



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 7 2006

Mr. Brian Jennings, Executive Vice President
American Coalition for Ethanol
2500 S. Minnesota Ave, #200
Sioux Falls, SD 57105

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Dear Mr. Jennings:

The purpose of this letter is to respond to your September 26 correspondence concerning the applicability of the U.S. EPA's Facility Response Plan (FRP) regulations to ethanol production and storage facilities and whether denatured ethanol is an "oil." We appreciate your concerns for prevention of oil spills to the environment and trust that this response will clarify EPA's position. Please note that although EPA works closely with the U.S. Department of Transportation (DOT) and the U.S. Coast Guard (USCG) in oil spill prevention, preparedness, and response, we can only address those facilities and regulations under our jurisdiction in response to your concerns.

As you indicated, EPA 40 CFR Parts 112.20 and 112.21 require facilities that exceed certain oil storage capacity thresholds and that because of their location could reasonably be expected to cause substantial harm to the environment by discharging into or on navigable waters, adjoining shorelines, or the exclusive economic zone, to prepare and submit an FRP. Inspectors from EPA's Region 8 recently visited five ethanol production facilities and found that four require an FRP because their total oil storage capacity exceeds the one million gallon threshold and they meet one or more of the substantial harm criteria at 40 CFR Part 112.20(f)(1). Two of the four have already submitted FRPs to the Region. The remaining two facilities elected to modify their process operations such that each facility's total oil storage capacity would fall below the applicable threshold, and thus, would no longer be subject to the FRP requirements.

One of the key factors driving FRP applicability is total oil storage capacity. You requested that EPA clarify that storage tanks containing denatured ethanol are not to be included when determining whether a facility exceeds the FRP total oil storage capacity threshold. However, this depends on the denaturant and whether it is an oil. If a facility uses gasoline as the denaturant, which is defined as a "petroleum oil" in 40 CFR Part 112.2, then the "storage capacity" defined in Part 112.2 is "the shell capacity of the container." Therefore, any containers used to store oil or fluids that include oil would need to be considered when determining whether a facility's overall oil storage capacity exceeds the FRP applicability threshold. Although the DOT regulations at 49 CFR 130.2(c)(1) provide for an oil concentration threshold of 10% for containment and response planning requirements applicable to transportation of oil by motor vehicles and rolling stock, there is no *de minimis* oil concentration in EPA's definition of oil for facilities in its jurisdiction, other than the determination that the oil could reasonably be expected



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to be discharged to navigable waters in quantities that may be harmful, as described in 40 CFR 110.3 (violates water quality standards or causes a sheen).

In summary, once the determination is made that oil at a facility could reasonably be expected to be discharged to navigable water in quantities that may be harmful then, because gasoline is an oil, tanks storing ethanol denatured with 5% gasoline are oil tanks and the shell capacity of such tanks must be included in the facility's total oil storage capacity when determining applicability under 40 CFR Part 112, including the FRP requirements.

If you have any further questions on this issue, please contact Craig Matthiessen, Director of the Regulation and Policy Development Division in the Office of Emergency Management at 202-564-8016.

Sincerely,


Susan Parker Bodine
Assistant Administrator