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Domestic Petroleum Council

February 10, 2006

EPA Docket Center (EPA/DC)
Docket ID No. EPA-HQ-OPA-2005-0001
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re:
Oil Pollution Prevention;
Spill Prevention, Control, and Countermeasure Plan Requirements – Amendments; Proposed
Rule (70 Federal Register 73524, December 12, 2005);
EPA Docket ID No. EPA-HQ-OPA-2005-0001

Dear Sir or Madam:

The Domestic Petroleum Council (DPC) is pleased to offer comments on publicly available information from the U.S. Environmental Protection Agency's (EPA) Proposed Rule referenced in the December 12, 2005, 70 Federal Register 73524. The Proposed Rule announces EPA's proposal to amend Spill Prevention, Control and Countermeasure (SPCC) Plan requirements.

The Domestic Petroleum Council is a national trade association representing 24 of the largest United States independent upstream natural gas and crude oil exploration and production (E&P) companies. Most DPC members are publicly traded corporations, and many have international operations or interests. The DPC 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. DPC companies operate many small single well natural gas and crude oil production facilities, which typically consist of one or two small oil tanks that are usually only a few hundred barrels (42 gallons) in size. Some member companies also operate larger facilities, such as multi-well centralized tank batteries, compressor stations and gas processing plants.

The DPC membership appreciates EPA's attempts to address the many concerns raised by the 2002 SPCC rule that must accommodate numerous industry types. DPC recognizes

continuous improvement is being made, however there are multiple points that directly impact the Exploration and Production industry that must be recognized and addressed.

DPC requests that the EPA recognize risk analysis and performance data of E&P facilities and have meaningful provisions that accommodate the difference in risk between a small production storage tank that is often remotely located and a concentrated risk from a large capacity holding tank found at a downstream plant or a large storage tank near navigable waters. Smaller, lower risk facilities should not be required to follow the same, more restrictive standards as the larger, higher risk facilities.

Produced Water Tank Containment

The intent of the SPCC rule is to prevent and control oil discharges. The EPA does not have authority to regulate produced water under the Clean Water Act. We question the statutory applicability to produced water tanks; however, even if it is determined that produced water is not statutorily excluded from the rule, water produced from the oil and gas exploration and production (E&P) should be exempt from the SPCC regulations because there is a very low risk of a discharge of oil to Waters of the U.S.

In addition, the EPA has not presented data demonstrating there is a significant history of documented spills of oil into Waters of the U.S. from E&P produced water storage tanks. The EPA has already applied a risk-based approach in its decision to not require secondary containment for containers holding less than 55 gallons of oil. Therefore, water tanks with less than this volume of oil should not be regulated under the SPCC rules.

In addition, oil and gas exploration and production equipment used to treat produced water should be subject to the wastewater exemption to the same extent as similar facilities in other industrial sectors. The EPA has singled out oil and gas water separation facilities for an increased level of regulation while facilities in other industry sectors using similar or nearly identical technologies and treatment are allowed to be exempted from these rules.

Current Industry Practice. In some instances, produced water tanks are contained within secondary containment structures; however, this is not always the case for every operator or location. Operators will have to develop new plans and be faced with construction of costly containment structures around produced water tanks, even though these containers present a very low risk of a significant discharge of oil to Waters of the U.S. Historical evidence shows that the smaller oil and gas production facilities have not been an oil spill risk to navigable water.

Impacts of the new rule. Produced water tanks should not be regulated as bulk oil storage containers requiring containment because the amount of oil commonly present is zero or is generally less than the criteria considered to be a harmful quantity (55-gallons) for secondary containment. Any requirement to regulate produced water as oil will require the containment structures at thousands of facilities to be retrofitted which will be extremely costly for all operators. Many production wells, especially marginal wells, are significantly impacted by

the SPCC requirements. Marginal crude oil and natural gas wells operate at the lower edge of profitability. The SPCC requirements could cause some of these marginal oil and gas wells to be prematurely plugged, due to the economics of preparing plans and constructing and maintaining secondary containment around produced water tanks that contain zero or de minimis amounts of oil.

DPC Recommendation. E&P produced water tanks should not be considered bulk oil storage containers and should not be subject to the SPCC regulation as they contain water. If oil is present, it is in de minimis quantities that do not present a significant risk of discharging oil to Waters of the U.S.

Equipment containing produced wastewater should be included in the wastewater exemption to the same extent as similar facilities in other industrial sectors. In addition, containment structures should revert back to the old language to prevent costly retrofits of containment structures for produced water tank on numerous E&P facilities.

Tiered Volumes and Self Certification

Through this Proposed Rule, EPA has presented potential options for consideration to reduce the regulatory burden for qualified facilities and oil-filled equipment under the SPCC rule. Small unsophisticated facilities usually are supporting marginally economic crude oil production. The time delays, cost and expertise of a Professional Engineer for plan certification of secondary containment of a small facility is not warranted.

DPC supports a tiered approach, but believes that the proposed thresholds are too low to include small oil and gas production facilities that pose a minimal risk to the environment. The tiered approach along with self certification for small volume oil storage has significant merit. DPC reiterates our previous comments to EPA and strongly supports this approach.

DPC Recommendation. Expand the Tier thresholds for E&P as follows:

- o Tier I (1,321 to 20,000 gallons and all marginal well operations) – compliance with all applicable substantive provisions of the rule (e.g., secondary containment), but self certification and no written plans
- o Tier II (20,001 to 50,000 gallons) – compliance with all applicable substantive provisions of the rule (e.g., secondary containment) and have a written SPCC plan that does not require a Professional Engineer (PE) certification
- o Tier III (>50,000 gallons) - compliance with all applicable substantive provisions of the rule (e.g., secondary containment) and written SPCC plans with a Professional Engineer (PE) certification

Most larger, multi-well centralized production facilities and gas processing plants would have oil storage that would likely fall into Tier III. DPC agrees with the cost and benefit

analysis previously provided by the U.S. Small Business Administration and believes that it is more applicable to the E&P industry with the thresholds listed above.

Process Vessels

The DPC members use and operate processing equipment at thousands of E&P locations. This equipment should not be considered bulk storage containers requiring secondary containment. Leaks and breeches in heavy steel pressurized process equipment are extremely rare and present a low risk of a release of oil to Waters of the U.S. The EPA has not presented data demonstrating there is a significant history of documented spills of oil into Waters of the U.S. 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 have advised oil and gas operators that containment around fired vessels is ill advised and threatens the safety of workers. The regulation, as written, takes away the opportunity for the Professional Engineer (PE) to exercise professional judgment.

Further, the Proposed Rule is inconsistent in regards to process/operating equipment among the different industrial sectors. At non-exploration and production sites, process equipment 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 and any volume accounting for the oil in that type of equipment would amount to double-counting of that oil.

Current Industry Practice. Currently pressured and fired vessels are located both in and out of secondary containment, depending on the specific company practices, equipment location or spacing or the advice of the Professional Engineer (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.

Impacts of the new rule. Many production wells, especially marginal wells, are significantly impacted by the requirement to provide secondary containment around oil filled 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.

DPC Recommendation. EPA should clarify the definition of processing equipment and bulk storage container. Language should be modified as follows:

“Oil containing equipment (i.e., heater-treaters, pumps, crankcases, flow lines, gathering lines, etc.) whose primary purpose is “process” related, not “storage” related, is not a bulk storage container.”

Alternatively, the definition could be changed as follows: “Bulk storage container means a storage tank”.

In addition, the rule should be changed to allow the Professional Engineer flexibility to exercise professional judgment based on the situation at a certified facility.

Timing To Develop and Implement SPCC Plans

The Proposed Rule creates an unnecessary new burden to the E&P industry and contradicts or will nullify new innovative well testing techniques by requiring the SPCC plans be prepared and implemented by operators of new facilities before beginning operations. Under the 1973 regulation, the owner or operator had six months to prepare and implement an SPCC plan for a new facility. Again, the EPA has not demonstrated that the Proposed Rule timeline change is necessary and that the existing timeline causes damage to the Waters of the U.S.

Further, this new timeframe is not practicable or realistic for DPC members or the E&P industry that drill and produce most of the wells in the United States. The logistics of moving out a drilling or completion rig, installing flow lines, equipment and tanks and developing a certified SPCC plan before the well is tested and determined to be commercial and final are onerous and cost prohibitive.

Since a majority of oil and gas facilities are usually located in remote locations that are not easily accessible, preparation of SPCC plans prior to operation of a facility will result in production delays, additional costs and inefficiency. The inefficiencies will result because a Professional Engineer will need to visit a single site prior to completing the plan, rather than following the current practice of waiting until a number of facilities are completed and visiting them all at the same time. Also, the transfer of a facility from one operator to another will cause an additional delay of production and inefficiencies, if a new plan must be prepared prior to operation of the facility by the new owner.

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 a central production facility or onsite 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 a new well completion

through temporary skid-mounted production equipment brought directly to the well site to separate and capture the oil, natural gas and water. The water and hydrocarbon liquid is then transferred into temporary storage tanks and the natural gas is sent to a temporary flow line and ultimately into a pipe line system for sales in stead of venting or flaring. In most cases, the tank 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 Proposed Rule, 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.

The innovation of the "Green Completion" technique has significantly reduced the amount of greenhouse gas (GHG), in this case primarily methane, from being released into the atmosphere during well testing. While quantification of the total emission reductions from this technique is not possible, one member company reported methane emission reductions of approximately 4.8 BCF in 2005 alone.

DPC Recommendation. The EPA should work within its own agency to accommodate new technology and innovations that protect the environment. The EPA Natural Gas Star program would be an excellent source to estimate the total emission reductions reported through the STAR program and the use of the "Green Completion". The EPA should maintain the 6 month timeline or allow operators at least 90 days to prepare and implement an SPCC Plan. The Proposed Rule timeline is not efficient or realistic for the E&P industry sector.

Flow Lines and Gathering Lines

A requirement for secondary containment for flow lines and gathering lines will cause significant and unnecessary disturbance of the surrounding lands. Agricultural productivity may be disrupted and agricultural equipment safety may be compromised. Additionally, installing secondary containment (including double-walled piping) or retrofitting all existing flowlines and gathering lines is cost prohibitive.

The DPC oil and natural gas producers employ a variety of construction, inspection and maintenance practices to prevent pollution. These practices are aimed at preventing the loss of produced oil and gas which is critical to economical operations while protecting the environment.

DPC Recommendation. The EPA should allow operators to implement reasonable and prudent practices to maintain flow lines and gathering line integrity to prevent discharges of oil to Waters of the U.S. Oil and gas operators focus resources and effort on responsible, risk-based flow line inspection, maintenance, and replacement spill prevention programs.

Load Racks

The DPC members have expressed confusion about the term "Load Racks" and believe that the hauling of oil from an E&P facility is not conducted in the context of a "Load Rack".

DPC Recommendation. The EPA should formally recognize in the rule that the use of truck loading and unloading facilities at upstream E&P facilities to haul product is not the same as the use of product loading racks in the downstream chemical plant industry.

Economic Impact

The EPA has not provided the results of any economic impact or cost benefit analysis that has been performed on the domestic oil and gas industry as a result of the Proposed Rule. The potential energy supply consequences to the United States due to the increased economic burden on the domestic oil and natural gas industry sector must be addressed before the Proposed Rule is final. Additionally, the EPA has not presented environmental or economic data demonstrating there is a significant history or record of documented spills of oil into Waters of the U.S. from E&P produced water storage tanks. Furthermore, no data has been provided by EPA which indicates that spills from E&P flow lines and gathering lines contribute significantly to releases to Waters of the US.

DPC Recommendation. The DPC believes that there will be in excess of \$100 million impact from the Proposed Rule which has the potential to adversely affect the economy in a material way due to interrupted energy supplies, earlier well abandonment and annual impact to one or more industry sectors. The EPA should partner with the Department of Energy to complete an economic analysis before promulgating the Proposed Rule.

In closing, the Domestic Petroleum Council is pleased to offer comments on publicly available information from the U.S. Environmental Protection Agency's (EPA) Proposed Rule referenced in the December 12, 2005 Federal Register and appreciates the opportunity to provide the above comments for consideration. Should you have any questions, please call me at (202) 742 4300.

Sincerely,

W. Whitsitt

William F. Whitsitt
President

Proposed SPCC Tiered Approach for Small Upstream Crude Oil and Natural Gas Production Facilities

Background. Currently, the Federal Spill Prevention Control and Countermeasure (SPCC) requirements under the Clean Water Act are applicable for any facility that has a total oil storage capacity greater than 1,320 gallons, and where a release or spill could reasonably reach navigable waters. All facilities falling within this regulation are subject to the same requirements without any consideration of the differences in risk to the environment resulting from varying storage capacity and throughput. Recently, EPA proposed a threshold for small facilities with a storage capacity of 10,000 gallons or less that eliminates the Professional Engineer (PE) certifications in certain instances; however, the substantive requirements would remain. EPA's proposal will provide minimal to no benefit for upstream crude oil and natural gas production facilities, especially small volume marginal wells and the operators of those wells.

There is a need to streamline the regulatory and administrative process for small upstream crude oil and natural gas facilities while maintaining the protection of navigable waters. Regulatory relief is needed regarding the development of plans, P.E. certifications, and most importantly, the implementation of requirements for those upstream facilities that provide minimal risk to the environment as compared to larger storage facilities, tank farms and refineries. A more practical and economic regulatory scheme would encourage crude oil and natural gas production operators (large and small) to comply, protect navigable waters and assure that industry's funds are spent where it can provide the most benefit.

The following tiered approach accounts for the needs of small volume storage, large facilities and tank farm operations. This approach applies to those facilities that due to its location, could reasonably be expected to discharge oil into or upon navigable waters.

Tier 1: A facility's total oil storage capacity is greater than or equal to 1,320 gallons but less than 50,000 gallons. This proposed threshold is 5% of the facility response plan (FRP) threshold (i.e. greater than or equal to 1,000,000 gallons of total oil storage where there is no transfer of oil over water). This tier includes:

- No single tank at a facility would exceed a nominal capacity of 21,000 gallons (500 barrels). The risk of all tanks failing at the same time would be remote. A single tank exceeding the nominal capacity of 500 barrels would fall under the requirements for Tier 2 because it could present a greater risk to the environment if it failed.
- Eliminates the requirements for operations/process equipment, flow lines, loading/unloading areas, integrity testing, and other various requirements currently required for a facility that typically has a greater single storage capacity and higher throughput.
- Requires a one page plan and/or a spreadsheet matrix (see attachment)
 - Includes operator/owner's name, address and contact information; well name and location; volume calculations for secondary containment; emergency contact information; and signature of authorized representative of the owner/operator.
 - No P.E. certification of plan
 - For new well completions or recently purchased wells, the operator would have 6 months after well testing is completed or purchase closing date to develop a SPCC plan and to implement secondary containment around the storage tanks.

Tier 2: A facility's total oil storage capacity is greater than or equal to 50,000 gallons but less than 1,000,000 gallons. This tier would include full requirements in accordance with existing SPCC rules.

Tier 3: In general, a facility's total oil storage capacity is greater than or equal to 1,000,000 gallons. Facilities subject to 40 CFR §112.20, would follow the requirements of this section.

**Spill Prevention Control and Countermeasure Plan (SPCC) Requirements
Proposed SPCC Form for Tier 1 Facilities**

Applicability: This form can be used by those facilities where the total oil storage capacity is greater than or equal to 1,320 gallons but less than 50,000 gallons, where a potential spill at the facility could reasonably reach waters of the U.S., and where no single tank at a facility exceeds a nominal capacity of 21,000 gallons (500 barrels). This form shall be updated anytime there is a material change at the facility. For more information on SPCC requirements, go to <http://www.epa.gov/oilspill> or see 40 CFR 112.

Facility Operator/Owner:	Address:	City: State: Zip Code:
Facility Name:	Facility Location:	
Facility Manager/Primary Contact:	Work Phone Number:	Cell Phone Number:
<p>Secondary Containment: Secondary containment shall provide sufficient volume for the single largest tank plus freeboard to contain precipitation and account for any displaced volume caused by tanks within the secondary containment structure. The containment structure shall be capable of containing a spill and be detected by company personnel before it escapes the containment structure.</p>		
<p>Calculations: In general, the following formula can be used to determine if the size of the secondary containment is appropriate for the facility. Interior containment length x width x height less volume of any and all tanks within the containment to the height of the containment = largest tank volume plus the volume of rainfall freeboard</p>		
<p>Additional information to make this determination is provided on the back of this document.</p>		
<p>Emergency Contact Number(s) in Case of a Spill:</p>		
<p>Discharge Response: Eliminate potential ignition sources; if possible and safe to do so, identify and shut down the source of discharge; contain the discharge with sorbents, berms, trenches, sandbags, or other similar materials; contact facility manager; contact regulatory authorities (if necessary), contact response organizations; collect and dispose of product in accordance with the regulations.</p>		
Name of Authorized Company Representative:	Title:	
Signature	Date:	

Additional Information to Determine the Size of the Secondary Containment

1. Volume of single largest tank:

$$\underline{\hspace{1cm}} \text{ barrels times } 42 \text{ gallons/barrel} = \underline{\hspace{1cm}} \text{ gallons}$$

2. To convert gallons to cubic feet:

$$\underline{\hspace{1cm}} \text{ gallons divided by } 7.48 \text{ gallons/feet}^3 = \underline{\hspace{1cm}} \text{ feet}^3.$$

3. If the tank volume is not known, use the measurements of the tank to calculate volume:

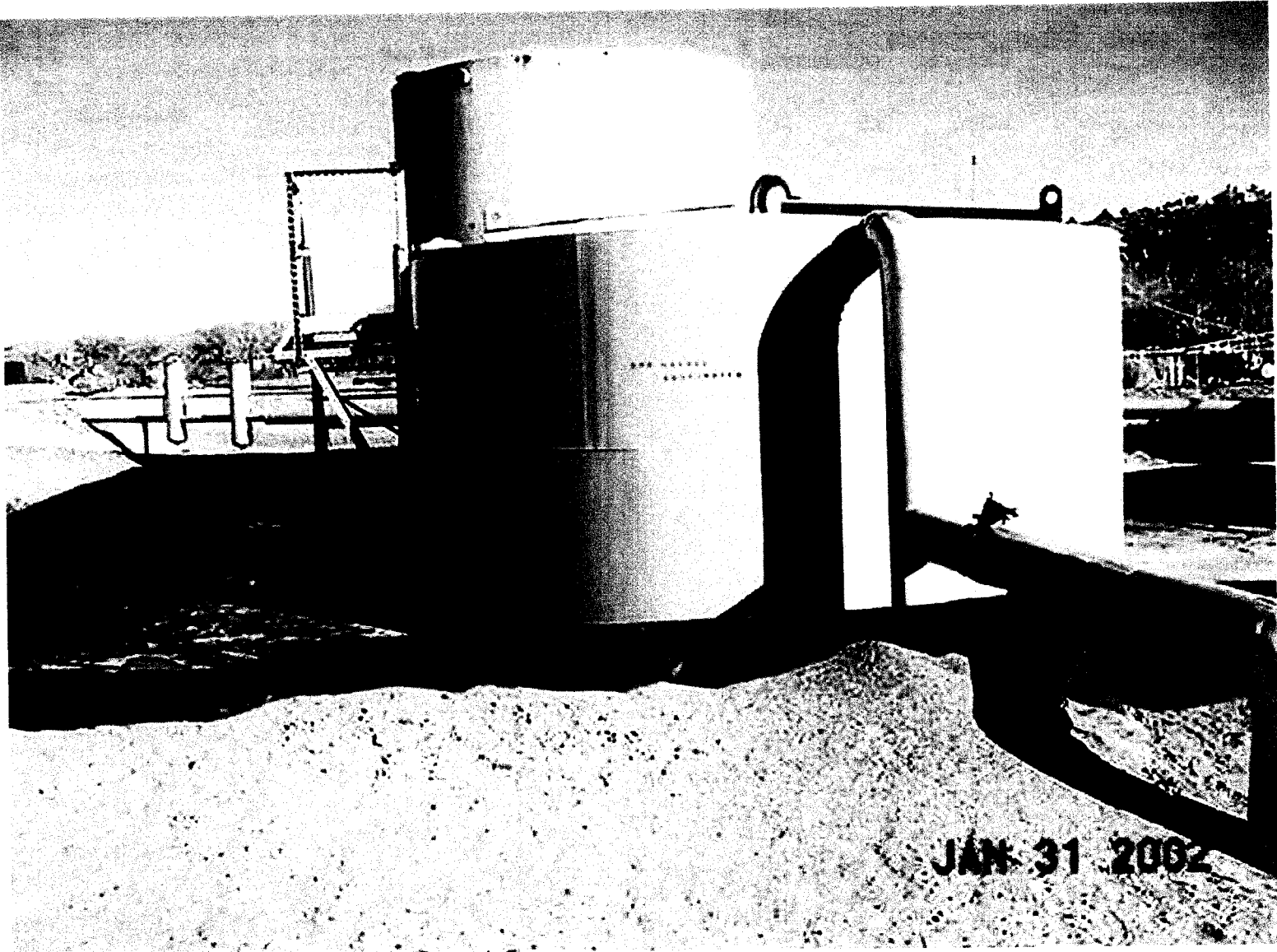
$$\underline{\hspace{1cm}} \text{ Volume (feet}^3\text{)} = 3.1416 \text{ times } \underline{\hspace{1cm}} \text{ radius(feet)}^2 \text{ times } \underline{\hspace{1cm}} \text{ height (feet)}$$

4. Displacement from tanks within the secondary containment: The total capacity of the containment area is reduced by the volume "displaced" by tanks inside the containment structure.

$$[3.1416 \text{ times } (\underline{\hspace{1cm}} \text{ diameter of tank in feet})^2 / 4] = \underline{\hspace{1cm}} \text{ feet}^2$$

5. Precipitation: EPA has not set a standard for freeboard capacity, however, industry standards recommend freeboard be sufficient to contain a rainfall that corresponds to a 25-year, 24-hour storm event in the area of the facility. See http://hdsc.nws.noaa.gov/hdsc/pfds/other/ok_pfds.html.

$$\underline{\hspace{1cm}} \text{ inches} / 12 \text{ inches/feet} = \underline{\hspace{1cm}} \text{ feet}$$



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Points on Spill Prevention Control and Countermeasure Rule (SPCC Plans)

Intent of the rule is to protect the environment from a release of oil

- Produced Water Tanks will now be required to have containment
 - Low risk of discharge
 - Little or no oil stored in these tanks
 - Process or Pressured Vessels *— flow, in esp ls*
 - Unsafe to have fire walls around a vessel
 - Impracticable to contain a spill from a pressured vessel
 - Process vessels in other industries are not regulated
 - No evidence that vessel failure is an issue
 - Tiered Approach for 50,000 gallon or less storage
 - Industry consensus
 - Simplifies a lengthy rule
 - Does not relieve operators from containment responsibilities
 - Will result in better compliance
 - 10,000 gallon proposal from EPA does nothing
 - Flow and Gathering lines
 - Secondary containment will result in more environmental damage
 - Contingency plans must be flexible to work
-