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SAROSH J. H. MANEKSHAW
Director
Environmental, Safety
and Health Affairs

June 2, 1993

Dockets Unit (DHM - 30)
Research and Special Programs Administration
U. S. Department of Transportation
Room 8421
400 Seventh Street, SW
Washington, DC 20590-0001

RE: Interim Final Rule: **OPA** Plans for Bulk Packagings
Docket No. **HM-214**; Notice No. **93-9**
58 FR 6864
February 2, 1993

Dear Sir or Madam:

Pennzoil is a natural resources company engaged in the exploration, production, refining, and marketing of petroleum products; the operation of quick lube facilities; and the mining and sales of sulphur. Pennzoil operates numerous facilities, including refineries, packaging plants, and distribution centers that will be impacted by the Research and Special Programs Administration's (RSPA) interim final rule establishing Oil Pollution Act (**OPA**) response plan requirements for bulk packagings containing oil. We appreciate the opportunity to submit comments on **RSPA's** interim final rule.

Since the publication of the interim final rule, Pennzoil has been involved in the comment process. We submitted our first set of comments on April 5, 1993, and testified at the

June 2,1993



Page 2

hearing on May 13. Pennzoil also submitted a letter to the docket requesting an extension of the comment deadline. We thank RSPA for responding to requests for an extended comment deadline. The letter submitted today, June 2, 1993, contains supplemental comments on the interim final rule for bulk packagings of oil. Our comments address several provisions of the interim final rule including:

- The threshold for the preparation of extensive response plans;
- The threshold for regulation under the rule;
- The addition of oil n.o.s. with a flashpoint not less than 93°C (hereinafter referred to as "high flashpoint oil") to the hazardous materials table; and
- The compliance deadline.

Threshold for the Preparation of Extensive Response Plans

The Oil Pollution Act defines oil as "oil of any kind or in any form, including, but not limited to, petroleum, vegetable oil, animal oil, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." The statute requires facility owners or operators to develop plans for those facilities that, because of their location, could be reasonably expected to cause "substantial harm" to the environment by discharging into or on the navigable waters or adjoining shorelines.

On the basis of incident and spill statistics and current regulatory requirements applicable to the transportation of oil, RSPA has concluded that bulk packaging containing high flashpoint oil in a quantity of 1,000 barrels **or** less could not be reasonably expected to cause "substantial harm" to the environment. Pennzoil agrees with this conclusion and supports the development of extensive response plans for packaging in quantities greater than 1,000 barrels as set forth under 171.5.

Threshold for Regulation Under the Rule

In the interim final rule, RSPA determined that high flashpoint oil in quantities less than 1,000 barrels could not be reasonably expected to cause "substantial harm" to the environment. Nevertheless, the final rule regulates and requires basic response plans for high flashpoint oil in packagings with a capacity over 450 liters. In the interim final rule, RSPA requests comments on the 450-liter threshold. Although RSPA provides extensive data to support the 1,000-barrel threshold for the preparation of extensive response plans, the agency does not provide data to justify the 450-liter threshold for coverage under the rule. In the interim final rule, RSPA states that "current standards for most hazardous materials use this (450-liter) breakpoint as the determinant to apply detailed requirements for packaging, marking, and placarding that are appropriate to the greater threat that **bulk** quantities pose to life, property and the environment" (57 ER 6865). RSPA does not provide any other evidence or statistics to support the 450-liter threshold for regulation.

Bulk packagings of many substances regulated by RSPA and included on the hazardous materials table, such as sulfuric acid, pose a significant threat to human life. However, Pennzoil, believes that bulk packagings of high flashpoint oil pose a minimal threat to human life. As stated in the preamble to the interim final rule, oil with a flashpoint above 200° F was previously unregulated because it did not meet the criteria for any hazard class. Oil which exceeds the flashpoint presents an extremely low health hazard. It does not normally burn or explode as the result of an incident or spill because of the relatively high flashpoint. Furthermore, the Occupational Safety and Health Administration (OSHA) does not regulate oil with a flashpoint above 200° F (29 CFR 1910.106). By including bulk packagings of such oils in the final rule, RSPA will be applying the extensive regulatory requirements governing bulk packagings of extremely hazardous substances to bulk packagings of a material that poses a minimal health threat.

Pennzoil also believes that the discharge of such a small amount of oil does not pose a significant threat to the environment. The data provided by RSPA illustrate the low probability of oil spills reaching navigable waters. RSPA's information, for example, shows that only one petroleum spill from a railroad shipment over the past eight years entered a waterway. Furthermore, only 12 oil spills out of a total of 273 spills from trucks impacted water in 1990.

Since high flashpoint oil poses a minimal threat to human health and the environment, Pennzoil suggests that RSPA adopt a 250-barrel (10,500 gallons) threshold for regulation under the rule. Other OPA rulemakings include precedents for setting a threshold of 250 barrels. The United States Coast Guard, in its interim final rule for marine transportation-related facilities,

has set the threshold for significant harm at 250 barrels. Pennzoil believes that a 250-barrel threshold will protect the environment by regulating oil only in quantities that may significantly harm navigable waters. Adoption of the 250-barrel threshold will also provide consistency across OPA rulemakings and simplify compliance.

Addition of High Flashpoint Oil to the Hazardous Materials Table

RSPA determined that in order to avoid duplicative regulatory schemes to carry out the mandates of OPA and the Hazardous Materials Transportation Act (HMTA), it would not issue a separate set of rules to address OPA requirements but instead would amend the current hazardous materials table to include a new class of materials (i.e., "oil n.o.s, with a flashpoint not less than 93° C") which poses little or no hazard during transportation. The preamble claims that this rulemaking will have a minimal impact on shippers and carriers of oil. It is Pennzoil's position that the extensive application of the hazardous materials regulations to materials that pose minimal transportation risks is unnecessary to achieve the OPA mandate and will have a **significant and major** impact upon shippers and carriers of oil. As Pennzoil understands the interim final rule, adding oil to the hazardous materials table will require oil transporters to meet the requirements outlined in the following sections of **our** comments.

Retrofitting of Tank Cars

The rule will mandate that oil be transported in approved packagings suitable for the transport of hazardous materials. Thus, adding high flashpoint oil to the hazardous materials

June 2, 1993

Page 6

table will require oil transporters to retrofit tank cars. Pennzoil, for example, will be required to retrofit almost 800 tank cars in order to meet the requirements associated with the transportation of "hazardous" materials listed on the hazardous materials table. Retrofitting will involve thoroughly cleaning tank cars and then installing bottom protection **or** internal valves at an estimated cost of \$2500 per car. Furthermore, we believe that it will be extremely difficult for all oil transporters to retrofit tank cars by the October 1, 1993 deadline because retrofitting facilities will be overloaded with orders and retrofitting supplies are limited. We estimate that retrofitting **all** covered tank cars could take over two years. We request that RSPA clarify the applicability of retrofitting requirements to bulk packagings of oil in the final rule.

Certification of Totes

Second, the **rule** will mandate that oil transporters recertify totes used as cargo tank containers every two years. DOT authorizes only certain types of bulk packagings for the transport of hazardous materials. The authorized packagings, including totes, must be certified for **use** in hazardous materials transportation. In order to ensure the safety of totes, 49 CFR 173.32 requires that each portable container be retested every two years. Each container must pass a pressure, vibration, and drop test (49 CFR 178.252-3). We estimate that the recertification of each tote will cost **\$50**, not including the cost **of** tote transportation. If high flashpoint oil is added to the hazardous materials table, Pennzoil will be required to recertify 1,000 totes at a total cost of \$25,000 annually. Moreover, companies may be required to pay an additional fee to clean the totes before they are recertified. Again, Pennzoil requests that RSPA

clarify the applicability of the tote recertification requirement to bulk packagings of oil in the final rule.

Training Requirements

Third, listing high flashpoint oil on the table will require oil transporters to conduct hazardous materials training, including awareness and function-specific training, and may require transporters to conduct hazardous waste operations and emergency response (HAZWOPER) training. Many drivers who currently transport high flashpoint oil have not been required to receive hazardous materials and HAZWOPER training. Pennzoil, for instance, estimates that 450 drivers may need HAZWOPER training and that **600** employees, including shipping agents, dispatchers, clerks, and supervisors, will require hazardous materials training if high flashpoint oil is added to the hazardous materials table. Pennzoil estimates that it will cost \$50,000 to conduct hazardous materials training for all covered employees. In addition, we estimate that it will cost \$2000 per driver for 24-hour HAZWOPER training. Moreover, the training will require drivers to devote about 4 hours for hazardous materials training and, in some cases, up to 40 hours for HAZWOPER training. The addition of high flashpoint oil to the hazardous materials table may also require annual refresher training for hazardous materials and HAZWOPER, further increasing the cost and time commitment for Pennzoil employees.

Attendance Requirements

Fourth, the addition of high flashpoint oil to the hazardous materials table will require oil transporters to meet the attendance requirements for loading and unloading operations. In order to meet the attendance requirements, transporters must either purchase new monitoring equipment or dedicate employees to monitor loading and unloading operations. Pennzoil believes that at least **25** locations will require new video monitoring equipment. We estimate that Pennzoil will spend at least \$10,000 to \$15,000 at each affected location to obtain video equipment. We also estimate that the rule may require Pennzoil to hire **20** - 25 new employees to meet attendance requirements for all the facilities which are not suited for video monitoring.

Furthermore, the addition of oil to the hazardous materials table will also trigger labeling requirements and Material Safety Data Sheet revision requirements. In total, the interim final rule will impact 90 Pennzoil facilities and about **650** employees. We estimate that compliance with the rule will require an initial investment of approximately four million dollars. Thus, the requirements mandated by the addition of oil to the hazardous materials table will involve a substantial investment of time and capital by oil transporters

Requirements Necessary to Achieve the OPA Mandate

Pennzoil understands that in order for **RSPA** to **fulfill** the mandate of OPA, the agency must provide for the identification of oil in transport. However, Pennzoil does not believe that RSPA should provide for the identification of oil by adding high flashpoint oil to the hazardous

June 2, 1993

Page 9

materials table. It is unnecessary for RSPA to impose such extensive regulations on transporters of low-hazard oil in order to fulfill the mandate of OPA.

If RSPA insists on adding high flashpoint oil to the hazardous materials table, Pennzoil believes that the shipping paper requirement is the only portion of the hazardous materials table regulations that should apply to oil. RSPA should exempt low-hazard oil from the other extensive requirements mandated by the hazardous materials table including retrofitting tank cars and recertifying totes. Requiring shipping papers will allow RSPA to identify oil in transport and fulfill its responsibilities under OPA. Pennzoil, therefore, recommends that RSPA revise the table entry for "oil n.o.s. with a flashpoint not less than 93° C (200° F)" to eliminate reference to any hazard class or definition, identification numbers, packing group, label or packaging authorization. In accordance with Pennzoil's suggested threshold for regulation under the final rule, we recommend that RSPA clarify that only oil in packagings exceeding the 250-barrel threshold are required to comply with the hazardous materials table regulations applicable under OPA.

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If the interim final rule is finalized as currently proposed, facilities must be in compliance by October 1, 1993. Since this rulemaking will significantly impact oil transporters who must comply with all of the requirements of the hazardous materials table and its subsequent references, Pennzoil requests an extension of the compliance deadline until October 1, 1994 or one year after publication of the final rule, whichever is later. As previously

demonstrated, the rule will require oil transporters to retrofit tank cars in order to properly transport oil. Pennzoil believes that it will be extremely difficult for all oil transporters to retrofit tank cars by the October 1, 1993 deadline because retrofitting facilities will be overloaded with orders. Oil transporters will also need time to conduct required training, recertify totes, label containers, and meet the attendance requirements for the loading and unloading of hazardous materials.

In addition, if RSPA amends the interim final rule in response to comments, industry will be forced to implement the requirements of a rule that may change within weeks of the compliance date. Pennzoil suggests that RSPA extend the compliance deadline so that industry will be able to effectively implement the provisions of RSPA's final rule.

Conclusion

Once again, Pennzoil thanks RSPA for the opportunity to comment on its interim final rule establishing response plan requirements for bulk packagings containing oil. Pennzoil supports RSPA's efforts to fulfill the mandate of OPA and protect the environment from oil spills. Pennzoil also supports the 1,000-barrel threshold for the preparation of extensive response plans. Additionally, Pennzoil suggests that RSPA:

- Adopt a 250-barrel threshold for regulation under the rule;
- Include only the hazardous materials table requirements (shipping papers) necessary to achieve the OPA mandate for quantities of oil above the minimum threshold. Pennzoil

June 2, 1993



Page 11

suggests that **RSPA** exempt such oil from the other requirements mandated by addition to the hazardous materials table;

- Clarify the applicability of retrofitting and certification requirements to bulk packagings of oil; and
- Extend the compliance deadline until October 1, **1994** or one year after publication of the final rule. whichever is later.

We sincerely hope that our comments will help **RSPA** develop an effective and practical final rule.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kane Lebow", written over a horizontal line.