

February 10, 2006

EPA Docket Center (EPA/DC)  
1200 Pennsylvania Ave., NW.  
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OPA-2005-0001.

Subject: Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan Requirements--Amendments, 70 Federal Register 237 (December 12, 2005) – Proposed Rule, (Docket ID No. EPA-HQ-OPA-2005-0001).

These comments are filed on behalf of the Independent Petroleum Association of America (IPAA), the International Association of Drilling Contractors (IADC), the International Association of Geophysical Contractors (IAGC), the National Stripper Well Association (NSWA), the Petroleum Equipment Suppliers Association (PESA), Association of Energy Service Companies (AESC), the US Oil & Gas Association (USOGA) and the following organizations:

California Independent Petroleum Association  
Coalbed Methane Association of Alabama  
Colorado Oil & Gas Association  
East Texas Producers & Royalty Owners Association  
Eastern Kansas Oil & Gas Association  
Florida Independent Petroleum Association  
Illinois Oil & Gas Association  
Independent Oil & Gas Association of New York  
Independent Oil & Gas Association of Pennsylvania  
Independent Oil & Gas Association of West Virginia  
Independent Oil Producers Association Tri-State  
Independent Petroleum Association of Mountain States  
Independent Petroleum Association of New Mexico  
Indiana Oil & Gas Association  
Kansas Independent Oil & Gas Association  
Kentucky Oil & Gas Association  
Louisiana Independent Oil & Gas Association  
Michigan Oil & Gas Association  
Mississippi Independent Producers & Royalty Association  
Montana Petroleum Association  
National Association of Royalty Owners  
Nebraska Independent Oil & Gas Association  
New Mexico Oil & Gas Association  
New York State Oil Producers Association  
Northern Alliance of Independent Producers

Ohio Oil & Gas Association  
Panhandle Producers & Royalty Owners Association  
Pennsylvania Oil & Gas Association  
Permian Basin Petroleum Association  
Petroleum Association of Wyoming  
Tennessee Oil & Gas Association  
Texas Alliance of Energy Producers  
Texas Independent Producers and Royalty Owners Association  
Virginia Oil and Gas Association  
Wyoming Independent Producers Association

Collectively, these groups represent the thousands of independent oil and natural gas explorers and producers that will be the most significantly affected by the proposed requirements in these regulatory actions. Independent producers drill about 90 percent of domestic oil and natural gas wells, produce over 65 percent of domestic oil, and more than 80 percent of domestic natural gas.

These organizations appreciate the opportunity to comment on the Environmental Protection Agency (EPA) proposal to modify its Spill Prevention, Control, and Countermeasure (SPCC) Plan regulations originally promulgated in 2002. These comments will provide a broad overview of concerns about the SPCC Plan regulations, discuss suggestions for future rulemaking and address specific issues in the proposed rule.

### **Putting The Issue In Context**

Inherent in developing a regulatory framework is the need to understand the costs, consequences and benefits of the rulemaking. The 2002 SPCC Plan regulations present a fundamental failure of this responsibility.

These regulations were principally driven by two large tank failures in 1988. Proposed rules were published first in 1991 and then in 1997. Five years later, the 2002 regulations were promulgated – regulations that were vastly different than those proposed in either 1991 or 1997. The rulemaking process used in this effort capriciously disregards any serious effort to fully understand the broad and serious effects these regulations can have on the domestic oil and natural gas production industry.

For example, three years after promulgating the 2002 regulations, EPA indicates in this proposed rule that:

Additionally, EPA in conjunction with DOE will be conducting an energy impact analysis of the SPCC requirements, and will consider the results of this analysis to inform the Agency's deliberations over any future rulemaking.

The potential energy consequences to domestic oil and natural gas production should have been addressed well before the 2002 regulations were promulgated. Instead, the agency has attempted to avoid realistic assessments of the entire regulatory effort. When the 2002 regulations were promulgated, EPA stated:

The reduction in size of the regulated community due to final rule revisions will lead to a capital cost savings of approximately \$29.47 million per year.

This statement was wholly inconsistent with industry assessments of the implications of the new regulations. Now, EPA appears to have recognized that its 2002 regulations will impose significant new costs. In the rule amendment proposal EPA admits that:

Under the terms of Executive Order 12866, this action has been judged as a “significant regulatory action” because it will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

In fact, there appears to be no clear sense of the full magnitude of the 2002 regulatory changes. Moreover, to avoid reflecting the full implications EPA chose to arbitrarily revise its interpretation of the SPCC Plan regulations that had been in operation for almost 30 years prior to the 2002 modifications.

For example, without any prior publication of a proposal to alter the treatment of produced water under SPCC Plans as wastewater, the 2002 regulations specifically exclude produced water as part of the wastewater exclusion. EPA argues:

No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily wastewater. ...

... We do not consider wastewater treatment facilities or parts thereof at an oil production, oil recovery, or oil recycling facility to be wastewater treatment for purposes of this paragraph. These facilities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. Production facilities are normally unmanned and therefore lack constant human oversight and inspection. Produced water generated by the production process normally contains saline water as a contaminant in the oil, which might aggravate environmental conditions in addition to the toxicity of the oil in the case of a discharge.

Additionally, the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil, while eliminating impurities in the oil, including water, whereas the goal of a wastewater

treatment facility is to purify water. Neither an oil production facility, nor an oil recovery or oil recycling facility treats water, instead they treat oil. For purposes of this exemption, produced water is not considered wastewater and treatment of produced water is not considered wastewater treatment. Therefore, a facility which stores, treats, or otherwise uses produced water remains subject to the rule. At oil drilling, oil production, oil recycling, or oil recovery facilities, treatment units subject to the rule include open oil pits or ponds associated with oil production operations, oil/water separators (gun barrels), and heater/treater units. Open oil pits or ponds function as another form of bulk storage container and are not used for wastewater treatment. Open oil pits or ponds also pose numerous environmental risks to birds and other wildlife.

Produced water is generated at oil and natural gas wells. The oil, gas and water are processed to separate the components. After the conclusion of this “primary separation,” the produced water contains minimal concentrations of oil, and is either disposed of, or further treated and disposed of, or used for other purposes such as secondary recovery. Tanks storing produced water may contain small amounts of oil, as other wastewaters will. Contrary to EPA’s assertions that this wastewater is unregulated, it cannot be discharged without specific permit authority. Under the National Pollutant Discharge Elimination System (NPDES) program, onshore exploration and production (E&P) facilities cannot discharge produced water without an NPDES permit. It is otherwise managed under the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program where it is either injected for disposal or for secondary recovery. It is not oil and results from a separation process just like other wastewaters. EPA’s rationale to distinguish produced water from other wastewaters is a distinction without a difference; there is simply no justification to argue that these waters should be denied the same treatment.

Yet, EPA goes further. It argues that – despite consistent recognition in the past that wastewater tanks were not a part of the SPCC Plan scope – these waters were always intended to be covered by the SPCC regulations. The consequence of this interpretation is significant regarding the analysis of the impact of the 2002 regulation. By characterizing its position on wastewater as covered by the 1973 regulations, there is no increased cost associated with the 2002 regulation. Indeed, the 2002 regulation could be considered as reducing compliance costs. But, the reality is far different.

As a result of the EPA position that produced water is not exempted from the SPCC Plan requirements, thousands – even tens of thousands – of production facilities can be subjected to SPCC Plan requirements solely because of the processing and storage of water. In particular, natural gas wells with modest amounts of natural gas liquids that are less than the threshold for oil storage will now be compelled to develop SPCC Plans and implement physical changes to their operations. Some may be subjected to enforcement actions. Moreover, about 250,000 of these natural gas wells are marginal wells where, even at current prices, the costs of SPCC regulation compliance can make them uneconomic. Similar issues arise regarding the roughly 400,000 marginal oil wells.

This issue exemplifies more pervasive problems with the 2002 SPCC Plan regulations. Driven by events in 1988 that were significant and associated with large releases of oil, the regulations have morphed and expanded to compel major costs and likely losses of domestic oil and natural gas production. However, nowhere in the regulatory process has EPA conducted an analysis of these consequences compared to the environmental benefits. Domestic oil and natural gas producers are not aware of any credible, thorough study that demonstrates a systemic failure of the 1973 regulations as they have been interpreted prior to 2002 with regard to domestic oil and natural gas production facilities. Domestic producers are unaware of any studies that indicate the changes in the SPCC Plan requirements are even directed at specific problem areas. Domestic producers are unaware of any study showing that the changes in the 2002 regulations will result in broad environmental benefits justifying the costs and energy consequences of the 2002 regulations. Certainly, spill prevention, control and containment efforts are necessary, but whether plans exist or not, producers are still liable for any damage caused by the failure of their operations. This liability is a far more compelling driving force in protecting the environment than the existence of the SPCC Plan requirements.

### **Suggestions for Future Rulemaking**

As stated in an October 5, 2005, IPAA letter to the Office of Management and Budget, the most appropriate and logical action to take at this time is a suspension of the 2002 regulations and a return to the interpretations of the SPCC Plan regulations consistent with their application during the 30 year period prior to the 2002 regulations. Then, EPA should develop the analyses described above to determine the full consequences of potential changes to SPCC Plan requirements on domestic energy development (including completion of the study with the Department of Energy), to identify the systemic problems with the current Plans, and to craft regulations targeted to address those problems. These actions should occur to avoid the potential consequences of compelling expenditures that damage energy development and production but do not improve the environment.

Since 2002, domestic producers have continually raised issues that need to be fully considered in a future rule making. These concerns remain.

One of the first issues that causes concern and confusion is the question of what triggers the need to create an SPCC Plan. This decision must be based on whether an operation is a “facility” under the regulation and whether it could result in a release that would reach “navigable waters”. Both elements must be met and both pose significant questions to the producer who must interpret them.

For example, some sources have indicated that the Environmental Protection Agency (EPA) estimates that there are approximately 144,000 oil and natural gas upstream operations that would require SPCC Plans. However, there are approximately 870,000 producing oil and natural gas wells in the United States. Most producers believe that the SPCC regulation definition of a facility would capture most of these producing wells.

Moreover, about 635,000 of these producing wells are stripper wells that are highly vulnerable to the impact of excessive regulatory costs. Many of these wells could be shutdown if meeting the new SPCC Plan requirements is too costly.

A similar fundamental issue relates to the interpretation of navigable waters. Making a judgment regarding whether an operation – particularly one in a remote area – poses a threat to navigable waters has been consistently confounding. Over the past two decades different interpretations of the scope of the term have been complicated by different assessments by various EPA Regional offices. Further confusing the issue in this rule is the Supreme Court decision limiting the definition of the term in the *Solid Waste Agency of Northern Cook County v United States Army Corps of Engineers* (“SWANCC”) case, 531 U.S. 159 (2001) and other cases that have been subsequently argued. The EPA SPCC Guidance for Regional Inspectors document (Guidance Document) does little more than restate broad and confusing terms describing navigable waters and the issue remains in litigation. This issue remains a continuing problem in interpreting the requirement to develop an SPCC Plan and needs a consistent resolution. Without some common understanding of the law, producers will be compelled to make judgments regarding the need for SPCC Plans that may be incorrect. They would either risk enforcement actions or incur unnecessary costs. Neither choice is appropriate.

Moving beyond these pivotal issues, a number of other significant issues with the new regulations must be either clarified or addressed. Following are brief reviews of these issues.

*First*, past interpretations of the SPCC Plan requirements clearly allowed the operator to consider costs in determining the practicability or impracticability of meeting particular requirements of the planning process. In the new regulation, EPA states:

Thus, we do not believe it is appropriate to allow an owner or operator to consider costs or economic impacts in any determination as to whether he can satisfy the secondary containment requirement.

The consequence of this approach could be enormous when applied to the marginal wells in this country. Subsequently, in 2004, EPA provided some additional clarification of its position in the May 25 Federal Register by stating:

The Agency did not intend ... to opine broadly on the role of costs in determinations of impracticability. Instead, the Agency intended to make the narrower point that secondary containment may not be considered impracticable solely because a contingency plan is cheaper.

Nevertheless, concerns remain that the inspection process – despite segments in the Guidance Document addressing the impracticability issue – will not reflect EPA’s revised statements. To put this in perspective, a marginal oil well is defined as one producing 15 barrels per day or less (a stripper oil well produces 10 barrels per day or less). Individually, marginal oil wells average around 2.2 barrels per day, but collectively they

produce about 20 percent of domestic oil and are about 80 percent of the number of wells. The costs of SPCC Plans are estimated to range from lows of around \$5,000 to as high as \$20,000 with most of this cost associated with secondary containment requirements. Clearly, these costs put the economic viability of marginal wells in jeopardy.

*Second*, one of the principal issues affecting these costs is a requirement in the new regulations for secondary containment at loading operations. There have been extensive and productive discussions regarding alternative approaches to managing the spill risk during loading operations. EPA has addressed the issue in its May 2004 Federal Register notice:

... we interpret §112.7(h) only to apply to loading and unloading “racks.” Under this interpretation, if a facility does not have a loading or unloading “rack,” §112.7(h) does not apply. Thus, in stating that section 112.7(h) applies to “all facilities, including production facilities,” the Agency only meant that the provision applies if a “facility” happens to have a loading or unloading rack present. The Agency did not mean to imply that any particular category of facilities, such as production facilities, are likely to have loading or unloading racks present.

While this clarification is significant, the underlying regulation is still subject to interpretation during inspections. Despite what seems to be relatively clear statements in the Guidance Document, additional rulemaking would settle the issue more clearly.

*Third*, a similar issue exists regarding secondary containment related to flowlines. This is an area where the question of practicability is easily raised. EPA has tried to clarify its assessment of the problem in the Guidance Document:

EPA acknowledges that in many cases, secondary containment may not be practicable for flowlines and gathering lines. For example, a production facility in a remote area may have many miles of flowlines and gathering lines, around which it would not be practicable to build permanent containment structures. For instance, it may not be possible to install secondary containment around flowlines running across a farmer’s or rancher’s fields since berms may become severe erosional features of the fields and can impede access to the fields by farm/ranch tractors and other equipment. Similarly, it may be impracticable to construct secondary containment around flowlines that run along a fence line or county road due to space limitations or intrusion into a county’s property or right-of-way. At unmanned facilities, the use of active secondary containment methods is not possible because there is limited capability to detect a discharge and deploy active measures in a timely fashion. If secondary containment is not practicable, facility owners/operators may make an impracticability determination and comply with the additional regulatory requirements described in §112.7(d).

Here again, the issue hinges on inspection interpretation and poses risks to production sites that should be more clearly resolved through regulation changes that clarify that secondary containment of production flowlines and gathering lines should not be the primary presumption.

*Fourth*, as described in detail above, in the new rule EPA has concluded that produced water operations are not exempted as wastewater treatment. This decision would subject hundreds of thousands of produced water tanks and vessels to secondary containment requirements when they contain only incidental amounts of oil. This issue needs further examination; it clearly presents a potentially significant cost. Moreover, it can subject tens of thousands of natural gas wells to SPCC Plan requirements when they have not previously been covered.

*Fifth*, the new SPCC rule, Section 112.1(b) includes the “use” of oil. The addition of this term expands the rule, and now requires processing and operating equipment at E&P sites to be considered bulk storage containers requiring secondary containment. Leaks and breaches in heavy steel pressurized process equipment are extremely rare and present a low risk of a release of oil to Waters of the United States. The EPA has not presented data demonstrating there is a significant history of documented spills of oil into Waters of the United States from this type of E&P equipment.

The containment of produced fluids around fired vessels, such as heater treaters, can also represent a serious safety hazard. Such equipment represents a source of ignition near any spilled hydrocarbon liquids and associated vapors. Many registered Professional Engineers (PE) have advised oil and gas operators that containment around fired vessels is ill advised and threatens the safety of workers.

The rule is inconsistent relative to process/operating equipment among the different industrial sectors. At non-exploration and production sites, it is excluded from the definition of bulk storage containers. At E&P facilities, this type of equipment is considered bulk storage containers and subject to secondary containment requirements.

The purpose of a heater treater is to process oil/water mixtures, not to store them. Since the oil contained at any moment in time in process equipment (e.g. heater treater, piping, etc.) is only flowing through the equipment on its way to storage, any accounting for the oil in that type of equipment would amount to double-counting of that oil.

The change of “tank” to “container” has created confusion in the upstream oil and gas E&P industry. The term “tank” is commonly used; however, “containers” are not. In addition, the discrepancy in various sections of Part 112 creates uncertainty and allows for misinterpretation by EPA and industry. For example, there is no definition for “container”, only “bulk storage container”. The definition of “bulk storage container” excludes oil filled operating or manufacturing equipment; however the definition of “facility” and “production facility” includes “equipment”. Section 112.7(a)(3)(iii)



requires secondary containment around “containers” and “equipment”.  
Section 112.9(c)(2) requires containment for the largest single “container”.

Currently pressured and fired vessels are located both in and out of secondary containment, depending on the specific company practices, equipment location and the advice of the PE certifying SPCC plans. The old SPCC rule did not provide for the inclusion of oil that was used in oil filled equipment and treated in process equipment in the volumetric calculations along with the requirement to provide secondary containment around these types of equipment.

Many production wells, especially marginal wells, are significantly impacted by the requirement to provide secondary containment around oil filled equipment and process equipment. The containment of produced fluids around fired vessels, such as heater treaters, creates a safety hazard. In addition, the rule is confusing from one section to the other which leads to misinterpretation by EPA and industry and leads to non compliance. The rule as written takes away the opportunity for the PE to exercise good professional judgment based on the situation at a facility.

*Sixth*, under the 2002 regulation, EPA required that owners or operators of new facilities prepare and implement an SPCC Plan before beginning operations at an onshore or offshore facility. Under the 1973 regulation, the owner or operator had six months to prepare and implement an SPCC plan for a new facility. This new timeframe is not realistic; independent producers drill most of the wells in the United States. Currently, the U.S. rig count is close to 1400, and most of the wells are gas wells. With drilling times averaging 30 days or less, that is close to 1400 new facilities per month that are being added. Getting a P.E. to visit each location where a rig has just completed drilling before the wells can be produced is not logistically possible.

In addition, this requirement is problematic during the initial cleanup of a recently completed well. When new oil and gas wells are completed, they are typically flowed back into frac tanks for several days until they are cleaned up enough to turn into a pipeline. In support of EPA's Natural Gas Star program (STAR), a number of E&P companies have developed new well completion techniques to reduce methane emissions. The technique, which is commonly referred to as "Green Completions" or "Reduced Emission Completions", involves the operator flowing newly completed wells through temporary skid-mounted production equipment to separate the oil, natural gas and water. The water and oil is then transferred into temporary storage tanks and the natural gas is sent to a temporary flowline into the pipeline system for sales. In most cases the tanks storage capacity for the oil, condensate, and/or water is greater than the threshold to trigger the requirement for an SPCC plan. Since the equipment is set up for temporary use, an SPCC plan and secondary containment would not be practicable. Under the SPCC proposal, this practice would no longer be allowed because it would violate the requirement to have a plan in place and functional prior to facility startup.

This technique has significantly reduced the amount of methane released into the atmosphere. While quantification of the total emission reductions from this technique is

not possible, one company reported methane emission reductions of approximately 4.8 BCF in 2005 alone. Roger Fernandez, with EPA's Natural Gas Star program, would be an excellent source to estimate the total emission reductions reported through the STAR program.

However, operators will not be willing to develop SPCC Plans for temporary tanks that are on location for a couple of weeks and are then replaced by a permanent tank battery. EPA should allow operators at least 90 days to prepare and implement an SPCC Plan.

*Seventh*, producers believe that there are three broad challenges that must be met. First, there is a compelling need to continue the process of developing an approach that is clearly understood by all domestic oil and natural gas producers – particularly marginal well producers. Second, the process must yield a Plan that can be certified by licensed professional engineers or that an appropriate alternative is developed. In previous submissions to the EPA, the oil and natural gas exploration and production industry has proposed alternative approaches based on concepts presented by the Small Business Administration. These have not been embraced by EPA and need further attention. Third, the Plan must be affordable so that both the environmental objective of SPCC regulation can be met and domestic production is not inappropriately impaired.

Producers remain committed to working with EPA to develop an approach to formulating SPCC Plans to meet the environmental risks of domestic oil and natural gas production. Ideally, such an approach should be focused on addressing those circumstances that have presented problems in the past. Such an approach would assure that the limited funds available – particularly for marginal well producers – are spent on areas where past experience has demonstrated a compelling call for action.

Taken together, these issues cannot be resolved without setting aside the 2002 regulations and reformatting the SPCC Plan requirements based on a full understanding of all the issues and consequences.

### **Comments on Current Proposal**

Regarding specific issues in the current proposal, EPA proposes to amend the SPCC Plan requirements to reduce the regulatory burden for qualified facilities by:

- Providing an option that would allow owners/operators of facilities that store less than 10,000 gallons of oil and meet other qualifying criteria to self-certify their SPCC Plans, in lieu of review and certification by a Professional Engineer;
- Providing an alternative to the secondary containment requirement, without requiring a determination of impracticability, for facilities that have certain types of oil-filled equipment;
- Defining and providing an exemption for motive power containers;
- Exempting airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers;
- Removing and reserving certain SPCC requirements for animal fats and vegetable oils; and

- Proposing a separate extension of the compliance dates for farms.

These comments will address the first item relating to self-certification. Unfortunately, EPA precluded manufacturing vessels from the scope of its proposal to provide an alternative to secondary containment. This issue remains important and was addressed previously in these comments.

While the current proposal does not embrace the multi-tiered approach suggested by the Small Business Administration (SBA), independent producers concluded that such an approach could offer a significant opportunity to reduce the regulatory burden on E&P facilities if it were modified to reflect conditions at E&P operations. Following are the key portions of the comments submitted by IPAA and many of the other organizations submitting these comments to the EPA Certain Facilities Notice of Data Availability (NODA) in 2004 that address an alternative approach to the current proposal.

The IPAA appreciates the opportunity to comment on the publicly available information referenced in the September 20, 2004 Federal Register related to Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities (Docket ID No. OPA-2004-0007).

IPAA member companies operate the overwhelming majority of small single well oil and gas production facilities, which typically consist of one or two small oil tanks that are only a few hundred barrels in size. Member companies also operate larger facilities, such as multi-well centralized production facilities and gas plants. .

As requested, IPAA is providing comments on the document titled “Data on Facilities that Handle Below a Certain Threshold of Oil (‘Certain Facilities’)”. This document is a compilation of excerpts from several documents that the U.S. Environmental Protection Agency (EPA) is considering in its efforts to assess whether alternate regulatory requirements would be appropriate for facilities subject to the SPCC rule that handle oil below a certain threshold amount. IPAA strongly supports actions that may be taken by the EPA to limit the more extensive requirements of the rule to only those facilities that pose a significant threat to navigable waters. Smaller, lower risk facilities should not be required to follow the same, more restrictive standards as the larger, higher risk facilities.

The U.S. Small Business Administration (Sections 1, 2, and 3) and several others (Section 4 and 6) have presented a three-tiered approach. This approach has significant merit and IPAA strongly supports this approach, with an expansion of the Tier thresholds. The Small Business Administration approach is summarized as follows:

- Tier I (1,321 to 5,000 gallons) – compliance with all applicable substantive provisions of the rule (e.g., secondary containment) but no written plans
- Tier II (5,001 to 10,000 gallons) – compliance with all applicable substantive provisions of the rule (e.g., secondary containment) and written SPCC plans not requiring a Professional Engineer (PE) certification
- Tier III (>10,000 gallons) - compliance with all applicable substantive provisions of the rule (e.g., secondary containment) and written SPCC plans with a Professional Engineer (PE) certification

IPAA supports this tiered approach, but believes that the proposed thresholds are too low to include the truly small oil and gas production facilities, that pose a minimal risk to the environment. IPAA supports:

- Tier I applied to facilities associated with non-marginal wells with storage from 1321 gallons to 20,000 gallons.
- Tier I applied to all facilities associated with marginal well operations, regardless of storage volumes (Marginal wells would be defined as wells that produce 15 barrels per day or less of crude oil or condensate and/or that produce 90,000 cubic feet per day or less of natural gas and/or wells that produce 25 barrels per day or less of crude, condensate, or equivalent natural gas and are 95 percent water),
- Tier II applied to facilities associated with non-marginal wells with storage greater than 20,000 gallons to 50,000 gallons, and
- Tier III applied to facilities associated non-marginal wells with storage greater than 50,000 gallons.

This would allow the smaller, lower risk oil and gas production facilities to fall into Tier I and eliminate the paperwork burdens of the SPCC Plan process. Tier II facilities would undertake the planning requirements without the burden of the Professional Engineer certification. Many E&P producing facilities include surplus tankage, because the tank batteries were sized for early peak oil or condensate production. With time, the fields mature, production rates decrease and produced water volumes increase. This is a characteristic of all oil and gas wells. The surplus tankage is left in place because removing tanks is costly and the salvage value low. The initial production rate of a well or field is not known before production commences. The majority of shallow wells are drilled

by independents. As a rule of thumb, these wells are provided with three or four 300 barrel (12,600 gallon) or 400 barrel (16,800 gallon) tanks. This provides independent operators with tankage for oil and produced water on an interchangeable basis, if the production has decreased or is lower than anticipated. Providing a Tier II cut-off at 50,000 gallons storage capacity provides an incentive to disconnect surplus hydrocarbon tankage. Most small mature operations can reduce tankage without increasing the risk of hydrocarbon release. Larger fields – those covered under Tier III – are more capable of absorbing the full burden of the SPCC Plan costs.

Historical evidence shows that the smaller oil and gas production facilities have not been an oil spill risk to navigable water. For instance, IPAA member companies operate hundreds of thousands of oil and gas production facilities across the U.S. Most of these facilities are in remote locations, not near the public, and not near navigable water. The risk presented by these wells supports only a need for minimal regulation. According to the National Response Center spill release data, during 2003, 96.7 percent of the crude oil spilled came from sources that generated spills exceeding 1000 barrels – an amount that takes the average marginal well over 450 days to produce.

The experience of the oil and gas industry as a whole indicates a very low risk for these small oil and gas production storage facilities. For example, the NRC itself has reported that from 2000 through 2002, approximately 204,000,000 barrels of oil were produced in Oklahoma. Of that amount, approximately 750 barrels of oil and condensate were spilled from storage tanks that required notification to the NRC. This is only approximately 0.0004 percent of the total Oklahoma oil production. The risk of oil spills from small oil and gas production facilities does not justify the costs associated with SPCC Plan development and Professional Engineer (PE) certification.

In the current Proposed Rule EPA presents an alternative that falls far short of the multi-tiered approach initially suggested by SBA. EPA suggests that its unwillingness to embrace the SBA multi-tiered approach partly relates to its inability to understand the practical application of the approach. While domestic producers cannot assess the validity of this concern for other industries, for domestic oil and natural gas producers the implications are laid out above. The multi-tiered approach as described would dramatically reduce paperwork burdens and certification costs for the most economically sensitive oil and natural gas production operations. It could deliver some of the cost savings promised in the 2002 regulations. Unfortunately, the concerns and problems related to new physical requirements from the revised regulations would not be changed by the multi-tiered approach. These – for the reasons described above – need to be addressed in future rulemaking.

If there are questions regarding these comments or if additional information is required, please contact Lee Fuller at IPAA, 202-857-4722.