



December 14, 2007

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 – Amendments;
Proposed Rule (72 Federal Register 58378, October 15, 2007);
EPA Docket ID No. EPA-HQ-OPA-2007-0584

Dear Sir or Madam:

The American Exploration and Production Council (AXPC) is pleased to offer comments on publicly available information from the U.S. Environmental Protection Agency's (EPA) Proposed Rule referenced in the October 15, 2007, 72 Federal Register 58378. The Proposed Rule announces EPA's proposal to amend Spill Prevention, Control and Countermeasure (SPCC) Plan requirements.

The AXPC believes there are a number of positive changes proposed by EPA that will lessen the impact to the upstream oil and gas industry sector; however, there are a number of issues that EPA needs to resolve. They are discussed fully below.

One specific issue requires highlighting because it is perhaps the most important to oil and gas producers: Authority to regulate produced water under SPCC regulations and the Department of Energy's (DOE) corresponding proposed Option C, requesting the full exemption of produced water from SPCC requirements. AXPC strongly supports Option C.

The AXPC is a national trade association representing 26 of the largest United States independent upstream natural gas and crude oil exploration and production (E&P) companies.

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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 attempts to address the many concerns raised by the 2002 SPCC rule and corresponding amendments that must accommodate numerous industry types. In addition, AXPC commends EPA on its belief that formal rule amendment will provide additional clarity and understanding rather than proceeding with the option to address this rule solely through guidance since such an approach would allow diverse interpretation and confusion among industry. AXPC recognizes continuous improvement is being made, however there are multiple points that directly impact the E&P industry that must be recognized and addressed.

Definition of Facility

The AXPC supports EPA's clarification of the definition of "facility." However, EPA should also clarify that a lease does not necessarily define a facility. A lease may be several thousand acres consisting of multiple tank batteries and/or production facilities. A facility may consist of the entire lease or defined by the operator as each tank battery and associated equipment and wells. EPA should include provisions in the rule that allow an operator to include multiple-facility plans within one overall SPCC plan and not trigger the applicability determination of the Facility Response Plan (FRP) rule.

Currently, most operators will include, under one overall SPCC plan, facilities that utilize that same response organization, call list, management and control. The operators will then include facility-specific information at the back of the plan such as plot plans, flow diagrams, tank dimensions, and spill containment provisions. This practice greatly reduces the number of individual plans containing much of the same information that needs to be prepared while providing the necessary containment and response organizations to address releases. Forcing operators to assess and total the stored individual volumes included in the overall plan for FRP purposes provides no benefit and would ultimately result in forcing operators to prepare unnecessary individual plans. EPA should provide a mechanism to allow the practice of multiple-facility plans without triggering FRP requirements.

We believe the amended definition of "facility" provides for additional clarity. Conversely, the language within the examples portion of the Preamble referenced on (72 Federal Register 58387, October 15, 2007) deducts from EPA's intention of clarification and streamlining. Specifically, the phrase, "It is also important to note that if an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of applicability of the FRP rule requirements" alludes to an opposite connotation of EPA's intention to clarify the definition of "facility."

AXPC Recommendation: EPA should clarify that a lease does not necessarily define a facility. In addition, it should provide clear, concise language that explicitly entails that a multiple-facility Plan does not require an FRP. Also, it should clarify or delete the aforementioned paragraph regarding FRPs.

Definition of Production Facility (also see notes on definition of facility)

The AXPC appreciates EPA's proposal to modify the definition of "production facility" to provide flexibility in determining the extent of a facility. In addition, AXPC commends the change from the phrase "and located in a single geographical oil or gas field operated by a single operator" to "*may be located...*" However, upon review of the language, the AXPC believes the deletion of the entire phrase may best enhance the general clarity of the definition and reduce confusion. Furthermore, the AXPC believes the addition of the phrase, "and or natural gas" following "the separation or treating of oil" would add further clarity to the definition. To increase clarity and avoid dual jurisdiction, the AXPC recommends the deletion of "gathering lines" from this definition (discussed in detail under gathering lines).

AXPC Recommendation: The definition of production facility should read: "Means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flow lines ~~or gathering lines~~), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil and or natural gas, or associated storage or measurement."

Definition of Loading/Unloading Rack

The AXPC supports EPA's definition and clarification of "Loading/Unloading Rack." The new definition satisfies the intention of clarifying 112.7(h).

SPCC Plan Implementation and Preparation

The AXPC commends EPA for recognizing the unique characteristics regarding 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 will allow operators to continue reducing methane emissions through the practice of "green completions" or "reduced emission completions".

The AXPC commends and fully supports EPA's proposal to extend the timeframe by six months from which an oil production facility becomes operational and must prepare and implement a Plan. 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.

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, the Independent Petroleum Association of America (IPAA) represents several entities meeting this alternative criterion and the AXPC supports the comments submitted on their behalf regarding this topic.

Facility Diagram

The AXPC supports the proposed revision to the facility diagram requirement. The proposed revision will simplify the process of developing a facility diagram by allowing a general description of the location and contents of portable oil storage containers. Moreover, the general description requirement will reduce the amount of unnecessary paperwork and additional diagrams required to comply with the current rule.

Flowlines and Intra-Facility Gathering Lines

The AXPC disagrees with EPA’s position that it has authority to regulate gathering lines, both “intra” and “inter” and challenges its jurisdictional interpretation regarding such lines. The AXPC would like to remind EPA of a Memorandum of Understanding (MOU) published December 18, 1971, between the EPA and the US Department of Transportation (DOT). Within a paragraph of this MOU, 36 FR 24080 states:

“Non transportation-related onshore and offshore facilities means.....(c) Fixed onshore and offshore oil production structures, platforms, derricks and rigs including all equipment and appurtenances related thereto, as well as completed wells and wellhead equipment, pipings from wellheads to oil separators, oil separators, and storage facilities used in the production of oil...”.

The language within the MOU clearly states that the intent was for EPA to regulate only those lines connecting the wellhead to the separator and associated production equipment. The AXPC believes that all piping following custody transfer is not subject to SPCC requirements.

AXPC Recommendation: The AXPC requests that EPA clarify that gathering lines are regulated and under the authority of the DOT and exempt from EPA’s SPCC rule. This exemption should be clarified in the Preamble language and codified in 40 CFR 112.1, either by explicate exemption of the lines, or by clarifying that lines or facilities falling under the jurisdiction of the DOT (40 CFR 112.1(d)(3)) are not subject to SPCC rule requirements.

Security

The AXPC supports EPA’s position that oil production facilities are excluded from the security requirements of the rule. Compliance with the provisions of the rule would be difficult for most oil production facilities and provide very little benefit.

In addition, the AXPC recommends that EPA refer to other agencies’ Security Plans to substantiate appropriate environmental equivalence such as compliance with (33 CFR 154.105, or 49 CFR 172.800) or any other state and federal security requirements.

Loading and Unloading Racks

The AXPC supports the exclusion of onshore oil production facilities from the loading and unloading rack requirements of 112.7(h) and agrees that EPA's reasoning is accurate. EPA is correct in its assessment that loading and unloading areas associated with oil production tank batteries generally do not have the equipment to meet the proposed definition. By exempting oil production facilities from the sized secondary containment requirements, EPA recognizes the minimal potential for a release to reach Waters of the U.S. from oil production loading activities. AXPC supports the use of general secondary containment measures that allow the operator in conjunction with a P.E. to consider the conditions at the site and implement appropriate active or passive containment measures.

Flowline and Intra-Facility Gathering Line Maintenance Program

The AXPC supports the EPA's elimination of secondary containment for flowlines in favor of general secondary containment that includes both passive and active response measures. Secondary containment for these lines is impractical and would result in more harm than good, including significant disturbance of surrounding land and the disruption of agricultural production practices. However, under certain circumstances, the EPA must acknowledge the option for operators to select sized secondary containment based on site conditions and recommendations of the P.E. In these cases, the EPA should allow for either option to be exercised.

AXPC supports the current SPCC requirement to "have a program of flowline maintenance" that is general in nature, performance-based, and allows for the P.E.'s discretion in determining how best to prevent discharges from each flowline. Additional prescription and specificity may pose additional expense as well as a burden to operators in geographic areas less prone to experience a discharge to navigable waters as opposed to those that may require an intricate program created to ensure flowline integrity and detailed planning to eliminate discharge to navigable waters. As previously noted, the AXPC disagrees that EPA has authority over DOT jurisdictional gathering lines, no matter how a "facility" is developed within a Plan. Hence, any reference regarding maintenance programs shall not be expanded beyond flowlines. The additional prescription of the proposed language including, "Promptly remove any accumulations..." initiates an inconsistency with the intent of the rule which is to prevent a discharge to navigable waters. Rather than using, "Promptly remove any accumulations..." the AXPC suggests the following, "initiate appropriate response actions to contain and stabilize accumulations of oil discharges associated with flowlines".

Flow-Through Process Vessel Exemption

The AXPC commends the EPA on its elimination of sized-secondary containment for flow-through process vessels and supports its reasoning with regard to potential safety hazards created by sized-secondary containment. Also, as noted in the previous paragraph, the additional prescription of the proposed language including, "Promptly remove any accumulations..." initiates an inconsistency with the intent of the rule which is to prevent a discharge to navigable water. Additionally, under the proposed 112.9 (5)(i) *Flow-through process vessels* the language used states:

“In lieu of the requirements in paragraph (c)(3) of this section, periodically and on a regular schedule visually inspect and/or test flow-through process vessels and associated components (e.g. dump valves) for leaks, corrosion, or other conditions that could lead to a discharge as described in Sec 112.1 (b).”

The AXPC believes this language from the proposed rule could also be applied as the prescriptive portion with regard to integrity testing of bulk storage containers and flowlines.

Bulk Storage Container Inspections and Integrity Testing

The AXPC opposes EPA’s proposal to prescribe additional requirements to 40 CFR 112.8 (c)(6) and 112.12 (c)(6) requiring industry standards be used for testing and inspections, as well as determining “appropriate qualifications for personnel performing tests...”. This requirement does not take into consideration the operator’s and P.E.’s ability to provide appropriate measures based on site conditions, spill history, and potential for a spill to reach Waters of the U.S. This removes the performance-based intent of the rule in favor of specificity and additional prescription. In addition, the term “qualified personnel” is vague. By relying on the P.E., there are assumed engineering standards and certifications that are being implemented as well as a mechanism for ensuring engineering qualifications are maintained through continued education by the individual. In the Preamble (p.58380) EPA states:

“EPA proposes to differentiate the integrity testing requirements at 112.12(c)(6) for an owner or operator of a facility that handles certain types of animal fats and vegetable oils. Specifically, EPA proposes to provide the PE or an owner/operator of certifying an SPCC Plan with the flexibility to determine the scope of integrity testing that is appropriate for containers that store animal fats of vegetable oil and that meet other criteria.”

This passage is performance-based and allows a P.E. to certify the criteria or practice as adequate to eliminate a spill from reaching Waters of the U.S. This passage, along with the previously mentioned 112.9 (5)(i) would be appropriate for a performance-based container testing and inspection program for oil production facilities.

AXPC Recommendation: EPA should eliminate any language using “qualified personnel” and allow the operator and P.E. to use their ability in establishing a program to eliminate spills to navigable waters. Through the implementation of one of the aforementioned paragraphs, the inspection should be visual and documented formally at a frequency determined by the operator and PE based on site conditions.

Produced Water Tank Containment

The AXPC commends EPA’s acknowledgement that produced water tanks do not require sized secondary containment. The AXPC also commends EPA for proposing Option C (Exemption of Produced Water) and fully supports the Department of Energy’s (DOE) and EPA’s logic and understanding regarding the need to exempt produced water for oil and gas facilities. Produced water continues to increase in value to the public and industry. Factors such as high oil prices, advances in water treatment technology, the value of recycled produced water both socially and economically for beneficial uses including agricultural irrigation, livestock watering, recreation, aquifer recharge, and enhanced oil recovery are, as stated within the Preamble, all factors that encourage the industry to separate oil and natural gas fluids from produced water.

The AXPC acknowledges that there are a variety of situations regarding produced water that dictate how it is managed and disposed. However, there is one constant in industry: the value of oil is considerable, and economics aligned with enhanced separation technology encourage the recovery of oil to the maximum extent practicable.

Produced water tanks should not be considered bulk oil storage containers and subject to SPCC regulations. 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 brings these facilities into the requirements.

Following initial separation, the amount of oil present in produced water does not present a significant risk of discharge into waters of the U.S. The original SPCC rule's intent was to prevent spills from oil-handling tanks, not water storage. In addition, the economics of retrofitting thousands of facilities would place an unnecessary burden on the oil and gas industry for very little benefit. 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 considering 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 must consider 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.

Often these locations must already comply or be regulated under National Pollution Discharge Elimination System (NPDES), Safe Drinking Water Act (SDWA), Underground Injection Control (UIC), or other state permitting requirements that limit the amount of oil that could be introduced into the environment. 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 AXPC believes that spill data does not justify the need to specifically address produced water from one industrial sector. A substantial economic analysis must be undertaken, first with reasonable and necessary data revealing the need for additional control, previous to any prescriptive ruling regarding the containment of produced water.

The AXPC strongly supports the acceptance of EPA's Option C provided in 72 FR 58414 in which produced water is to be exempted.

AXPC Recommendation: The selection of Option C provided in 72 FR 58414 in which produced water will be fully exempted.

In closing, the American Exploration and Production Council appreciates the opportunity to provide comments on the EPA's proposed SPCC rule.

Should you have any questions, please contact me at (202) 742-4300, or call AXPC Environment, Health and Safety Committee Chairman David Templet (Manager, Environment, Health and Safety, Devon Energy Corporation) at (405) 228-8628).

Sincerely,

A handwritten signature in black ink, appearing to read "W. Whitsitt". The signature is written in a cursive style with a horizontal line through the middle.

William F. Whitsitt
President