



U.S. ENVIRONMENTAL PROTECTION AGENCY MID-ATLANTIC REGION

OIL PROGRAM UPDATE

JUNE 2011

Serving: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

EPA OIL SPILL PREVENTION, CONTROL, AND COUNTERMEASURES RULE REQUIREMENTS FOR FARMS

Our EPA Region 8 guest writer, Melissa Payan, breaks it down.

As we've seen in the news lately, oil spills can cause a lot of damage to the environment. While the BP spill in the Gulf of Mexico is an extreme example, most people don't realize that it doesn't take a lot of oil to do significant damage. As little as one gallon of oil can contaminate one million gallons, or more than three-acre feet, of water.

The purpose of EPA's Oil Spill Prevention, Control, and Countermeasure (SPCC) program is to prevent oil spills from damaging our water, land and natural resources. By developing plans and taking basic precautions, farmers and livestock producers can avoid the damage, costs, and headaches that can result from even a small release of oil from their tanks.

One of the key provisions of the SPCC program is the development of a plan to prevent the release of oil products into waters of the United States. Not every farm or livestock operation needs an SPCC plan. The rule requires facilities that store more than 1,320 gallons of oil or fuel in above ground containers (or more than 42,000 gallons in buried containers) to have an SPCC plan -- if an accidental release could reasonably be expected to discharge into waters of the U.S. For purposes of the rule, oil includes, but is not limited to petroleum oils, fuel (gasoline, diesel, etc.), sludge, synthetic oils, oil refuse, and oil mixed with wastes other than dredged spoil. Oil also includes animal fats, vegetable oils and fish oils.

Although the SPCC requirements have been in place since 1974, there is a renewed interest in the rule. In January 2010, rule amendments became effective that are intended to make compliance simpler and easier for farmers and livestock producers that are subject to the Rule. Under these amendments, only containers with a capacity of 55 gallons or more are counted towards the 1,320 gallon threshold. Also, containers located on separate parcels can be considered separately when calculating whether this threshold is met. Pesticide containers and application equipment as well as residential heating oil tanks are exempted from the SPCC rule.

Another important change is the ability for farmers to self-certify their SPCC Plan. The amendments state that an SPCC plan can be self-certified if the total oil storage capacity at a facility is less than 10,000 gallons. An easy-to-use template is available on EPA's website for those eligible to self-certify, so long as no single container is larger than 5,000 gallons. If total farm storage capacity exceeds 10,000 gallons, however, the SPCC plan must be certified by a professional engineer.

These new amendments provided for a compliance date of November 10, 2011, for facilities which were not in existence prior to August 16, 2002. Facilities in existence prior to August 16, 2002 that do not have an SPCC plan in place are currently out of compliance and must prepare and implement a plan as soon as possible.

So what does an SPCC plan require? To prepare or update a plan, farmers first need to identify the location and contents of containers holding oil and the controls in place to prevent spills. Plans also should describe measures in place to prevent any potential spills from reaching water, and the methods and resources available to contain and clean up spills. Plans should also include a list of emergency contacts and first responders.

SPCC plans should also detail spill prevention measures such as the use of suitable containers for the oil stored; information about contractors or other local personnel that can help clean up an oil spill; overfill prevention mechanisms for tanks or containers; effective, properly sized secondary containment for bulk storage containers; general secondary containment in places where fuel or oil is transferred; and periodic inspection and testing of pipes and containers.

In case of a spill, the operator should follow the cleanup and response procedures in their plan and notify the National Response Center of any discharge to waters of the U.S. Operators should also notify EPA directly if more than 1,000 gallons of oil are discharged to water in a single event, or if more than 42 gallons of oil are spilled to water on two different occasions within any 12-month period.

EPA knows that farmers and livestock producers have a firsthand appreciation of the value of clean water. SPCC plans are an effective way to minimize the likelihood of a spill and to ensure that any spills that do occur are contained before they can damage precious water resources.

The following resources are available to provide more information about the SPCC program.

A useful fact sheet for producers is available at: www.epa.gov/emergencies/docs/oil/spcc/spccfarms.pdf.

The SPCC plan template can be found at: www.epa.gov/oem/content/spcc/tier1temp.htm.

The SPCC rule can be obtained at: www.epa.gov/emergencies/spcc.

A specific website dedicated to agriculture and SPCC regulations can be found at: http://www.epa.gov/emergencies/content/spcc/spcc_ag.htm.

Questions can be addressed to the EPA Ag Compliance Assistance Center at: www.epa.gov/agriculture (888-663-2155) or the Oil Information Center at: www.epa.gov/superfund/resources/infocenter (800-424-9346).

Melissa Payon is the EPA Region 8 SPCC Coordinator.

COMMON VIOLATIONS OBSERVED DURING SPCC INSPECTIONS

- ✓ A Spill Prevention Control and Countermeasure (SPCC) Plan, prepared in accordance with 40 CFR 112, but not implemented.
- ✓ Regulated containers, such as 55-gallon drums and totes, not located to prevent discharges to waters of the US and not provided with sized secondary containment [40 CFR 112.8 (c)(11)].
- ✓ Cinder blocks, wood and other materials not designed for support, being used for that purpose. Piping support must be designed to minimize abrasion and corrosion; and also to allow for expansion/contraction [40 CFR 112.8(d)(3)].
- ✓ Record keeping: Activities like training sessions, routine inspections, dike drainage events, integrity testing, and drills/exercises not documented.
- ✓ State plans vs. SPCC plans - A facility subject to the SPCC and pertinent state regulations, must comply with both sets of requirements. Complying with the state requirements does not necessarily mean that the federal requirements have been satisfied.

- ✓ Oil operational filled equipment not included as part of the facility's aggregate oil storage capacity. The definition of bulk storage container in §112.2 specifically excludes oil-filled electrical, operating, and manufacturing equipment. Therefore, oil-filled equipment is not subject to the bulk storage container requirements in §§112.8(c), 112.9(c), and 112.12(c). However, oil-filled equipment must meet the general requirements of §112.7.
- ✓ SPCC plans not amended when there is a technical change at the facility that affects the potential for a discharge. Examples of changes that may require an amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at a facility. A Professional Engineer has to certify any technical amendments to the SPCC Plan in accordance with §112.3(d).

WHAT DO I NEED TO DO TO MAINTAIN MY FACILITY'S RESPONSE PLAN?

Your Facility Response Plan (FRP) must comply with 40 CFR part 112 and any amendments. You must review relevant portions of the National Contingency Plan and applicable Area Contingency Plan (ACP) annually and, if necessary, revise the FRP to ensure consistency with these plans. You must review and update the FRP periodically to reflect changes at the facility. (Please see 40 CFR 112.20(g)(1), (2), and (3) for more information.) You must submit the revised portions of the response plan within 60 days of each change that may materially affect the response to a worst case discharge. These changes include:

A change in the facility's configuration that materially alters information in the response plan;

A change in the type of oil handled, stored, or transferred;

A material change in capabilities of any oil spill removal organization that provides equipment and personnel to respond to oil discharges from the facility; or

A material change in the facility's discharge prevention and response equipment or emergency response procedures.

All amendments are to include the Regional FRP number and should be sent to:

**U.S. Environmental Protection Agency
Region 3
Office of Enforcement, Oil and Prevention Branch
(3HS61)
1650 Arch Street
Philadelphia, PA 19103-2029
Attn: Linda Zieger-Rice, FRP Coordinator**

WHAT TO EXPECT DURING AN SPCC/FRP INSPECTION

In order to monitor compliance with the Rule, SPCC/FRP inspectors conduct announced and unannounced inspections throughout Region 3 (i.e., Pennsylvania, Delaware, Maryland, Virginia, West Virginia and Washington, DC). These inspections are conducted pursuant to the Oil Pollution Prevention Regulation of the Clean Water Act as amended by the Oil Pollution Act of 1990.

EPA Inspectors have statutory authority to inspect a facility, as well as have access to any records, pursuant to Section 308 of the Clean Water Act. Once access to the facility is granted by the Owner/Operator (or authorized personnel) to perform the inspection, the inspectors will require the following documentation:

- ✓ A copy of the SPCC plan
- ✓ Personnel training records
- ✓ Tank inspections records
- ✓ A copy of the FRP plan (if applicable)
- ✓ Drill records (FRP facilities only)
- ✓ Oil Spill Removal Organization (OSRO) information (FRP facilities only)

During the opening conference, the facility representative will be interviewed and the facility records will be evaluated. As part of the inspection records, inspectors will ask for documentation on integrity testing, dike drainage events and spill incident reports, where applicable. When this is completed, the inspectors will proceed with a facility walk-through and will document observations and take photographs regarding the facility's spill prevention and response measures, storage tanks, diversionary structures, loading/unloading racks and security, among other things. The inspector will hold a closing conference to conclude the inspection, discuss observations, gather documents requested and answer any questions the facility representative(s) may have.

Following the inspection, EPA will evaluate all information collected and observed at the inspection and will perform a comprehensive review of the SPCC Plan. Correspondence will be sent to the facility regarding any compliance deficiencies found at the facility.

EMERGENCIES

Report Oil or chemical spills to the National Response Center at **800-424-8802**.

On line reporting is also available at:
<http://www.nrc.uscg.mil/nrchp.html>

GOVERNMENT INITIATED UNANNOUNCED EXERCISES (GIUE)

Facilities that are subject to Facility Response Planning are required to exercise their plans. Prior to the conduct of an exercise, EPA selects an area with a concentration of Facility Response Plan (FRP) facilities. EPA coordinates with State and/or Coast Guard Representatives to give them the opportunity to participate in the drills. Letters are mailed to notify all potential candidates in the selected area to advise of the upcoming exercises within a specific time frame. EPA will then select several facilities based on specific criteria, such as spill history, date of last facility inspection, etc. A possible scenario for the exercise is then created.

During the GIUE, which is limited to approximately four hours, EPA Inspectors present the facility representative with a scenario of a small discharge (2,100 gallons) of oil being spilled outside secondary containment and discharging into or on navigable waters and/or adjoining shorelines. The facilities are then required to play out the drill as if it were actually happening. There should be deployment of response and recovery equipment as identified in the facility response plan. If a facility relies on an Oil Spill Removal Organization (OSRO), that OSRO must respond during the drill and deploy their response and recovery equipment just like the real thing. The facility must also conduct proper notifications to respond to the exercise scenario. A facility can simulate the calling of 911, but must make calls to the other emergency numbers listed in their facility response plan - but initiate the call with the statement: "THIS IS A DRILL". One or two of our EPA representatives observe the notification process and also check records of drills and exercises that the facility has participated in for the last few years. Other participants will function as observers and/or evaluators.

After the GIUE, a post exercise meeting is held with the exercise participants and an informal de-briefing session among the group occurs. EPA and other invited observers/evaluators will meet again to review our observations and notes. A formal summary report, along with the completed Verification Checklist, is prepared and mailed to the facility.

Once a facility has successfully completed an unannounced exercise, they may take credit for several Oil Pollution Act exercise requirements, including the quarterly qualified individual drill, the semiannual equipment deployment drill, and the annual unannounced drill. In addition, if the facility successfully completes a GIUE, they will not be required to participate in another Federal GIUE for at least 36 months.

Things to remember and make sure you you have completed.

- ✓ Have you remembered to submit any updates/revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst case discharge?
- ✓ Have you changed your OSRO since your last submitted FRP update to EPA?
- ✓ Has your facility owner/operator developed and implemented a facility response training program and drill/exercise program that satisfies the requirements of the regulations found at 40 CFR, Part 112.21?

SPCC AND MILK

On April 12, 2011, EPA amended the SPCC rule to exempt milk and milk product containers, associated piping and appurtenances. EPA believes that certain specific construction and sanitation standards and requirements address the prevention of oil discharges in quantities that may be harmful. The capacity of the exempt milk and milk product containers, piping and appurtenances should not be included in a facility's total oil storage capacity calculation to determine if the facility is subject to SPCC. The Agency is also removing the compliance date requirements for the exempt containers.

Please visit the website at: http://www.epa.gov/emergencies/content/spcc/spcc_milk.htm for additional information.

Question: Why did EPA regulate milk in the first place?

All kinds of oils, including animal fats and vegetable oils, have been considered oils under the Spill Prevention, Control, and Countermeasure (SPCC) rule based on the legislative definition of "oil" in the Clean Water Act. Milk is considered an oil and its storage and handling have been subject to the SPCC rule, which is intended to prevent damage to the inland waters and shorelines of the United States.

Question: Is milk currently regulated by EPA under SPCC?

During EPA's rulemaking efforts, we provided extensions to revise SPCC Plans. EPA also delayed the SPCC compliance date by which a facility must address milk and milk product containers until the Agency could issue this final rule.

Question: What action is EPA taking for milk and milk products?

EPA is amending the SPCC rule to exempt milk and milk product containers and associated piping and appurtenances from the SPCC requirements. The Agency is also removing the compliance date requirements for the exempt containers.

Question: What milk and milk products are covered by the exemption?

The exemption will cover all containers, piping and appurtenances of milk and milk products. For example, milk products include cheeses, yogurts and ice cream. Additionally, transfers and milk handling associated with these containers and appurtenances are exempt from the SPCC requirements.

Question: Are all milk farms and milk producers exempt?

The exemption is for all milk and milk product containers, piping and appurtenances, but does not exempt containers that store other oils, such as petroleum oil at dairies, milk producers and milk product manufacturing facilities. These facilities will not have to account for, or address, the exempt milk and milk product containers in their SPCC Plans. As a result of this exemption,

some facilities may either be no longer subject to the SPCC rule or eligible for streamlined requirements as qualified facilities.

Question: What is the basis for the exemption?

EPA is finalizing this exemption because we believe that milk production is already subject to other standards and requirements that will help prevent spills.

Question: Is there any public health risk created by this exemption?

No. Milk and milk product containers, piping and appurtenances are subject to regulatory standards and requirements for safe human consumption. These standards also serve to prevent discharges to waters of the U.S.

Question: Why did the milk container exemption take so long to finalize?

EPA started developing an exemption when the issue was raised by the milk industry, which led to the 2009 proposed rule. Since then, we have been completing the steps required to finalize a rule, including soliciting and considering public input, evaluating the impact of the rule, and making final decisions on the rule.

Question: Does this rulemaking only address milk and milk products?

Yes. This rulemaking does not exempt any other non-petroleum or petroleum based oil from SPCC requirements. EPA developed this rule for milk and milk products because they are subject to certain specific container construction and sanitation standards and requirements that also serve to prevent discharges to waters of the U.S.

Question: What should I do if milk, milk products, or other oils are spilled in significant quantities (such as from a tanker or storage facility) into an inland waterway or shoreline?

You must report the spill to the National Response Center (NRC) at 800-424-8802 or 1-202-426-2675. The NRC is the federal government's centralized reporting center, which is staffed 24 hours per day by U.S. Coast Guard personnel.

Compliance Assistance Available

EPA Region 3 staff are available to provide on-site compliance assistance and/or presentations on the SPCC and FRP Regulations. For more information, contact Lori Miller at (215) 814-3225.

EPA COMPLIANCE DATES

On October 7, 2010, EPA maintained the November 10, 2010, compliance date for drilling, production or work over facilities that are offshore or that have an offshore component, and for onshore facilities required to have and submit Facility Response Plans (FRPs). However, EPA extended the compliance date an additional year for all other facilities to amend or develop a SPCC Plan until **November 10, 2011**.

The amendments do not remove the regulatory requirement for owners or operators of facilities in operation before August 16, 2002, to maintain and continue implementing an SPCC Plan in accordance with the SPCC regulations then in effect. Such facilities continue to be required to maintain Plans during the interim until the applicable compliance date for amending and implementing the amended Plans.

The purpose of the SPCC rule is to establish requirements for facilities to prevent a discharge of oil into navigable waters or adjoining shorelines. Deep water drilling, production or work over facilities are typically not subject to EPA jurisdiction and will not be impacted by this action.

WHAT IS A HARMFUL QUANTITY OF OIL DISCHARGED?

A harmful quantity is any quantity of discharged oil that violates state water quality standards, causes a film or sheen on the water's surface, or leaves sludge or emulsion beneath the surface. For this reason, the Discharge of Oil regulation is commonly known as the "sheen" rule. Note that a floating sheen alone is not the only quantity that triggers the reporting requirements (e.g., sludge or emulsion deposited below the surface of the water may also be reportable).

Under 311 (b)(3) of the Clean Water Act, as amended, reporting oil discharges does not depend on the specific amount of oil discharged, but instead can be triggered by the presence of a visible sheen created by the discharged oil or the other criteria described above.

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<http://www.epa.gov/emergencies/index.htm>

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