



U.S. EPA Proposes New SPCC Regulations

U.S. EPA has proposed significant and far-reaching changes to the federal spill prevention, control and countermeasure (SPCC) program regulating oil production and storage facilities around the country. Comments on the proposed rule amendments – including suggestions to improve the regulatory process – are due December 14, 2007.

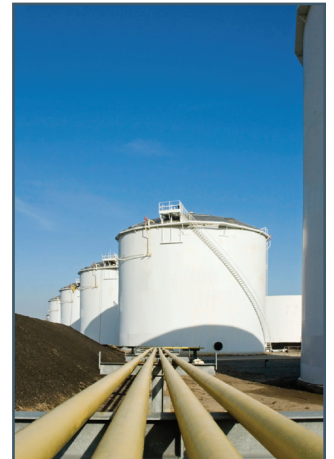
Background - Authorized by the federal Clean Water Act, the SPCC program was first instituted in 1973 as a means of preventing, preparing for, and responding to oil discharges at non-transportation related facilities. To prevent oil from reaching navigable waters of the United States – the touchstone of U.S. EPA jurisdiction – the program requires these facilities to develop and implement SPCC plans and establishes the procedures, methods and equipment requirements to do so. From the very beginning, members of the E&P industry have questioned the necessity, meaning and needless complexity of various provisions of the federal program.

EPA proposed numerous revisions to the SPCC program over the following decades, adopting a final rule amendment on July 17, 2002. That amendment changed significantly the requirements for preparing and implementing SPCC and facility response plans. The problems created for E&P operators were several and costly, including how to determine what *facilities* are and are not governed by the program; the inability of operators to consider costs when determining the impracticability of *secondary containment requirements* (particularly for marginal production facilities); and EPA's conclusion that facilities that store, treat or otherwise use *produced water* are properly subject to regulation under the SPCC program, and not excluded under the wastewater treatment exemption.

Responding to industry-wide concerns, EPA repeatedly extended the deadlines for E&P facility compliance with these new requirements. That date is now July 1, 2009.

U.S. EPA Proposal - On October 15, 2007, EPA proposed to amend the federal SPCC program to more clearly define its applicability and to tailor certain requirements for E&P facility owners to address many of the issues raised by industry over the years. Among other things, EPA asks for comment on the following:

- Modifications to the definitions of *facility* and *production facility* designed to clarify that contiguous installations (such as contiguous leases) may be considered a single facility by an operator if warranted by site-specific factors, such as ownership, management or operation of the facility, similarity of operational characteristics and activities at the site, and even shared drainage pathways. To illustrate their application, EPA notes that a wellhead connected to a tank battery separated by a mile-long flowline is – as a whole – an example of an oil production facility for purposes of preparing and implementing an SPCC plan because each of the individual items of equipment are an integral part of the entire production process.
- An *exemption from secondary containment requirements* for flowlines and intra-facility gathering lines, replaced by a requirement for contingency plans and written commitments of manpower, equipment and materials in the event of a discharge. This would also involve implementation of a performance-based maintenance program for these lines designed by EPA (and which would include, for example, periodic visual inspections and/or testing). For purposes of this



proposal, flowlines are considered to be the piping that transfers oil and well fluids from the wellhead to the tank battery and gathering lines are considered to be the piping that transfers product between tank batteries within or between facilities. EPA is not proposing definitions for these terms, however, believing that they are well understood in the industry.

- A definition of the term *loading / unloading rack* based on characteristics set forth in EPA's *SPCC Guidance for Regional Inspectors*, that will exclude from the rule on-shore oil production facilities as sought by industry. EPA notes, though, that oil transfer areas at production facilities would remain subject to the program's general secondary containment requirements despite the exclusion.
- A modification of the requirements imposed on *small production facilities* to allow operators of qualified facilities having a maximum individual storage container capacity of 5,000 U.S. gallons to complete and implement a streamlined, self-certified SPCC plan drafted by EPA. EPA is soliciting comment on whether this proposal addresses the concerns expressed by industry on the impact of SPCC regulations on marginal facilities; whether an alternative definition for *qualified facility*, based on industry-related stripper-well proposals, should be adopted; whether certain alternative approaches for addressing the needs of small facilities suggested by the U.S. Department of Energy should be adopted; and whether there are other alternatives that might serve to increase SPCC compliance, such as a stripper well exemption that would apply once a facility's production declines below marginal levels.

50452 Federal Register / Vol. 72, No. 198 / Monday, October 15, 2007 / Proposed Rules

APPENDIX G to Part 112—Tier 1 Qualified Facility SPCC Plan

This template constitutes the SPCC Plan for the facility, when completed and signed by the owner or operator of a facility that meets the applicability criteria in § 112.3(a)(1). This template meets the requirements of 40 CFR part 112. Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or for a facility attended less than 4 hours per day, at the nearest field office.

Facility Description

Facility Name _____
 Facility Address _____
 City _____ State _____ ZIP _____
 County _____ Tel. Number () - _____

Owner/Operator Name _____
 Owner/Operator Address _____
 City _____ State _____ ZIP _____
 County _____ Tel. Number () - _____

I. Self-Certification Statement (§ 112.46(a)(1))

The owner/operator of a facility certifies that each of the following is true in order to utilize this template to comply with the SPCC requirements:

- I, _____, certify that the following is accurate:
 - I am familiar with the applicable requirements of 40 CFR part 112.
 - There is no oil or petroleum product stored at the facility.
 - This Plan was prepared in accordance with accepted and sound industry practices and standards.
 - Procedures for required inspections and testing have been established in accordance with industry professional and testing standards or recommended practices.
 - I will fully implement the Plan:
 - The aggregate oil storage capacity of the facility is 10,000 U.S. gallons or less;
 - The facility has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons and no two discharges as described in § 112.1(b) each exceeding 1,000 U.S. gallons within any twelve-month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (not including discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism); and
 - There is no individual oil storage container at the facility with a capacity greater than 5,000 U.S. gallons.
- This Plan does not deviate from any requirements of 40 CFR part 112 as imposed by §§ 112.7(a)(2) (environmental equivalence) and 112.7(b) (impracticability of secondary containment).
- The Plan and individual(s) responsible for implementing this Plan have the full approval of management and have completed the necessary resources to fully implement the Plan.

- A clarification on *general secondary containment* requirements noting that they need only address the typical container failure mode and the most likely quantity of oil that would be discharged, and not rare but catastrophic failure modes and maximum quantities potentially discharged. EPA also identifies additional examples of prevention systems, such as drip pans, sumps and collection systems, and emphasizes that these are examples only and do not represent the sole methods for providing containment.

- Whether there are regulatory options for *produced water* that can protect the environment without the need for full compliance with the SPCC program. Currently, EPA considers a produced water container that also contains oil to be a bulk storage container subject to SPCC regulation. EPA is now asking for comments on three alternative regulatory schemes: (i) an approach that would allow operators to provide general secondary containment and rely on additional measures to protect against discharge, such as periodic inspections and integrity testing, rather than require sized-secondary containment measures as currently mandated; (ii) an approach that would utilize only additional measures for produced water storage containers and eliminate both sized and general secondary containment requirements; and (iii) an outright exemption for produced water, as presently exists for wastewater treatment facilities under the SPCC program.
- And an *extension of the timeframe* by which an oil production facility must *prepare and implement an SPCC plan*. Under the current rule, production facilities must prepare and implement a plan before beginning operations. Recognizing the unique start-up characteristics of an oil production facility, EPA proposes to allow new production facilities six months after the start of operations to prepare and implement a plan. "Start of operations" would be established by the start of well fluid pumping, transfer via flowlines, separation, treatment, or storage of oil.

Operators should review EPA's proposal and consider whether to file comments, due on December 14, 2007. It is virtually certain that the SPCC program is going to change for E&P operators as a result of this rulemaking – a change that is going to have a direct impact on an operator's bottom line. And it is just as certain that environmental groups and other interested parties are going to vigorously oppose much of the flexibility that is now being proposed by EPA.

To obtain a copy of EPA's proposal, go to www.epa.gov/oilspill/.

Vorys Energy Group: Vorys' Energy and Utility Practice Group is one of the premier energy practices in the Appalachian Basin, with experience representing energy producers, service companies, local distribution companies and end-users in a wide range of business, litigation and regulatory matters. You can reach the author of this article Gregory D. Russell at 614.464.5468 or via email at gdrussell@vorys.com. You can reach other practice group members W. Jonathan Airey, at 614.464.6346 or via email at wjairey@vorys.com; John K. Keller, at 614.464.6389 or via email at jkkeller@vorys.com; or M. Howard Petricoff, at 614.464.5414 or via email at mhpetricoff@vorys.com.

Additional References: www.epa.gov; www.ooga.org; www.ipaa.org

Disclaimer

This newsletter contains information necessarily of such a general nature that it cannot be regarded as legal advice. Vorys, Sater, Seymour and Pease LLP is available to provide additional information and to discuss matters contained herein as they may apply to specific situations.

© 2007. For additional information, please visit www.vorys.com