



November 16, 2017

Submitted via electronic submission

Mr. Joe Beaman
OLEM/OEM/RID
(5104A)
Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460

RE: Information Collection Request for Voluntary Survey to Support the Clean Water Act
Hazardous Substances Discharge Prevention and Containment Rule

Dear Mr. Beaman:

The American Exploration & Production Council (“AXPC”) and the Independent Petroleum Association of America (“IPAA”) are pleased to submit comment to the Environmental Protection Agency (“EPA”) on its voluntary information collection request (“ICR”) proposal, “Survey on Clean Water Act Hazardous Substances and Spill Impacts” published in the federal register on September 21, 2017 (Document No. 2017-20170). AXPC and IPAA member companies are currently subject to the existing spill prevention, control, and countermeasure (SPCC) regulations in addition to the many similar, supplementary state specific requirements. As such, AXPC and IPAA believe that the current regulatory environment is sufficient as it provides for adequate protection against any unplanned release of hazardous substances and submits the following response.

Background and Current State of Regulation

The goal of oil pollution and prevention regulation is to prevent oil from reaching navigable waters and adjoining shorelines, and to contain discharges of oil. Thus, the regulations require these facilities¹ to develop and implement SPCC Plans and establish procedures, methods, and equipment requirements for said facilities. Focusing on oil spill prevention, preparedness, and response, the SPCC rule is designed and adequately written to protect public health, public welfare,

¹40 CFR §112.2 – Definitions: *Facility* means any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and oil waste treatment, or in which oil is used, as described in appendix A to this part. The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. Only this definition governs whether a facility is subject to this part.

and the environment from potential harmful effects of oil discharges to navigable waters and adjoining shorelines. To further underscore the adequacy of the existing rules, there are provisions allowing for a sufficient amount of time to obtain a plan once production has begun; robust containment requirements to prevent releases from occurring, and; if a spill of any regulated hazardous material occurs that threatens to enter or enters a navigable water, reporting to the National Response Center is required as soon as knowledge of a spill.

In addition, many states also have established protective, state-specific thresholds for requiring immediate agency reporting for releases of oil or other hazardous materials at oil and natural gas exploration and production locations.

When considering expansion of the SPCC Regulation, we recommend that EPA study the impact of recent state regulatory efforts and the corresponding effects on all stakeholders. These assessments should consider the true impact of regulating additional hazardous substances. Assessments should also implement additional containment, inspection, reporting and overall information management requirements as well as whether or not these types of regulations achieved measurable reductions in spills and environmental impacts.

For example, the West Virginia Aboveground Storage Tank Act (“Act”) required registration of aboveground storage tanks well beyond the current SPCC requirements. The West Virginia tank registration proved to be very costly and burdensome for regulated community as well as the state regulators. The required timeframe for tank registration was very short and the registration process itself meant that many storage tank owners needed a significant amount of additional manpower and other resources over a several month period in order to meet the registration deadline imposed by the regulation. Since the passing of the Act in 2014, there have been significant regulatory changes in recognition the original requirements were not needed. Therefore, in this particular case more reasonable and less onerous regulation from the start would have resulted in adequate protection at considerably less cost.

Chemical Tracking

Submission of a Tier II form is required under Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This reporting structure provides State, local officials, and the public with specific information on potential hazards. This includes the locations, as well as the amount, of hazardous chemicals present at the facility during the previous calendar year. This inventory provides EPA with significant information related to the storage of hazardous chemicals. Additionally, some states may have supplementary requirements for reporting and submission of the Tier II inventory form. Any effort to report more on these chemicals, through the expansion of the SPCC rule, would be duplicative and unnecessary.

In addition, chemicals are frequently changed out or moved around on oil and gas well sites. If SPCC Plans are required to include hazardous chemicals, the plans would need to be updated almost every quarter. The addition of the hazardous chemicals would be considered an

amendment² to the SPCC plan which would require a Professional Engineer certification. The cost of keeping current with the plans would be excessive and difficult.

The questions being considered by EPA in the proposed voluntary ICR will largely be a duplication of information to which EPA already has access. The NRC website contains spill related information while the Tier II form is required under Section 312 of the EPCRA. Current regulations for spill prevention and/or cleanup are currently covered under the Mine Safety and Health Administration Surface Mining Control and Reclamation Act (MSHA SMCRA), Resource Conservation and Recovery Act, the National Pollutant Discharge Elimination System (NPDES), State water quality standards, the Toxics Release Inventory (TRI) program, Department of Transportation (DOT) regulations, and Department of Homeland Security (DHS) reporting. Many states have other regulations promulgated for spill response/prevention as well.

To reiterate, this proposed voluntary ICR will likely yield little information that EPA didn't already have the knowledge of or access to; reinforcing the sufficiency of the regulations currently in place. AXPC and IPAA would like to remind the agency of its stated cooperative federalism policy goal, most recently noted in EPA's Draft FY 2018-2022 Strategic Plan, and the necessity of allowing states to be the stewards of national standards. Further, any expansion of the current SPCC rule not only usurps the states' regulatory authority, but seems to be at odds with President Trump's Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, as the order explicitly directed agencies to identify regulations that are unnecessary or impose costs that exceed benefits. AXPC and IPAA appreciate the agency's consideration of the statements presented herein and appreciate the opportunity to participate in this public process.

AXPC is a national trade association representing 34 of America's premier independent natural gas and oil exploration and production companies. 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.

IPAA is a national trade association representing the thousands of independent crude oil and natural gas explorers and producers in the United States. It also operates in close cooperation with 44 unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies that provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong and viable domestic oil and natural gas industry,

² 40 CFR §112.2 – Definitions: (a) Amend the SPCC Plan for your facility in accordance with the general requirements in § 112.7, and with any specific section of this part applicable to your facility, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or de commissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at a facility. An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy.

Respectfully Submitted,



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