

## **LEGAL LOOKOUT: EPA Proposes Amendment to SPCC Plan Requirements**

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**by Lynn L. Bergeson**

On Dec. 12, 2005, the EPA proposed to amend Spill Prevention, Control, and Countermeasure (SPCC) plan requirements to reduce the regulatory burden these requirements impose on covered entities. The agency also released a document entitled SPCC Guidance for Regional Inspectors to assist regional inspectors in assessing a facility's implementation of SPCC requirements. As such, the document is an important how-to guide for ensuring compliance with SPCC plan requirements.

### **Background**

Section 311(j)(1)(C) of the Clean Water Act requires the president to issue regulations establishing procedures, methods, equipment and other requirements to prevent discharges of oil from vessels and facilities, and to contain such discharges. Over the years, the EPA has been given the authority to implement Section 311(j). The Oil Pollution Prevention rule reflects the agency's implementation of this authority and is codified in 40 C.F.R. Part 112. SPCC plans are the cornerstone of the EPA's strategy to prevent oil spills from reaching navigable waters of the United States. They are intended to ensure that facilities implement containment and other countermeasures, and are quite different from contingency plans intended to address spill cleanup measures after a spill has occurred.

Each SPCC plan must include certain elements. EPA occasionally inspects facilities to ensure compliance with the requirements. Facilities are also required to submit certain information after having two or more discharges (over 42 gallons) in any 12-month period, or a single discharge of more than 1,000 gallons. A copy of the SPCC plan must be maintained at the facility if the facility is typically attended for at least four hours per day. The plan must also be available to EPA for on-site review and inspection during normal business hours.

In 2002, the EPA published a final rule amending the Oil Pollution Prevention regulation and included requirements for SPCC plans and facility response plans. The final rule also included new provisions outlining requirements for various classes of oil, revised the applicability of the regulation, and amended the requirements for completing SPCC plans, among other modifications.

The final rule was judicially challenged by several regulated entities. Most of the issues raised in the litigation have been settled. In a separate notice also issued on Dec. 12, 2005, however, the EPA proposed to extend the dates by which facilities must prepare and/or amend and implement SPCC plans. The extension would allow the agency time to promulgate revisions to the final 2002 SPCC rule consistent with the settlement before owners or operators are required to meet requirements of that rule related to preparing, or amending and implementing SPCC plans.

The substantive amendments to the SPCC regulations recently proposed are principally intended to ease the regulatory burden on regulated entities. Whether the amendments achieve this goal is unclear, but a review of the proposal suggests that if implemented, the revisions would go a long way in lightening the load. Key amendments are summarized below.

## Proposed revisions

To reduce regulatory burdens and to address certain other concerns involving oil-filled operational equipment, motive power containers, airport mobile refuelers, and provisions specific to animal fats and vegetable oils, EPA has proposed amendments to the SPCC plan requirements codified at 40 C.F.R. Part 112. Specifically, EPA has proposed the following:

**Alternative Option for Owner/Operator Self-Certification** – Importantly for Pollution Engineering readers, the EPA has proposed an alternative option for the owner/operator of a qualified facility to self-certify that his/her SPCC plan was prepared in accordance with Part 112 in lieu of review and certification by a professional engineer (PE). A qualified facility would be defined as a facility subject to the SPCC requirements having a maximum total facility oil storage capacity of 10,000 gallons or less, and has had no reportable oil discharges during the 10 years prior to self-certification or, since becoming subject to the SPCC requirements if the facility has been in operation for less than 10 years. Under this approach, facility owners/operators may choose to self-certify their SPCC plans, but may not make impracticability determinations in their SPCC plans as described under the rules. To take advantage of the flexibility offered by PE-certified impracticability determinations, PE certification would be required.

**Revised Definition for Oil-Filled Operational Equipment** – The EPA proposed a definition for oil-filled operational equipment and proposed that owners/operators of facilities where oil-filled operational equipment is located have the alternative of preparing an oil spill contingency plan and a written commitment of manpower, equipment and materials without having to determine that secondary containment is impracticable on an individual equipment basis; and establish and document an inspection or monitoring program for this equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment for qualified oil-filled operational equipment. The proposal would eliminate the current requirement for an individual impracticability determination for oil-filled operational equipment at a facility that has had no discharges (as described under the rule) from any oil-filled operational equipment during the 10 years prior to the plan certification date or, since becoming subject to the SPCC requirements, if the facility has been in operation for less than 10 years.

**Exemption from SPCC Rule for Certain Motive Power Containers** – The EPA has proposed to exempt certain motive power containers from the SPCC requirements. These are onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation. The exemption would not apply to transfers of fuel or other oil into motive power containers at an otherwise regulated facility, nor would it apply to a bulk storage container mounted on a vehicle for any purpose other than powering the vehicle itself.

**Airport Mobile Refuelers Proposed to be Exempt from Certain Requirements** – The EPA has proposed to exempt certain airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers under 40 C.F.R. Sections 112.8(c)(2) and 112.8(c)(11) of the SPCC rule. Airport mobile refuelers include vehicles found at airports that have onboard bulk storage containers designed for, or used to, store and transport fuel for transfer into or from an aircraft or ground service equipment. The remaining provisions of Section 112.8(c) and the secondary containment requirements would continue to apply to the onboard bulk storage containers on airport mobile refuelers and the transfers associated with this equipment.

**Animal Fats and Vegetable Oils** – The EPA proposed to amend the requirements for animal

fats and vegetable oils by removing the requirements for onshore oil production facilities, onshore drilling and workover facilities, and for offshore oil drilling, production or work-over facilities. EPA believes these sections do not apply to facilities that handle, store or transport animal fats and vegetable oils.

Compliance Dates for Farms – The EPA proposed to extend the compliance dates for farms so EPA has time to consider whether the unique nature of this sector of the economy warrants differentiated requirements under the SPCC rule.

### **Guidance for inspectors**

On Dec. 2, 2005, the EPA also released the SPCC Guidance for Regional Inspectors. The guidance document is intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule. With its publication, the agency seeks to establish a consistent understanding among EPA regional inspectors on how particular provisions of the rule may be applied. The guidance document covers topics such as applicability, environmental equivalence, secondary containment and impracticability determinations, and integrity testing, as well as the role of the inspector in the review of these provisions. The document is also available as a guide to owners and operators of facilities subject to the SPCC requirements and to the general public on how the EPA intends the SPCC rule to be implemented. The SPCC Guidance for Regional Inspectors is available at [www.epa.gov/oilspill/guidance.htm#Content](http://www.epa.gov/oilspill/guidance.htm#Content)

The proposed rule offers a wonderful opportunity to help shape final revisions to the SPCC rule. The proposal is particularly relevant to Pollution Engineering readers in certain respects, including the option for owners/ operators of a qualified facility to self-certify their SPCC plans. Comments on the proposal are due on Feb. 10, 2006.

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