trigger. Applying a single, inflexible concept of an "aggregated facility total" to trigger compliance may make sense for a large terminal, but it makes no sense in the case of a farm or ranch that may have multiple fueling sites spread out across several miles.

We have also urged EPA to further delay implementation of its SPCC regulation given the fact that it would be impossible in most cases for farmers to meet the existing February and August 2006 deadlines for compliance.

As part of its December 2005, proposal, EPA has announced an indefinite extension for compliance with its 2002 regulations for all farms with an aggregate storage capacity of 10,000 gallons or less until more information can be collected and analyzed to determine if differentiated SPCC requirements may be appropriate. For farms and ranches with aggregate oil storage over 10,000 gallons, EPA has proposed that the compliance dates be extended to October 31, 2007.

While the 10,000 gallon trigger is a significant improvement over the current 1,320 gallon trigger, we are concerned that farms would still be subject to compliance based on the establishment of an "aggregate" trigger for the entire farm rather than on a site by site basis. In addition, given the huge cost as well as impracticality of its SPCC regulations in many cases, we believe EPA should exclude all farms from its requirements pending further review and that it adopt a more flexible and workable approach that fully addresses the concerns of agriculture as we have outlined.

In addition, we continue to be concerned over the potential impact and cost of such regulations on many farmer cooperatives and other agribusinesses that serve farmers.

Again, on behalf of the Agriculture Coalition, we appreciate the opportunity to testify before the committee on this important and costly issue. We look forward to working with you as well as EPA to address the concerns of agriculture, while continuing to meet important environmental objectives.

Thank you.

Members of the Coalition Include:

National Council of Farmer Cooperatives
Utah Council of Farmer Cooperatives
GROWMARK, Inc
National Grape Cooperative Association
Institute of Shortening and Edible Oils
National Corn Growers Association
National Association of Wheat Growers
South Dakota Association of Cooperatives
National Cattlemen's Beef Association
National Farmers Union
American Soybean Association
Dairylea Cooperative, Inc
Maryland and Virginia Milk Producers

USA Rice Federation
CHS, Inc
Southern States Cooperative, Inc
National Cotton Council
American Corn Growers Association
Soybean Producers of America
American Farm Bureau Federation
MFA Oil
US Rice Producers Association
National Grange
Tennessee Farmers Cooperative
Agricultural Retailers Association
Southeast Dairy Farmers

