



March 5, 2009

EPA Docket Center (EPA/DC)
Docket ID No. EPA-HQ-OPA-2007-0584
United States Environmental Protection Agency: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re:
Oil Pollution Prevention;
Spill Prevention, Control, and Countermeasure Plan Requirements – Final Amendments;
Delay of effective date and request for comment (74 Federal Register 5900, February 3,
2009); EPA Docket ID No. EPA-HQ-OPA-2007-0584

Dear Sir or Madam:

The American Exploration & Production Council (AXPC) is pleased to offer comments on the final amendments to the U.S. Environmental Protection Agency's (EPA) Final Rule adopted in the December 5, 2008, 73 Federal Register 74235, as requested in the referenced request for comments. The Final Rule announced EPA's amendments to the Spill Prevention, Control and Countermeasure (SPCC) Plan requirements. The February 3, 2009, delayed the effective date for 60 days and asked for comments specifically on the optional approaches for produced water containers and the criteria for qualified oil production facilities. The AXPC also endorses the comments of the Independent Producers Association of America (IPAA). Specifically, we will comment on the optional approaches for produced water containers and the definition of qualified oil production facilities.

The AXPC is a national trade association representing 25 of the largest United States independent upstream natural gas and crude oil exploration and production (E&P) companies. Most AXPC members are publicly traded corporations, and many have international operations or interests. The AXPC members are leaders in developing and applying technology necessary to explore for and extract, oil and gas onshore and offshore, including in deep water and from unconventional reservoirs. The large independent sector (meaning non-integrated companies without refining operations or retail service stations) has a history of *investing more than it earns*, and 100% of its cash flow, in exploration and production. The AXPC companies as a group are leaders in adding domestic energy reserves by being among the most active in drilling natural gas and oil exploration and development wells in the United States, accounting for nearly one quarter of all wells drilled.

As previously mentioned, the AXPC membership appreciates EPA's incorporation of many of the suggestions made in the comments on the October 15, 2007 proposed rule.

Produced Water Tank Containment

As EPA is well aware, the AXPC has never agreed with the interpretation that SPCC Plans should cover produced water storage. This is a significant alteration of interpretation in part because one consequence is expansion of the SPCC program to potentially hundreds of thousands of natural gas production operations that produce some liquid condensate and produced water. The condensate volume would not trigger the threshold volume for oil but adding produced water to it pulls these facilities into the requirements.

The AXPC believes that spill data does not justify the need to specifically address produced water from one industrial sector. A substantial economic analysis should have been undertaken, with reasonable and necessary data revealing the need for additional control, previous to any prescriptive ruling regarding the containment of produced water. EPA's decision to remove produced water tanks from the waste water exemption in the 2002 regulation drags a large number of operations, particularly natural gas facilities that only make a trace of condensate and would not meet the oil thresholds in the rule, into the SPCC regulation because of the addition of produced water to their volume thresholds.

Wastewater treatment facilities of publicly owned treatment works and other industries were exempted from the SPCC rule in 2002. Equipment containing produced wastewater should receive a similar exemption when you consider the fact that the oil and gas industry uses the same, if not more advanced separation techniques.

In evaluating the inclusion of produced water as oil storage, EPA should have considered the impact on specialized produced water facilities not associated with production storage. Specifically, EPA did not consider the impact to salt water disposal facilities, evaporation pits (some several acres in size), blow down tanks, and skim tanks. Each of these facilities contains produced water with very small amounts of oil, and presents little or no impact to Waters of the U.S. Additionally, blow down tanks may accrue only a small fraction of water for a short duration while the well is unloaded. These tanks pose an insignificant risk of discharge to Waters of the U.S.

The final rule provided three alternative approaches related to produced water tanks: (1) exempt produced water tanks from many SPCC requirements if (a) a P.E. certifies that a harmful quantity of oil is not reasonably likely to threaten or enter waters of the U.S., (b) the Plan includes produced water characteristics, and (c) the tanks are regularly inspected and maintained according to written procedures, and (d) annual verifications are made; (2) treat produced water tanks like oil tanks in an SPCC plan; or (3) establish a procedure for regularly skimming oil accumulations off produced water tanks, document the skimming events, regularly inspect the tank for its general condition, maintain the tank, and get a P.E. certification that an RQ of oil is unlikely to happen.

AXPC does not believe these three approaches offer much relief from full regulation of produced water tanks under the SPCC rule. A P.E. certification is required in all three cases, as are records of regular inspections and maintenance, regardless of whether there is a measurable amount of oil in a tank.

Qualified Facilities

The majority of production companies represented by the AXPC do not possess facilities that meet the alternative criteria set forth within the proposed amendments for “qualified facilities”. However, we agree with IPAA that EPA’s regulatory relief for these small facilities is too narrow. The only advantage accorded a qualified facility is the ability to self-certify, saving the costs of a professional engineer certification. The much larger costs associated with SPCC compliance are the construction of containment along with other regulatory requirements like response equipment.

SPCC Plan Implementation and Preparation

The AXPC appreciates that EPA allowed for a six month time period between when an oil production facility becomes operational and when the operator must prepare and implement a Plan. There are several unique characteristics that affect the construction and startup period for oil facilities including variable conditions of the reservoir, uncertainty of the type and proportion of products, stabilization of initial flowrates, and changes in storage capacity and facility design. Additionally, extending the implementation date allows operators to continue reducing methane emissions through the practice of “green completions” or “reduced emission completions”.

For most APXC member companies which drill a large number of wells each year, tank batteries are constructed with sized secondary containment. Especially in areas where there are already many wells, an area-wide SPCC plan already exists that provides for response procedures as well as regular inspections. It is the logistics of getting a P.E. to certify plans for multiple tank batteries each week that make the completion of the written specifics for a particular tank battery difficult to accomplish from the first day of operation.

EPA’s reasoning is accurate and consistent with the requirements originally promulgated in 1973, allowing for six months following the start of operations to allow adequate time for plan implementation, and alleviate the burden necessitating a PE to continually amend a Plan during initial stabilization.

In closing, the American Exploration & Production Council is pleased to offer comments on the U.S. Environmental Protection Agency’s (EPA) Final Rule amendments published in the December 5, 2008 Federal Register and appreciates the opportunity to provide the above comments for consideration. Should you have any questions, please call me at (202) 652-2354.

Sincerely,

V. Bruce Thompson
President