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OSHA Docket Office,  
Docket No. OSHA-2013-0020-0116  
Technical Data Center, Room N-2625,  
OSHA - U.S. Department of Labor,  
200 Constitution Ave. NW.,  
Washington, DC 20210

12 August 2016

**RE: Memorandum to Open Docket for the Submission of Documents and Comments on the Process Safety Management Small Entity Representative Background Document (SER Background Document)**

Dear Docket Clerk:

OSHA is considering revisions to the 29 CFR § 1910.119 Process Safety Management (PSM) standard. This letter provides comments from the American Exploration & Production Council (AXPC) and the Independent Petroleum Association of America (IPAA) (hereinafter referred to as the Associations) on OSHA's Process Safety Management Small Entity Representative Background Document (SER Background Document) as well as the Small Business Advocacy Review Panel final report.

The American Exploration & Production Council (AXPC) is a national trade association representing 29 of America's largest and most active independent natural gas and crude oil exploration and production companies. AXPC's members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business, such as downstream refining and marketing. AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

The Independent Petroleum Association of America (IPAA) is a national trade association representing thousands of independent oil and natural gas exploration and production companies as well as the service and supply industries that support them. Independents drill roughly 95 percent of the nation's oil and natural gas wells, producing 54 percent of America's oil and 85 percent of America's natural gas.

The Associations' member companies fully share OSHA's commitment to workplace safety and support its' efforts to identify revisions to its standards which are "*necessary to meet the goal of preventing major chemical accidents*". The Associations' member company facilities, well sites and other US land work

locations are subject to the Occupational Safety and Health Act and will be affected by potential revisions/updates to the PSM standard.

**As indicated in our response to the Request for Information entitled “Process Safety Management and Prevention of Major Chemical Accidents” (Docket No. OSHA-2013-0020), the Associations’ member companies do not believe that (1) eliminating the exemption for flammable liquids in atmospheric storage tanks; (2) eliminating the exemption for oil and gas well drilling and servicing operations; and/or (3) enforcing the PSM standard at oil and gas production facilities are appropriate or necessary.**

### **Atmospheric Tank Exemption**

The PSM standard covers processes with 10,000 pounds or more of a flammable liquid or gas, but exempts those “stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.”

OSHA is considering changing the language in § 1910.119(a)(1)(ii)(B) to limit the exemption to NAICS 4247 Petroleum and Petroleum Products Merchant Wholesalers.

Flammable liquids in atmospheric storage tanks (AST) associated with E&P facilities (such as crude oil tank batteries) are low risk and similar to ASTs at NAICS 4247 facilities, and do not have a significant potential for catastrophic release due to their limited volume. ASTs located at E&P facilities are already regulated under OSHA’s standard for flammable liquids as well as other federal and state regulations (such as State fire codes). Compliance with these existing regulations (and not developing further regulations) are adequate to manage the low risks associated with ASTs located at E&P facilities.

The Associations support the Small Business Advocacy Review Panel recommendation that OSHA consider exempting facilities in addition to NAICS 4247 that pose similar risks.

In accordance with the Small Business Advocacy Review Panel’s recommendation, we request the following activities with ASTs be exempted from the PSM standard:

- NAICS Code 21111 – Oil and Gas Extraction
- NAICS Code 213111 – Drilling Oil and Gas Wells
- NAICS Code 213112 – Support Activities for Oil and Gas Operations

### **Expanding the Existing PSM Standard to Include Oil and Gas Well Drilling, and Servicing Operations**

The PSM standard exempts oil and gas drilling and servicing (§ 1910.119(a)(2)(ii)). At the time the existing PSM standard was promulgated, OSHA planned to adopt a separate rule to address the process safety hazards at oil and gas drilling facilities. However, that standard was never promulgated, and currently OSHA has no standard that covers the process safety hazards at these facilities. OSHA is now considering removing the exemption for oil and gas drilling and servicing.

The Small Business Advocacy Review Panel recommended that OSHA consider requiring compliance with only those elements of the PSM standard that it determines are appropriate for oil and gas drilling and servicing operations. While OSHA does not have specific standards for oil and gas well drilling and servicing operations, there are numerous other federal and state regulations which specifically address

these operations. Prior to requiring compliance with specific elements of the PSM standard, OSHA must analyze and evaluate these other rules and standards (both state and federal) to avoid unnecessary duplication or conflicts.

The Associations do not support the Small Business Advocacy Review Panel recommendation that OSHA consider treating a “well” as the covered process and include “servicing operations” under the contractor provision of PSM. The PSM standard was never intended to be applied to oil and gas well drilling and servicing operations. The rationale being “*OSHA continues to believe that oil and gas well drilling and servicing operations should be covered in a standard designed to address the uniqueness of that industry. This exclusion is retained in the final standard since OSHA continues to believe that a separate standard dealing with such operations is necessary*” (refer to OSHA’s [“Summary and Explanation of the Final Rule”](#)). **No changes have been made - or proposed - to the PSM standard to address the unique nature of oil and gas well drilling and servicing operations.** Without such changes – the Associations believe application of the PSM standard (which was written for process facilities) is not an effective or efficient way to manage the unique risks associated with oil and gas well drilling and servicing operations. Instead, any additional regulations should be determined through a separate rulemaking effort involving appropriate stakeholders. The Small Business Advocacy Review Panel recommended that OSHA consider the appropriateness of applying the PSM standard to oil and gas operations as opposed to a vertical (standalone) oil and gas standard. As noted above, such consideration was given during the original PSM rulemaking, oil and gas well drilling, and servicing operations are and should remain exempt from the PSM standard.

### **Enforcing the Existing PSM Standard in Oil and Gas Production**

OSHA indicates that the PSM standard has always included covered oil and gas production facilities. However, in a 1999 Memorandum, OSHA agreed not to enforce the standard in oil and gas production facilities until the Agency completed an economic feasibility analysis. Upon the completion of an economic feasibility analysis, OSHA intends to resume enforcement of the PSM standard in oil and gas production.

Industry statistics demonstrate that safety performance associated with oil and production facilities has – and continues - to improve. Typically, incidents which do occur are not due to a lack of regulations but due to failures to meet existing regulations (such as those related to confined space entry, hot work, storage of flammable liquids, and/or control of hazardous energy). Outreach efforts to promote better understanding and implementation of existing regulations would have a greater impact than enforcing the existing PSM standard on oil and gas production facilities.

In addition, an overwhelming majority of oil and gas production facilities associated with the Associations’ member companies would be considered “normally unoccupied remote facilities” (NURF) (i.e. “*a facility which is operated, maintained or serviced by employees who visit the facility only periodically to check its operation and to perform necessary operating or maintenance tasks. No employees are permanently stationed at the facility*” as defined in the PSM standard).

By letter dated 16 Feb 2005, OSHA indicated that the definition of NURF is to be determined based an average amount of time employees visit the facility (i.e. 1.5 man-hours per day and a total of 14.5 man-hours per week). OSHA indicated that if employees exceed these average on-site times the facility is NOT considered a NURF.

OSHA’s interpretation is NOT consistent with the standard – which was specifically based on employees not being permanently stationed at the facility.


The Small Business Advocacy Review Panel recommended that OSHA consider clarifying the definition of NURF. Prior to initiating an economic feasibility analysis, the Associations request that OSHA work with industry to develop an appropriate interpretation for the definition of NURF (specifically as it applies to oil and gas production facilities) and to eliminate arbitrary time limits for periodic visits necessary to provide proper oversight for these facilities.

We appreciate the opportunity to provide these comments and look forward to an opportunity to discuss these issues further.

Sincerely,



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President  
American Exploration & Production Council



Lee O. Fuller  
Vice President of Government Relations  
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