

December 24, 2007

The Honorable Joseph Lieberman  
706 Hart Senate Office Building  
Washington, D.C. 20510

By Fax: 202-224-9750

Dear Senator Lieberman,

The EPA has taken arbitrary action that threatens the ability of heating oil dealers to deliver heating oil in a timely fashion to homeowners across Connecticut. This issue is particularly important as we enter the winter heating season. I am writing today on behalf of the more than 450 home heating oil retailers who employ 13,000 Connecticut citizens in our state concerning an issue of enforcement by the United States Environmental Protection Agency.

The federal Clean Water Act, 33 U.S.C. 1321, has since its inception in the early 1970's required of those who have permanent, fixed oil storage facilities over a certain size to have spill prevention, control and countermeasure plans [SPCC plans]. These SPCC plans are designed and implemented by professional engineers to ensure that any potential discharges from these regulated storage facilities cannot reach the navigable waters of the United States. Regulation of these facilities by the U.S. EPA is found at 40 CFR 112.

Until the year 2000, the U.S. Department of Transportation had authority over vehicles transiting our nation's highways that also had as a part of their vehicles tanks used to store oil for delivery to homes and businesses. The U.S. DOT also required these vehicles to have spill plans should any accident occur.

In the year 2000 it appears that the U.S. EPA and the U.S. DOT engaged in an internal discussion outside the federal Administrative Procedures Act, wherein the two agencies effectively determined what constituted "storage" for the purposes of the applicability of SPCC plans under the jurisdiction of the U.S. EPA versus what constituted "storage incidental to transportation" under the jurisdiction of the U.S. DOT.

The headache for hundreds of marketers, especially those with heating oil storage facilities in the rural parts of our state, is that now the U.S. EPA is threatening hundreds of thousands of dollars of fines on marketers who do not develop SPCC plans for their vehicles [delivery trucks] when their delivery trucks are parked on the same property as a fixed, permanent oil storage facility.

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While we agree that the Congress intended for certain fixed, permanent oil storage facilities to have SPCC plans to ensure potential discharges do not reach navigable waters, we find it impossible to comprehend how the U.S. EPA could extend that intent to include a vehicle whose only purpose is to transit the nation's highways delivering energy to consumers.

Second, we find it impossible to understand how two agencies of the federal government can get together by themselves and internally determine to realign decades of regulatory practices and create an entire new body of regulatory practices without so much as a public notice and opportunity to comment on the enormous financial and energy security burden these new EPA practices are imposing on our marketers. Do not let the U.S. EPA suggest that the MOU between itself and the U.S. DOT is merely an "interpretive" rule, not requiring APA procedures. Where an agency or agencies end up creating an entirely new body of regulatory practices unseen prior to their "interpretation" or "policy statement" they have not met the test of an interpretive rule.

What we are asking for is simple and straightforward. First, that the Congress clarify in the federal Clean Water Act that the requirement of certain facilities to develop and implement SPCC plans does not include vehicles whose storage of fuel onboard is strictly incidental to transportation; and Second that your office intercede on our behalf with U.S. EPA's Region One Administrator to set aside enforcement activities that involve petroleum delivery vehicles whose storage of fuel onboard is strictly incidental to transportation until such time as the Congress can amend the Clean Water Act. At the very least, U.S. EPA and U.S. DOT should be directed to engage in the public comment and OMB review procedures envisioned by the federal Administrative Procedures Act so that the entire national regulated community make become involved with its government in the enormous impact of what these agencies are undertaking.

The literally thousands of marketers across this region who own hundreds of storage facilities that are a critical part of the energy security of especially rural areas are in need of your help to prevent this egregious and improper regulatory action by EPA that will likely result in the closure of these storage facilities and the lessening of our energy security.

We look forward to hearing from you and working with you on this important task.

Sincerely,

Eugene A. Guilford, Jr.  
Executive Director