



American Public Power Association

2301 M Street, N.W.
Washington, D.C. 20037-1484
202-467-2900
202-467-2910 (fax)
www.APPAnet.org

Comments of
The American Public Power Association
EPA's Notices of Data Availability on Oil Pollution
Prevention and Response; Non-Transportation-Related Onshore and
Offshore Facilities

69 Fed. Reg. 56182 (Sept. 20, 2004)
69 Fed. Reg. 56184 (Sept. 20, 2004)

Submitted to
U.S. Environmental Protection Agency
Docket ID Nos.
OPA-2004-0007
OPA-2004-0008

November 19, 2004

APPA
2301 M. Street NW
Washington DC 20037

The American Public Power Association (“APPA”) appreciates the opportunity to comment on EPA’s proposal to streamline the SPCC regulations as discussed in the two Notice of Data Availability documents. APPA is a member of the Utility Solid Waste Group (“USWAG”) and endorses USWAG’s comments. Many technical and legal provisions regarding streamlining SPCC requirements more are fully addressed by USWAG’s comments. APPA appreciates the two NODA’s call for comments on streamlined regulatory alternatives and regarding oil-filled electrical equipment.

“Public power” is the term used to describe the more than 2,000 municipal and other state and local community-owned electric utilities that provide electricity for approximately 40 million Americans. These public power systems are among the most diverse of the electric utility sectors, representing utilities in small, medium and large communities in 49 states (all but Hawaii). Seventy-five percent of public power systems are located in cities with populations of 10,000 or less. Overall, public power accounts for about 16 percent of all kilowatt-hour sales to consumers.

APPA was created in 1940 as a non-profit, non-partisan organization. Its purpose is to advance the public policy interest of its members and their consumers, and to provide member services to ensure adequate, reliable electricity at a reasonable price with the proper protection of the environment. APPA would like EPA to keep in mind the following important facts as it considers the Association’s comments:

- **Ninety percent of “public power” utilities meet the SBREFA definition of sales of retail of \$4 million MWh annually and serve populations of 50,000 customers or less;**¹

- “Public power” includes a mix of generation from sustainable resources, including hydro-power, wind, and other renewable fuels,
- Many “public power” utilities, particularly larger utilities, have begun to offer “green pricing” programs to their consumers,
- Over 56 percent of the coal-fired units owned by “public power” are less than 20 years old, and
- “Public power” has numerous utility-specific programs to protect the environment reflecting the diverse interests of the constituencies served by individual units.

EXECUTIVE SUMMARY

1. APPA appreciates the EPA’s call for comments on the two NODA’s for SPCC regulatory reform and strongly encourages the EPA to expedite the rulemaking process for developing regulatory amendments needed to implement the regulatory alternatives offered in the two NODA’s;
2. APPA endorses the comments offered by Utility Solid Waste Activities Group (USWAG), Edison Electric Institute, NRECA and those comments offered by APPA in 2004; and
3. APPA believes that unlike the current SPCC requirement for aggregating the oil storage capacity of all oil containing units at a facility, that the EPA should have a unit specific approach to reflect the fact that failure of one piece of electrical equipment due to loss of oil has no effect on the risk of oil discharge from any other piece of equipment facility. Multiple pieces of equipment are generally not hydraulically interconnected. There is no justification for regulating a low risk

¹ Based on staff discussions with counsel for the SBA’s Office of Advocacy.

piece of small equipment at a site in the same manner as might be warranted for regulating a higher risk piece of equipment containing large volumes of oil. APPA acknowledges that adoption of a unit specific regulatory approach would be a significant departure from the current aggregation approach for calculating facility oil storage capacity under the SPCC rules, but without this change, EPA cannot achieve a closer balance between risk and regulatory burdens for the electrical equipment universe. This is especially true for APPA facilities since >90% are SBREFA qualified facilities.

Docket OPA-2004-008

APPA members operate thousands of oil-filled electric equipment that would be affected by EPA's proposed Spill Prevention, Control, and Countermeasure (SPCC) rule. Few APPA member utilities have never experienced a spill from any of this equipment that affected waters of the U.S. or sensitive natural resources, the burdens imposed by the rule's regulation of oil-filled electrical equipment remain significantly disproportionate to the low level of risk of such an event. Additionally, electrical equipment is essentially self-monitoring because a loss of dielectric fluid leads to failure of the device and an interruption in electrical power transmission. APPA strongly recommends that EPA establish a three-tier regulatory approach for individual pieces of oil filled equipment based on oil storage capacity, as proposed by the Utility Solid Waste Activities Group (USWAG).

Docket OPA-2004-007

Of the thousands of oil-filled equipment in public power utility plants, most have a storage capacity of less than 10,000 gallons. Nationwide, facilities with less than 10,000 gallons of storage capacity account for less than 0.2% of the total volume of oil spilled. Yet these facilities constitute a very large percentage of the total facilities regulated under SPCC. EPA's own research indicates that small facilities are a low risk of creating a discharge that could reach navigable waters and that written SPCC plans are not that effective in reducing risk.

APPA is concerned about the costs of PE certification under SPCC plans – in particular for more isolated or rural APPA facilities and where the utility has <50 employees. More than 90% of APPA member utilities have 50 employees or fewer and service a community of 50,000 customers. Often substations are located in remote areas where an employee would have to drive a number of miles (especially in the rural south or west). This location issue often increases the costs of SPCC plan implementation.

Oil-Filled Electrical Equipment

Supporting Data and Information: APPA agrees with API that the burdens imposed by the rule's regulation of oil-filled electrical equipment remain significantly disproportionate to the low level of risk and exceptionally positive spill history associated with such equipment. The risk of discharge of oil from electrical equipment is significantly below that of tanks. Electrical equipment is often constructed of heavier and more corrosion resistant steel than are tanks and is built to resist greater pressure differentials, including full vacuum.

Additionally, APPA agrees that electrical equipment is essentially self-monitoring because a loss of dielectric fluid leads to failure of the device and an interruption in electrical power transmission. Substation electrical equipment is commonly surrounded by a gravel bed that provides significant restriction to movement of any oil that maybe released. Published data show the rate of discharge of oil into navigable water from electrical equipment is less than one one-hundredth of one percent; yet the requirement for containment and/or diversionary structures or equipment

imposes significant costs at a large number of facilities shown to pose extremely low levels of risk.²

Alternate Regulatory Proposal: APPA recommends that EPA establish three regulatory tiers for individual pieces of oil filled equipment based on oil storage capacity. The first tier would consist of equipment below 1320 gallons. Equipment in this category would be exempt from SPCC regulations. The second tier would apply to what USWAG has proposed to define as a “qualified facility.” This tier would apply to equipment with storage capacity greater than 1320 gallons but not exceeding 20,000 gallons. In addition, to qualify for this tier,

- the equipment would have to be monitored or be subject to a rapid response program, such as the utility industry’s Supervisory Control and Data Acquisition system (“SCADA”), that would reasonably ensure that any discharge as described in § 112.1(b) would be expeditiously controlled
- the equipment must not have had a discharge as described in § 112.1(b) within the previous 10 years; and
- The facility must not have been directed by the Regional Administrator under § 112.1(f) to prepare and implement an SPCC Plan within the past 10 years.

A “qualified facility” would have the option of preparing an oil spill contingency plan consistent with Part 109 in lieu of preparing an SPCC Plan and would also be required to prepare a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful. The general provisions for compliance with applicable inspection and testing requirements (but not the integrity testing requirements for bulk storage containers), the recordkeeping, and the training requirements would apply to “qualified facilities.”

The third tier would apply to all equipment that is ineligible or has lost its status as a “qualified facility.” Such a facility would be subject to all the existing provisions of Subpart A of Part 112.³

Interim Relief: Soon after EPA released the July 2002 SPCC rule, they realized that they had not adequately addressed the vast scope of the regulation of all oil-filled electrical equipment. [However, EPA has stated that they consider oil-filled equipment is and always has been subject to the SPCC regulations]. Since these facilities are not addressed by the extension of the effective dates of the 2002 amendments, we urge EPA to exclude all oil-filled equipment in the interim, as it tailors new rules to address these facilities.⁴

Certain Small Facilities

Supporting Data and Information: EPA's own research indicates (1) that small facilities are a low risk of creating a discharge that could reach navigable waters and (2) that written SPCC plans are not that effective in reducing risk. EPA has ignored its own findings and has continued to defend the PE certification requirement for small businesses.

² American Petroleum Institute (API) coalition, *White Paper: Electrical Equipment*. 4/2/23. (excerpt). EPA NODA p. 9.

³ Utility Solid Waste Activities Group. Prepared by Piper Rudnick LLP. Explanation of Proposed amendment to SPCC Rules to Address the Requirements for Onshore Oil-Filled Electrical Equipment. 2/5/2004. (Excerpt EPA NODA p. 12).

⁴ United States Small Business Administration Office of Advocacy. Letter to Mr. Thomas P. Dunne, EPA. June 10, 2004

Facilities with less than 10,000 gallons of storage capacity account for less than 0.2% of the total volume of oil spilled. Yet these facilities constitute a very large percentage of the total facilities regulated under SPCC. We estimate that at least 170,000 small business establishments, or 65% of all small SPCC regulated facilities, store less than 10,000 gallons of oil.

EPA did not adequately take into account the low level of risk associated with small facilities.

In response to the proposed rule, the American Petroleum Institute, industry members, and facility owners and operators have raised several concerns regarding the PE certification requirement to the EPA. Comments listed in the preamble to section 112.3(d) of the July 2002 rule suggested that PE certification should not be required for small businesses. The basis for the assertion is that small facilities already have to submit detailed plans for review and approval by state or local laws prior to installation of tanks.

For example, tanks in small facilities are required to have the Underwriters Laboratory Seal of Approval. Commenters were also concerned that the EPA did not fully account for the cost to a facility owner/operator for a visit to each facility before certifying a Plan.⁵

If the costs [for PE Certification] are divided by revenues to put them on a proportional basis, it is evident that the requirement places a much higher burden on small businesses than it does on large businesses.⁶

In characterizing the electric utility industry, USWAG notes that meeting certain SPCC requirements "...will be extremely difficult for our smaller utility companies with fewer regulated facilities, including the rural electric cooperatives. Many of these companies are very small business with few employees - at least 158 rural electric cooperatives has 20 or fewer employees, and at least 30 such cooperatives have 10 or fewer employees."⁷

Alternate Regulatory Proposal:

Tier 1: 1,321 to 5,000 Gallon Facilities - No written plan required, but must implement compliance with all applicable substantive provisions of the rule.

Tier 2: 5001 to 10,000 Gallon facilities - Written plans required, but no PE-certification requirements. Collaborative EPA/Industry "best practices" model plans tailored to sectors having a significant number of similar small facilities.

Tier 3: 10,001 Gallons and Above Facilities -Written PE-certified plans.

⁵ Getting UL Seal of Approvals are not inexpensive for public powers 2000 utility systems, of which 90% have less than 20 employees.

⁶ US Small Business Administration. Prepared by Jack Faucett Associates, Inc. Spill Prevention control and countermeasures (SPCC) Issues, alternatives and Recommendations (Draft Ver. 4). 9/30/2003 (excerpt) Small Facilities EPA NODA pp. 5-6.

⁷ Utility Solid Waste Activities Group. Letter to EPA Docket Center, RE: Comments on EPA's Proposal to extend the compliance Deadline for the final July 17, 2002, SPCC Rule Amendments. 1/29/03. (excerpt) Small Facilities EPA NODA p. 34.

The adoption of the tiered plan can reduce the impact on small businesses, improve the cost-effectiveness of the overall regulation, place small and larger facilities and firms on more equal footing and reduce potential shortages of [registered Professional Engineers].⁸

Interim Relief -- We suggest that EPA promulgate an interim final rule that excludes small facilities with storage of less than 10,000 gallons (the first two tiers of a three-tier approach) from SPCC plan requirements, pending completion of the full notice and comment rulemaking for small facilities. In order to provide the safety net in the interim period, we recommend that EPA require: (1) regular visual inspections of containers, (2) replacement or retirement of leaking tanks, and (3) compliance with the Part 109 contingency plan requirements or their equivalent.⁹

Therefore, APPA strongly recommends that EPA adopt the alternate regulatory proposal advanced by the U.S. Small Business Administration. Under this arrangement, only facilities with storage capacities greater than 10,000 gallons would have to create written SPCC plans, certified by a professional engineer.

Finally, APPA also urges EPA to defer application of all the SPCC regulations referenced in both dockets until new regulations are finalized.

Thank you for your attention to our comments. If you have questions, please contact Theresa Pugh at 202-467-2943.

CC: Mr. Tom Sullivan
Chief Counsel – Office of Advocacy
U.S. Small Business Administration (SBA)
408 3rd St, SW
Washington DC 20416

Mr. Kevin Bromberg
Counsel - Office of Advocacy
U.S. Small Business Administration (SBA)
408 3rd St, SW
Washington DC 20416

Mr. Jim Roewer
Executive Director
USWAG
701 Pennsylvania Ave NW
Washington DC 20037

⁸ Prepared by Jack Faucett Associates, Inc. Proposed Reforms to the SPCC Professional Engineer Certification Requirement: Designing a more Cost Effective Approach for Small facilities. 6/10/2004 (excerpt). Small Facilities NODA pp.15-16

⁹ United States Small Business Administration Office of Advocacy. Letter to Mr. Thomas P Dunne, EPA. June 10, 2004.