Specific Oil and Gas Industry SPCC Issues

Objective – Move Resolution of Issues to the 2007 SPCC Rulemaking

- **Tiering of Requirements** – Building on the SBA suggestion that SPCC planning requirement differ based on the size of an operation, industry has identified approaches that would specifically limit the requirements for E&P operations. In particular, it would lessen the burden for marginal wells which are the most susceptible to cost increases. Among the issues that need to be addressed in this arena is the tier where professional engineer certification is necessary
- **Secondary Containment of Produced Water** – Produced water storage tanks typically contain small volumes of oil that do not represent a significant source of oil storage. Water produced should be exempt from the SPCC regulations because there is a very low risk of a significant discharge of oil to Waters of the U.S. Additionally, by expanding the scope of the SPCC program to cover produced water, it has the effect of capturing hundreds of thousands of natural gas operations that produced natural gas liquids that have previously fallen below the threshold for planning.
- **Secondary Containment of Process Equipment** – The containment of produced fluids around oil and gas fired process vessels, such as heater treaters, can present a serious safety hazard and it is impractical for pressurized vessels. In addition, the rule treats process/operating equipment inconsistently for the different industrial sectors. At non-exploration and production sites, it is excluded from the definition of bulk storage containers, whereas at E&P facilities, this type of equipment is considered bulk storage containers and subject to secondary containment requirements. The purpose of oil and gas process equipment such as heater treaters is to process oil/water mixtures. These vessels are flow-through process vessels rather than containment vessels.
- **Secondary Containment of Flow and Gathering Lines** – Requirements for containment around flow lines and gathering lines are excessive and impractical and will cause significant and unnecessary disturbance of the surrounding lands. Installing secondary containment (including double-walled piping) or retrofitting all existing flow lines and gathering lines is cost prohibitive. A more reasonable approach would be to allow operators to implement flexible and responsible, risk-based flow line inspection and maintenance programs to prevent spills. Flow lines are not and should not be considered oil storage containers.
- **Definition of Facility** – Although the Consent Decree agreement with the American Petroleum Institute attempted to clarify the distinction between the definition of "facility" and of "production facility" in the context of Facility Response Plans (FRPs), it leaves open the impact of these definitions on the planning process. In particular, changes in the definition of production facility from earlier regulatory proposals deleting the term "may" from the definition raises questions about the authority of the operator or the professional engineer to create discrete, manageable plans for production operations within the larger production field.
- **Timing of Implementation** – Because the oil exploration and production industry does not know whether its development efforts will succeed, it needs a structure that allows for SPCC Plans to be prepared within 6 months after operations begin and to be implemented within 6 months after they are prepared.

ipaa
America's Oil & Gas Producers

November 26, 2002

Mr. David Lopez
Director, Oil Program Center
OSWER, Office of Emergency and Remedial Response
Environmental Protection Agency
Ariel Rios Building (5203-G)
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities; Final Rule

Dear Mr. Lopez:

On behalf of the Independent Petroleum Association of America (IPAA) and its members I want to thank you for the opportunity to meet with you, Mark Howard, and Hugo Fleischman to discuss the new requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans contained in the July 17, 2002, Federal Register. I believe the meeting provided all of the participants the opportunity to better understand the issues regarding compliance with the new requirements. This letter will review some of the key issues in the discussion and request an extension of the compliance deadlines to allow time for these issues to be addressed.

One of the first issues that causes concern and confusion among IPAA members 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. What constitutes a facility therefore is implicitly a subset of the total number of operations, but most producers believe that the definition would capture most producing wells. Moreover, about 635,000 of these producing wells are stripper wells that are the most vulnerable to the impact of high regulatory costs. Many of these wells could be shutdown if the cost of meeting the new SPCC Plan requirements is too high.

A similar fundamental issue relates to the interpretation of navigable waters. Making a judgment regarding whether an operation – particularly one 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). It is IPAA's understanding that the Administration is developing guidance regarding the implications of this decision on all federal regulations. However, such guidance is not yet available nor, therefore, is there a common interpretation of the *SWANCC* case among the EPA Regional offices. Without some common understanding of the law, producers will be compelled 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, our meeting identified a number of other significant issues with the new regulations that must be either clarified or addressed. None of these produced the clear resolution needed to make appropriate planning decisions. Some raised significant questions about the capability of producers to comply with the regulatory deadlines. 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. 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. If oil sells at $25.00 per barrel, the average marginal well will gross about $20,000 annually with operating costs of about $17,400. 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. At our meeting I believe we made some progress in understanding these consequences.

Second, one of the principal issues affecting these costs is a requirement in the new regulations for secondary containment at loading operations. While I believe that we had some valuable discussion of alternative approaches to manage the spill risk during loading operations, it seemed to me that any resolution of this issue could likely require additional rulemaking. In any event, resolution prior to the deadline dates in the regulation appears improbable.

Third, a similar issue exists regarding secondary containment related to flowlines. Here, while some of our discussion focused on possible inspection related alternatives, the issue is unresolved and would likely require a revision to the rule.

Fourth, 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 vessels to secondary containment requirements when they contain only incidental amounts of oil. We did not address this part of the rule at length during our meeting, but it is clearly a potentially significant cost.

Fifth, one substantial issue that did draw extensive discussion during our meeting relates to the availability and willingness of licensed professional engineers to certify new SPCC Plans. During the discussion it became clear that in many states few licensed professional engineers are involved in SPCC Plan work. Moreover, the new regulation may drive many of those out of the

business because they are concerned that they cannot certify the Plans based on the current uncertainty over their interpretation of the regulation. Anecdotally, I received information from two states that elevates this problem. In Kansas, there are estimates that the new regulations could apply to 35,000 facilities, but there are only three professional engineers currently doing SPCC Plan certification. In Ohio, the situation is similar – about 40,000 wells and 4 professional engineers. Assuming that these engineers were certifying SPCC Plans on a one per day rate, it would take about three years to complete these two states. These limitations raise profound questions about the ability of the nation's oil and natural gas producers to meet current February and August 2003 deadlines in the regulations – deadlines that become even more unrealistic given the number of outstanding issues that still need resolution.

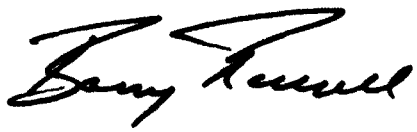
Sixth, there are other issues that undoubtedly will raise similar questions where time prevented discussion during our meeting. These need to be identified and addressed.

A final issue that we only mentioned during the meeting could present additional problems to EPA's own capabilities. As I understand EPA process, if a producer can interpret the regulation, develop a Plan, and obtain a professional engineer's certification, he does not need specific action by EPA. However, if a producer wants to do an alternative approach – such as many of those we discussed during our meeting – he would have to get the concurrence of the EPA Regional Administrator. This means that in many, if not most, cases to take any approach that might be more cost effective, regional EPA staff must be available to process the request. This would appear to place EPA in a position of having to address many of the questions we discussed on an ad hoc basis. Moreover, it would be a significant and probably currently unanticipated burden on the EPA Regions.

IPAA believes 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 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. Third, the Plan must be affordable so that both the environmental objective of SPCC can be met and domestic production is not inappropriately impaired. IPAA does not believe that these challenges can be met under the current compliance deadlines. Consequently, on behalf of America's domestic oil and natural gas producers, IPAA requests that EPA (1) extend the existing compliance dates for no less than one year and (2) begin the process of proposing such new regulations as are necessary to address the changes that are needed to revise the SPCC Plan requirements. IPAA is prepared to work with EPA to develop an approach to formulating SPCC Plans to meet the environmental risks of domestic oil and natural gas production. Ideally, it is our view that 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 shown a compelling need for action.

I look forward to working with you on these matters in the future.

Sincerely,



President

Cc: Marianne Horinko
Mike Cook

SPCC Planning Regulations

- Independent producers
    - Develop 90 percent of US wells, produce 82 percent of US natural gas and 68 percent of US oil
    - Range in size from small "Mom and Pop" operations to large publicly traded corporations
    - Primary operators of "marginal" wells – produce less than 15 barrels/day of oil or 90 mcfd of natural gas
        - 84 percent of US oil wells are marginal; 71 percent of US natural gas wells are marginal
            - About 400,000 oil wells and about 200,000 natural gas wells
        - Marginal wells produce about 20 percent of American oil and about 10 percent of American natural gas
- SPCC Background
    - The 2002 regulations and ex-post facto interpretations of the 1973 rules can have significant adverse effects on oil and natural gas producers and American production – particularly on marginal wells
        - Affects existing wells and new facilities
    - The industry has been involved in responding to EPA proposals since the early 1980s and more intensively since the 2002 regulations were issued
        - The 2002 regulations theoretically finalized earlier proposals but in reality presented new issues based on interpretations of previous rules that were inconsistent with past practices
            - EPA acted to exclude wastewater while stating that produced water from oil and natural gas E&P facilities would not be considered wastewater and contended the action was merely restating current policy
            - Probably single biggest cost to the E&P industry – would have dramatically changed the cost of the 2002 regulation
        - Numerous other issues are also of concern – secondary containment of flow and gathering lines, secondary containment of process vessels, secondary containment of loading areas, definition of facility, professional engineering certifications, a tiered process for marginal wells, timing for plan development
- SPCC Rulemaking Process Concerns
    - For E&P facilities, the SPCC rule is a solution in search of a problem
        - EPA has never produced a document that demonstrates the 1973 SPCC planning rules are inadequate for E&P facilities
        - EPA has never delineated a specific list of problems that represent a systemic failure of the existing process
        - EPA has never demonstrated that the changes it is making to the rules would eliminate whatever problems it is addressing
        - EPA has never shown that the costs of the solution are warranted based on the environmental risks

- Industry must meet its environmental obligations
  - If there is a spill at a site, industry is responsible for cleaning it up and remediating any damages
  - It's in industry's interest to limit its risk
  - But, industry is also concerned about spending capital on structures that will have little benefit – particularly on marginal wells
- Since 2002, industry has regularly sought an opportunity to approach the SPCC planning requirements rulemaking in an open process
  - As late as December 2006, when EPA indicated that it would be developing changes to the SPCC regulations specifically for oil and natural gas E&P facilities, industry suggested joint efforts to define the nature of the problems with the 1973 rules and to identify cost effective solutions to address them
  - EPA never rejects these requests, but it never accepts them and industry is always put in the position of opposing the regulations for the same reasons