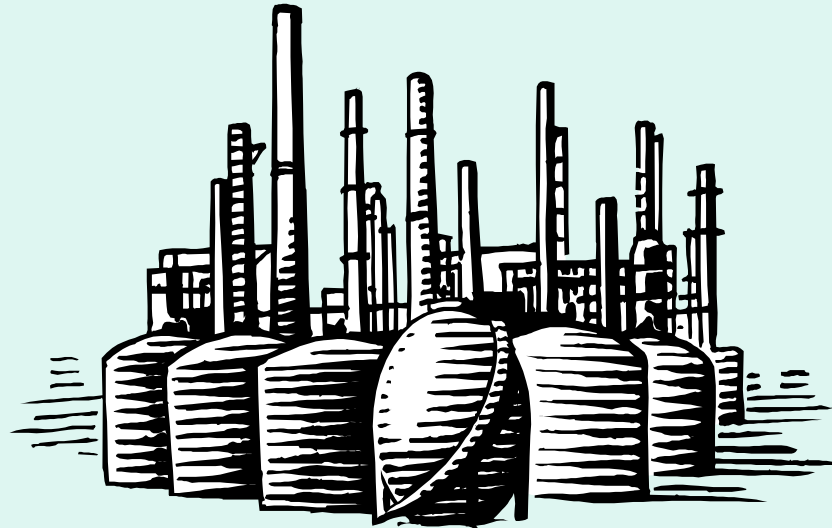


# Status of the EPA/DOT MOU & Visions of a Pipeline Breakout Company Through the EPA-SPCC Lens



# 1971 MEMORANDUM OF UNDERSTANDING (MOU)





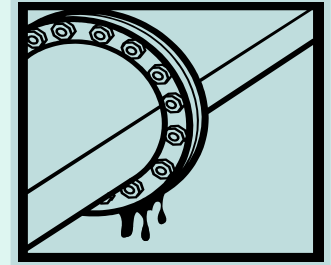
# MEMORANDUM OF UNDERSTANDING



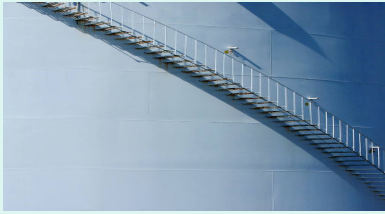
- 1971- At the Direction of Congress, EPA and DOT Entered into a Memorandum of Understanding (MOU)
  - All “Transportation Related” Facilities would be Subject to DOT Jurisdiction
  - All “Non-Transportation Related” Facilities would be Subject to EPA Jurisdiction



# MEMORANDUM OF UNDERSTANDING



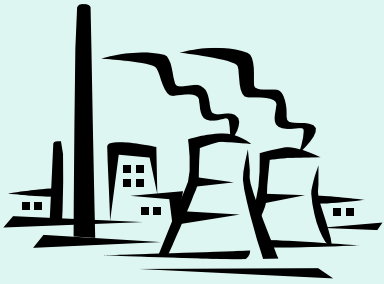
- “Transportation Related” was to Include:
  - Interstate/Intrastate Onshore/Offshore Pipeline Systems
  - Pumps and Appurtenances Related thereto
  - In-Line or Breakout Storage Tanks Needed for the Continuous Operation of a Pipeline System
  - Pipelines from Onshore and Offshore Oil Production Facilities



# MEMORANDUM OF UNDERSTANDING



- “Non-Transportation Related” was to Include:
  - Oil Storage Facilities
  - All Equipment and Appurtenances Related thereto
  - Fixed Bulk Plant Storage
  - Terminal Oil Storage Facilities
  - Pumps and Drainage Systems Used in the Storage of Oil
  - ***But Excluding Inline or Breakout Storage tanks needed for the continuous operation of a pipeline system***



# MEMORANDUM OF UNDERSTANDING



The MOU Espoused a “Systems Approach”...

“To the extent possible...it is considered most practical to assign one agency the responsibility for regulating [any one facility.]”

(See Section I, paragraph 5 of the 1971 MOU)

# MEMORANDUM OF UNDERSTANDING

1991 Executive Order 12777-Reconfirmed the Division of Responsibility Between EPA and DOT, but was Silent on Any Additional Guidance



# MEMORANDUM OF UNDERSTANDING-As Explained by the 2000 Memorandum of Agreement (MOA)

2000- DOT and EPA Sign the Felder/Luftig Memorandum of Agreement (the “2000 MOA”)

- Left the Previously Assigned Responsibilities Between DOT and EPA Intact



# MEMORANDUM OF UNDERSTANDING-As Explained by the 2000 MOA

- Section III of the 2000 MOA Added a New Term...
  - -“Complex Facility” –A Facility Performing Both Transportation and Non-Transportation (i.e. Storage Activities)

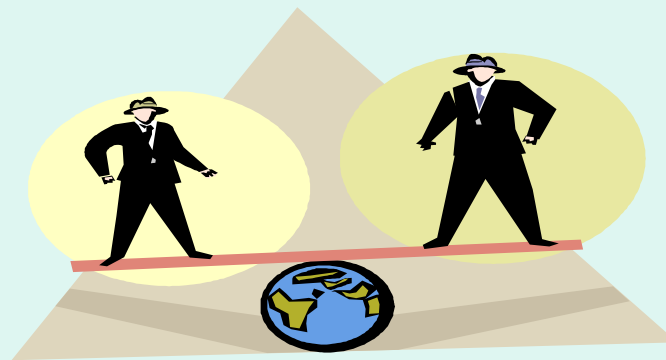


- Generated Confusion through the Attachment of Ten Diagrams Intended to Illustrate Jurisdictional Boundaries Between DOT and EPA

# MEMORANDUM OF UNDERSTANDING-As Explained by the 2000 MOA




Section V of the 2000 MOA:

“[A]s many facilities as possible are subject to single jurisdiction in the interest of regulatory efficiency”



# MEMORANDUM OF UNDERSTANDING-As Explained by the 2000 MOA

Some consequences of the 2000 MOA:

- Two Separate Agency Inspections (DOT & EPA) for the Same Tank(s)/Facility 
- Two Separate Sets of Regulations for the Same Facility, and Even the Same Piece of Equipment 
- Two Separate Sets of Facility Response Plans (FRP) 

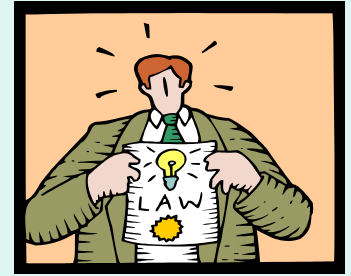
# MEMORANDUM OF UNDERSTANDING-As Explained by the 2000 MOA

Some Consequences of the 2000 MOA (Continued)

- Confusion-Why are Tanks, which are Constructed Exactly the Same and are Operated the Same, Regulated Differently?



# Status of the MOU



EPA & DOT have Committed to Revise or Augment their 1971 MOU to:

- More Clearly Define the Jurisdictional Scope Over Oil and Gas-Related Infrastructure
- Delineate the Specific Equipment and Appurtenances that are Part of the Pipeline System Subject to DOT Jurisdiction
- Make Available for Public Comment the Document Memorializing this Effort

# Status of the MOU

- EPA Has Not Yet Made a Revised or Augmented MOU Available
- Conversations with EPA Revealed that They are Still Diligently Working the Issue with PHMSA



# Status of the MOU

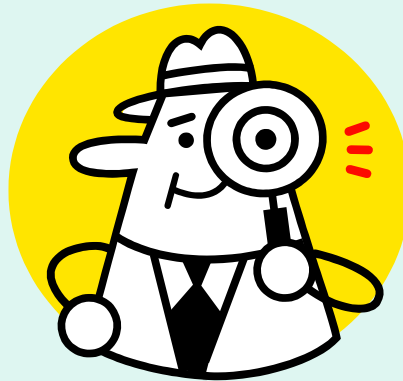
- One of Three Possible Scenarios for a Revised MOU:
  - Memorandum of Agreement (MOA) with Associated Qs & As Posted on the EPA Website
  - MOU in a Separate Federal Register Notice not Associated with the October 15<sup>th</sup>, 2007 Proposed Rule
  - Revised MOU Incorporated into the Final Rule Stemming from the October 15<sup>th</sup>, 2007 Proposed Rule-Unlikely Due to Procedural Due Process Concerns!

# A Look Through the EPA-SPCC Lens

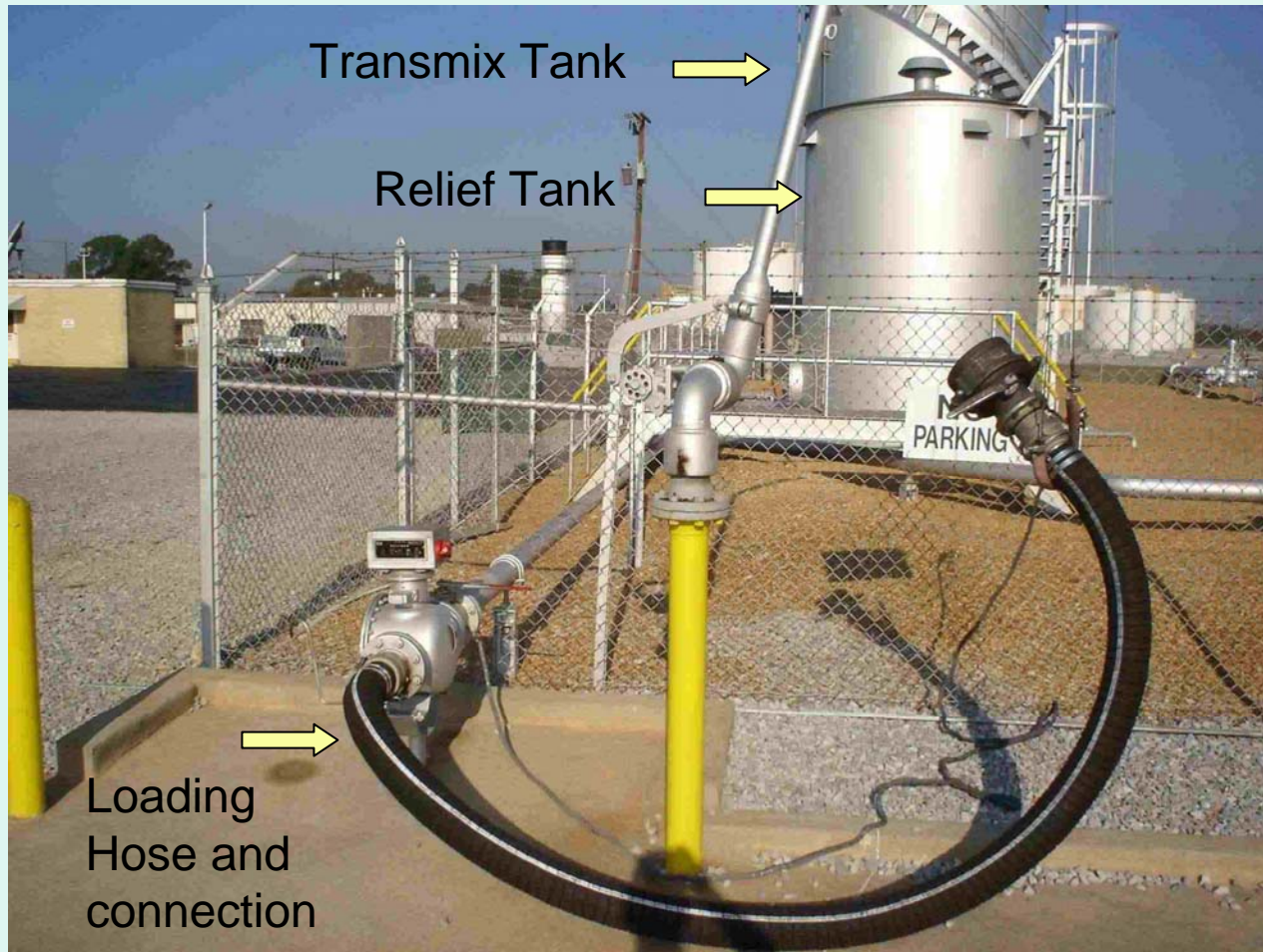


# A Look Through the EPA Lens

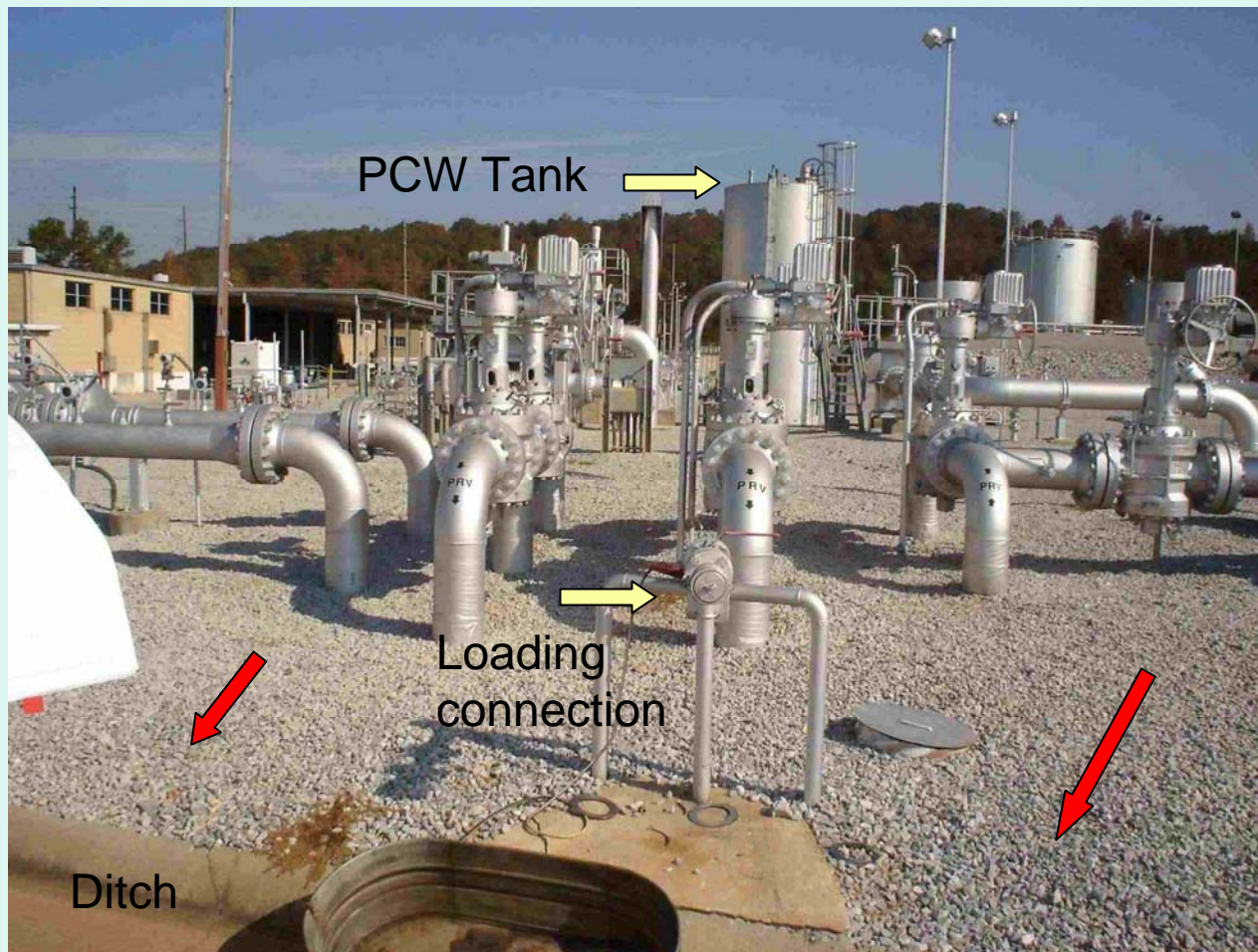
***Somewhere in the U.S., there is an Interstate Pipeline Company that Had Some Visits from EPA...***



# Transmix Tank Loading Area



# PCW Tank Loading Area



No  
Containment  
For PCW  
Tank

\*Drainage around PCW Tank appeared to flow toward ditch (ditch flows off-site) 19  
(Red arrows indicate drainage pathway)

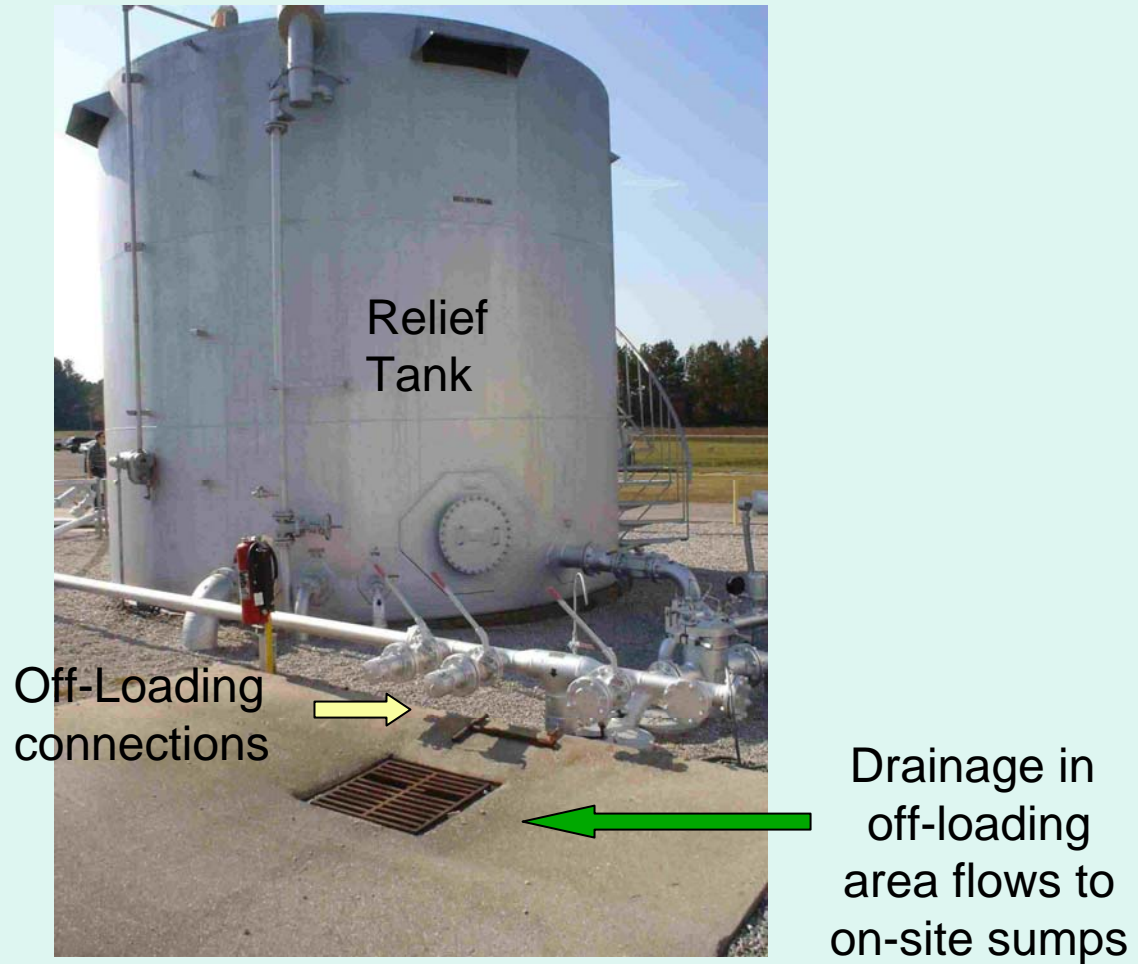
# PCW Tank Loading Area

Drainage in PCW loading area flows directly into ditch  
-Ditch flows off-site (toward trees in background)



Ditch flow

# Breakout Tank Off-Loading Area 1



# Breakout Tank Off-Loading Area 2 (On opposite side of Relief Tank)

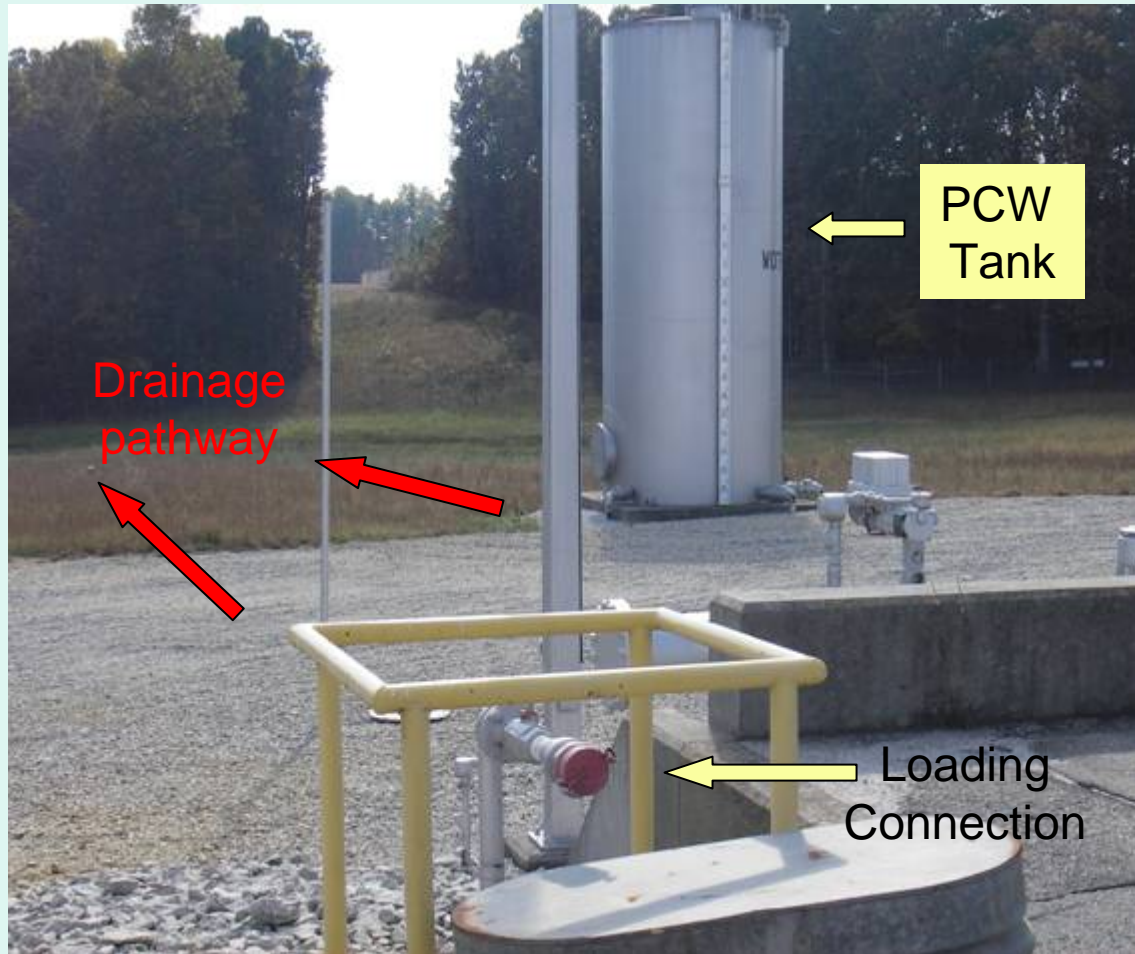


\*Drainage in off-loading area flows to on-site sumps

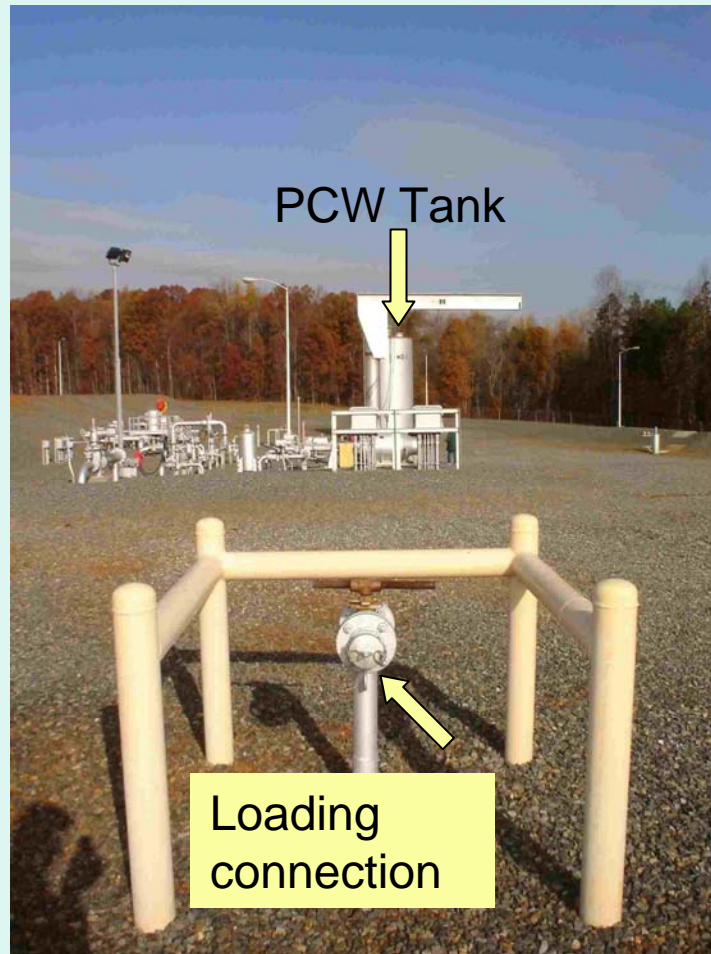
# PCW Tank Loading Area

No Containment  
for PCW Tank  
Nor for Loading Area

- Drainage around tank flows overland and off-site
- Drainage from loading area flows toward ditch that flows off-site

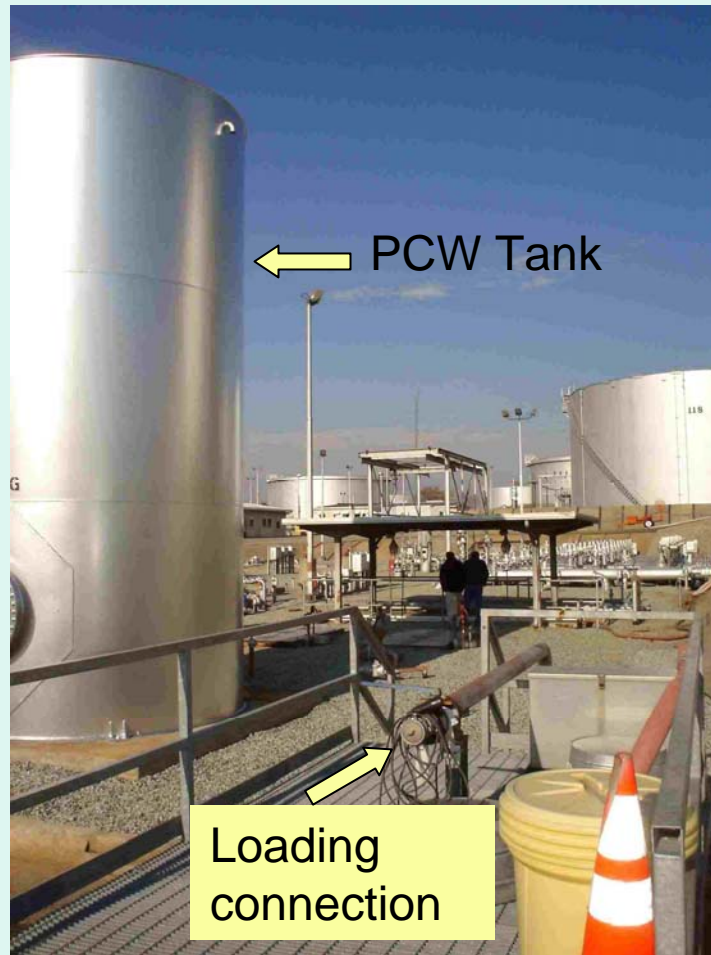


# PCW Tank Loading Area

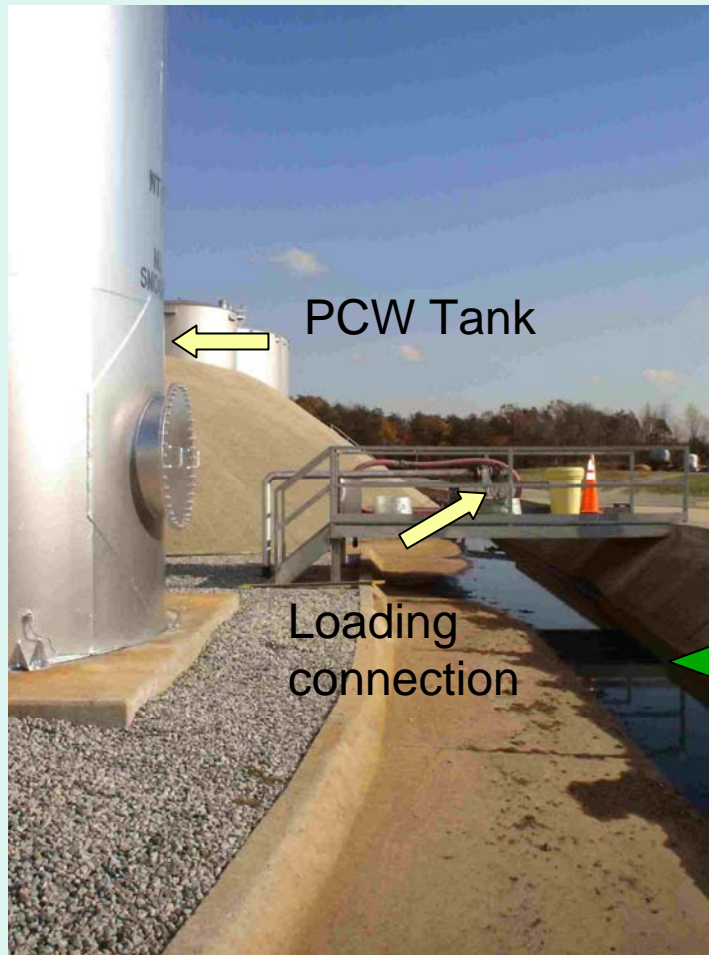


\*Drainage in Loading Area Flows Toward Containment Area

# PCW Loading Area

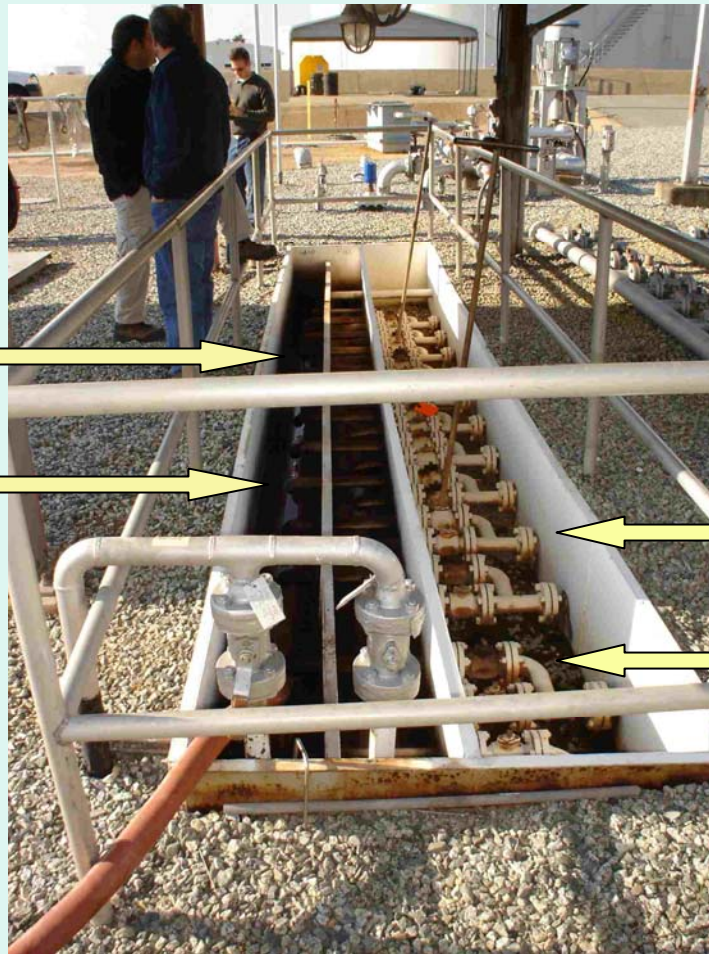


# PCW Loading Area



Ditch system provides containment for PCW Tank and loading area

# Breakout Tank Off-Loading Area (Trucks off-load into trough)



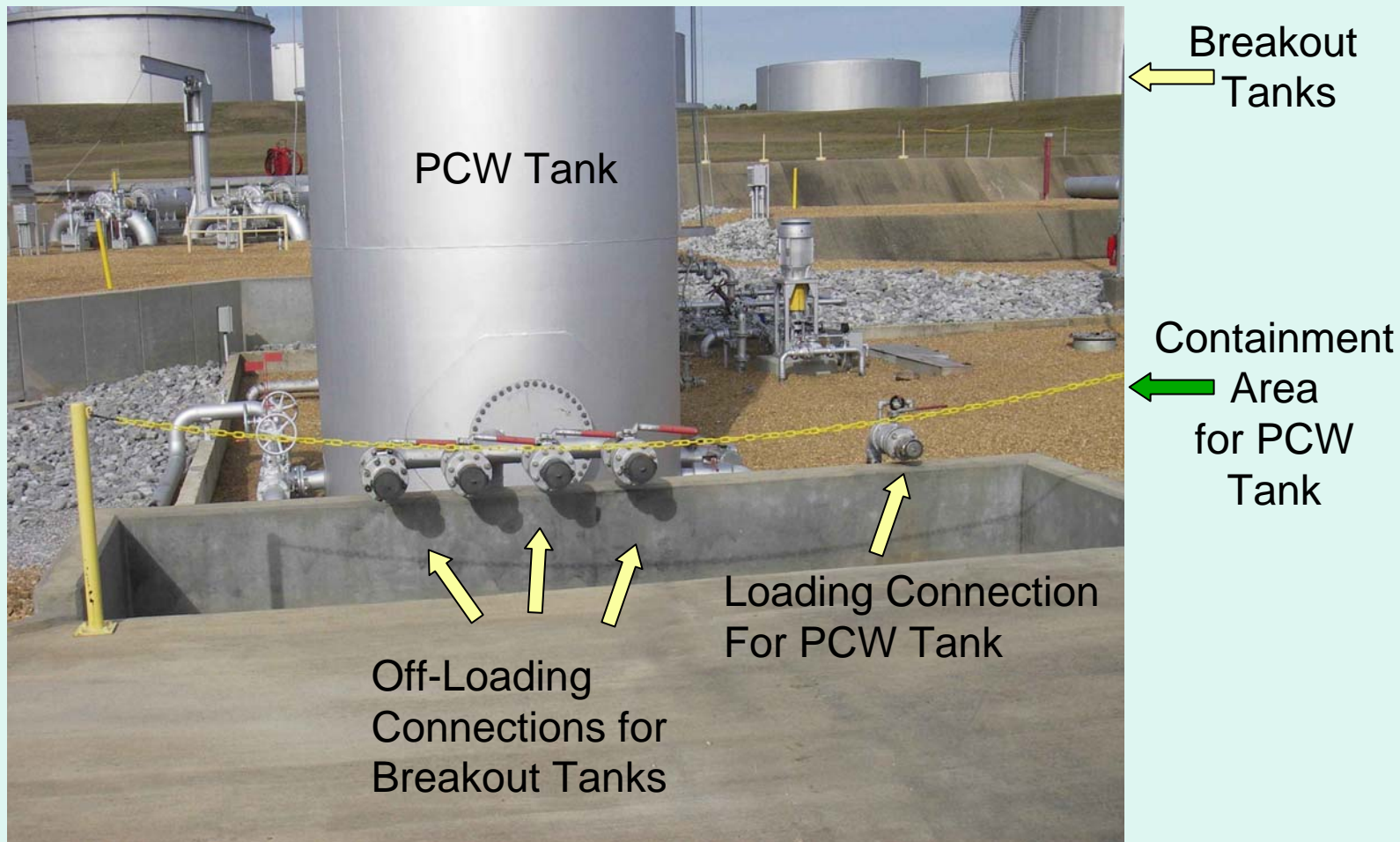
← Truck staging area

Flexhose from truck  
is placed in this  
trough/manifold system

← Manifold allows  
oil to be directed to any  
breakout tank

\*Drainage in this area flows to ditch system

# Breakout Tank Off-loading Area and PCW Loading Area



\*Loading area has localized containment

# PCW Tank



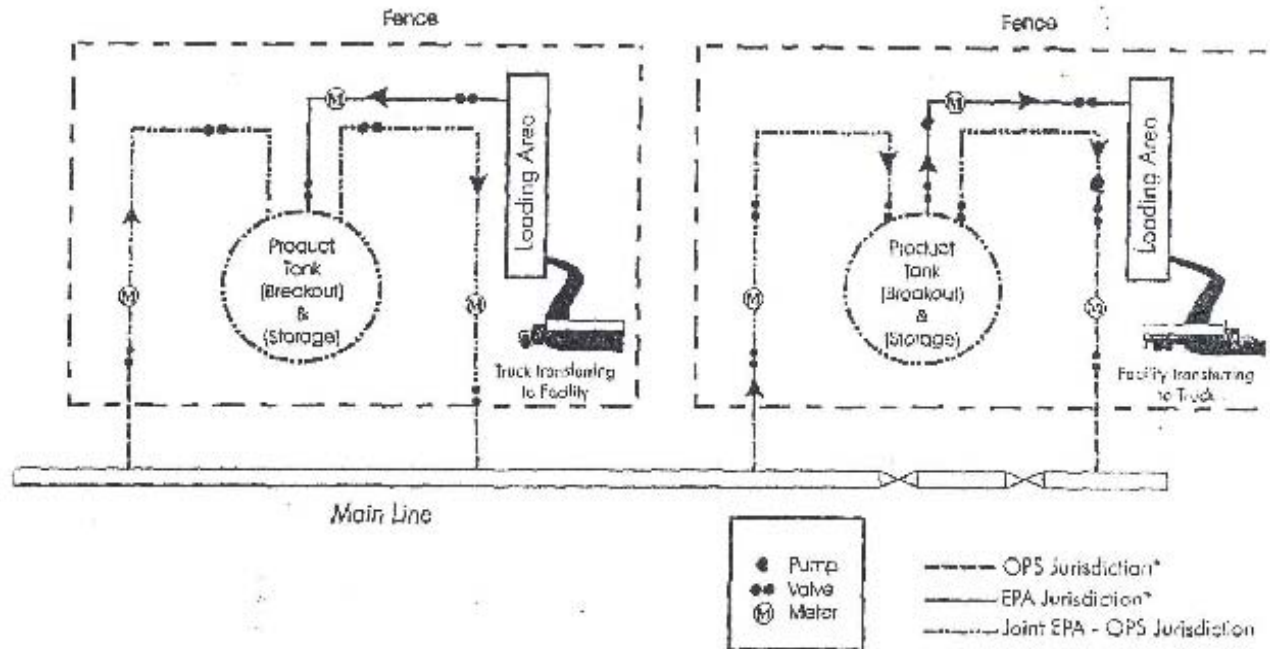
\*Note containment for tank

\*Loading area drainage flows to a retention pond via a ditch system

# BREAKOUT AND STORAGE TANKAGE - JOINT EPA - OPS JURISDICTION

(A)

(B)



\* This diagram does not identify the precise location where the change in jurisdiction occurs between EPA and OPS for the purpose of the Clean Water Act, Section 311(f) (33 USC 1321(f)). When the pipeline operator and the storage or breakout tank operator remain the same, the change in jurisdiction occurs at the first and last pressure influencing device, meter, valve, or isolation flange, or inside the facility property. When the pipeline operator and the storage or breakout tank operator are not the same, the change in jurisdiction occurs at the change in operational responsibility or at the first and last pressure influencing device, valve, or isolation flange, or inside the facility property. In either of the above situations, the location of the property line should not solely be used to determine jurisdiction when operational activities (loading/offloading) extend beyond the property line.

SOURCE: US EPA, REV 11/04/99

ATTACHMENT 4