



SPCC Update

SAEMS 2011 Regulatory Roundup

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Rulemaking History

- Original Spill Prevention, Control, and Countermeasures (“SPCC”) rules published December 11, 1973 [38 FR 34164]
- Subsequent Proposals
 - October 22, 1991 (56 FR 54612)
 - February 17, 1993 (58 FR 8824)
 - December 2, 1997 (62 FR 63812)
 - April 8, 1999 (64 FR 17227)
- Final 2002 SPCC amendments published July 17, 2002 [67 FR 47042]
- SPCC Guidance for Regional Inspectors, v 1.0 – November 28, 2005
 - Updated guidance pending

Rulemaking History

- Final 2006 amendments published December 26, 2006 [71 FR 77266]
 - Operational equipment
 - Small facilities (Tier II)
 - Motive power
 - Mobile refuelers
 - Animal fats and vegetable oils
 - Farms

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paragraph (a)(1)(iii) of this section shall be the following:

■ **Par. 10.** Section 1.964-1T is amended by revising the first sentence of paragraph (c)(2) and the last sentence of paragraph (c)(5)(i) to read as follows:

§ 1.964-1T **Determination of the earnings and profits of a foreign corporation (temporary).**

(c) * * *

(2) * * * For the first taxable year of a foreign corporation beginning after April 25, 2006, in which such foreign corporation first qualifies as a controlled foreign corporation (as defined in section 957 or 953) or a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)), any method of accounting or taxable year allowable under this section may be adopted, and any election allowable under this section may be made, by such foreign corporation or on its behalf notwithstanding that, in previous years, its books or financial statements were prepared on a different basis, and notwithstanding that such election is required by the Internal Revenue Code or regulations to be made in a prior taxable year. * * *

(5) * * * (i) * * * In the event that the United States shareholders of the controlled foreign corporation do not, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of such foreign corporation entitled to vote, the controlling United States shareholders of the controlled foreign corporation shall be all those United States shareholders who own (within the meaning of section 958(a)) stock of such corporation. * * *

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(Procedure and Administration).
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuels and Fuel Additives

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 72 to 80, revised as of

July 1, 2006, on page 695, § 80.75 is corrected by reinstating paragraphs (a)(2)(ix) and (a)(2)(x) to read as follows:

§ 80.75 Reporting requirements.

(a) * * *

(2) * * *

(ix) In the case of butane blended with reformulated gasoline or RBOB under § 80.82:

(A) Identification of the butane batch as complying with the provisions of § 80.82;

(B) Identification of the butane batch as commercial or non-commercial grade butane;

(C) The batch number of the butane;

(D) The date of production of the gasoline produced using the butane batch;

(E) The volume of the butane batch;

(F) The properties of the butane batch specified by the butane supplier, or the properties specified in § 80.82(c) or (d), as appropriate;

(G) The volume of the gasoline batch subsequent to the butane blending; and

(x) In the case of any imported GTAB, identification of the gasoline as GTAB.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2005-0001; FRL-8258-3]

RIN 2050-AG23

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan Requirements—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements by: first, providing the option for owners and operators of facilities that store 10,000 gallons of oil or less and meet other qualifying criteria to self-certify their SPCC Plans in lieu of review and certification by a Professional Engineer; second, providing an alternative to the general secondary containment requirement without requiring a determination of impracticability for facilities that have particular types of oil-filled equipment; third, defining and exempting particular

vehicle fuel tanks and other on-board bulk oil storage containers used for motive power; and fourth, exempting mobile refuelers from the sized secondary containment requirements for bulk storage containers. The Agency also is removing and reserving the SPCC requirements for animal fats and vegetable oils that are specific to onshore oil production facilities, onshore oil drilling and workover facilities, and offshore oil drilling, production, or workover facilities. Finally, the Agency is extending the SPCC compliance dates for farms. These changes significantly reduce the burden imposed on the regulated community for complying with the SPCC requirements, while maintaining protection of human health and the environment. In a separate document in this *Federal Register*, the Agency is proposing to extend the compliance dates for all facilities.

DATES: This final rule is effective February 26, 2007.

ADDRESSES: The public docket for this final rule, Docket ID No. EPA-HQ-OPA-2005-0001, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202-566-1744, and the telephone number to make an appointment to view the docket is 202-566-0276. The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to view the Public Reading Room to view documents. Consult EPA's *Federal Register* notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/pahome/dockets.htm> for

Rulemaking History

- Final 2008 amendments published December 5, 2008 [73 FR 74236] (“Loose Ends Rule”)
 - Exempts EDG tanks at nuclear power plants from SPCC rules
 - Provides SPCC template option for certain facilities with limited oil storage capacity in lieu of SPCC plan (Tier I)
 - Exempts certain tank trucks from sized secondary containment
 - Revises definition of “facility”
 - Clarifies general secondary containment requirements
 - Amends loading rack requirements

Compliance Timeframes

- Deadlines for preparing, amending, and implementing plans to comply with 2002 rule (and subsequent amendments)
 - Nov. 10, 2010 – offshore drilling, production or workover facilities and onshore facilities that are required to have facility response plans (“FRPs”);
 - Nov. 10, 2011 – all other facilities;
 - Facilities required to have SPCC plans prior to August 16, 2002, must maintain those plans;
 - Facilities that become operational after Nov. 10, 2011 must prepare and implement SPCC plan before beginning operations [40 C.F.R. § 112.3(a)(i)]
[75 FR 63093, 63095 (Oct. 14, 2010)]
- EPA Regions (not Headquarters) may grant extensions for preparing/ implementing an SPCC plan

Applicability

- Engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, **using or consuming** oil and oil products
- With Capacity
 - Over 42,000 gallons of oil in completely buried storage unless the tank is (i) regulated under the Part 280 UST program or (ii) is an underground storage tank that supplies emergency diesel generators at facilities regulated by the NRC;
 - Over 1,320 gallons of oil in aboveground storage (from containers of 55 gallons or more); and
- Could reasonably be expected to discharge oil in **harmful quantities** into or upon the **navigable waters** of the United States.
[§ 112.1(b) & (d)]
- Only “**non-transportation related facilities**” are subject to EPA (and SPCC) jurisdiction.

Definition of “Oil”

- Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin, **vegetable oils**, including oils from seeds, nuts, fruits, or kernels; and other oils and greases, including petroleum, fuel oil, **sludge**, *synthetic oils*, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Definition of “Oil”

- Included within SPCC definition of “oil”
 - Asphaltic cement
 - Drip or condensate from natural gas production
 - Synthetic oil
 - Non-petroleum oils and greases (e.g., coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils)
- Not included within the SPCC definition of “oil”
 - Natural gas
 - Highly volatile liquids that volatilize on contact with air or water (e.g., liquid natural gas, liquefied petroleum gas)
- Some substances, such as aromatic hydrocarbons, “may or may not be oil, depending on their physical characteristics and environmental effects.”
[67 FR 47076]

Exemptions from Threshold Calculation

- Permanently closed containers
- Containers used *exclusively* for wastewater treatment
- Motive power containers
- Hot-mix asphalt or any hot-mix asphalt container
- Pesticide application equipment and related mix containers

- Not Exempt
 - Oil/water separators having a storage capacity within the treatment unit itself. This storage capacity *is subject* to the SPCC rules. [67 FR 47068]

Navigable Waters

- Navigable Waters includes (1973 definition restored through litigation):
 - Previously defined navigable waters and tributaries thereto
 - Interstate waters
 - Intrastate lakes, rivers, streams which are utilized by interstate travelers for recreational or other purposes
 - Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce
- *Rapanos vs. United States*, 547 U.S.715 (2006)
 - “Significant Nexus” with waters that are navigable in fact
- EPA/Army Corps of Engineers Guidance Memorandum, Notice of Availability [72 FR 31824 (June 8, 2007)]
- EPA is developing new guidance, which is currently undergoing review at the Office of Management and Budget
- Manmade structures providing containment may still *not* be considered.
- How much “risk” can you live with?

Definition of “Facility”

- The facility determination is made by the owner/operator or the P.E. on their behalf [73 FR 74244]
- The boundaries of a facility depend on several site-specific factors, including but not limited to, the **ownership or operation** of buildings, structures, and equipment on the same site and the **types of activity** at the site
 - “may be as small as a piece of equipment...or as large as a military base” [67 FR 47045]
- “[A]n owner or operator may not characterize a facility so as to simply avoid applicability of the rule [74 FR 58789]
- If EPA ultimately disagrees with a facility determination, the Agency could challenge that determination
- However you define the “facility,” you should maintain documentation to support the rationale for that determination

SPCC Plan Formatting

- Facilities are allowed to employ any equivalent, alternative SPCC plan, such as:
 - A State plan;
 - An Integrated Contingency Plan (“ICP”);
 - A Best Management Practice Plan prepared under an NPDES permit;
or
 - A multi-facility/system-wide plan
- [67 FR 47079-80]
- Conditions on using a plan that does not follow the *precise* format of the rule:
 - **Cross-reference** must be made to appropriate portions of the SPCC rule;
 - Deviations from rule providing **equivalent environmental protection** must be explained in plan and certified by P.E.

SPCC Plan Location

- Copy of SPCC plan must be maintained at facility at all times if facility is attended at least four hours each day. § 112.3(e)
- If facility is not attended at least four hours/day, SPCC plan must be kept at “**nearest field office**”, which is the nearest office **with operational responsibility** over the facility, or the **nearest emergency response center** for the facility
[67 FR 47086]
- For multi-facility plan – site specific information may be in a central office or electronic database
 - Must be immediately accessible to responders and inspectors
 - If electronic, you must keep a paper copy or other back-up[67 FR 47080]

Amending/Reviewing Plans

- SPCC plans must be reviewed by owner/operator **every five years** and must document completion of review and whether the plan will be amended
- The plan must be **amended within six months** of the review to include more effective prevention and control technology if it was field proven at the time of the review and will significantly reduce the risk of discharge. Following plan certification, **implementation must be completed within six months.**

Amending/Reviewing Plans

- Plan amendments are necessary when a **material change** is made affecting facility's potential to discharge oil – increase or decrease may constitute material change
 - Plan amendment must be made **within six months of the change**
 - And must be **implemented as soon as possible**, but no later than six following the amendment

§ 112.5(a); [67 FR 47091]
- “[R]eplacement of tanks, containers, or equipment may not be a material change if the replacements are identical in quality, capacity and number.” [67 FR 47091]

The Professional Engineer

- SPCC plans must be certified and reviewed by a P.E. § 122.3(d)
- The P.E. is a quasi-regulator; P.E. certification substitutes for EPA review
- Exception: Tier II Qualified Facilities - Facilities with aboveground capacity of 10,000 gallons or less may have option to self-certify without a P.E. § 112.6(b)
- P.E. is certifying “good engineering practices” and should consider **applicable industry standards** as well as whether procedures for inspections and tests have been established
- *All* sites subject to P.E. certification must be visited, but P.E. is not personally required to conduct the visit

The Professional Engineer

- The certifying P.E. may be employed by the company that own/operates the facility for which the SPCC plan is being prepared [67 FR 47053 and 47085]
- EPA does not require the P.E. to be registered and/or licensed in the State in which a facility is located [67 FR 47053]; however, “P.E. certification...must be completed in accordance with the law of the State in which the P.E. is working” [67 FR 47085]
- P.E. certification is necessary *only for technical amendments* or those amendments requiring **engineering judgment**
- The EPA Regional Administrator can always disagree with a P.E.’s judgment
 - EPA could require a Plan amendment per § 112.4(d)

Tier II Qualified Facilities

- Owners/operators of facilities with 10,000 gallons or less of oil in aboveground storage may self-certify (without P.E. certification) SPCC plans and technical amendments, if
 - The facility has not had a § 112.4(a) reportable discharge (single discharge over 1,000 gallons or two discharges exceeding 42 gallons within any 12 month rolling period) **in the previous three years** or since becoming subject to the SPCC program if less than three years § 112.6(b)
- Reportable discharges due to natural disasters, acts of war or terrorism (but not acts of vandalism) do not disqualify otherwise qualified facilities from taking advantage of the self-certification option
§ 112.3(g)(2)

Tier II Qualified Facilities

- Discharge history criteria is a **one-time determination**
 - Self-Certified SPCC Plans:
 - May not include determinations that secondary containment is impracticable; and
 - May not include alternative methods to provide environmental equivalence for most SPCC requirements
 - Unless those determinations/alternatives are certified by a P.E. **(Hybrid approach)**
 - Site visit must be conducted by the person that certifies the Plan
- § 112.6(b)(1)(ii)

Tier I Qualified Facilities

- Must satisfy criteria for Tier II “qualified facilities.”
- No individual aboveground oil storage capacity > 5,000 gallons
- May use
 - SPCC Template – See Appendix G; or
 - Alternative format that contains all elements of Appendix G template with cross-reference to applicable SPCC regulations
§ 112.6(a)(1); [73 FR 74253-59; 74 FR 68798-99]
- Site visit must be conducted by the person that certifies the Plan
§ 112.6(a)(1)(ii)

Containment/Diversiónary Structures

- **General Secondary Containment** - requirement to provide containment and/or diversionary structures or equipment to prevent a discharge of oil **applies to all regulated facilities**
§ 112.7(c)
- **Performance Standard** that the containment “must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs” (i.e. **cleaned up before it reaches water**)
- Need only address the **typical failure mode**, and the most likely quantity of oil that would be discharged
§ 112.7(c); [73 FR 74261]

Containment/Diversiónary Structures

- “Sufficiently Impervious” – Goal is to contain an oil discharge until cleanup occurs. See SPCC Guidance for Regional Inspectors at 4-1, 4-2 – 4-23
- Section 112.7(c) allows for the use of certain types of **active containment measures** that require deployment or other specific action by the owner or operator
- Active containment measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a spill
- Examples include: the use of storm drain covers, spill kits, sorbent materials and the closing of valves

Containment/Diversiory Structures

- **Determination of Impracticability** - If the certifying P.E. determines that secondary containment of any kind is not practicable, the owner or operator of a facility may deviate from the containment requirement

§ 112.7(d)

- cost may be considered but may not be the sole consideration
- A contingency plan per § 112.7(d)(1) must conform to Part 109
 - In general, the Part 109 plan must ensure that all response actions are coordinated with governmental oil spill response organizations [67 FR 47104]

Oil-filled Operational Equipment

- Equipment that includes an oil storage container (or multiple containers) in which the **oil is present solely to support the function of the apparatus or the device**
- Includes: hydraulic systems, lubricating systems, gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, and electrical switches
- Excludes: oil-filled manufacturing equipment with a flow-through process and gensets

Oil-filled Operational Equipment

- Facilities with oil-filled operational equipment do not need to provide general secondary containment, if they:
 - Meet the clean discharge history qualification
 - Establish and document inspection/monitoring procedures
 - Include a Part 109 oil spill contingency plan and a written commitment of manpower, equipment and materials in the facility's SPCC plan§ 112.7(k)
- Expressly *excluded* from “bulk storage container” definition in § 112.2, therefore *not subject to* § 112.8(c) bulk storage requirements, including:
 - Bulk storage (sized) secondary containment
 - Corrosion protection
 - Periodic integrity testing and related visual inspections (other inspection requirements remain applicable)

Bulk Storage Requirements

- Bulk storage containers must satisfy (in addition to *General Containment*) the specific bulk storage container requirements of § 112.8(c)
 - Secondary containment for the container
 - Corrosion protection for buried portions of containers
 - Periodic integrity testing
 - Inspection requirements
- All bulk storage containers must be constructed with secondary containment “for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.” (i.e. **sized containment**)
§ 112.8(c)(2)

Bulk Storage Requirements

- No specific numeric standard for “freeboard sufficient to contain precipitation”
 - *EPA Recommendation*: sufficient to contain a 25-year, 24-hour storm event
- Facilities “must ensure that diked areas are **sufficiently impervious** to contain discharged oil”
§ 112.8(c)(2)
- Bulk storage container must be “compatible with the material stored and conditions of storage such as pressure and temperature”

Bulk Storage Requirements

- Any completely buried metallic bulk oil storage container installed on or after January 10, 1974, must be protected from corrosion by “coatings or cathodic protection compatible with soil conditions. You must regularly leak test such completely buried metallic storage tanks.”

§ 112.8(c)(4)

- All new/replaced buried piping **installed after August 16, 2002**, must have protective wrap and coating and cathodic protection or “otherwise satisfy” corrosion protection provisions for piping in 40 C.F.R. Part 280 or in a state program approved under Part 281 for *all* soil conditions

§ 112.8(d)(1)

Bulk Storage Requirements

- Owners/operators of bulk storage containers must perform **integrity tests** on aboveground storage tanks on a regular schedule as well as when material repairs are performed
- Industry standards may be used to satisfy the integrity testing requirement (*e.g.*, API 653, STI SP-001, API RP 575, and API RP 12R1)
§ 112.8(c)(6); [67 FR 47105, 47119; 73 FR 74264; 74 FR 58791]
- *All* field-constructed tanks must be inspected during repairs, alterations, or changes in service that might affect the risk of failure of the structure **due to a brittle fracture** or other catastrophe such as lightning strikes, seismic activity, etc.

Mobile Facilities

- Plans must be prepared for mobile facilities meeting the regulatory threshold that are operating in a fixed (non-transportation) mode
§ 112.3(c)
- General SPCC plans may be used at mobile facilities, and a new SPCC plan need *not* be prepared each time facility is moved to a new site
- Mobile/portable oil storage containers must be positioned or located “to prevent a discharge as described in § 112.1(b).”
(i.e. **General Secondary Containment**)

Mobile Facilities

- Owner/operator “must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.”
§ 112.8(c)(11)
- These containers are subject to bulk storage testing and inspection requirements. § 112.8(c)(6)
- When a container on a truck is used to transfer oil to multiple sites and is empty (or containing only residual oil), it is engaged in a transportation-related function and not subject to the SPCC program at parking locations.

Mobile Facilities

- When oil is loaded or unloaded from the truck's container, it is subject to SPCC regulation as a mobile/portable container if the regulatory threshold is met and the reasonable expectation of discharge criterion is met
- When the vehicle is **engaged in transfer operations**, only general containment/diversionary structures are required
- When the vehicle is in a **stationary, unattended mode**, the container must be positioned to prevent discharges and sized secondary containment is also required

Mobile Refuelers/Tank Trucks

- Defined as “a bulk storage container, onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.”
- **Exempted from sized secondary containment** requirements at §§ 112.8(c)(2) & (11) [71 FR 77285]
- Exemption has been **extended to non-transportation-related tank trucks** such as trucks used to refill oil-filled equipment § 112.8(c)(2); [73 FR 74262-63; 74 FR 58790-91]
- General secondary containment provisions at § 112.7(c) still apply [73 FR 74263; 74 FR 58790]

Inspection Records

- “[U]sual and customary business” records may be used as inspection records under section § 112.7(e)
- Records may be kept as appendix to SPCC plan or in a separate log, so long as they are kept **“with” the SPCC plan** [67 FR 47106]
- Records must be readily accessible and should be retained for three years § 112.7(e)
- Records required under NPDES permit regulations for recording stormwater bypass events may also be used to meet SPCC recordkeeping requirements for stormwater drainage
§ 112.8(c)(3)

Training

- SPCC training is required only for “oil-handling personnel”
§ 112.7(f)(1)
- Employees must be trained only in **matters relevant to activities** at facility
- “[T]raining must include, at a minimum: the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan” [67 FR 47108]
- Oil discharge prevention briefings must be conducted for all oil-handling personnel at least once a year
§ 112.7(f)(3)

Loading/Unloading Racks

- EPA has adopted a new definition:
 - “[A] fixed structure (such as a platform, gangway) necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to [SPCC regulation]. A loading/unloading rack includes a loading or unloading arm and may include any combination of the following: piping assemblages, valves, pumps, shot-off devices, overall sensors, or personnel safety devices.”
 - A standard fill pipe or similar connection with flexible tubing does not qualify as a loading rack

Regional Override

- EPA Regions may require any facility to prepare SPCC plan, or part of a plan, when necessary to achieve Clean Water Act purposes.
§ 112.1(f)

Everything is Back on the Table

- EPA made the following announcement on June 18, 2010:
 - “By 2015, in response to the Deepwater BP oil spill in the Gulf of Mexico, EPA will update and modernize its rules, guidelines, and procedures relating to all relevant aspects of EPA’s oil spill program including preparedness, response, and recovery to ensure that the Agency has the appropriate tools to respond to environmental disasters of this scale.” Draft FY 2011-2015 EPA Strategic Plan p. 47.



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