

HQ Civil Works Rulemaking Summary		
Title: Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities		Date: July 17, 2002
SARS RIN#: 2050-AC62	Action Type: Final Rule	Cite: 67 FR 47042
<p>Executive Summary:</p> <p>Spill Prevention Control and Countermeasure (SPCC) Plans are required by EPA to reduce the likelihood and impact of oil releases to navigable waters. The Clean Water Act requires SPCC Plans to specify procedures and equipment requirements for facilities. EPA finalized multiple proposed rules dated 10/22/91 (56 FR 54757), 2/17/93 (58 FR 8824) and 12/2/97 (62 FR 63812). Important aspects of the final rule include the following:</p> <ul style="list-style-type: none"> • It establishes 2/17/03 as the date for SPCC Plan revision and associated PE certification and 8/18/03 as the date for amended plan implementation. • It clarifies the role of the Professional Engineer (PE) in the SPCC Plan certification process, clarifies “good engineering practice” and the use of “industry standards” in the SPCC Plan development and implementation process. • It clarifies EPA’s position on facility loading/unloading racks. • It exempts certain containers from SPCC requirements if they are associated with a wastewater treatment process and are not used to meet a 40 CFR 112 requirement. • It clarifies that oil filled equipment is excluded from the bulk container provisions. • It excludes underground storage tanks from most of the SPCC rules provided they are in compliance with 40 CFR 280/281. • It reorganizes the existing regulation to better reflect different facility requirements. • It adds/modifies a substantial number of definitions to clarify several issues. • It allows flexibility in SPCC format requirements provided a cross reference is made. • It provides relief from some discharge reporting. • It adds a method for deviating from some plan requirements provided appropriate justification is documented. • It defines a 55-gallon container as the lower limit for making storage capacity determinations and has dropped the 660-gallon single tank trigger provision. • It clarifies general inspection, testing, and record keeping requirements and specifically addresses integrity testing issues associated with “field constructed” vs. “shop fabricated” containers. 		
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Key Elements of the Final Rule:

EPA has consolidated and finalized three SPCC proposed rules dating from 10/22/91 (56 FR 54757), 2/17/93 (58 FR 8824) and 12/2/97 (62 FR 63812). The rule reorganizes the regulation, reduces administrative burdens, provides exemptions to the SPCC requirements, and clarifies EPA's position on matters of secondary containment, PE certification and oil filled equipment. Additional, less applicable, but notable provisions include incorporating the Edible Oil Regulatory Reform Act (EORRA) and expanding the scope of the rule to include Outer Continental Shelf and Deepwater Port activities.

Implementation Dates:

EPA has indicated that existing facilities, with previously prepared SPCC Plans, have until 2/17/03 to amend their plans to incorporate changes induced by the rule's new provisions and EPA "clarifications." The facility then has until 8/18/03 to fully implement those changes. This compliance revision and amendment process is a separate and distinct requirement to that of the periodic (previously three year, now 5 year) SPCC Plan review. EPA has stated that the Regional Administrator, on a case-by-case basis, may grant extensions provided appropriate justification is given. The request for extension process is outlined at 40 CFR 112.3(f).

Role and Scope of the PE, "Good Engineering Practice" and "Industry Standards"

EPA clarified the responsibility of the PE by requiring the PE to specifically consider applicable industry standards and certify that the plan is prepared in compliance with Part 112. All SPCC plans must be reviewed, amended as necessary to comply with the new rule, and certified by a PE by 2/17/03. The rule further states that the PE must certify any later technical amendments. PE certification is not required for non-technical amendments such as names and phone numbers etc.

EPA has clarified what they consider to be the fundamental premise of the SPCC program, "good engineering practice" and associated "industry standards." EPA decided not to incorporate any specific industry standards, as they were concerned codified standards would become quickly obsolete. Instead, EPA listed what they consider appropriate industry standards (ANSI, API, NFPA etc.) at 67 FR 47058 and indicated these are the types of standards a PE should be evaluating in their SPCC Plan certification process. EPA is relying in large part on the PE to implement good engineering practice and to evaluate the appropriateness of current industrial standards for plan implementation. It is then the responsibility of the owner/operator (O/O) to implement the plan. EPA specifically states that the O/O "must specifically document any industry standard used to comply with this section [112.3(d)]. This documentation should include the name of the industry standard, and the year or edition of that standard [See 67 FR 47085]." EPA further stated that it is the responsibility of the PE to develop inspection and testing procedures. For any SPCC plan certified after 8/16/02 the PE must now attest familiarity with 40 CFR 112; that he or his agent has visited the site; that plan preparation is in accordance with good engineering practice, including consideration of industry standards; that inspections and testing procedures have been established; and that the Plan is adequate for the facility (40 CFR 112.3(d)(1)). The actual implementation of the SPCC Plan is solely an O/O responsibility.

Facility tank car and tank truck loading/unloading rack

EPA has clarified in the preamble (67 FR 47110) that 40 CFR 112.7(h)(1) requires secondary containment (in compliance with 112.7(c)). Further, EPA states that the secondary containment for these locations “must be capable of containing any single compartment of a tank car or tank truck loaded or unloaded in the facility.” Apparently, by interpretation, EPA has expanded the concept of a facility tank car and tank truck loading/unloading rack to encompass any loading or unloading of an above ground storage tank (AST) to or from a tank car or tank truck. If this interpretation holds true, cost impacts associated with the evaluation, design and construction of containment and/or diversion structures for tank truck loaded AST’s on Civil Works projects could be substantial.

EPA does however state that if secondary containment is not practicable from an engineering perspective, and the deviation can be justified, the O/O must provide a contingency plan (40 CFR 109) and take other appropriate actions as defined in 112.7(d).

Regarding potential regulatory relief in this area, EPA states (67 FR 47110) “EPA will continue to evaluate the issue of whether the provisions for secondary containment found in 112.7(h)(1) should be modified or revised.”

Based on discussions with other MACOMs, it is very likely that DOD will jointly address interpretive concerns with EPA.

The “Waste Water Treatment” Exemption

EPA has clarified that certain facilities or parts of a facility that are involved in the treatment of wastewater, vs. the handling and management of oil, may be excluded from the SPCC requirements. In order to meet the exemption criteria, the facility or portion of the facility must not be used to meet any of the substantive requirements of 40 CFR 112 and that particular part of the facility may not be involved in the production, storage, or use of oil. Depending on the specific situation, some oil water separators (OWS) may or may not meet this exemption. EPA has indicated that the fundamental question that must be asked regarding the applicability of the exemption is what was the primary purpose of the OWS? If the OWS was designed and constructed as a spill contingency structure vs. a waste water treatment structure, EPA would argue the OWS is subject to the provisions of 40 CFR 112. Since other issues associated with the necessity of counting or not counting OWS design capacities for SPCC and Facility Response Plan applicability also come into play in these types of scenarios, this subject will likely be an area where additional guidance may be warranted.

Switchyards, Substations, and Oil Filled Equipment

EPA has clarified, by definition, that oil filled equipment does not meet the definition of a bulk storage container, thereby excluding this equipment from the 40 CFR 112.8 provisions (i.e. bulk storage containers). EPA was clear that these facilities, as well as others with oil filled equipment, are subject to the SPCC plan requirements and the general provisions of 112.7 provided the equipment capacity equals or exceeds the 55-gallon container size threshold.

Depending on how broadly a project or facility has historically interpreted the scope of SPCC Plan applicability, oil filled equipment such as transformers; oil circuit breakers and other types of oil filled equipment, may or may not have been included in facility SPCC Plans. At a minimum, these areas will need to be identified and addressed in the SPCC Plan and containment or diversion structures will need to be evaluated during the review process. If these features or structures are not present or are not practicable to implement, a deviation under 112.7(a)(2) would need to be documented (see “Deviation Rule” below).

Underground Storage Tank (UST) Exemptions

EPA has defined “completely buried tank” and clarified that if these tanks are in compliance with 40 CFR 280/281 they will no longer be regulated under the SPCC provisions. The only requirement will be that these tanks will need to be located and identified on the SPCC Plan facility diagram. Project staff will need to address this requirement in existing SPCC Plans if they are not already identified. EPA further clarified that the SPCC provisions do apply to UST’s exempt from the 40 CFR 280/281 regulations for underground storage tanks. The logic here is that if the tanks are exempt from UST regulations and SPCC requirements then they would be completely unregulated.

Rule Reorganization

The rule has been reorganized into subparts. Subpart A consists of applicability, definitions, and general requirements for all facilities. Subparts B and C outline requirements for different types of oils. Subpart B addresses petroleum and non-petroleum oils excluding animal and vegetable oils. Subpart C addresses animal and vegetable oils. These provisions are important to keep in mind as moves to bio-based products are contemplated under EO 13148, requirements of the new “Farm Bill” and any future associated affirmative procurement guidelines. Subparts B and C are each divided into sections to reflect the two major types of facilities, non-production and production, as well as for each type of oil (petroleum and non petroleum based). EPA has provided a tabular summary of major changes to the rule at 67 FR 47044.

Important New Definitions

EPA has added or modified over 20 definitions. Of particular importance is:

- **Facility:** The revised rule clarifies that a facility may be as small as a piece of equipment, such as a tank, or as large as a military base (67 FR 47074).
- **Bulk Storage Container:** EPA added a clarification that oil filled electrical, operating, or manufacturing equipment is not a bulk storage container.

SPCC Format Flexibility

EPA has stated that owners and operators (O/O’s) are not specifically obligated to follow the sequential format of the revised SPCC Plan. However, from a compliance perspective, the plan must include a cross reference of the revised sequence as finalized in this rule. EPA’s argument is

that without a quick way to check the contents of a plan against those outlined in 40 CFR 112, compliance would be difficult to evaluate. EPA has provided a cross-reference matrix consisting of the current and revised regulatory citations, which identify the requirements and content of SPCC Plans. The cross-reference can be found beginning at 67 FR 47050. As indicated above, O/O's have 6 months from the effective date of the rule to revise SPCC Plans, plus an additional 6 months to implement changes.

Discharge Reporting Relief

40 CFR 112.4(a) historically required that when two or more discharges in "quantities that may be harmful" in any consecutive twelve month period occurred, the second occurrence triggered the submission of information and a copy of the SPCC Plan to the Regional Administrator (RA). EPA has revised these triggering thresholds now stating that two releases of 42 or more gallons (one barrel) within a twelve-month period, or an individual release of 1000 gallons or more will trigger additional reporting. EPA has done this to better focus their resources. There has been no change or revision to the "sheen rule."

The "Deviation Rule" (40 CFR 112.7(a)(2))

EPA has added a provision that specifically allows deviations from most of the rules substantive requirements. With the exception of secondary containment, deviations are allowed provided that you can explain your reasons and provide "equivalent environmental protection" with an alternative. An example of a deviation may address EPA required security measures. In some instances fencing, lighting and other security measures may not be elements of good engineering practice. In that instance a variation is authorized provided the deviation is appropriately documented. EPA specifically stated that the deviation provision was not sensitive to cost issues. Deviations of technical aspects of the plan require engineering judgment and are subject to PE certification.

Section 112.7(d) contains provisions for the O/O when secondary containment required by 112.7(c) [general containment/diversion], 112.7(h)(1) [loading/unloading], 112.8(c)(2) [bulk storage containers], or 112.8(c)(11) [mobile /portable storage tanks] is not practicable. In those cases, the O/O must comply with 112.7(d), develop a 40 CFR 109 Contingency Plan, and develop a written commitment of manpower and resources unless a Facility Response Plan (FRP) already exists.

It is critical that the sections referenced in 112.7(a)(2) [deviations allowed] vs. 112.7(d) [containment/diversion being not practicable] be reviewed closely.

Container Thresholds and Bulk Container Definition

EPA has defined bulk storage container and has specifically excluded oil filled equipment from that definition. Further, EPA has clarified that containers with a storage capacity of less than 55 gallons are exempt from all SPCC requirements. EPA has further clarified the bulk container provisions by breaking them out under 40 CFR 112.8. These provisions are in addition to those presented under the general requirements of 112.7. EPA also dropped the > 660 gallon single

container trigger provision. Facilities that were required to develop SPCC Plans due only to a single container with a > 660 gallon capacity may no longer formally need to comply with the SPCC Plan provisions.

Integrity Testing of “Shop Fabricated” vs. “Field Constructed Tanks”

EPA has clarified that based on good engineering practice, inspection and testing provisions for smaller shop fabricated tanks may be subjected to visual inspections only, provided all sides can be seen and no sides are in contact with the ground. The deviation would need to be documented as required by 112.7(a)(2). While EPA did not specifically discuss this issue relative to 55 gallon drums and similar sized containers, it would seem logical that visual inspections of drums would suffice if the appropriate language was incorporated into the SPCC plan under justification.

For larger storage tanks, the requirement that the certifying PE now attest that industry standards and their associated testing have been evaluated and incorporated as appropriate will likely have an impact on operating budgets. EPA had indicated in the 1991 proposed rule that they thought an integrity testing frequency of once per ten years might be appropriate. While EPA dropped any reference to a specific time frame for integrity testing, and deferred to industry standards in the final rule, the 10-year frequency proposal was likely a good indication of what a typical industry standard may require or recommend as an appropriate frequency. In terms of testing techniques, EPA indicated that there are several non-destruction methods including hydrostatic, radiographic, ultrasonic, and acoustic emissions testing that may be employed depending on the application and referenced standard. It is hard to determine what level of familiarity Army PE's or private industry PE's, that have historically certified SPCC Plans, have with the EPA referenced industry standards and their associated integrity testing methods, but it is reasonable to assume that some degree of familiarization will be necessary for both private and government PE's before a comfort level is reached to certify SPCC Plans after the effective date of this rule (8/16/02).

Inspections, Testing, and Record Keeping

The rule allows “usual and customary business records” to minimize duplication of the record keeping process. (i.e. integrity testing records conducted under contract need not be a part of the plan). Another example might be that some NPDES best management practices (BMPs) and storm water permit related record keeping might also be used to meet wastewater management requirements associated with storm water in diked areas.

EPA also stated that electronic versions of the plan are fine, but hard copies must be available on-site for facilities occupied at least 4 hours per day. If the facility does not meet those criteria, a copy of the plan must be available at the nearest field office. Plan review must now be conducted every 5 years vs. every 3 years. A signed statement attesting to the review must be documented by the owners and operators.