



Motive Power

- In the preamble to the July 2002 SPCC rule, EPA states that “using, or consuming” oil could subject a facility to SPCC jurisdiction.





Motive Power

- Construction equipment has tanks of oil (diesel, hydraulic fluids) used to power/operate the machine
- Tanks not intended for oil distribution (often exceed 55 gal)
- Meeting SPCC requirements for such tanks (secondary containment) is impossible
 - Equipment is used temporarily, moved daily, and often it is not parked in the same spot each night





Motive Power

- Because fuel/fluid tanks are included in the threshold calculation for SPCC rule:
 - Most construction sites with significant site prep work are covered
 - These sites may only meet the threshold during the site prep phase, but still need a PE-certified plan
 - Low risk of spill reaching U.S. waters





EPA Response

- SPCC Stakeholders Meeting –
March 31, 2004
- Issue: Applicability of Motive Power
 - *EPA Response*: We will consider proposed rulemaking to exempt bulk oil storage containers on a vehicle used exclusively to provide fuel for propulsion or other movement of the same vehicle and may consider exemptions for equipment on the same vehicle where oil is used for operational purposes (“mixed-use vehicles”), such as a gas tank for a car and its associated oil, or a fuel tank for a tractor and its associated hydraulic equipment.





Proposal #1

- Construction equipment with large fuel or fluid tanks should not be considered “storage” pursuant to the SPCC program
 - Exempt all tanks on construction equipment (not intended for fuel or oil distribution) under the concept of “motive power”
 - Fuel tanks of any size that operate the vehicle or related apparatus, as well as hydraulic fluid tanks, should be exempt from SPCC requirements





Proposal #1 (cont.)

- EPA has expressed its intention to address motive power
- Acting under the Administrative Procedures Act (APA) Section 553, and within its authority, EPA should issue an interim final rule as soon as possible





Proposal #1 (cont.)

- Applicable Rule Provisions:
 - 40 CFR Part 112.1
 - Appendix A to Part 112:
Memorandum of Understanding
Between the Secretary of
Transportation and the Administrator
of the Environmental Protection
Agency





Presented By:

Leah Wood Pilconis

AGC of America

woodl@agc.org

Jeffrey Longsworth

Barnes & Thornburg, LLP

jlongsworth@BTlaw.com