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March 5, 2009

EPA Docket
Docket ID No. EPA-HQ-OPA-2007-0584
United States Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, DC 20460

Re: Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule – Final Amendments, Delay of Effective Date and Request for Comment (74 Fed. Reg. 5900, February 3, 2009), EPA Docket ID No. EPA-HQ-OPA-2007-0584

Dear Docket Clerk:

The American Petroleum Institute (API) is pleased to offer these comments on the U.S. Environmental Protection Agency's (EPA's) Delay of Effective Date and Request for Comments (74 Fed. Reg. 5900, February 3, 2009, hereafter "Request for Comments") on the Final Amendments to the Spill Prevention, Control, and Countermeasure Rule (73 Fed. Reg. 74236, December 5, 2008, hereafter "Final Amendments"). API represents approximately 400 member companies involved in all aspects of the oil and natural gas industry, including exploration, production, refining, transportation, and marketing of crude petroleum and petroleum products. There are approximately 150 petroleum refineries, over 2000 marketing terminals and bulk storage facilities, and over 100,000 oil and gas production facilities in the United States, its territories, and Puerto Rico potentially affected by this proposal.

API recognizes and appreciates EPA's hard work and diligent attempts to address many of the concerns raised by the 2002 SPCC rule. API recognizes the substantive progress that has been made since that time. On numerous occasions since 2002, EPA has met with both API and with the SPCC Industry Coalition to receive and discuss industry's concerns and to work toward improving the clarity of the rule. EPA has also extended the rule compliance dates in order to allow this dialogue to happen.

On December 14, 2007, API submitted to EPA detailed comments on EPA's proposed amendments to the SPCC rule (72 Fed. Reg. 58378, October 15, 2007). We are not re-submitting those comments as they are already part of the record regarding the Final Amendments. The following comments, therefore, are intended to provide additional perspective for EPA during re-evaluation of the Final Amendments.

Produced Water Containers and Qualified Oil Production Facilities

EPA specifically requested comments on the optional approaches for produced water containers and the criteria for qualified oil production facilities. The Independent Petroleum Association of America (IPAA) has commented on these issues in detail as they relate to the small producer and

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stripper well operations. API endorses those comments to prevent many marginal production wells from becoming uneconomical as a result of requirements imposed by this rulemaking.

API also realizes that EPA may not be able to address all of IPAA's concerns and comments in the area of produced water containers requiring Professional Engineer (PE) review and certification. However, we strongly encourage the Agency to maintain the exemption for produced water containers and the specific language found in the December 5, 2008 Final Rulemaking. Under 40CFR112.3(d)(1)(vii) [73 Fed. Reg. 74301], the provision "any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan" is important to preserve. Although it is not broadly applicable, this exemption lowers the burden of the SPCC rule in specific instances, while adequately protecting Waters of the U.S. As an example, consider a large produced water tank (50,000 bbl capacity) located inside of an existing containment structure with a smaller condensate tank (500 bbl capacity). The existing containment is more than adequate to contain the condensate tank contents, but is inadequate to contain all of the produced water. By adding the operational controls required by 40CFR112.3(d)(1)(vii), the operator can avoid the capital cost of enlarging the existing containment.

EPA/DOT Jurisdiction

API supports revision of the February 4, 2000 memorandum of agreement between the Department of Transportation (DOT) and EPA, or repeal of this agreement and preparation of a new agreement, to eliminate, to the maximum extent possible, dual jurisdiction between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and EPA. Within the regulated community, the 2000 memorandum added confusion to the original 1971 Memorandum of Understanding (MOU).

An unintended consequence of this confusion was that breakout tanks previously regulated solely by DOT would potentially fall under the concurrent jurisdiction of EPA, contravening the original intent of the 1971 MOU, subsequent Executive Orders, and guidance memoranda. Executive Order 12580 signed by President George H. W. Bush stated that DOT is to have primary jurisdiction over "transportation related activities/facilities" while EPA is to have jurisdiction over "non-transportation facilities." Dual regulation can only result in unnecessary confusion, duplication, and regulatory burden on the pipeline and bulk storage industries, with little incremental environmental benefit.

Examples of the additional regulatory burden of dual jurisdiction include, but are not limited to:

- Two separate agency inspections (DOT & EPA) to differing regulatory standards for the same tank(s)/facility(ies);

- Two separate set of regulations for the same facility, and even for the same piece of equipment;
- Two separate Facility Response Plans (FRPs) for the same facility;
- Confusion over why tanks constructed exactly the same way, holding the same type of product, and operated the same way, are regulated differently; and,
- In some cases, such as those involving marine facilities, potential for three (3) agencies (EPA, DOT and USCG) providing independent oversight, enforcing three separate sets of overlapping regulations.

Prior to the Administration change, it was our understanding that EPA and PHMSA were developing a new letter agreement incorporating a primary function test to determine jurisdiction. The goal of this new agreement would be to eliminate gaps and overlaps in the separate spill prevention regulations. API fully supports this goal and would like to work with the agencies to provide any information needed to complete this agreement to both agencies' satisfaction.

Appropriate Notice and Comment of Amendment Revisions

EPA has not published proposed changes to the Final Rule found at 73 Fed. Reg. 74236 (Dec. 5, 2008). API reminds EPA that the Administrative Procedure Act good cause exemption is narrowly construed and acceptable only when delay would be "impracticable, unnecessary or contrary to the public interest." API does not believe EPA has made such a showing.

In requesting additional comments, it is clear that EPA is considering further revisions of the final rule. Should EPA decide to revise its final rule based upon comments received as a result of the Request for Comments, then as matters of law and fairness, these revisions should be subject to public notice and comment before promulgation.

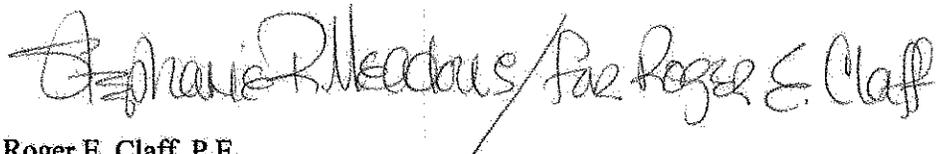
Extension of Compliance Dates

Should EPA decide to revise the Final Amendments based upon comments received as a result of the Request for Comments, API requests an extension of the compliance dates by which facilities must amend SPCC Plans and implement those plans. API requests the compliance date to amend SPCC Plans be extended to at least one year from the effective date of the revised Final Amendments. API also recommends that EPA maintain a separation of six months between the deadline for SPCC Plan amendment and implementation of that Plan, to allow facility owners/operators adequate time after plan amendment to modify their facilities, properly train employees on the amended plan requirements, and allow for full implementation of the amended plan requirements.

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API appreciates the opportunity to provide these comments for EPA's careful consideration.
Please feel free to contact me to discuss our comments, or if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "St. Francis R. Meadows / For Roger E. Claff". The signature is written in a cursive style and is positioned above the typed name of the sender.

Roger E. Claff, P.E.
Senior Scientific Advisor

cc: K. Simon
S. Meadows
K. Cauthen
M. See