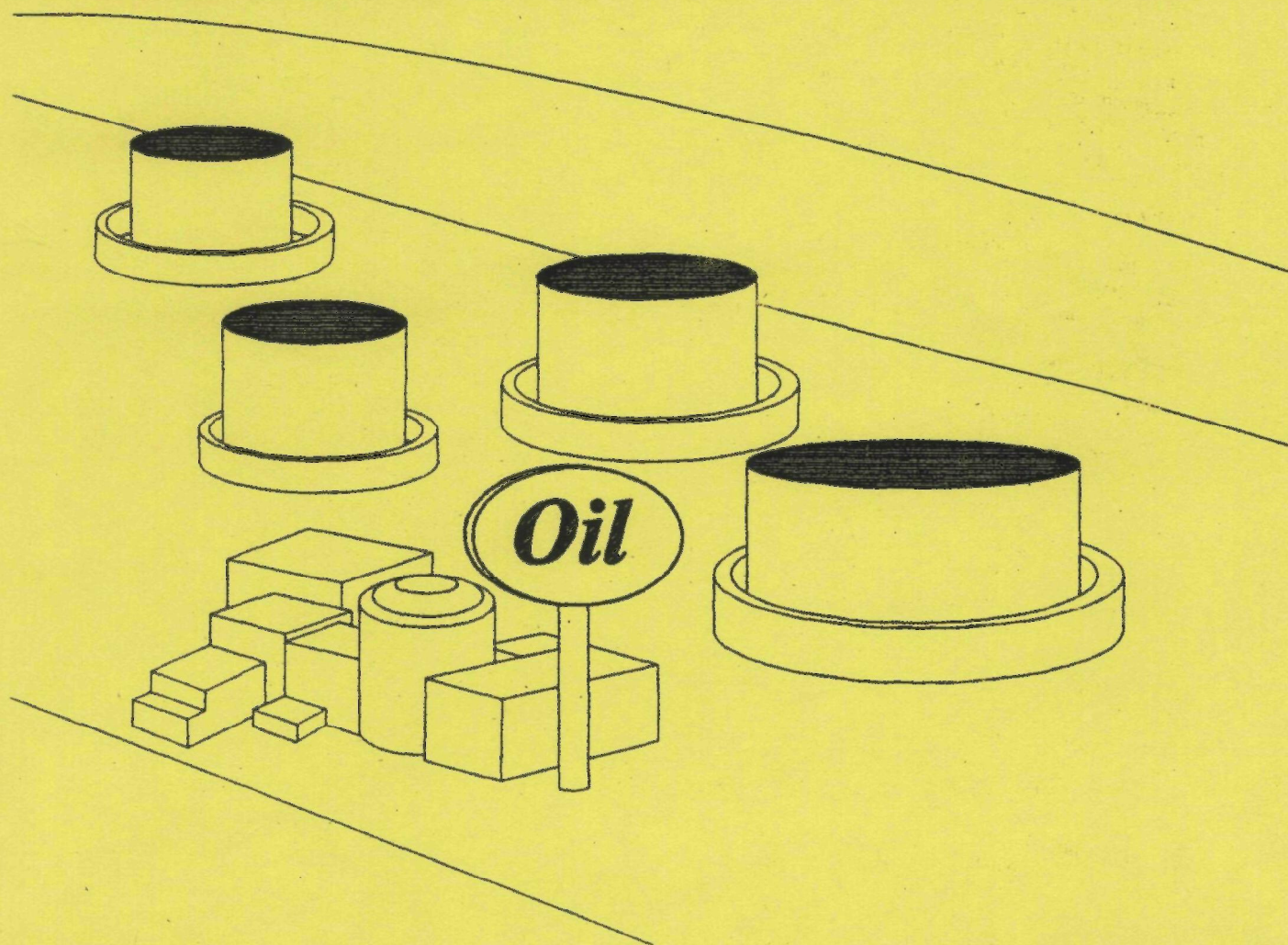


Spill Prevention, Control & Countermeasures

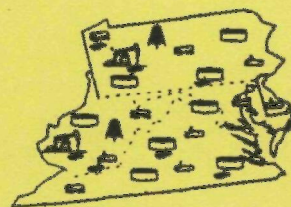
Facility Response Plans

OUTREACH COURSE MANUAL

September 1994



United States Environmental Protection Agency
Region III, Superfund Removal Branch
841 Chestnut Building
Philadelphia, PA 19107



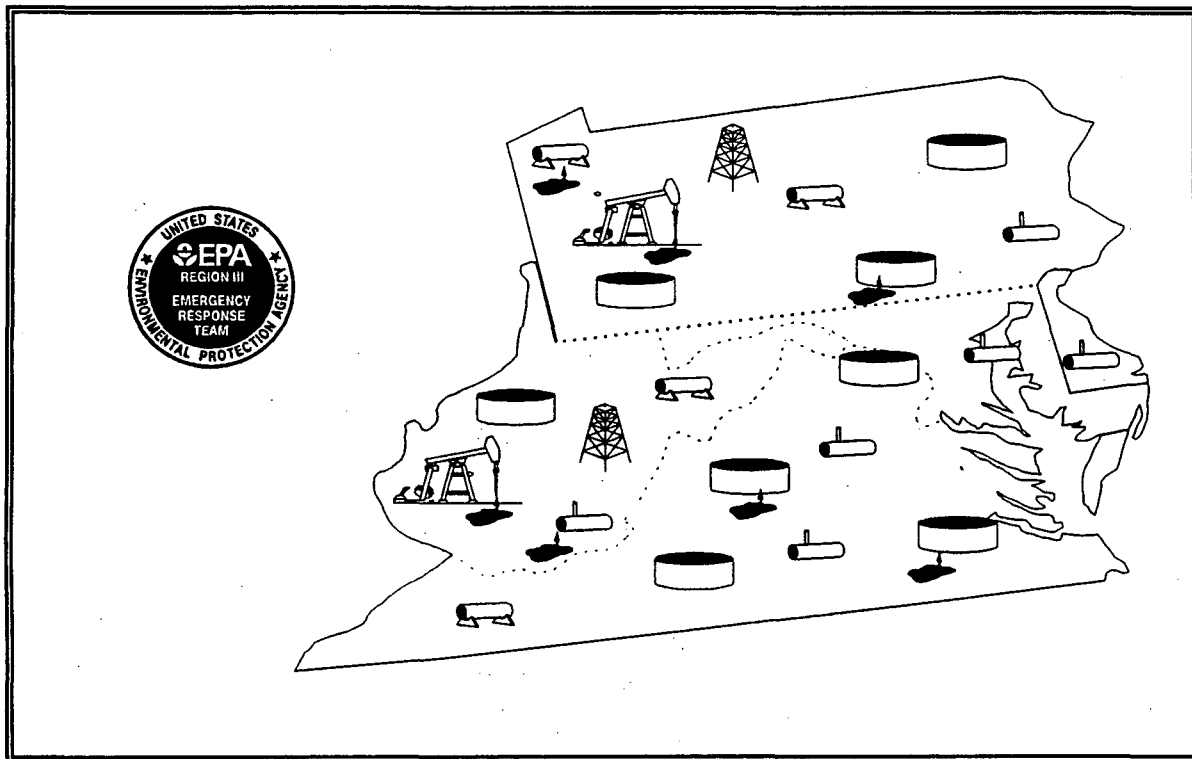
MANUAL ORGANIZATION

- SECTION A:** **SPILL PREVENTION, CONTROL AND COUNTERMEASURE (SPCC)**
Information Guide
- SECTION B:** **NOTICE OF PROPOSED RULE MAKING SPCC REVISION for 40 C.F.R. PART 112 dated OCTOBER 22, 1991**
- SECTION C:** **INTERIM FINAL RULE for 40 C.F.R. PART 112 dated NOVEMBER 4, 1992**
- SECTION D:** **SPCC/FRP OUTREACH CONTACT NUMBERS**

MOST COMMONLY USED CWA-OPA-SPCC ACRONYMS

SPCC IMPORTANT DEFINITIONS
- SECTION E:** **SPCC COURSE SLIDES**
- SECTION F:** **WHAT TO EXPECT DURING AN SPCC INSPECTION**
ACKNOWLEDGEMENT AND RECORD OF SPCC/FRP
INSPECTION/PLAN REVIEW
- SECTION G:** **FACT SHEET: OPA Q's & A's**
- SECTION H:** **FACT SHEET: FACILITY RESPONSE PLANS (FRP's)**
- SECTION I:** **FRP DEFINITIONS**
- SECTION J:** **FINAL RULE MAKING for 40 C.F.R. PARTS 9 AND 112 dated JULY 1, 1994**
- SECTION K:** **FRP COURSE SLIDES**
- SECTION L:** **40 C.F.R. PART 112.20**
CERTIFICATION OF SUB HARM FORM
SUB HARM FLOW CHART
APPENDIX "F"
- SECTION M:** **SPCC/FRP EVALUATION SHEET for COURSE PRESENTATION**
SPCC/FRP SEMINAR REQUEST SHEET

SPILL PREVENTION, CONTROL, AND COUNTERMEASURE (SPCC) INFORMATION GUIDE



SECTION A

TABLE OF CONTENTS

TABLE OF CONTENTS	i
FOREWORD	iii
KEY POINTS OF PREVENTION REGULATION	1
ELEMENTS OF AN SPCC PLAN	5
QUESTIONS FREQUENTLY ASKED	9

Appendix A, Example SPCC Plan (7 Pages)

Appendix B, Dike Designs (1 Pages)

Appendix C, 40 CFR 109

Criteria for State, Local, and Regional Oil Removal Contingency Plans ... (2 Pages)

Appendix D, 40 CFR 110

Discharge of Oil (3 Pages)

Appendix E, 40 CFR 112

Oil Pollution Prevention (10 Pages)

Appendix F, 33 CFR PART 153.201

Notice of the Discharge of Oil or a Hazardous Substance (5 Pages)

Appendix G, 40 CFR 114

Civil Penalties (4 Pages)

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FOREWORD

This document has been prepared by Region III of the U.S. Environmental Protection Agency as an informational and educational guide, and may be used in developing Spill Prevention, Control, and Countermeasure (SPCC) Plans as required under Title 40, Code of Federal Regulations, Part 112 (40 CFR 112). The information contained in this manual has been compiled from existing regulations, EPA documents, and other guidance documents. This document should not be relied upon as the sole source in developing a site-specific SPCC Plan; it is intended to be used only as a guide in explaining the SPCC regulations. 40 CFR 112, which is included in Appendix E, is the standard against which SPCC Plans are judged and should be used as the primary guide in developing SPCC Plans.

For additional information concerning SPCC regulations, call or write the SPCC Coordinator as follows:

Vince Zenone, SPCC Coordinator
U.S. Environmental Protection Agency
Superfund Removal Branch
Oil and Title III Section (3HW34)
841 Chestnut Building
Philadelphia, PA 19107

(215) 597-3038

Should the SPCC Coordinator be unavailable to answer questions, please leave a message on the voice mail system.

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KEY POINTS OF PREVENTION REGULATION

The Environmental Protection Agency (EPA) Oil Pollution Prevention Regulation, Title 40, Code of Federal Regulations, Part 112 (40 CFR 112), addresses non-transportation-related facilities. The main requirement of facilities subject to the regulation is the preparation and implementation of a Plan to prevent any discharge of oil into waters of the United States. Such a Plan is referred to as a Spill Prevention, Control, and Countermeasure (SPCC) Plan.

The main thrust of the SPCC regulation is "prevention" of a discharge as opposed to "after-the-fact" (or "reactive") clean-up measures commonly described in spill contingency plans. The regulation applies to any facility engaged in drilling, producing, gathering, storing, processing, refining, transferring or consuming oil and oil products, providing that all three of the following conditions are met:

- The facility is non-transportation-related (see definition of "non-transportation" in Appendix E).
- The aboveground storage capacity of single container is in excess of 660 gallons, or the aggregate aboveground storage capacity is greater than 1,320 gallons, or the total underground storage capacity is greater than 42,000 gallons.
- Due to its location, oil spilled at the facility could reasonably be expected to reach waters of the United States.

Facilities that are subject to 40 CFR 112 must prepare and implement an SPCC Plan in accordance with guidelines outlined in the regulation. The persons actually responsible for preparing and implementing the Plan are owners or operators of facilities subject to regulation, including persons in charge of departments, agencies, and instrumentalities of the Federal or state governments.

GENERAL REQUIREMENTS OF THE SPCC PLAN

There is no rigid format for an SPCC Plan. The guidelines in 40 CFR 112 state that the SPCC Plan must be carefully thought out, prepared in accordance with good engineering practices, and approved by management at a level with the authority to commit the resources necessary to implement the Plan.

The SPCC Plan should clearly address three areas:

- Operating procedures to prevent the occurrence of oil spills.
- Control measures to prevent a spill from entering navigable waters.
- Countermeasures to contain, clean up and mitigate the effects of an oil spill that impacts navigable water.

SPILL PREVENTION

An essential element of an SPCC Plan is a description of measures designed to prevent operational error and equipment failure, which cause most spills. Operational errors can be minimized through training programs to maintain a high level of personnel efficiency and awareness of the importance of spill prevention. Equipment failures can be minimized through proper initial selection and construction of processing and storage vessels and pipelines. Regular maintenance of structural integrity and function, and frequent inspections (visual and mechanical) to detect leaks around tank seams, gaskets, rivets and bolts, flange joints, expansion joints, valves, catch pans, and so forth should be conducted.

While personnel training and equipment maintenance programs are based on industry standards and sound engineering practices, the full support of management is essential to develop and implement effective facility-specific programs for training and maintenance.

SPILL CONTROL

Another important element of the SPCC Plan is spill control. EPA Region III is generally concerned with prevention of spills from facilities where positive containment devices and systems are practicable and effective. Dikes, retaining walls, curbing, spill diversion ponds, sumps, etc., fall into the category of positive containment. Only where it is not practicable to provide positive containment does the facility have the option of taking the "contingency" plan approach to spill control. In such a case, the facility owner/operator must clearly demonstrate the impracticability of providing positive containment. The owner/operator must also provide a strong Oil Spill Contingency Plan following the provision of 40 CFR 109 (see Appendix C) and a written commitment of personnel, equipment, and materials required to expeditiously control and remove any harmful quantity of oil discharged.

"Impracticability" pertains mainly to those cases where severe space limitations may preclude installation of structures or equipment to prevent oil from reaching water. Demonstrating "impracticability" on the basis of financial considerations is unacceptable

because the commitment of resources required to control, remove, and dispose of spilled oil expeditiously would not normally offer any significant economic advantage over providing positive containment.

SPILL COUNTERMEASURES

Contingency plans are considered "reactive" in nature in that they generally describe after-the-fact actions (spill countermeasures) that when properly performed can be expected to mitigate the effects of a spill after it occurs. The aim of the SPCC regulation is to keep spills from occurring, therefore, spill prevention and spill control measures must be given first priority consideration in the preparation of the SPCC Plan.

AMENDMENTS TO THE SPCC PLAN

Once an SPCC Plan has been developed, it may be amended by the U.S. EPA Regional Administrator under certain circumstances or by the facility owner or operator. The Regional Administrator may require amendments to the Plan following a single discharge at the facility in excess of 1,000 gallons, or following two discharges in "harmful quantities" that occur within any twelve-month period and are reportable under the Federal Water Pollution Control Act.

The SPCC regulation requires the owner or operator to amend the Plan whenever there is a change in facility design, construction, operation, or maintenance that materially affects the facility's potential for discharging oil. Such amendments must be fully implemented not later than six months after the change occurs. The regulation also requires the owner or operator to review and evaluate the SPCC Plan every three years, and amending the Plan may be part of this review. Within six months following the review, the owner or operator may amend the Plan to incorporate more effective control and prevention technology if the technology will significantly reduce the likelihood of a release, and the technology has been field proven at the time of the review.

All amendments must be certified by a registered professional engineer per Section 112.3 (d) of the SPCC regulation.

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ELEMENTS OF AN SPCC PLAN

While each SPCC Plan is unique, there are certain elements that must be included almost without exception to make the SPCC Plan comply with the provisions of 40 CFR 112. These elements include, but may not be limited to, the following:

1. Name of Facility - The name of the facility may be different from the name of the company that the facility operates under. Include both names if they are different.
2. Type of Facility - Describe briefly the purpose of the facility and the type of activities conducted there.
3. Date of Initial Operation - Provide the date that the facility began operation.
4. Location of the Facility - Provide either a description of the location or an address that can be supported by area maps. Location and topographic maps should be included in the Plan as they can be critical in determining the adverse consequences of an oil spill. Sources for such maps include: the U.S. Geological Survey, state highway department, county highway engineer, local land surveys, and city engineer.
5. Name and Address of Owner - The address of the owner may be the same as or different from the facility location.
6. Designated Person Responsible for Oil Spill Prevention - Provide the name and title of the person with overall responsibility for the facility's spill prevention program. This person should be thoroughly familiar with the SPCC regulation and with the facility's SPCC Plan.
7. Oil Spill History - Provide a detailed history of significant spill events, if any, that occurred in the twelve-month period (from January 10, 1973 to January 10, 1974) prior to the effective date of the regulation. For each spill that occurred within the period, include the following information:

- a. Type and amount of oil spilled.
 - b. Location, date and time of spill(s).
 - c. Watercourse affected.
 - d. Description of physical damage.
 - e. Cost of damage.
 - f. Cost of clean-up.
 - g. Cause of spill.
 - h. Action taken to prevent recurrence.
8. Management Approval - Provide a statement about the facility's commitment to the Plan, signed by a person with the authority to commit management to implementation of the SPCC Plan.
 9. Certification - Provide a statement of SPCC Plan certification under the seal and signature of a registered professional engineer. The state of registration and the registration number of the certifying engineer must also be provided. The certifying engineer is not required to be registered in the state in which the facility is located.
 10. Facility Analysis - Describe the facility operation and indicate the largest magnitude of spill possible. The description should include a discussion of the amount and type of storage, normal increments of transfer or patterns of usage, distribution, processes, etc. In the analysis the direction of flow of spilled oil should be indicated along with any factors that are pertinent or influence spill potential. It is appropriate to support this type of information by charts, tables, plot plans, etc., to aid clarity or promote brevity.
 11. Facility Inspection - Incorporate an up-to-date inspection report covering the facility in terms of equipment, containment, operation, drainage, security, etc., if available. An inspection report would best serve more complex facilities and is not necessarily considered an element common to all SPCC Plans.
 12. Review of the SPCC Plan - Provide documentation of Plan reviews conducted by the owner or operator. The facility owner or operator must review the SPCC Plan at least once every three years. These reviews must be documented.
 13. Amendments to the SPCC Plan - Make amendments of the completed Plan as required by the SPCC regulation.

The complete SPCC Plan, which must follow the sequence outlined in Section 112.7 of the regulation, must include a discussion of the facility's site-specific conformance with the relevant guidelines in the regulation. The SPCC Plan must be certified by a registered professional engineer.

A copy of the entire SPCC Plan must be maintained at the facility if the facility is normally attended at least eight hours per day, or at the nearest field office if the facility is not so attended. The SPCC Plan must be made available to the EPA Regional Administrator, or to a duly authorized representative, for on-site review during normal working hours.

SPCC PLAN GUIDELINES

Several industrial trade associations have developed suggested guidelines for use by their members in preparing SPCC Plans. Generally, such guidelines are available for particular types of facilities and may be very helpful. For example, the American Petroleum Institute has prepared a bulletin entitled "Suggested Procedure for Development of Spill Prevention Control and Countermeasure Plans" (API Bulletin D 16). This bulletin, designed primarily for oil production facilities, may be used in addition to the regulations and other guidance documents to develop an SPCC Plan. Care should be taken, however, to not rely completely on any standardized format. Each SPCC Plan must be unique to the facility. Development of a unique Plan requires detailed knowledge of the facility and of the potential impact that any spill may have.

An example SPCC Plan for a modest-sized oil storage facility is included as Appendix A.

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QUESTIONS FREQUENTLY ASKED

What is the U.S. Environmental Protection Agency's Oil Pollution Prevention Regulation?

It is a regulation that tries to prevent a discharge of oil into or upon the navigable waters of the United States by establishing certain requirements for owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, or consume oil. The text of the regulation is found in Title 40 of the Code of Federal Regulations, Part 112 (40 CFR 112).

What does the regulation require a facility to do?

The regulation requires that all subject facilities have a fully prepared and implemented Spill Prevention Control and Countermeasure (SPCC) Plan. Facilities in existence at the time the regulation went into effect in 1974 were required to have a Plan prepared within six months of the effective date of the regulation, and to have implemented the Plan within one year of the effective date of the regulation. New facilities must prepare an SPCC Plan within six months of the date they commence operations; they must implement the Plan within one year of the date operations begin.

What constitutes an SPCC Plan?

An SPCC Plan is a detailed, site-specific written description of how a facility's operation complies with the guidelines in the regulation (Section 112.7).

Who is required to prepare an SPCC Plan?

The owner or operator of the facility subject to regulation is required to prepare a written SPCC Plan, which must be certified by a registered professional engineer.

When did this regulation go into effect?

The regulation was promulgated on December 11, 1973, and went into effect on January 10, 1974.

Which facilities are subject to the regulation?

A facility is subject to the regulation if it is a non-transportation-related facility (either onshore or offshore), if due to its location it could reasonably be expected to discharge oil into waters of the United States if a spill should occur and if it has:

1. Total aboveground oil storage capacity in excess of 1,320 gallons or a single container (tank, drum, transformer, etc.) in excess of 660 gallons; or

2. Total underground oil storage capacity in excess of 42,000 gallons.

The facility must address all aboveground and underground storage capacities once subject to 40 CFR 112.

A facility may be exempt from the regulation if due to its location it could not reasonably be expected to discharge oil into or upon the navigable waters of the United States. The exemption determination is based on consideration of such geographical aspects of the facility as proximity to navigable waters, land contour, drainage, and so forth. The determination must exclude consideration of man-made features such as dikes, equipment, or other structures that would inhibit a discharge from reaching navigable waters.

What is a non-transportation-related facility?

- (1) Onshore or offshore well drilling facilities;
- (2) Onshore or offshore mobile well drilling platforms, barges, trucks or other mobile facilities when in the fixed position for drilling operations;
- (3) Onshore or offshore oil production facilities, fixed or mobile, including all equipment and appurtenances such as wells, wellhead separators, and storage facilities;
- (4) Oil refining facilities, including all equipment and appurtenances such as processing units, storage units, piping, drainage systems, and waste treatment units;
- (5) Oil storage facilities, including all equipment and appurtenances, such as bulk storage, terminal oil storage, consumer storage, pumps and drainage systems used in the storage of oil;
- (6) Industrial facilities which store oil;
- (7) Commercial facilities which store oil;
- (8) Agricultural facilities which store oil;
- (9) Public facilities which store oil;
- (10) Waste treatment facilities, including in-plant pipelines, effluent discharge lines, and storage tanks.

What is a transportation related facility?

- (1) Onshore and offshore terminal facilities, including transfer hoses, loading arms, and other equipment and appurtenances used for the purpose of handling or

transferring oil in bulk (including oily ballast or tank washings) to or from a vessel;

- (2) Interstate and intrastate, onshore and offshore, pipeline systems;
- (3) Highway vehicles and railcars used for the transport of oil interstate or intrastate commerce.

Can a facility be both transportation and non-transportation related?

Yes. Part of a facility's operation may be transportation-related and part may be non-transportation-related. Those parts that are non-transportation-related are subject to the SPCC regulation.

What determines the reasonability of a discharge to navigable waters?

Reasonability is determined on the basis of the location of the facility in relation to a stream, ditch, or storm sewer; the volume of material likely to be spilled; drainage patterns; soil conditions; and so forth. The presence of manmade structures that would inhibit the flow of oil is not considered when making the determination.

Is a facility still subject to the regulation if it is located in such a manner that any spill that may occur would not be expected to discharge into the waters of the United States?

No. However, the determination of exemption should be made very carefully. If any oil could reach a sewer line, drainage ditch, etc., that discharges into navigable waters, either directly or indirectly, then the facility is subject to the regulation.

Who determines whether or not a facility would reasonably be expected to discharge oil into navigable waters?

The facility owner or operator makes the determination.

What if the owner or operator decides the facility is exempt from the regulation and the decision is wrong?

The facility could be subject to the penalty provisions of the regulation for failure to comply.

What are the requirements for certifying the Plan by a registered professional engineer (P.E.)?

The engineer should be familiar with the provisions of 40 CFR 112, must have examined the facility and be a registered professional engineer in at least one state. The engineer need not be registered in the state in which the facility is located. The engineer's name, registration number, and state of registration must be included as part of the SPCC Plan (Section 112.3). In addition, the engineer's seal must be affixed to the Plan as part of the certification.

When the SPCC Plan is completed and certified, is it sent to EPA for review?

No. A certified copy of the SPCC Plan is required to be available at the facility for EPA on-site review if the facility is attended at least eight hours a day. If the facility is attended less than eight hours a day, then the SPCC Plan must be kept at the nearest company office. However, if the facility has a single discharge of more than 1,000 gallons or two discharges of harmful quantities in any twelve month period, the Plan must be sent to the EPA for review.

Who reviews the SPCC Plan and how often is the SPCC Plan reviewed?

The owner or operator is required to review the SPCC Plan at least once every three years. The review must be documented.

Who can amend an SPCC Plan?

The owner or operator of a facility may amend an SPCC Plan to include updated information and to reflect changes in procedure. In certain cases, the EPA Regional Administrator may require the amendment of a facility's SPCC Plan.

When must an SPCC Plan be amended by the facility operator?

The regulation requires the owner or operator to amend the Plan within six months following a review to incorporate more effective control and prevention technologies if the technology will significantly reduce the likelihood of a release, and the technology has been field proven at the time of the review. The owner or operator must also amend the SPCC Plan whenever there is a change in the facility design, construction, operation or maintenance that materially affects the facility's potential for discharge into navigable waters of the United States or adjoining shorelines (Section 112.5). Such amendments must be fully implemented no later than six months after the change occurs.

Amendments must be certified by a registered professional engineer in accordance with Section 112.3 of the regulation.

When might an SPCC Plan be amended by the EPA?

The U.S. EPA Regional Administrator may amend the Plan following a single discharge at the facility in excess of 1,000 gallons, or following two discharges within any twelve-month period that are in "harmful quantities" and are reportable under the Federal Water Pollution Control Act. Within 60 days following such a discharge(s), the facility owner or operator must submit the SPCC Plan to the Regional Administrator and to the state agency in charge of water pollution control activities. The owner or operator must also submit a description of the causes of the spill and the corrective actions taken. Additional information pertaining to the Plan or spill event that the Regional Administrator may reasonably require must also accompany the Plan.

After review of the SPCC Plan, the Regional Administrator may inform the facility owner or operator that amendments to the Plan are proposed as deemed necessary to prevent any future discharges. Within 30 days of notification of the Regional Administrator's decision, the owner or operator may submit written information, views, and arguments on the proposal. The Regional Administrator will consider this new information and may either notify the owner or operator of any amendments required or rescind the original proposal. Any required amendments must become part of the facility's SPCC Plan within 30 days after notification and must be implemented within six months after the amendments become part of the Plan.

Amendments made in this manner must also be certified by a registered professional engineer in accordance with Section 112.3 of the regulation.

When a production lease consists of several operations, such as wells, oil/water separators, collection systems, tank batteries, etc., does each operation require a separate SPCC Plan?

No. One SPCC Plan may include all operations within a single geographical area; however, each operation must be addressed in the SPCC Plan.

Is every loss of oil or oil product subject to a penalty?

A discharge is defined in the Federal Water Pollution Control Act as including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping *that enters the waters of the U.S. or the adjoining shorelines in harmful quantities*. If a discharge occurs and enters the water, a penalty may be assessed.

Penalties are determined using the following factors:

- seriousness of violation.
- economic benefit to violator resulting from violation.
- degree of culpability involved.
- penalties for same incident from other agencies.
- violation history.
- efforts by the violator to minimize effects of discharge.
- economic impact of the penalty on violator.
- any other matters as justice may require.

What is considered to be a harmful quantity?

A harmful quantity of oil is a discharge that results in a violation of applicable water quality standards; causes a film or sheen upon the water or adjoining shorelines; discolors the water or adjoining shorelines or causes an emulsion or sludge to be deposited beneath the surface of the water or upon adjoining shorelines.

What are considered navigable waters?

Navigable waters of the U.S. are defined in Section 502(7) of the Federal Water Pollution Control Act (FWPCA), and include:

- 1) All navigable waters of the U.S., as defined in judicial decisions prior to the passage of the 1972 amendments to the FWPCA, and the tributaries of such waters;
- 2) Interstate waters, including interstate wetlands;
- 3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and
- 4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

What penalties are assessed for failure to comply with the regulation?

40 CFR 112.6 authorizes the U.S. EPA Regional Administrator to assess civil penalties.

The guidance for determining penalties is addressed in 40 CFR 114.

When should the National Response Center (800-424-8802, toll free) be called?

Any discharge of oil involving U.S. waters must be reported to the National Response Center by the person in charge of the vessel, facility or vehicle from which the discharge occurs. Threats of discharges or releases should also be reported. The procedures for such notifications are set forth in 33 CFR 153, 40 CFR 110, 40 CFR 112 and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300.

Does a state spill plan meet the requirements of a Federal SPCC Plan?

Not necessarily. If the state spill plan is intended to be used as the Federal SPCC Plan, it must meet or exceed all the requirements under 40 CFR Part 112. The state spill plan must express clearly that it addresses both the state and Federal regulations.

What counts toward storage capacity?

Storage capacity includes the capacity of all containers such as tanks, portable tanks, transformers, 55-gallon drums, 5-gallon buckets, etc. The capacity of any empty containers that may be used to store oil and are not permanently taken out of service are also counted in the facility total storage capacity.

Does the term "oil" include vegetable oil, transformer oil, and other non-petroleum based oil?

Yes. "Oil" is defined in 40 CFR 112.2 as *oil of any kind* or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil. This definition has been interpreted to include vegetable oil, mineral oil, transformer oil and other oils.

Are transformers covered under SPCC regulation?

Electrical transformers and similar equipment are covered by the SPCC regulation provided that they contain sufficient quantities of oil, and, due to location, can reasonably be expected to spill their oil into navigable waters or adjoining shorelines.

If the drainage from a facility discharges into a sewer system, is this facility required to have an SPCC Plan?

If the sewer is a storm sewer or combined sewer and the spill could reasonably be expected to reach navigable waters, a Plan would be required. If the flow from the sewer is entirely treated in the facility's sewage treatment plant, then an engineering assessment should be made by the owner or operator as to whether or not the treatment system could handle the maximum possible volume of oil without exceeding the permitted amount at the plant. If the system could not handle the oil, then an SPCC Plan would be required.

Are SPCC Plans required for hazardous substances or hazardous wastes?

Only in the event that the hazardous substances or hazardous wastes are mixed with oil.

Must secondary containments be provided for transfer operations (i.e., for a tanker truck loading/unloading fuel at a facility)?

Yes. The secondary containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loading or unloading at the facility. This is not to say that a truck must park within a diked area for loading/unloading. The regulation allows flexibility here for diversion structures such as curbing or diking to channel a potential spill to a secondary containment structure. Transfer of oil to water transportation vessels is not covered under the SPCC regulations.

If a tank is taken out of service, what measures must a facility take in order to be exempt from SPCC regulations?

Any tank taken out of service must have all pipes and fittings sealed in order to be excluded from facility storage capacity calculations. If, after the tanks are taken out of service, the facility storage capacity is below regulatory amounts then the facility will be exempt from the SPCC regulations.

Do the SPCC regulations spell out design requirements for diking, curbing, etc?

The SPCC regulations require diked areas for storage tanks to be sufficiently impervious to contain any spilled oil. All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Containment curbs and pits are sometimes used as secondary containments, but they may not always be appropriate.

Are double walled tanks and other alternative aboveground storage tanks satisfactory to meet the secondary containment requirements for SPCC?

Double walled tanks may provide adequate secondary containment; however, the valving must be designed so that accidental release from the inner tank (from such occurrences as an inadvertent valve opening or a failure) are completely contained within the outer tank. The inner tank should be an Underwriters' Laboratory-listed steel tank, the outer wall should be constructed in accordance with nationally accepted industry standards (e.g., those codified by the American Petroleum Institute, the Steel Tank Institute, and American Concrete Institute), the tank should have an overfill alarm and an automatic flow restrictor or flow shut-off, and all product transfers should be constantly monitored.

Other "alternative aboveground storage tanks," such as small tanks with an attached shop-fabricated containment dike, with capacities less than 12,000 gallons, may be satisfactory in meeting the secondary containment requirements for SPCC. If "alternative aboveground storage tanks" are utilized, an SPCC Plan must still be prepared and certified by a registered professional engineer. If the engineer does not certify that these tanks will provide adequate secondary containment, other containment systems must be implemented.

Must each tank, drum, or other oil storage container have individual secondary containment?

Not necessarily. A single dike may be used for a group of containers. A dike for a tank battery is required to contain the volume of the largest single tank within the battery plus sufficient freeboard to allow for precipitation. The dike should be sufficiently impervious to contain any spilled oil from the tank battery.

Should tanks be inspected by the facility?

Yes. All aboveground tanks should be subject to periodic integrity testing, taking into account tank design and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Tank supports and foundations should be included in these inspections.

Buried storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings. Buried tanks should at least be subject to regular pressure testing.

Is a partially buried tank or a tank in an underground basement or vault considered to be underground storage?

No. To qualify as buried storage, a tank must be completely covered by earth. Tanks that are in an underground basement or vault and those that are partially buried do not qualify as underground storage. Buried tanks have inherent release protection from the containing action of the surrounding earth, whereas vaulted and partially buried tanks do not.

What authorities do states have under SPCC regulation?

Section 311 of the Clean Water Act does not permit EPA to delegate the SPCC Program to the states. States may perform SPCC inspections at the request of the EPA; however, the overall review process of the inspection is the responsibility of the EPA. This review process is handled within the Regional EPA office.

Where can I get additional information concerning SPCC regulations?

Call or write the SPCC Coordinator as follows:

Vince Zenone, SPCC Coordinator - 3HW34
U.S. Environmental Protection Agency Region III
841 Chestnut Building
Philadelphia, PA. 19107
(215) 597-3038

Should the SPCC Coordinator be unavailable to answer questions, please leave a message on the voice mail system.

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APPENDIX A
EXAMPLE SPCC PLAN

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EXAMPLE

SPILL PREVENTION, CONTROL, AND COUNTERMEASURE PLAN

TEX'S BULK STORAGE TERMINAL

100 Everspill Road
Post Office Box 311 (K)
Oily City, USA 12345
Telephone (123) 222-2222

SJ Oil Company
P.O. Box 00002
Crude City, USA 77777

CONTACT
Steve Bob Doe, Manager

CERTIFICATION: I hereby certify that I have examined the facility, and, being familiar with the provisions of 40 CFR Part 112, attest that this SPCC Plan has been prepared in accordance with good engineering practices.

ENGINEER: Christopher Columbus

SIGNATURE:

REGISTRATION NUMBER: 98765

(seal)

STATE: Of the Union

DATE: June 11, 1974

1. NAME OF OWNERSHIP

Name: SJ Oil Company - Tex's Bulk Storage Terminal
100 Everspill Road
P.O. Box 311(K)
Oily City, USA 12345
Telephone: (123) 222-2222

Manager: Steve Bob Doe
505 Oil Road
Oily City, USA 12345
Telephone: (123) 222-3333

Owner: SJ Oil Company
P.O. Box 00002
Crude City, USA 77000

Other
Personnel: Secretary-Bookkeeper
Dispatcher
Transport Driver
Delivery Personnel (3)

Service
Area: North-West County

2. DESCRIPTION OF FACILITY

Tex's Bulk Storage Terminal of the SJ Oil Company handles, stores, and distributes petroleum products in the form of motor gasoline, kerosene, and No. 2 fuel oil. The accompanying drawing shows the property boundaries and adjacent highway drainage ditches, buildings on site, and oil-handling facilities.

Fixed Storage:

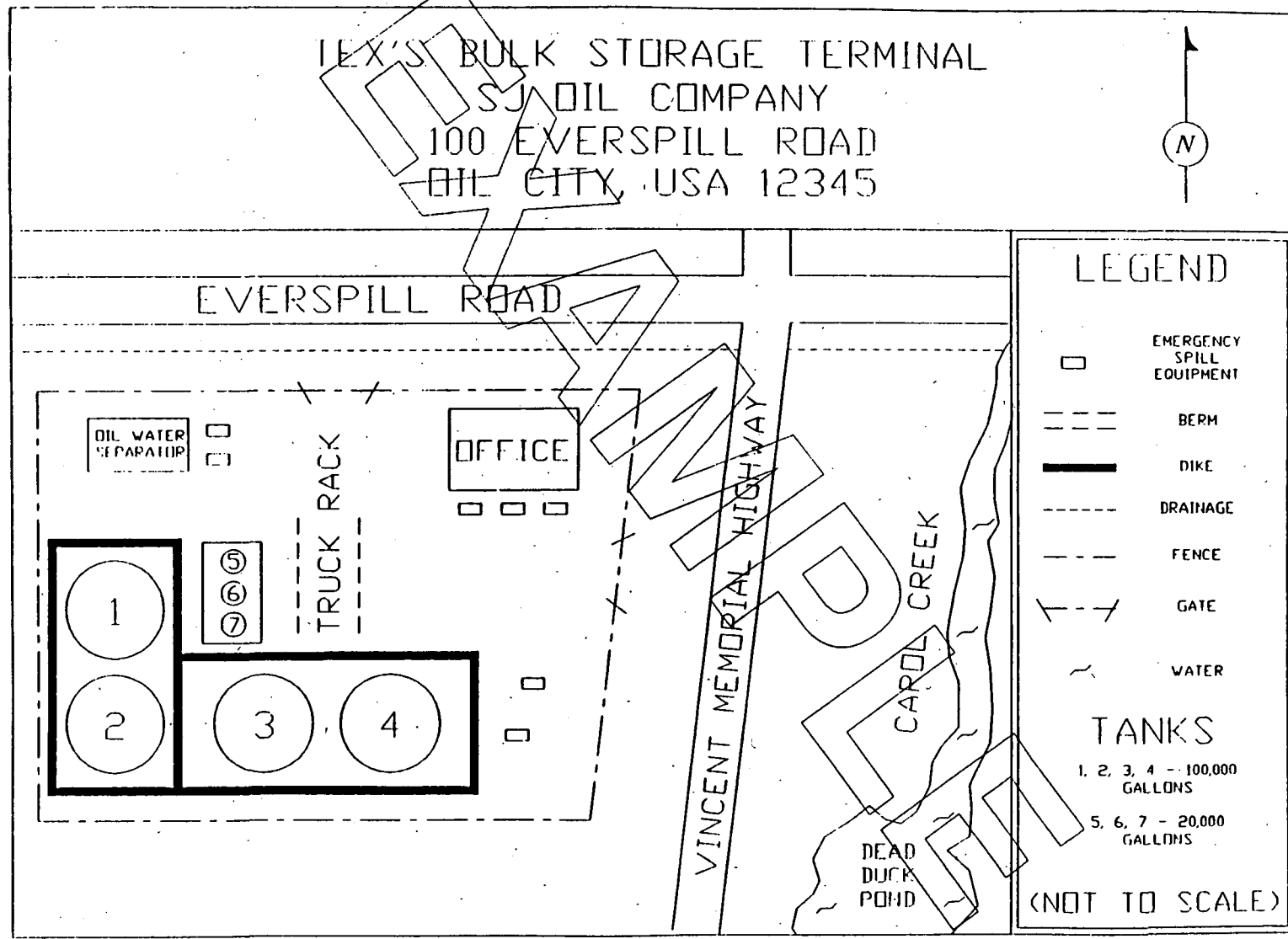
- (2) 100,000-gallon vertical tanks (premium gasoline)
- (2) 100,000-gallon vertical tanks (regular gasoline)
- (2) 20,000-gallon vertical tanks (No. 2 fuel oil)
- (1) 20,000-gallon vertical tank (kerosene)

Total: 460,000 gallons

Vehicles:

- (1) Transport truck
- (4) Tankwagon delivery trucks

DRAWING OF TEX'S BULK STORAGE TERMINAL - FACILITY LAYOUT



3. POTENTIAL SPILL VOLUMES AND RATES

<u>Potential Event</u>	<u>Volume Released</u>	<u>Spill Rate</u>
Complete failure of a full tank	100,000 gallons	Instantaneous
Partial failure of a full tank	1 to 99,000 gallons	Gradual to instantaneous
Tank overfill	1 to several gallons	Up to 1 gallon per minute
Pipe failure	Up to 20,000 gallons	4 gallons per second
Leaking pipe or valve packing	Several ounces to several gallons	Up to 1 gallon per minute
Leak during truck loading	1 to several gallons	Up to 1 gallon per minute

4. SPILL PREVENTION AND CONTROL

A. Storage Tanks

1. Each tank is UL-142 construction (aboveground use).
2. Each tank is equipped with a direct-reading gauge. Venting capacity is suitable for the fill and withdrawal rates.
3. A dike surrounds each tank installation. Each dike wall has been constructed and designed to local, state, and Federal engineering regulations. The contained volume (height versus area) is computed based on the single largest tank within (100,000 gallons) and allowance is made for all additional vertical tank displacement volumes below the dike height (estimated spill liquid level), and for precipitation. A 2-inch water drain is located at the lowest point within the dike enclosure, and it connects to a normally closed gate-valve outside the dike. The gate valve is manually operated. Rainwater contained within this dike is examined prior to release to ensure that harmful quantities of oil are not discharged.
4. After a fill pipe is used, a bucket is placed under it to catch any product that might drip from the pipe.
5. There are no buried or partially buried tanks at this facility.

6. Tanks are subject to periodic integrity testing and inspection. Tank supports, foundations, and piping are included in these inspections, and proper records are kept. The exterior of the tanks are examined frequently.
7. Materials stored on the site for spill countermeasures include bagged absorbent, sorbent pads, and booms. There is a sand-filled catchment basin for minor, routine spillage at loading pump intakes and loading racks. The catchment basin will contain greater than the largest compartment of the largest tank truck loaded or unloaded at this facility. Sand will be placed as needed, and any oil-contaminated sand is disposed of properly.
8. Failsafe engineering mechanisms are in place.
 - a. Tanks are equipped with high-level alarms.
 - b. Tanks are equipped with visual gauges.

B. FACILITY TRANSFER OPERATIONS

1. Buried pipes are properly protected against corrosion. If a section of buried pipe is exposed, it is examined for deterioration.
2. Pipelines not in service or on standby for an extended period are capped or blank-flagged, and marked as to their origin.
3. All pipe supports are properly designed to minimize abrasion and corrosion, and to allow for expansion and contraction.
4. Aboveground pipelines and valves are examined periodically to assess their condition.
5. Warning signs are posed as needed to prevent vehicles from damaging pipelines.
6. Curbing is installed at the vehicle loading racks.

5. SPILL COUNTERMEASURES

The front highway drainage ditch on the property's northern boundary crosses the highway through a culvert headed eastward and eventually leads to Carol Creek, located approximately one-half mile away. Emergency containment action will consist of erecting an earthen dam and placing absorbent materials at the entrance to the culvert. Sorbent boom will be strategically placed on Carol Creek, upstream of Dead Duck Pond, to contain oil that will be recovered and disposed of according to generally accepted procedures.

Personnel, materials, equipment, are committed to ensuring that this contingency plan is implemented in such a manner that no oil reaches Dead Duck Pond, which is an environmentally sensitive ecosystem.

6. PAST SPILL EXPERIENCE

None.

7. SECURITY

- a. The bulk plant is surrounded by steel security fencing, and the gate is locked when the plant is unattended.
- b. Tank drain valves and all other valves that will permit direct outward flow of a tank's contents are locked in the closed position when not in use. The electrical controls for the pumps are also locked in the closed position when not in use.
- c. The loading and unloading connections of pipelines are capped when not in service.
- d. Two area lights are located in such a position so as to illuminate the office and storage areas.

8. PERSONNEL

Facility personnel have been instructed by management in the following spill prevention and countermeasure plans:

- a. No tanks or compartments are to be filled without checking reserves prior to commencing the filling operation.
- b. No pump operations are to continue unless attended constantly.
- c. At appropriate locations are displayed warning signs to remind personnel to check line disconnections before vehicle departures.
- d. Training has been held on oil-spill prevention, containment, and retrieval methods. A "dry-run" drill for an on-site vehicular spill has been conducted.
- e. Instructions and phone numbers regarding the report of a spill to the National Response Center and the state have been publicized and posted at the office.
- f. Instructions and company regulations relating to oil spill prevention and countermeasure procedures have been posted conspicuously.

9. EMERGENCY TELEPHONE NUMBERS

A. NOTIFICATION PROCEDURES

1. Steve Bob Doe, Facility Manager (123) 222-3333
2. National Response Center (800) 424-8802
3. State Response Mechanism (123) 555-2221

B. CLEAN-UP CONTRACTORS

1. E-Z Clean Environmental (123) 222-3038
2. O.K. Engineers, Inc. (123) 222-2207

C. SUPPLIES AND EQUIPMENT

1. Oily City Equipment Co. (123) 222-8372
2. Northwestern Sorbent Co. (123) 222-9217

10. REVIEW DATES

6/08/77 (signature)

6/01/80 (signature)

6/10/83 (signature)

6/09/86 (signature)

6/06/89 (signature)

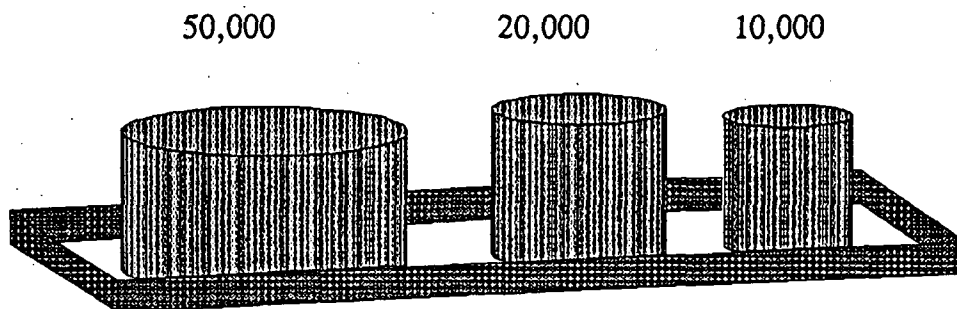
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APPENDIX B

DIKE DESIGNS

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SAMPLE DIKE HEIGHT CALCULATION



Calculations for this example:

- a) minimum containment volume (mcv) = to capacity of largest tank in a tank installation, in this example 50,000 gallons. $mcv = 50000 \times 0.1337 \text{ cu. ft./gal.} = \underline{6,685 \text{ cu. ft.}}$ /

* factor in freeboard per local requirements.

- b) dike area (proposed) Length x Width
 c) dike height (proposed)
 d) dike volume (dike area x dike height)
 e) displacement volume (tank area x tank height of dike wall)

* Volume of tank (cylinder) = $\pi r^2 h$

- f) effective secondary containment
 dike volume - displacement volume = x

- 1) if x is greater than the mvc then the secondary containment may be adequate, if sufficient freeboard for precipitation is factored in
- 2) if x is less than mcv, adjust the dike area n dike height accordingly, the recalculate.

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APPENDIX C

40 CFR PART 109

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PART 109—CRITERIA FOR STATE, LOCAL AND REGIONAL OIL REMOVAL CONTINGENCY PLANS

Sec.

- 109.1 Applicability.
- 109.2 Definitions.
- 109.3 Purpose and scope.
- 109.4 Relationship to Federal response actions.
- 109.5 Development and implementation criteria for State, local and regional oil removal contingency plans.
- 109.6 Coordination.

AUTHORITY: Sec. 11(j)(1)(B), 84 Stat. 96, 33 U.S.C. 1161(j)(1)(B).

SOURCE: 36 FR 22485, Nov. 25, 1971, unless otherwise noted.

§ 109.1 Applicability.

The criteria in this part are provided to assist State, local and regional agencies in the development of oil removal contingency plans for the inland navigable waters of the United States and all areas other than the high seas, coastal and contiguous zone waters, coastal and Great Lakes ports and harbors and such other areas as may be agreed upon between the Environmental Protection Agency and the Department of Transportation in accordance with section 11(j)(1)(B) of the Federal Act, Executive Order No. 11548 dated July 20, 1970 (35 FR 11677) and § 306.2 of the National Oil and Hazardous Materials Pollution Contingency Plan (35 FR 8511).

§ 109.2 Definitions.

As used in these guidelines, the following terms shall have the meaning indicated below:

(a) *Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(b) *Discharge* includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) *Remove or removal* refers to the removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(d) *Major disaster* means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to become of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(e) *United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(f) *Federal Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, et seq.

§ 109.3 Purpose and scope.

The guidelines in this part establish minimum criteria for the development and implementation of State, local, and regional contingency plans by State and local governments in consultation with private interests to insure timely, efficient, coordinated and effective action to minimize damage resulting from oil discharges. Such plans will be directed toward the protection of the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches. The development and implementation of such plans shall be consistent with the National Oil and Hazardous Materials Pollution Contingency Plan. State, local and regional oil removal contingency plans shall provide for the coordination of the total response to an oil discharge so that contingency organizations established thereunder can function independently, in conjunction with each other, or in conjunction with the National and Regional Response Teams established by the National Oil and Hazardous Materials Pollution Contingency Plan.

§ 109.4 Relationship to Federal response actions.

The National Oil and Hazardous Materials Pollution Contingency Plan provides that the Federal on-scene commander shall investigate all reported spills. If such investigation shows that appropriate action is being taken by either the discharger or non-Federal entities, the Federal on-scene commander shall monitor and provide advice or assistance, as required. If appropriate containment or cleanup action is not being taken by the dis-

charger or non-Federal entities, the Federal on-scene commander will take control of the response activity in accordance with section 11(c)(1) of the Federal Act.

§ 109.5 Development and implementation criteria for State, local and regional oil removal contingency plans.

Criteria for the development and implementation of State, local and regional oil removal contingency plans are:

(a) Definition of the authorities, responsibilities and duties of all persons, organizations or agencies which are to be involved or could be involved in planning or directing oil removal operations, with particular care to clearly define the authorities, responsibilities and duties of State and local governmental agencies to avoid unnecessary duplication of contingency planning activities and to minimize the potential for conflict and confusion that could be generated in an emergency situation as a result of such duplications.

(b) Establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge including:

(1) The identification of critical water use areas to facilitate the reporting of and response to oil discharges.

(2) A current list of names, telephone numbers and addresses of the responsible persons and alternates on call to receive notification of an oil discharge as well as the names, telephone numbers and addresses of the organizations and agencies to be notified when an oil discharge is discovered.

(3) Provisions for access to a reliable communications system for timely notification of an oil discharge and incorporation in the communications system of the capability for interconnection with the communications systems established under related oil removal contingency plans, particularly State and National plans.

(4) An established, prearranged procedure for requesting assistance during a major disaster or when the situation exceeds the response capability of the State, local or regional authority.

(c) Provisions to assure that full resource capability is known and can be committed during an oil discharge situation including:

(1) The identification and inventory of applicable equipment, materials and supplies which are available locally and regionally.

(2) An estimate of the equipment, materials and supplies which would be required to remove the maximum oil discharge to be anticipated.

(3) Development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials and supplies to be used in responding to such a discharge.

(d) Provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including:

(1) Specification of an oil discharge response operating team consisting of trained, prepared and available operating personnel.

(2) Predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under existing national and regional contingency plans.

(3) A preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response operations.

(4) Provisions for varying degrees of response effort depending on the severity of the oil discharge.

(5) Specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses.

(e) Specific and well defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinances.

§ 109.6 Coordination.

For the purposes of coordination, the contingency plans of State and local governments should be developed and implemented in consultation with private interests. A copy of any oil removal contingency plan developed by State and local governments should be forwarded to the Council on Environmental Quality upon request to facilitate the coordination of these contingency plans with the National Oil and Hazardous Materials Pollution Contingency Plan.

APPENDIX D

40 CFR PART 110

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PART 110—DISCHARGE OF OIL

Sec.

- 110.1 Definitions.
- 110.2 Applicability.
- 110.3 Discharge into navigable waters of such quantities as may be harmful.
- 110.4 Discharge into contiguous zone of such quantities as may be harmful.
- 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.
- 110.6 Discharge prohibited.
- 110.7 Exception for vessel engines.
- 110.8 Dispersants.
- 110.9 Demonstration projects.
- 110.10 Notice.
- 110.11 Discharge at deepwater ports.

AUTHORITY: Secs. 311 (b)(3) and (b)(4) and 501(a), Federal Water Pollution Control Act, as amended (33 U.S.C. 1321 (b)(3) and (b)(4) and 1361(a)); sec. 18(m)(3) of the Deepwater Port Act of 1974 (33 U.S.C. 1517(m)(3)); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971-1975 Comp., p. 793.

SOURCE: 52 FR 10719, Apr. 2, 1987, unless otherwise noted.

§ 110.1 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

Act means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., also known as the Clean Water Act;

Administrator means the Administrator of the Environmental Protection Agency (EPA);

Applicable water quality standards means State water quality standards adopted by the State pursuant to section 303 of the Act or promulgated by EPA pursuant to that section;

Contiguous zone means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

Deepwater port means an offshore facility as defined in section (3)(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10));

Discharge, when used in relation to section 311 of the Act, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, that are caused by events occurring within the scope of relevant operating or treatment systems;

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, Annex I, which regulates pollution from oil and which entered into

force on October 2, 1983;

Navigable waters means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

NPDES means National Pollutant Discharge Elimination System;

Offshore facility means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

Oil, when used in relation to section 311 of the Act, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, when used in relation to section 18(m)(3) of the Deepwater Port Act of 1974, has the meaning provided in section 3(14) of the Deepwater Port Act of 1974;

Onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States, other than submerged land;

Person includes an individual, firm, corporation, association, and a partnership;

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a for-

foreign nation, except when such vessel is engaged in commerce;

Sheen means an iridescent appearance on the surface of water;

Sludge means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel; and

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

§ 110.2 Applicability.

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act. This includes certain discharges into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). The regulations of this part also define the term "discharge" for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, as provided under § 110.11 of this part.

§ 110.3 Discharge into navigable waters of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7 of this part, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.4 Discharge into contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the waters of the contiguous zone in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

§ 110.6 Discharge prohibited.

As provided in section 311(b)(3) of the Act, no person shall discharge or cause or permit to be discharged into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) any oil in such quantities as may be harmful as determined in §§ 110.3, 110.4, and 110.5, except as the same may be permitted in the contiguous zone and seaward under MARPOL 73/78, Annex I, as provided in 33 CFR 151.09.

§ 110.7 Exception for vessel engines.

For purposes of section 311(b) of the Act, discharges of oil from a properly

functioning vessel engine are not deemed to be harmful, but discharges of such oil accumulated in a vessel's bilges shall not be so exempt.

§ 110.8 Dispersants.

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

§ 110.9 Demonstration projects.

Notwithstanding any other provisions of this part, the Administrator may permit the discharge of oil, under section 311 of the Act, in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

§ 110.10 Notice.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of § 110.6, immediately notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area, 426-2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR part 153, subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, subpart E. (Approved by the Office of Management and Budget under the control number 2050-0046)

§ 110.11 Discharge at deepwater ports.

(a) Except as provided in paragraph (b) below, for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall include but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or

upon adjoining shorelines.

(b) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" excludes:

(1) Discharges of oil from a properly functioning vessel engine, (including an engine on a public vessel), but not discharges of such oil accumulated in a vessel's bilges (unless in compliance with MARPOL 73/78, Annex I); and

(2) Discharges of oil permitted under MARPOL 73/78, Annex I.

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APPENDIX E

40 CFR PART 112

PART 112—OIL POLLUTION PREVENTION

Sec.

- 112.1 General applicability.
- 112.2 Definitions.
- 112.3 Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.
- 112.4 Amendment of SPCC Plans by Regional Administrator.
- 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.
- 112.6 Civil penalties for violation of oil pollution prevention regulations.
- 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

APPENDIX—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF TRANSPORTATION AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

AUTHORITY: Secs. 311(j)(1)(C), 311(j)(2), 501(a), Federal Water Pollution Control Act (sec. 2, Pub. L. 92-500, 86 Stat. 816 et seq. (33 U.S.C. 1251 et seq.)); sec. 4(b), Pub. L. 92-500, 86 Stat. 897; 5 U.S.C. Reorg. Plan of 1970 No. 3 (1970), 35 FR 15623, 3 CFR 1966-1970 Comp.; E.O. 11735, 38 FR 21243, 3 CFR.

SOURCE: 38 FR 34165, Dec. 11, 1973, unless otherwise noted.

§ 112.1 General applicability.

(a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

(b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

(c) As provided in section 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

..(d) This part does not apply to:

-(1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows:

(i) Onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects

of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of man-made features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000.

(2) Those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements:

(i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and

(ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.

(e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with § 112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12657, Mar. 26, 1976]

§ 112.2 Definitions.

For the purposes of this part:

(a) *Oil* means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

(b) *Discharge* includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term *discharge* shall not include any discharge of oil which is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.).

(c) *Onshore facility* means any facility

ty of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

(d) *Offshore facility* means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility.

(e) *Owner or operator* means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

(f) *Person* includes an individual, firm, corporation, association, and a partnership.

(g) *Regional Administrator*, means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located.

(h) *Transportation-related and non-transportation-related* as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24080.

(i) *Spill event* means a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities, as defined at 40 CFR part 110.

(j) *United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(k) The term *navigable waters* of the United States means *navigable waters* as defined in section 502(7) of the FWPCA, and includes:

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

(l) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used as a means of transportation on water, other than a public vessel.

§ 112.3 Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.

(a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this

part that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure Plan (hereinafter "SPCC Plan"), in writing and in accordance with § 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the effective date of this part and shall be fully implemented as soon as possible, but not later than one year after the effective date of this part.

(b) Owners or operators of onshore and offshore facilities that become operational after the effective date of this part, and that have discharged or could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare an SPCC Plan in accordance with § 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the date such facility begins operations and shall be fully implemented as soon as possible, but not later than one year after such facility begins operations.

(c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare and implement an SPCC Plan as required by paragraphs (a), (b) and (d) of this section. The owners or operators of such facility need not prepare a new SPCC Plan each time the facility is moved to a new site. The SPCC Plan may be a general plan, prepared in accordance with § 112.7, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the SPCC Plan for the facility. No mobile or portable facility subject to this regulation shall operate unless the SPCC Plan has been implemented. The SPCC Plan shall only apply while the facility is in a fixed (non-transportation) operating mode.

(d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of

his duty to prepare and fully implement such Plan in accordance with § 112.7, as required by paragraphs (a), (b) and (c) of this section.

(e) Owners or operators of a facility for which an SPCC Plan is required pursuant to paragraph (a), (b) or (c) of this section shall maintain a complete copy of the Plan at such facility if the facility is normally attended at least 8 hours per day, or at the nearest field office if the facility is not so attended, and shall make such Plan available to the Regional Administrator for on-site review during normal working hours.

(f) Extensions of time.

(1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of an SPCC Plan beyond the time permitted for the preparation and implementation of an SPCC Plan pursuant to paragraph (a), (b) or (c) of this section where he finds that the owner or operator of a facility subject to paragraphs (a), (b) or (c) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees.

(2) Any owner or operator seeking an extension of time pursuant to paragraph (f)(1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include:

(i) A complete copy of the SPCC Plan, if completed;

(ii) A full explanation of the cause for any such delay and the specific aspects of the SPCC Plan affected by the delay;

(iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;

(iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment or other preventive measures.

In addition, such owner or operator may present additional oral or written statements in support of his letter of request.

(3) The submission of a letter of request for extension of time pursuant to paragraph (f)(2) of this section shall in no way relieve the owner or operator from his obligation to comply with the requirements of § 112.3 (a), (b) or (c). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the SPCC Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of § 112.3 (a), (b) or (c) with respect to other equipment or other specific aspects of the SPCC Plan for which an

extension of time has not been expressly authorized.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12657, Mar. 26, 1976]

§ 112.4 Amendment of SPCC Plans by Regional Administrator.

(a) Notwithstanding compliance with § 112.3, whenever a facility subject to § 112.3 (a), (b) or (c) has: Discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single spill event, or discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in two spill events, reportable under section 311(b)(5) of the FWPCA, occurring within any twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following:

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Date and year of initial facility operation;

(5) Maximum storage or handling capacity of the facility and normal daily throughput;

(6) Description of the facility, including maps, flow diagrams, and topographical maps;

(7) A complete copy of the SPCC Plan with any amendments;

(8) The cause(s) of such spill, including a failure analysis of system or subsystem in which the failure occurred;

(9) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(10) Additional preventive measures taken or contemplated to minimize the possibility of recurrence;

(11) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

(b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of an SPCC Plan pursuant to § 112.3 (a), (b), (c) and (f).

(c) A complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section shall be sent at the same time to the State agency in charge of water pollution control activities in and for the State in which the facility is located. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from such fa-

cility.

(d) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the SPCC Plan if he finds that the Plan does not meet the requirements of this part or that the amendment of the Plan is necessary to prevent and to contain discharges of oil from such facility.

(e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, he shall notify the facility operator by certified mail addressed to, or by personal delivery to, the facility owner or operator, that he proposes to require an amendment to the Plan, and shall specify the terms of such amendment. If the facility owner or operator is a corporation, a copy of such notice shall also be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, shall specify another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan. The appeal shall be made to the Administrator of the United States Environmental Protection Agency and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from the owner or operator, or from any other person. The Administrator or his designee may request additional information from the owner or operator, or from any other person. The Administrator or his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of his decision.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12658, Mar. 26, 1976]

§ 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

(a) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) shall amend the SPCC Plan for such facility in accordance with § 112.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shore lines. Such amendments shall be fully implemented as soon as possible, but not later than six months after such change occurs.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3 (a), (b) or (c) shall complete a review and evaluation of the SPCC Plan at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility, and (2) if such technology has been field-proven at the time of the review.

(c) No amendment to an SPCC Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Professional Engineer in accordance with § 112.3(d).

§ 112.6 Civil penalties for violation of oil pollution prevention regulations.

Owners or operators of facilities subject to § 112.3 (a), (b) or (c) who violate the requirements of this part 112 by failing or refusing to comply with any of the provisions of § 112.3, § 112.4 or § 112.5 shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be imposed in accordance with procedures set out in part 114 of this subchapter D.

(Secs. 311(j), 501(a), Pub. L. 92-500, 86 Stat. 868, 885 (33 U.S.C. 1321(j), 1361(a)))
[39 FR 31602, Aug. 29, 1974]

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities

or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed:

(a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

(b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following preventive systems or its equivalent should be used as a minimum:

(1) Onshore facilities:

(i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil;

(ii) Curbing;

(iii) Culverting, gutters or other drainage systems;

(iv) Weirs, booms or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds;

(vii) Sorbent materials.

(2) Offshore facilities:

(i) Curbing, drip pans;

(ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following:

(1) A strong oil spill contingency plan following the provision of 40 CFR part 109.

(2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.

(e) In addition to the minimal prevention standards listed under § 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines):

(1) *Facility drainage (onshore); (excluding production facilities).* (i) Drainage from diked storage areas

should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or inplant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water.

(ii) Flapper-type drain valves should not be used to drain diked areas. Valves used for the drainage of diked areas should, as far as practical, be of manual, open-and-closed design. When plant drainage drains directly into water courses and not into wastewater treatment plants, retained storm water should be inspected as provided in paragraphs (e)(2)(iii) (B), (C) and (D) of this section before drainage.

(iii) Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding.

(iv) If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant.

(v) Where drainage waters are treated in more than one treatment unit, natural hydraulic flow should be used. If pump transfer is needed, two "lift" pumps should be provided, and at least one of the pumps should be permanently installed when such treatment is continuous. In any event, whatever techniques are used facility drainage systems should be adequately engineered to prevent oil from reaching navigable waters in the event of equipment failure or human error at the facility.

(2) *Bulk storage tanks (onshore); (excluding production facilities).* (i) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an inplant catchment basin or holding pond.

(iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(A) The bypass valve is normally sealed closed.

(B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR part 110.

(C) The bypass valve is opened, and resealed following drainage under responsible supervision.

(D) Adequate records are kept of such events.

(iv) Buried metallic storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings, cathodic protection or other effective methods compatible with local soil conditions. Such buried tanks should at least be subjected to regular pressure testing.

(v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface.

(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

(vii) To control leakage through defective internal heating coils, the following factors should be considered and applied, as appropriate.

(A) The steam return or exhaust lines from internal heating coils which discharge into an open water course should be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system.

(B) The feasibility of installing an external heating system should also be considered.

(viii) New and old tank installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices:

(A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air

vent may suffice.

(B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(C) Direct audible or code signal communication between the tank gauger and the pumping station.

(D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent.

(E) Liquid level sensing devices should be regularly tested to insure proper operation.

(ix) Plant effluents which are discharged into navigable waters should have disposal facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(x) Visible oil leaks which result in a loss of oil from tank seams, gaskets, rivets and bolts sufficiently large to cause the accumulation of oil in diked areas should be promptly corrected.

(xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout.

(3) *Facility transfer operations, pumping, and in-plant process (onshore); (excluding production facilities).* (i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries.

(ii) When a pipeline is not in service, or in standby service for an extended time the terminal connection at the transfer point should be capped or blank-flanged, and marked as to origin.

(iii) Pipe supports should be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(iv) All aboveground valves and pipelines should be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed. In addition, periodic pressure testing may be warranted for piping in areas where facility drainage is such that a failure might lead to a spill

event.

(v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping.

(4) *Facility tank car and tank truck loading/unloading rack (onshore).* (i) Tank car and tank truck loading/unloading procedures should meet the minimum requirements and regulation established by the Department of Transportation.

(ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines.

(iv) Prior to filling and departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles should be closely examined for leakage, and if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(5) *Oil production facilities (onshore)*—(i) *Definition.* An onshore production facility may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) *Oil production facility (onshore) drainage.* (A) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent required under § 112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs (e)(2)(iii) (B), (C), and (D) of this section. Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods.

(B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

(iii) *Oil production facility (onshore) bulk storage tanks.* (A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in § 112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

(C) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

(D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following:

(1) Adequate tank capacity to assure that a tank will not overfill should a pumper/gauger be delayed in making his regular rounds.

(2) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(3) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(4) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(iv) *Facility transfer operations, oil production facility (onshore).* (A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

(B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge.

(C) Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

(6) *Oil drilling and workover facilities (onshore).* (i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters.

(ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(iii) Before drilling below any casing string or during workover operations,

a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(7) *Oil drilling, production, or workover facilities (offshore).* (i) Definition: "An oil drilling, production or workover facility (offshore)" may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary nontransportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) Oil drainage collection equipment should be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Drains on the facility should be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent discharges of oil into the navigable waters of the United States. Where drains and sumps are not practicable oil contained in collection equipment should be removed as often as necessary to prevent overflow.

(iii) For facilities employing a sump system, sump and drains should be adequately sized and a spare pump or equivalent method should be available to remove liquid from the sump and assure that oil does not escape. A regular scheduled preventive maintenance inspection and testing program should be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(iv) In areas where separators and treaters are equipped with dump valves whose predominant mode of failure is in the closed position and pollution risk is high, the facility should be specially equipped to prevent the escape of oil. This could be accomplished by extending the flare line to a diked area if the separator is near shore, equipping it with a high liquid level sensor that will automatically shut-in wells producing to the separator, parallel redundant dump valves, or other feasible alternatives to prevent oil discharges.

(v) Atmospheric storage or surge tanks should be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(vi) Pressure tanks should be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or other acceptable alternatives to prevent oil discharges.

(vii) Tanks should be equipped with

suitable corrosion protection.

(viii) A written procedure for inspecting and testing pollution prevention equipment and systems should be prepared and maintained at the facility. Such procedures should be included as part of the SPCC Plan.

(ix) Testing and inspection of the pollution prevention equipment and systems at the facility should be conducted by the owner or operator on a scheduled periodic basis commensurate with the complexity, conditions and circumstances of the facility or other appropriate regulations.

(x) Surface and subsurface well shut-in valves and devices in use at the facility should be sufficiently described to determine method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the plan should be kept by the owner or operator.

(xi) Before drilling below any casing string, and during workover operations a blowout preventer (BOP) assembly and well control system should be installed that is capable of controlling any well-head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(xii) Extraordinary well control measures should be provided should emergency conditions, including fire, loss of control and other abnormal conditions, occur. The degree of control system redundancy should vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems have redundant or "fail close" valving. Subsurface safety valves may not be needed in producing wells that will not flow but should be installed as required by applicable State regulations.

(xiii) In order that there will be no misunderstanding of joint and separate duties and obligations to perform work in a safe and pollution free manner, written instructions should be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures should be maintained at the offshore production facility. Under certain circumstances and conditions such contractor activities may require the presence at the facility of an authorized representative of the owner or operator who would intervene when necessary to prevent a spill event.

(xiv) All manifolds (headers) should be equipped with check valves on individual flowlines.

(xv) If the shut-in well pressure is greater than the working pressure of

the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline should be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over pressuring.

(xvi) All pipelines appurtenant to the facility should be protected from corrosion. Methods used, such as protective coatings or cathodic protection, should be discussed.

(xvii) Sub-marine pipelines appurtenant to the facility should be adequately protected against environmental stresses and other activities such as fishing operations.

(xviii) Sub-marine pipelines appurtenant to the facility should be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections should be documented and maintained at the facility.

(8) *Inspections and records.* Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of three years.

(9) *Security (excluding oil production facilities).* (i) All plants handling, processing, and storing oil should be fully fenced, and entrance gates should be locked and/or guarded when the plant is not in production or is unattended.

(ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status.

(iii) The starter control on all oil pumps should be locked in the "off" position or located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status.

(iv) The loading/unloading connections of oil pipelines should be securely capped or blank-flanged when not in service or standby service for an extended time. This security practice should also apply to pipelines that are emptied of liquid content either by draining or by inert gas pressure.

(v) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to: (A) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (B) prevention of spills occurring through acts of vandalism.

(10) *Personnel, training and spill prevention procedures.* (i) Owners or operators are responsible for properly instructing their personnel in the op-

eration and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules and regulations.

(ii) Each applicable facility should have a designated person who is accountable for oil spill prevention and who reports to line management.

(iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

APPENDIX—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF TRANSPORTATION AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

SECTION II—DEFINITIONS

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term:

(1) "Non-transportation-related onshore and offshore facilities" means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to

or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

..(2) "Transportation-related onshore and offshore facilities" means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a nontransportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are high-

way vehicles and railroad cars and motive power used exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

APPENDIX F

33 CFR PART 153.201

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Subpart B—Notice of the Discharge of Oil or a Hazardous Substance

§ 153.201 Purpose.

The purpose of this subpart is to prescribe the manner in which the notice required in section 311(b)(5) of the Act is to be given and to list the government officials to receive that notice.

§ 153.203 Procedure for the notice of discharge.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as they have knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of section 311(b)(3) of the Act, immediately notify the National Response Center (NRC), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593, toll free telephone number 800-424-8802 (in Washington, DC metropolitan area, (202) 267-2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA pre-designated OSC for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the pre-designated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible.

NOTE: Geographical jurisdiction of Coast Guard and EPA OSC's are specified in the applicable Regional Contingency Plan. Regional Contingency Plans are available at Coast Guard District Offices and EPA Regional Offices as indicated in Table 2. Addresses and telephone numbers for these offices are listed in Table 1.

[CGD 84-067, 51 FR 17966, May 16, 1986, as amended by CGD 88-052, 53 FR 25121, July 1, 1988]

§ 153.205 Fines.

Section 311(b)(5) of the Act prescribes that any person who fails to notify the appropriate agency of the United States Government immediately of a discharge is, upon conviction, subject to a fine of not more than \$10,000, or to imprisonment of not more than one year, or both.

TABLE 1—ADDRESSES AND TELEPHONE NUMBERS OF COAST GUARD DISTRICT OFFICES AND EPA REGIONAL OFFICES

	Address	Telephone
EPA Regional Offices		
Region:		
I.....	John F. Kennedy Federal Bldg., Boston, MA 02203.	617-565-3715
II.....	26 Federal Plaza, New York, NY 10278.	212-264-2525
III.....	841 Chestnut Street, Philadelphia, PA 19107.	215-597-9800
IV.....	345 Courtland Street, NE, Atlanta, GA 30365.	404-347-4727
V.....	230 S. Dearborn Street, 13th Floor, Chicago, IL 60604.	312-353-2000
VI.....	1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202.	214-655-6444
VII.....	726 Minnesota Avenue, Kansas City, KS 66101.	913-236-2800
VIII.....	999 18th St., Suite 500, Denver, CO 80202-2405.	303-293-1603
IX.....	215 Fremont Street, San Francisco, CA 94105.	415-974-8071
X.....	1200 6th Avenue, Seattle, WA 98101.	206-442-5810
Coast Guard District Offices		
District:		
1st.....	408 Atlantic Ave., Boston, MA 02110-2209.	617-223-8444
2nd.....	1430 Olive St., St. Louis, MO 63103.	314-425-4655
5th.....	Federal Bldg., 431 Crawford St., Portsmouth, VA 23705-5004.	604-398-6638
7th.....	Federal Bldg., Room 1221, 51 S.W. 1st Ave., Miami, FL 33130.	305-536-5651
8th.....	Hale Boggs Federal Bldg., 500 Camp St., New Orleans, LA 70130-3396.	504-589-6901
9th.....	1240 East 9th St., Cleveland, OH 44189.	216-522-3919
11th.....	Union Bank Bldg., 400 Oceangate, Long Beach, CA 90822-5399.	213-499-5330
13th.....	Federal Bldg., 915 Second Ave., Seattle, WA 98174.	206-442-5850
14th.....	Prince Kahanaloa Federal Bldg., 300 Ala Moana Blvd., 9th Floor, Honolulu, HI 96850.	608-541-2114
17th.....	P.O. Box 3-5000, Juneau, AK 99802.	907-586-7195

TABLE 2—STANDARD ADMINISTRATIVE REGIONS OF STATES AND CORRESPONDING COAST GUARD DISTRICTS AND EPA REGIONS

States and EPA region	Coast Guard district
Region I:	
Maine.....	1st
New Hampshire.....	1st
Vermont:	
All except Northwestern portion.....	1st
Northwestern portion.....	1st
Massachusetts.....	1st
Connecticut.....	1st
Rhode Island.....	1st
Region II:	
New York:	
Coastal area and Eastern portion.....	1st
Great Lakes area and other portions.....	9th
New Jersey:	
Upper portion.....	1st
Lower portion.....	5th

Environmental Protection Agency

TABLE 2—STANDARD ADMINISTRATIVE REGIONS OF STATES AND CORRESPONDING COAST GUARD DISTRICTS AND EPA REGIONS—Continued

States and EPA region	Coast Guard district
Puerto Rico	7th
Virgin Islands	7th
Region III:	
Pennsylvania:	
Eastern portion	5th
Great Lakes area	9th
Southwestern portion	2nd
Maryland	5th
Delaware	5th
West Virginia	2nd
Virginia	5th
District of Columbia	5th
Region IV:	
Kentucky	2nd
Tennessee	2nd
North Carolina	5th
South Carolina	7th
Georgia	7th
Florida:	
Atlantic and Gulf coasts	7th
Panhandle area	8th
Alabama:	
Southern	8th
Northern	2nd
Mississippi:	
Southern	8th
Northern	2nd
Region V:	
Minnesota:	
Great Lakes area	9th
Inland rivers area	2nd
Wisconsin:	
Great Lakes area	9th
Inland rivers area	2nd
Michigan	9th
Illinois:	
Great Lakes area	9th
Inland rivers area	2nd
Indiana:	
Great Lakes area	9th
Inland rivers area	2nd
Ohio:	
Great Lakes area	9th
Inland rivers area	2nd
Region VI:	
New Mexico	8th
Texas	8th
Oklahoma	2nd
Arkansas	2nd
Louisiana	8th
Region VII:	
Nebraska	2nd
Iowa	2nd
Kansas	2nd
Missouri	2nd
Region VIII:	
Montana	13th
Wyoming	2nd
Utah	11th
Colorado	2nd
North Dakota	2nd
South Dakota	2nd
Region IX:	
California	11th
Nevada	11th
Arizona	11th
Hawaii	14th
Guam	14th
American Samoa	14th
Trust Territory of the Pacific Islands	14th
Northern Mariana Islands	14th
Region X:	
Washington	13th
Oregon	13th
Idaho	13th
Alaska	17th

[CGD 84-067, 51 FR 17967, May 16, 1986, as amended by CGD 88-052, 53 FR 25121, July 1, 1988]

**PART 114—CIVIL PENALTIES FOR
VIOLATION OF OIL POLLUTION
PREVENTION REGULATIONS**

40 CFR Ch. I (7-1-90 Edition)

**NON-TRANSPORTATION RELATED ONSHORE AND
OFFSHORE FACILITIES**

- Sec.
114.1 General applicability.
114.2 Violation.
114.3 Determination of penalty.
114.4 Notice of Violation.
114.5 Request for hearing.
114.6 Presiding Officer.
114.7 Consolidation.
114.8 Prehearing conference.
114.9 Conduct of hearing.
114.10 Decision.
114.11 Appeal to Administrator.

AUTHORITY: Secs. 311(j), 501(a), Pub. L. 92-500, 86 Stat. 868, 885 (33 U.S.C. 1321(j), 1361(a)).

SOURCE: 39 FR 31602, Aug. 29, 1974, unless otherwise noted.

**NON-TRANSPORTATION RELATED
ONSHORE AND OFFSHORE FACILITIES**

§ 114.1 General applicability.

Owners or operators of facilities subject to § 112.3 (a), (b) or (c) of this subchapter who violate the requirements of Part 112 of this Subchapter D by failing or refusing to comply with any of the provisions of § 112.3, 112.4, or 112.5 of this subchapter shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be assessed and compromised in accordance with this part. No penalty shall be assessed until the owner or operator shall have been given notice and an opportunity for hearing in accordance with this part.

§ 114.2 Violation.

Owners or operators of facilities shall be liable for a civil penalty for noncompliance with the requirements of Part 112 of this subchapter, including but not limited to failure to:

- (a) Prepare a Spill Prevention Control and Countermeasure (SPCC) plan in accordance with § 112.3 of this subchapter;

(b) Have a SPCC plan certified by a Registered Professional Engineer as required by § 112.3 of this subchapter;

(c) Implement the SPCC plan as required by § 112.3 of this subchapter;

(d) Submit information after a spill as required by § 112.4 of this subchapter;

(e) Amend plan as required by § 112.4 of this subchapter;

(f) Implement amendment as required by § 112.4 of this subchapter;

(g) Amend plan after change in facility design as required by § 112.6 of this subchapter;

(h) Review plan every three years as required by § 112.5 of this subchapter;

(i) Amend plan after review as required by § 112.5; or

(j) Have amendment certified as required by § 112.5 of this subchapter and implemented.

§ 114.3 Determination of penalty.

(a) In determining the amount of the penalty to be assessed the following factors shall be considered:

- (1) Gravity of the violation; and
(2) Demonstrated good faith efforts to achieve rapid compliance after notification of a violation.

(b) The amount of the civil penalty to be assessed may be settled by compromise at any stage of the proceedings.

(c) Civil penalties may be assessed by the Regional Administrator where there is no request for a hearing pursuant to § 114.5.

§ 114.4 Notice of Violation.

The Notice of Violation shall be sent to the person charged with a violation and shall specify the:

- (a) Date of issuance;
(b) Nature of violation, including the law or regulation that he is charged with violating;
(c) Amount of the maximum penalty;

(d) Amount of the proposed civil penalty;

(e) The right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty, or bearing on the person's efforts to achieve compliance after notification of the violation;

(f) Manner of the payment of any money which may be paid to the United States;

(g) Right to request a hearing; and

(h) The procedures for requesting a hearing including the right to be represented by counsel.

§ 114.5 Request for hearing.

Within thirty (30) days of the date of receipt of a Notice of Violation, the person named in the Notice may request a hearing by submitting a written request signed by or on behalf of such person by a duly authorized officer, director, agent, or attorney-in-fact, to the Regional Administrator.

(a) Requests for hearings shall:

(1) State the name and address of the person requesting the hearing;

(2) Enclose a copy of the Notice of Violation; and

(3) State with particularity the issues to be raised by such person at the hearing.

(b) After a request for hearing which complies with the requirements of paragraph (a) of this section has been filed, a hearing shall be scheduled for the earliest practicable date.

(c) Extensions of the time for the commencement of the hearing may be granted for good cause shown.

§ 114.6 Presiding Officer.

The hearing shall be conducted by the Presiding Officer. The Regional Administrator may designate any attorney in the Environmental Protection Agency to act as the Presiding Officer. No person shall serve as a Presiding Officer where he has any prior connection with the case including without limitation the performance of investigative or prosecuting functions or any other such functions. The Presiding Officer appointed shall have the full authority to conduct the hearing, decide issues and to assess a civil penalty as appropriate.

§ 114.7 Consolidation.

The Presiding Officer may, in his discretion, order consolidation of any hearings held under this part and arising within one Region whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. The Administra-

tor may, in his discretion, order consolidation, and designate one Region to be responsible for the conduct of any hearings held under this part which arise in different Regions whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. Consolidation shall not affect the right of any person to raise issues that could have been raised if consolidation had not occurred. At the conclusion of the hearing the Presiding Officer shall render a separate decision for each separate civil penalty case.

§ 114.8 Prehearing conference.

The Presiding Officer may hold one or more prehearing conferences and may issue a hearing agenda which may include, without limitation, decisions with regard to any or all the following:

(a) Stipulations and admissions;

(b) Disputed issues of fact;

(c) Hearing procedures including submission of oral or written testimony and the time allotted for oral arguments; and

(d) Any other matter which may expedite the hearing or aid in disposition of any issues raised therein.

§ 114.9 Conduct of hearing.

The hearing shall be held in the general location of the facility where the alleged violation occurred or as agreed to by EPA and the person charged. The Presiding Officer shall have the duty to conduct a fair and impartial hearing, to take action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. The person charged with the violation may offer relevant facts, statements, explanations, and other items which such person feels should be considered in defense to the charges, bearing on the person's efforts to achieve compliance after notification of the violation or which may bear upon the penalty to be assessed. The EPA or other appropriate Agency personnel shall have the opportunity to offer facts, statements, explanations and other items including testimony of other appropriate Agencies personnel in order for the Presiding Officer to be fully in-

§ 114.10

40 CFR Ch. I (7-1-90 Edition)

formed. In the event the matter cannot be resolved by settlement the person charged with the violation shall be informed in writing, of the decision of the Presiding Officer and shall be advised of his right to appeal.

cision of the Presiding Officer in any respect and shall include in his decision a concise statement of the basis therefore. The decision of the Administrator on appeal shall be effective when rendered.

§ 114.10 Decision.

Within thirty (30) days after the conclusion of the hearings, the Presiding Officer shall issue findings with respect to the matter, including, where appropriate to the amount of the civil penalty. In assessing the civil penalty the Presiding Officer shall consider the factors set forth in § 114.3. A copy of the Presiding Officer's decision shall be sent to the person charged in the Notice of Violation. The decision of the Presiding Officer shall become the final decision of the Environmental Protection Agency unless within fifteen (15) days from the date of receipt of such decision, the person assessed the penalty appeals the decision to the Administrator, or unless the Administrator shall have stayed the effectiveness of the decision pending review.

§ 114.11 Appeal to Administrator.

(a) The person assessed a penalty in the Presiding Officer's determination shall have the right to appeal an adverse decision to the Administrator upon filing a written Notice of Appeal in the form required by paragraph (b) of this section within fifteen (15) days of the date the receipt of the Presiding Officer's decision.

(b) The Notice of Appeal shall:

(1) State the name and address of the person filing the Notice of Appeal;

(2) Contain a concise statement of the facts on which the person relies;

(3) Contain a concise statement of the legal basis on which the person relies; and

(4) Contain a concise statement setting forth the action which the person proposed that the Administrator take.

(c) The Administrator may delegate this authority to act in a given case.

(d) The Administrator, after a Notice of Appeal in proper form has been filed, shall render a decision with respect to the appeal promptly. In rendering his decision, the Administrator may adopt, modify, or set aside the de-

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APPENDIX G

40 CFR PART 114

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federal register

**Wednesday
November 4, 1992**

Part V

Environmental Protection Agency

40 CFR Part 112, et al.

**Civil Penalty Provisions for the Oil
Pollution Prevention Regulations, Clean
Water Act Notification Provision and
Prohibition Against Unauthorized
Discharges of Oil and Hazardous
Substances; Interim Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 112, 114 and 117

(FRL-4829-4)

Civil Penalty Provisions for the Oil Pollution Prevention Regulations, Clean Water Act Notification Provision and Prohibition Against Unauthorized Discharges of Oil and Hazardous Substances

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) today publishes an interim final rule which limits the applicability of the administrative penalty assessment provisions of the Agency's regulations on oil pollution prevention and reportable quantities for hazardous substances. These provisions are being amended in light of new authorities for the assessment of civil administrative and judicial penalties under the Oil Pollution Act (OPA).

DATE: Effective date: The interim final rule shall be effective November 4, 1992. Comments: EPA will accept post-publication comments until December 4, 1992.

ADDRESSES: Persons may mail two copies of all comments on this interim final rule to Cecilia L. Smith, Office of Waste Programs Enforcement, (OS-816), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The administrative record of this rulemaking is available and persons may inspect comments at the above address.

FOR FURTHER INFORMATION CONTACT: Cecilia L. Smith, Office of Waste Programs Enforcement, 3302G, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 603-8943.

SUPPLEMENTARY INFORMATION:**I. Preamble****Oil Pollution Prevention Regulations**

The civil penalty provision of the oil pollution prevention regulations (40 CFR 112.6), and the related civil penalty provisions and procedures at 40 CFR part 114 were promulgated in 1974 pursuant to section 311(j) of the Federal Water Pollution Control Act, 33 U.S.C. 1321, also known as the Clean Water Act (CWA) (39 FR 31602, August 29, 1974). Part 112 sets out, for onshore and offshore non-transportation-related facilities, requirements designed to prevent discharges of oil into "navigable waters and adjoining shorelines." 40

CFR 112.6 and 114.1 each provide that violations of the oil pollution prevention regulations may result in the assessment of an administrative penalty of not more than \$5,000 per day of violation. 40 CFR 112.6 and 114.1 are based on authority in CWA section 311(j)(2), which, before its amendment by the Oil Pollution Act of 1990 (OPA), limited civil penalties assessed for violations of regulations issued under section 311(j) to "not more than \$5,000 for each such violation."

The OPA repealed CWA section 311(j)(2) and amended CWA section 311(b)(6) to provide that violators of CWA section 311(j) may be assessed a Class I penalty of up to \$10,000 per violation (up to a maximum assessment of \$25,000), or a Class II penalty of up to \$10,000 per day of violation (up to a maximum assessment of \$125,000). Further, section 311(b)(6) now provides for different administrative proceedings for these two classes of penalties. Respondents in Class I cases are given a reasonable opportunity to be heard and to present evidence, but the hearing need not meet the requirements of the Administrative Procedure Act (APA) for formal adjudications (5 U.S.C. 554). Class II hearings, however, are on the record and subject to 5 U.S.C. 554.

As a result of the savings provision in section 6001 of the OPA, §§ 112.6 and 114.1 continue in effect until repealed, amended or superseded. Today's regulation amends 40 CFR 112.6 and 114.1 by making them applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act.

The OPA also amended CWA section 311(b) to provide for the judicial assessment of civil penalties of up to "\$25,000 per day of violation."

Notification of Discharge(s)

40 CFR 117 generally establishes the reportable quantities for hazardous substances designated under 40 CFR 116 for purposes of CWA section 311. 40 CFR 117.21 sets out the notification requirement for discharges of designated hazardous substances pursuant to CWA section 311(b)(5). 40 CFR 117.22(a) provides that violation(s) of the notification requirement may result in a fine of not more than \$10,000 or imprisonment for not more than one year, or both. 40 CFR 117.22(a) is based on language in former CWA section 311(b)(5), which was later amended by the OPA. Section 4301 of the OPA amended CWA section 311(b)(5) to provide that any criminal penalty for violation of the notification requirement in CWA section 311(b)(5) be "in accordance with title 18, United States Code, or imprisoned for not more than 5

years, or both." As a result of the savings provision in section 6001 of the OPA, 40 CFR 117.22(a) continues in effect until repealed, amended or superseded. Today's regulation amends § 117.22(a) by making it applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act.

Prohibition Against Unauthorized Discharges

40 CFR 117.22(b) provides that an owner, operator or a person in charge of a vessel or facility that has discharged a designated hazardous substance exceeding the reportable quantity may be subject to a civil administrative penalty assessment of up to \$5,000 per violation. The regulation also states that the Agency may pursue a judicial civil penalty action, seeking up to \$50,000 per violation; where the discharge resulted from willful negligence or willful misconduct, the maximum judicial civil penalty is \$250,000. 40 CFR 117.22(b) is based on language in former CWA section 311(b)(6)(A), which was amended by the OPA.

Section 4301 of OPA repealed CWA section 311(b)(6) and replaced it with a new penalty assessment framework. CWA section 311(b)(6) now provides that violators of the prohibition against unauthorized discharges in section 311(b)(3) may be assessed a Class I penalty of up to \$10,000 per violation (up to a maximum assessment of \$25,000) or a Class II penalty of up to \$10,000 per day of violation (up to a maximum assessment of \$125,000).

As a result of the savings provision in section 6001 of the OPA, 40 CFR 117.22 continues in effect until repealed, amended or superseded. Today's regulation amends 40 CFR 117.22 by making it applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act.

Section 4301 of OPA also added CWA section 311(b)(7), which provides for the judicial assessment of civil penalties for violations of CWA section 311(b)(3) of up to "\$25,000 per day of violation" or up to "\$1,000 per barrel of oil or unit of reportable quantity of hazardous substances." For violations of section 311(b)(3) that are a result of gross negligence or willful misconduct, the violator now is subject to a civil penalty of "not less than \$100,000 and not more than \$3,000 per barrel of oil or unit of reportable quantity or hazardous substance discharged."

Today's Interim Final Regulation

Congress clearly intended that violations of the oil pollution prevention regulations, violations of the section 311(b)(5) notification requirement, and violations of the prohibition against unauthorized discharges in section 311(b)(3), occurring after the OPA's passage should be subject to a more rigorous penalty framework than previously was the case. Furthermore, the OPA establishes procedures that differ from those set forth in 40 CFR parts 112, 114 and 117 has always been to allow civil penalty assessments up to the maximum amount allowed under the statute. In light of the recent statutory change to the maximum amount of civil penalties provided for violations of CWA section 311(f) regulations, CWA section 311(b)(5) and CWA section 311(b)(3), the Agency's existing regulations on this matter need to be changed to conform to the statutory amendments. The Agency believes that such a conforming change reflecting explicit Congressional intent does not warrant notice and opportunity for comment under the Administrative Procedure Act, and that there is good cause for publishing this rule in interim final form. For the same reason, the Agency believes there is good cause for making the rule effective immediately. Consequently, this rule is published as an interim final rule amending 40 CFR 112.6, 114.1 and 117.22 with regard to any violations occurring after the date of the OPA's enactment (August 18, 1990). 40 CFR 112.6, 114.1 and 117.22 still apply, however, to violations that occurred prior to August 18, 1990.

Interim Procedures

As a result of today's interim final rule, there will be no promulgated rules containing procedures for assessing administrative penalties for CWA Section 311 regulatory violations or violations of section 311(b)(3) occurring after August 18, 1990. The Agency, however, will use two existing sets of procedures as guidance until it completes a rulemaking to implement the new CWA penalty provisions. For Class I penalties, the Agency will follow generally the procedures set forth in the recently proposed 40 CFR 28, Non-APA Consolidated Rules of Practice for Administrative Assessment of Civil Penalties (56 FR 20996, July 1, 1991). These procedures will be used as guidance until the regulation is published in the Federal Register as final, at which time they will have the force of law. For the assessment of CWA section 311 Class II penalties, the

Agency intends to use as guidance the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits at 40 CFR 22. 40 CFR 22 satisfies the requirements of the APA for adjudicatory hearings on the record. The Agency intends in the near future to amend 40 CFR 22 to incorporate the OPA Amendments to the CWA.

II. Procedural Requirements**A. Review Under Executive Order 12291**

Executive Order No. 12291 requires that all Proposed and final regulations be classified as major or non-major rules. The Agency has determined that this final rule is not a major rule under Executive Order 12291 because it will not result in any of the impacts delineated in the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." This regulation will not impose significant costs on any small entities. The overall impact on small entities is expected to be slight. In addition, the rule is procedural and does not impose additional regulatory requirements on small entities. Therefore, as required by the Regulatory Flexibility Act, EPA hereby certifies that this final rule will not have a significant impact on small entities.

C. Review Under the Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

III. Additional Opportunity for Public Comment

EPA has issued today's rule as an interim final rule in order to provide a limited opportunity until December 4, 1992 for public comment. After evaluating any comments which are received, EPA will decide whether a response is warranted.

List of Subjects**40 CFR Part 112**

Oil pollution. Penalties. Reporting and recordkeeping requirements.

40 CFR Part 114

Administrative practice and procedure. Oil pollution. Penalties.

40 CFR Part 117

Hazardous substances. Penalties. Reporting and recordkeeping requirements. Water pollution control.

Dated: October 28, 1992.

William K. Ruffey,

Administrator

For the reasons set out in the preamble, parts 112, 114 and 117 of chapter I of title 40 of the Code of Federal Regulations, are amended as set forth below.

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 is revised to read as follows:

Authority: Sec. 311, 501(a), Federal Water Pollution Control Act (sec. 2, Pub. L. 92-500, 66 Stat. 848 *et seq.* (33 U.S.C. 1251 *et seq.*)); sec. 4(b), Pub. L. 92-500, 66 Stat. 897; 5 U.S.C. Reorg. Plan of 1970 No. 3 (1970), 35 FR 15423, 2 CFR 1900-1970 Comp.; E.O. 11735, 38 FR 21243, 3 CFR, superseded by E.O. 12777, 56 FR 54757.

2. Section 112.6 is revised to read as follows:

§ 112.6 Civil penalties for violation of oil pollution prevention regulations.

(a) Applicability of section. This section shall apply to violations specified in paragraph (b) of this section which occurred prior to August 18, 1990.

(b) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) who violate the requirements of this part 112 by failing or refusing to comply with any of the provisions of § 112.3, § 112.4 or § 112.5 shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be imposed in accordance with procedures set out in part 114 of this subchapter D.

PART 114—CIVIL PENALTIES FOR VIOLATION OF OIL POLLUTION PREVENTION REGULATIONS

1. The authority citation for part 114 is revised to read as follows:

Authority: Secs. 311, 501(a), Pub. L. 92-500, 66 Stat. 848, 849 (33 U.S.C. 1321, 1361(a)).

2. Section 114.1 is revised to read as follows:

§ 114.1 General applicability.

(a) Applicability of section. This section shall apply to violations specified in paragraph (b) of this section which occurred prior to August 18, 1990.

(b) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) of this subchapter who violate the requirements of part 112 of this subchapter D by failing or refusing to comply with any of the provisions of §§ 112.3, 112.4, or 112.5 of this subchapter shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be assessed and compromised in accordance with this part. No penalty shall be assessed until the owner or operator shall have been given notice and an opportunity for hearing in accordance with this part.

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 is revised to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), ("the Act") and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

2. Section 117.22 is revised to read as follows:

§ 117.22 Penalties.

(a) Applicability of section. This section shall apply to violations specified in paragraphs (b) and (c) of this section which occurred prior to August 18, 1990.

(b) Any person in charge of a vessel or an onshore or offshore facility who fails to notify the United States Government of a prohibited discharge pursuant to § 117.21 (except in the case of a discharge beyond the contiguous zone, where the person in charge of a vessel is not otherwise subject to the jurisdiction of the United States) shall be subject to a fine of not more than \$10,000 or imprisonment for not more than one year, or both, pursuant to section 311(b)(5).

(c) The owner, operator or person in charge of a vessel or an onshore or offshore facility from which is discharged a hazardous substance designated in 40 CFR part 118 in a quantity equal to or exceeding in any 24-hour period, the reportable quantity established in this part (except in the case of a discharge beyond the contiguous zone, where the person in charge of a vessel is not otherwise subject to the jurisdiction of the United States, shall be assessed a civil penalty

of up to \$5,000 per violation under section 311(b)(5)(A). Alternatively, upon a determination by the Administrator, a civil action will be commenced under section 311(b)(5)(B) to impose a penalty not to exceed \$50,000 unless such discharge is the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, in which case the penalty shall not exceed \$250,000.

Notes: The Administrator will take into account the gravity of the offense and the standard of care manifest by the owner, operator, or person in charge in determining whether a civil action will be commenced under section 311(b)(5)(B). The gravity of the offense will be interpreted to include the size of the discharge, the degree of danger or harm to the public health, safety, or the environment, including consideration of toxicity, degradability, and dispersal characteristics of the substance, previous spill history, and previous violation of any spill prevention regulations. Particular emphasis will be placed on the standard of care and the extent of mitigation efforts manifest by the owner, operator, or person in charge.

[FR Doc. 92-28661 Filed 11-3-92; 8:45 am]
BILLING CODE 6560-02-01

SECTION B

- * NOTICE OF PROPOSED RULE MAKING
(PHASE I) FOR 40 CFR PART 112
DATED OCTOBER 22, 1991**

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Environmental Protection Agency

Tuesday
October 22, 1991

Part II

**Environmental
Protection Agency**

40 CFR Part 112

**Oil Pollution Prevention; Non-
transportation-related Onshore and
Offshore Facilities; Proposed Rules**



Printed on Recycled Paper

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[SW H-FRL-3671-4]

RIN 2050-AC62

Oil Pollution Prevention; Non-transportation-related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency is proposing to revise the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under section 311(j)(1)(C) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. This proposed rule establishes requirements for Spill Prevention, Control, and Countermeasures (SPCC). Plans to prevent spills of oil by non-transportation-related onshore and offshore facilities into the waters of the United States or adjoining shorelines. The proposed revision involves changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflects changes in the jurisdiction of section 311 of the CWA made by 1977 and 1978 amendments to the CWA.

DATES: EPA will consider comments submitted on or before December 23, 1991.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number SPCC-1P, Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in the Superfund Docket, room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 [Docket Number SPCC-1P]. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket should be made by calling 1-202/260-3046. The public may copy a maximum of 267 pages from any regulatory docket at no cost. If the number of pages copied exceeds 267, however, a charge of 15 cents will be incurred for each page after 100 pages.

FOR FURTHER INFORMATION CONTACT: Monica L. McEaddy, Response

Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 1-202-260-1358 or Bobbie Lively-Diebold at 1-703-356-8774; the ERNS/SPCC Information line at 1-202-260-2342; or RCRA/Superfund Hotline at 1-800-424-9346 (in the Washington, DC metropolitan area, 1-703-920-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 1-800-553-7672 (in the Washington, DC metropolitan area, 1-703-486-3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

- I. Introduction
 - A. Statutory Authority
 - B. Background of this Rulemaking
 - C. The Oil Pollution Act of 1990 (OPA)
- II. General Issues
 - A. Notification
 - B. Contingency Planning
 - C. New Discretionary Provisions
- III. Proposed Changes in Each Section of 40 CFR Part 112
 - A. Section 112.1—General Applicability and Notification
 - B. Section 112.2—Definitions
 - C. Section 112.3—Requirements to Prepare and Implement a Spill Prevention, Control, and Countermeasures Plan
 - D. Section 112.4—Amendment of SPCC Plans by Regional Administrator
 - E. Section 112.5—Amendment of SPCC Plans by Owners or Operators
 - F. Section 112.6—Civil Penalties for Violation of the Oil Pollution Prevention Regulation
 - G. Section 112.7—Spill Prevention, Control, and Countermeasures Plan General Requirements
 - H. Section 112.8—Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Facilities (Excluding Production Facilities)
 - I. Section 112.9—Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Production Facilities
 - J. Section 112.10—Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Drilling and Workover Facilities
 - K. Section 112.11—Spill Prevention, Control, and Countermeasures Plan Requirements for Offshore Oil Drilling, Production, or Workover Facilities
- IV. Relationship to Other Programs
 - A. Underground Storage Tanks
 - B. State Programs
 - C. Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III Integration With Local Emergency Planning
 - D. Wellhead Protection
 - E. Flood-Related Requirements
 - F. Occupational Safety and Health Administration
 - V. Request for Comments
 - VI. Regulatory Analyses
 - A. Economic Analyses

- B. Executive Order No. 12291
 - C. Regulatory Flexibility Act
 - D. Paperwork Reduction Act
- List of Subjects

I. Introduction

A. Statutory Authority

Section 311(j)(1)(C) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, also known as the Clean Water Act (CWA), authorizes 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. The authority to regulate non-transportation-related onshore and offshore facilities under section 311(j)(1)(C) of the CWA was delegated by the President to the Administrator of the U.S. Environmental Protection Agency (EPA or the Agency) by Executive Order 11735. In this same Executive Order, authority over onshore and offshore transportation-related facilities and vessels was delegated to the department in which the U.S. Coast Guard (USCG) is operating (currently, the U.S. Department of Transportation). A Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), establishes the responsibilities of EPA and the Department of Transportation for purposes of administering their respective spill prevention programs. The definitions set forth in this MOU (i.e., the definitions of "non-transportation-related onshore and offshore facilities" and "transportation-related onshore and offshore facilities") are included as an appendix to 40 CFR part 112.

B. Background of This Rulemaking

The Oil Pollution Prevention regulation, also known as the Spill Prevention, Control, and Countermeasures (SPCC) regulation, was originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the CWA. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related facilities with aboveground (non-buried) oil storage capacity greater than 1,320 gallons (or greater than 660 gallons aboveground in a single tank) or buried underground oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that, because of their location, could reasonably be expected to discharge oil into the navigable

waters of the United States or adjoining shorelines.

In addition to the Oil Pollution Prevention regulation, EPA has promulgated related regulations defining oil discharges that may be harmful (40 CFR part 110) and procedures for imposing the civil penalties provided for in the Oil Pollution Prevention regulation (40 CFR part 114). As described below, penalty provisions have been revised by the Oil Pollution Act of 1990 (OPA). The USCG has promulgated regulations on oil pollution prevention for vessel transfer facilities (the USCG regulations do not apply to pipelines or other modes of transportation) (33 CFR part 154), pursuant to the November 24, 1971, MOU described above. The USCG also has promulgated requirements for the reporting of oil discharges (33 CFR part 153), and regulations relating to discharges from ships (33 CFR part 155).

Two previous revisions have been made to the Oil Pollution Prevention regulation. On August 29, 1974, the regulation was amended (39 FR 31602) to set out the Agency's policy on civil penalties for violation of the CWA section 311 requirements. On March 26, 1976, 40 CFR part 112 was again amended (41 FR 12567), primarily to clarify the criteria for determining whether or not a facility is subject to the regulation. Other revisions made in the March 26, 1976, rule clarified that SPCC Plans must be in written form and specified the procedures for development of SPCC Plans for mobile facilities.

Implementation of the regulation since the 1976 revisions has indicated a need for other changes, primarily for purposes of clarification and simplification. Changes in 40 CFR part 112 also have been made necessary by amendments to CWA section 311.

On May 20, 1980 (45 FR 33814), EPA proposed revisions to the Oil Pollution Prevention regulation similar to revisions proposed today. These proposed revisions would have reflected changes in the jurisdiction of CWA section 311 made by the 1977 CWA amendments. Also proposed were requirements concerning new facilities, the content of SPCC Plans, the availability of SPCC Plans for review by EPA personnel, and the review of SPCC Plans by owners or operators.

One of the revisions proposed on May 20, 1980, was a clarification that certain "guidelines" in § 112.7 are mandatory rather than discretionary. Based on a subsequent decision by the Agency that the proposed modifications to 40 CFR part 112 were not required at that time, the revisions proposed on May 20, 1980,

were not finalized. As described below, however, continuing experience with administering this program demonstrates a need for the clarifications to 40 CFR 112.7. Accordingly, the Agency is proposing certain changes to 40 CFR 112.7 that are similar to those proposed on May 20, 1980.

On January 2, 1988, the collapse of a four-million-gallon aboveground storage tank owned by the Ashland Oil Company in Floreffe, Pennsylvania, resulted in a spill of approximately 3.8 million gallons of diesel fuel. Of this amount, approximately 750,000 gallons of diesel fuel were released into the Monongahela River. This event led to the formation of an Oil Spill Prevention, Control, and Countermeasures Program Task Force (the SPCC Task Force) to examine Federal government regulations governing spills of oil from aboveground storage tanks. The SPCC Task Force was composed of senior personnel from EPA Headquarters, Regional offices, other Federal agencies, and State offices with significant oil spill response responsibilities. The Task Force issued its findings and recommendations in a May 13, 1988, report.¹ The Task Force report focused on the prevention of large catastrophic spills, but made recommendations on many aspects of the Federal oil spill prevention, control, and countermeasures program.

The SPCC Task Force recommended that EPA clarify that certain provisions described in the Oil Pollution Prevention regulation in terms that could be interpreted as guidelines are required practices. The Task Force also recommended that EPA establish additional technical requirements for all facilities subject to the regulation, and that EPA expand the scope of the regulation to include requirements for facility-specific oil spill contingency planning. The Task Force further found that EPA does not have an adequate inventory of facilities subject to the regulation and recommended that EPA gather specific information about these facilities (e.g., the number of aboveground storage tanks at a facility). The Task Force also recommended strengthening the facility inspection program to better identify violations and enforce compliance. A subsequent General Accounting Office (GAO) report contained similar recommendations.²

¹ U.S. Environmental Protection Agency, "The Oil Spill Prevention, Control, and Countermeasures Program Task Force Report," Interim Final Report, May 13, 1988. This document is available for inspection at the Superfund Docket, room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

² General Accounting Office, "Inland Oil Spills: Stronger Regulation and Enforcement Needed to

As a result of major oil spills such as the Ashland Oil Company spill discussed previously and the findings from the SPCC Task Force and the GAO reports, EPA is today proposing revisions to 40 CFR part 112.

EPA has decided to address the SPCC Task Force findings and recommendations, together with OPA requirements, in two phases. A two-phase approach has been chosen because several of the Task Force recommendations require further information gathering and analysis before determining specific additional changes to the existing regulation, whereas other recommendations can be implemented more readily. Phase One revisions, which include provisions that generally do not require substantial additional Agency data gathering (e.g., technical amendments to clarify regulatory language, notification requirements), are being proposed today. Phase Two revisions, which will be addressed in a separate rulemaking and proposed at a later date, will address other, more substantive regulatory recommendations, such as facility-specific contingency planning and aboveground storage tank integrity testing requirements. Phase Two will also implement applicable requirements of the OPA. For further discussion of the Phase Two revisions as they relate to the OPA, see Section I.C. of this preamble.

After consideration of comments received in response to this proposed rule, a final rule will be promulgated. In addition to a general request for comments, the Agency requests comments on specific proposed revisions throughout the preamble. The provisions are also summarized in Section V of this preamble. If the comments received indicate sufficient need, the Agency will consider holding a public hearing on the proposed revisions to permit further expression of views prior to the final rulemaking. EPA will publish a notice of its intent to hold any such public hearing in the *Federal Register*. Any statements made at such a hearing would be included in the public record of the rulemaking.

C. The Oil Pollution Act of 1990 (OPA)

The OPA was signed into law by the President on August 18, 1990. The OPA contains significant modifications to many of the provisions of section 311 of the CWA, including section 311(j). The

Avoid Future Incidents." February 1989 (GAO/RCE-89-65). This document is available for inspection at the Superfund Docket, room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

specific language of section 311(j)(1)(C), however, is not changed. The principal provisions of the OPA that will impact the SPCC program are summarized below.

Section 1004 of the OPA sets a number of limits on liability of owners or operators of vessels and facilities for oil spills to U.S. waters. The liability limits include \$350 million for onshore facilities and deepwater ports; \$75 million plus removal costs for offshore facilities; and \$1,200 per gross ton or up to \$10 million, whichever is greater, for tank vessels. The President must report to the Congress on the desirability of adjusting these liability limits, and EPA is addressing this issue for onshore, non-transportation-related facilities. There is no liability limit when spills are caused by willful misconduct or gross negligence or by violation of Federal safety, construction, or operating regulations; or in cases of failure or refusal to report the discharge, failure to cooperate in oil removal actions, or comply with orders issued by the Federal agency in charge of cleanup.

Under OPA section 1002, the scope of damages for which oil dischargers may be liable is expanded to include damages for injury to, or loss of subsistence use of, natural resources; damages for injury to property; loss of revenues, profits, or earning capacity; and costs of public services during or after oil removal activities.

The OPA establishes that the Oil Spill Liability Trust Fund under section 9509 of the Internal Revenue Code of 1986 shall be used to pay for removal costs and damages not recovered from responsible parties. The existing fund under CWA section 311(k) and other oil spill compensation and liability funds are dissolved; the assets and liabilities of these funds are consolidated in the Oil Spill Liability Trust Fund.

Section 4113 of the OPA requires the President to conduct a study on whether liners or other secondary means of containment should be used to prevent or help detect leaks from onshore bulk oil storage facilities. EPA is currently undertaking such a study and will prepare a Report to Congress on the results.

Under OPA section 4201(a), Federal authority under the CWA for the removal of oil and hazardous substances defined under the CWA is expanded; for example, the Federal government is required to direct removal actions for discharges posing a substantial threat to the public health or welfare of the U.S. Also, new discretionary authority to direct the spiller's removal actions under other

circumstances has been added to existing authorities.

OPA section 4202 amends CWA section 311(j) to require the development of Area Contingency Plans to help ensure the removal of a worst-case spill from a vessel or facility in or near the area covered by the plan. The President must designate inland and coastal areas for which plans are to be prepared; and for each of these areas, an Area Committee must be established consisting of qualified Federal, State, and local officials. Each Area Committee in inland areas must prepare an Area Contingency Plan and submit it to the President. The President must then review each plan and either approve or require amendments to it.

Section 4202 of the OPA also amends CWA section 311(j) to require that the President issue regulations for owners or operators of certain facilities and vessels to prepare response plans for worst-case oil and hazardous substances discharges. Onshore facilities that can cause "substantial harm" in the event of a worst-case spill must submit their plans to the President. Of these plans, the President must review and issue determinations on plans for onshore facilities that can cause "significant and substantial harm."

Although the changes to the SPCC regulation proposed today do not directly incorporate requirements of the OPA, the notification requirement proposed today will assist in the implementation of many of these OPA requirements. This requirement will provide information on the number and location of facilities, as well as the size and number of tanks at each one. EPA expects that implementation of many of the OPA provisions related to non-transportation-related facilities will be delegated to EPA in a forthcoming Executive Order. As described in section II.A of this preamble, the facility data developed as a result of the notification requirement will assist EPA in its implementation of the response planning provisions of OPA section 4202 in Phase Two.

The SPCC Task Force concluded that aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. The Phase One modifications would retain the existing requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific oil spill contingency plans in lieu of the prevention systems. In developing the Phase Two modifications, EPA will

consider whether facility owners or operators with aboveground storage tanks, as well as others, should be required to prepare facility-specific contingency plans. Phase Two modifications will also address the requirements of a properly designed contingency plan and, as described above, will implement additional OPA requirements for facility response (contingency) plans, as appropriate.

Section 4301 of the OPA increases penalties under the CWA for violations resulting from discharges of oil or hazardous substances. Section 4301(a) amends the CWA to provide more stringent penalties for failure to notify the appropriate Federal agency of a discharge. The OPA provides for imprisonment of up to five years and a fine not exceeding \$250,000 for an individual, or not more than \$500,000 for an organization. Section 4301(b) establishes the penalty for failure to comply with regulations under CWA section 311(j) at \$25,000 per day of violation. In addition to these civil penalties, section 4301(b) establishes administrative penalties of \$10,000 per violation, not to exceed \$25,000 for Class I penalties, and \$10,000 per day per violation, not to exceed \$125,000 for Class II penalties.

Section 4301(c) provides that violations of the prohibition on discharges of oil or hazardous substances in amounts that may be harmful are subject to criminal penalties established under section 309(c) of the CWA. These penalties are \$2,500 to \$25,000 and up to one year imprisonment for negligent violations, \$5,000 to \$50,000 and up to three years imprisonment for knowing violations, and up to \$250,000 (or \$1 million for organizations) and up to 15 years imprisonment for knowing endangerment.

II. General Issues

A. Notification

The SPCC Task Force found in its review of the SPCC program that information concerning the numbers, storage capacities, and locations of above ground oil storage facilities is needed to effectively administer the SPCC program. Therefore, EPA is proposing to require that all facilities that are currently subject to the Oil Pollution Prevention regulation by virtue of their aboveground oil storage capacity, or that are otherwise subject to the CWA and have above ground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), notify the Agency of certain SPCC-related facility

characteristics. Partially buried tanks and bunkered tanks, as defined in proposed § 112.2, are included in determining the capacity of aboveground storage, and facilities with such tanks are subject to the notification requirement. In addition, EPA is proposing that all facilities that become subject to this regulation in the future by virtue of their aboveground oil storage capacity must notify the Agency prior to beginning operations at the facility. Many facilities subject to the Oil Pollution Prevention regulation by virtue of their underground storage capacity are already subject to notification requirements under the Underground Storage Tank (UST) program (40 CFR part 280), and EPA is proposing to exempt many such UST-regulated facilities from the Oil Pollution Prevention regulation. The remaining SPCC-regulated facilities with only underground storage tanks, as defined in proposed § 112.2(v), would not be subject to the proposed notification requirement. The proposed notification provision in § 112.1(e) would require that facility owners and operators furnish their names; the name and address of the facility; the number and size of aboveground oil storage tanks at the facility; the facility's total aboveground oil storage capacity; the distance of the facility to the nearest navigable waters; the facility's Dun & Bradstreet D-U-N-S number, if available; and the facility's primary Standard Industrial Classification, if applicable and available. This information is to be supplied using a proposed standard form, which is included as appendix B of today's proposed regulation. In addition, the Agency is considering requiring information on the latitude and longitude of the facility, location of environmentally sensitive areas and potable water supplies, presence of secondary containment, spill history, leak detection equipment and alarms, age of tanks, and potential for adverse weather. This additional information would assist in implementing the facility response plan requirements that are mandated by the OPA. The facility response plan requirements will be proposed in the Phase Two rulemaking. Specifically, the information may be useful in determining which facilities could reasonably be expected to cause "substantial harm" or "significant and substantial harm" by discharging into the navigable waters, adjoining shorelines, or the exclusive economic zone and, therefore, must submit their facility response plan. EPA requests comments on collecting this additional information through the notification

form. EPA also requests comments on additional information that could be used in developing Area Plans or in implementing the community right-to-know program described in section IV.C of this preamble.

The Agency proposes that the owner or operator of the facility would complete and send the form to the SPCC program office at EPA Headquarters within two months of the effective date of the final rule. The proposed notification would be a one-time requirement; a facility would not be required to notify EPA of changes in owner(s), operator(s), or the other required information elements. Any owner or operator who fails to notify or knowingly submits false information in a notification would be subject to a civil penalty. The Agency specifically requests comment on the proposed notification requirement and the proposed notification form.

The Agency expects to use data collected under the proposed notification requirement to develop a data base of facility-specific information. This data base may also include information on spills (obtained from spill reports submitted by facilities or from the Emergency Response Notification System (ERNS)) and various other types of information. The Agency will use the information in the data base to more effectively allocate SPCC program resources by prioritizing inspections and enforcement efforts and by determining the need for additional prevention requirements for certain categories of facilities (such as facilities with the potential to threaten major drinking water supplies or sensitive ecosystems).

The Agency is particularly interested in comment on alternate methods of facility notification. In particular, EPA is aware that facilities may already be required to submit Material Safety Data Sheets (MSDSs) and other information to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs), and local fire departments under sections 311 and 312 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III). Comments are solicited concerning ways that these data submissions may be used to establish an inventory of facilities subject to this proposed rule.

B. Contingency Planning

EPA believes that facility-specific contingency planning in coordination with local authorities is an important part of any spill related preparedness program. The SPCC Task Force

recommended that the Oil Pollution Prevention regulation be revised to require the inclusion of contingency plans in facility SPCC Plans, and that these plans be coordinated with existing State and local contingency planning groups.

EPA believes that, in general, a facility-specific contingency plan should contain provisions for discovery of a spill, emergency notification procedures, the name of the spill response coordinator, procedures for identifying personnel and equipment that may be needed, available equipment lists, available personnel lists, an identification of hazards, a vulnerability analysis, and an event and fault tree analysis.

The vulnerability analysis identifies areas of immediate concern following a spill event and provides an estimate of the area most likely to be affected. Examples of areas to be identified in the vulnerability analysis include, but are not limited to, population centers, wetlands, wellhead protection areas, and areas that may be inhabited by endangered species. In addition, the vulnerability analysis should identify sensitive ecosystems requiring special protection and drinking water suppliers who must be notified if a release occurs.

An event and fault tree analysis will identify potential spill scenarios. It is usually based on prior spills at the facility and can be used to estimate possible sources of leaks, spill sizes, pathways, and causes of spills at other facilities. Case studies of major spills show that close attention should be paid to the methods by which equipment and personnel may be obtained. Finally, the contingency plan should address disposal of recovered oil, used sorbents, and other materials. The Agency's experience at various spill sites also demonstrates the importance of addressing the location of off-site spill pathways in the contingency plan. Above all, a contingency plan needs to be workable and easy to follow in emergency situations. Facility personnel should be trained in the contingency plan procedures to improve their understanding of the plan and ensure that it is properly followed in emergencies.

The Agency is proposing in today's notice only to require elementary contingency planning steps that are currently included in most existing SPCC Plans, such as the inclusion in a facility's Plan of a list of contacts (e.g., the facility response coordinator, the National Response Center (NRC)). EPA is also proposing to clarify an existing requirement that facilities without

secondary containment or diversionary measures complete a site-specific contingency plan. Because as part of Phase Two EPA is currently considering requirements for more comprehensive facility-specific contingency plans in response to the recommendations of the Task Force and the requirements of the OPA, the Agency wishes to provide an opportunity for commenters to submit additional information and recommendations on contingency planning during the development of such requirements. Therefore, EPA is requesting comments and supporting data on oil spill contingency planning needs.

C. New Discretionary Provisions

In addition to proposing changes to clarify and strengthen the Oil Pollution Prevention regulation, EPA is proposing a number of provisions as recommendations. These new provisions are described individually in Section III of this preamble. Among the new recommendations are the following two provisions:

- *Proposed § 112.8(d)(4).* It is recommended that facilities have all buried piping³ tested for integrity and leaks annually or have buried piping monitored monthly in accordance with the provisions of 40 CFR part 280. In addition, it is recommended that records of the testing or monitoring be kept for five years (does not apply to offshore facilities or production facilities).

- *Proposed § 112.8(d)(5).* It is recommended that facilities post vehicle weight restrictions to prevent damage to underground piping (does not apply to offshore facilities or production facilities).

EPA is proposing these two provisions and other provisions as recommendations rather than requirements. The Agency is concerned that these provisions may not for all facilities achieve the standard of provisions based on good engineering practice, which is the basic standard of the regulation. EPA, however believes that implementation of these provisions at most facilities would contribute to the facilities' overall effort to prevent oil discharge and to mitigate those spills that may occur. Consequently, EPA is proposing these discretionary provisions so that the owners and operators of facilities subject to the Oil Pollution Prevention Regulation can decide whether the suggested practices are

warranted under the existing regulatory requirements. At many facilities the proposed provisions are consistent with the general requirement that the SPCC Plan be prepared in accordance with good engineering practices. At the same time, the Agency recognizes that for some facilities implementation of these provisions is inappropriate for technological or other reasons or is not necessary because of other facility-specific practices or circumstances. For such facilities, not implementing these discretionary provisions would be consistent with the existing requirement concerning good engineering practices.

The Agency requests comments and supporting data (including information on likely environmental impacts or benefits) regarding whether these discretionary provisions should be made requirements. EPA is particularly interested in receiving comments and information on the advisability of establishing the two provisions as requirements for large facilities, but as recommendations for small facilities. This is consistent with the SPCC Task Force recommendation that EPA regulate larger facilities more stringently than smaller facilities. EPA considered defining a "large facility" for this specific purpose as a facility with more than 42,000 gallons of SPCC-regulated storage capacity. The Agency believes that larger volumes of oil stored at a facility increases the chances of a spill occurring, and that spills from large-capacity facilities may be greater in magnitude than those from smaller facilities, thus posing a greater potential threat to the waters of the United States. Section 311(j)(1)(C) of the CWA, however, does not explicitly authorize differential requirements based on facility size. EPA is also requesting comment on the option of applying these provisions as requirements to all sizes of SPCC-regulated facilities under § 311(j)(1)(i) of the CWA.

In addition, EPA is requesting comments on two other practices that are not included in the proposed revisions. These practices are:

- That owners and operators of facilities affix a signed and dated statement to the SPCC Plan indicating that the revision has taken place and whether or not amendment of the Plan is required.

- That owners and operators of onshore facilities other than production facilities state the design capabilities of their drainage system in the SPCC Plan if the system is relied upon to control spills or leaks. EPA believes that these practices may improve the quality of a facility's SPCC

Plan and may be appropriate to include in the Oil Pollution Prevention regulation as discretionary practices. The Agency has not included these practices in the proposed rule because of the lack of data for the benefits likely to result from these practices. EPA specifically requests comments regarding the extent to which these provisions would further improve the effectiveness of the Oil Pollution Prevention regulation.

III. Proposed Changes in Each Section of 40 CFR Part 112

In this section, the principal changes and clarifications being proposed today to each of the sections of 40 CFR part 112 are discussed and explained. Minor grammatical and editorial changes also have been made to the text of the proposed rule. To more effectively organize § 112.7, it has been divided into five separate sections (proposed §§ 112.7, 112.8, 112.9, 112.10, and 112.11), based on facility type. This reorganization will aid in the clarification of SPCC Plan requirements for different types of facilities.

A. Section 112.1—General Applicability and Notification

The geographic scope of the applicability of the Oil Pollution Prevention regulation, which is stated in paragraphs (a), (b), and (d) of § 112.1, is proposed to be extended to conform with the 1977 CWA amendments that extended the geographic scope of EPA's authority under CWA section 311. CWA section 311(b)(1) as amended in 1977, establishes a national policy prohibiting discharges of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). As a result, the applicability of the SPCC regulations as stated in paragraphs (a) and (b) of § 112.1 and in subsequent paragraphs of the rule is proposed to be revised to reflect the statutory language.

In light of amendments to the CWA in 1978, EPA is revising the phrase "harmful quantities" in § 112.1(b). The revised phrase—"quantities that may be harmful, as described in part 110"—includes oil discharged in quantities that violate applicable water quality

³ The change from the use of "pipeline" to "piping" is to eliminate any possible confusion between the regulation's use of "pipeline" and "pipelines" regulated by DOT's Office of Pipeline Safety.

standards, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 110.3).⁴

Since the implementation of the SPCC regulation in 1973, EPA has received numerous questions concerning the scope of the definition of oil. Section 311(a)(1) of the CWA defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." EPA interprets this definition to include crude oil and refined petroleum products as well as non-petroleum oils such as vegetable and animal oils. The Agency solicits comments on the appropriateness of this interpretation for the SPCC program.

The facilities, equipment, and operations that are exempt from this regulation are described in § 112.1(d). EPA is proposing several changes to this section. In proposed paragraph (d)(1)(i), a reference to proposed § 112.1(b)(1), which delineates the scope of the Oil Pollution Prevention rule, has been added.

To avoid duplicative and unnecessarily burdensome regulation, the Agency is proposing in the new § 112.1(d)(4) to exempt underground storage tanks (defined by proposed § 112.2(v)) that are now subject to the technical requirements of EPA's Underground Storage Tank (UST) program (40 CFR part 280). In addition, EPA is proposing in § 112.1(d)(2)(i) to exclude the capacity of UST-regulated underground storage tanks from the calculation of underground oil storage capacity made to determine whether a facility is subject to this regulation. Under proposed § 112.7(a)(3), however, any facility subject to this regulation must have the location and contents of all tanks marked on the facility diagram for informational purposes.

Notwithstanding differences in the scope and focus of the SPCC and UST programs, EPA believes that the UST technical requirements codified in 40 CFR part 280 are consistent with the underlying regulatory purposes of the SPCC program and are equally protective for purposes of preventing discharges of oil into waters of the United States. For example, under the UST program, new and existing tanks must meet specific corrosion protection requirements, be equipped with

catchment basins, automatic shutoff devices, and alarms, and be subjected to periodic tank tightness testing. These requirements achieve a level of protection needed to ensure that a discharge of oil will not reach bodies of water protected by the CWA.

It is important to note that the proposed § 112.1(d)(2)(i) and § 112.1(d)(4) exemptions apply only to UST-regulated tanks that meet the definition of "underground storage tank" proposed in § 112.2(v). The proposed rule makes this clear in § 112.1(b)(3), by providing that "bunkered tanks" and "partially buried tanks" (defined by the proposed § 112.2(c) and § 112.2(n), respectively), as well as tanks in subterranean vaults, are considered aboveground storage tanks for the purposes of this regulation and are subject to the requirements of the regulation. Compared to completely buried tanks, spills from these tanks are more likely to enter surface waters regulated under the CWA. For further discussion of the relationship of the SPCC program to the UST program, see Section IV.A. of this preamble.

EPA is proposing in both § 112.1(d)(2)(i) and (ii) to exempt from the calculation of storage capacity, tanks and facilities that are "permanently closed," as defined in the proposed § 112.2(o). This proposed approach results from experience gained by EPA in administering the SPCC program, which indicates that tanks and facilities properly closed on a permanent basis need not continue maintaining current SPCC Plans. Such tanks and facilities cannot reasonably be expected to discharge oil in quantities that may be harmful in the manner described in the proposed § 112.1(b)(1). Therefore, the Agency is proposing to exempt oil storage tanks meeting the criteria for being "permanently closed" in proposed § 112.2(o) and facilities at which all tanks are permanently closed. The Agency has considerable experience with applying the criteria to show that they are appropriate for defining SPCC-regulated facilities that do not represent a significant threat of a discharge of oil in quantities that may be harmful. However, the Agency specifically solicits comments on the appropriateness of these criteria, including supporting data and descriptions of suggested alternative criteria for defining "permanently closed" tanks.

Facilities with some permanently closed tanks, where other tanks contain sufficient capacity and are not permanently closed, remain subject to this regulation unless otherwise

exempted under § 112.1(d). The Agency has also found that, in contrast to facilities and tanks that are permanently closed, facilities and tanks used for standby storage, seasonal storage, or temporary storage can reasonably be expected to discharge oil as described in proposed § 112.1(b)(1). EPA is, therefore, clarifying in proposed § 112.1(b)(2) that such facilities and tanks are not considered permanently closed.

To avoid redundancy with the requirements of the U.S. Department of the Interior's Minerals Management Service (MMS), the Agency is proposing in § 112.1(d)(3) to exempt from this regulation offshore oil production or exploration facilities subject to MMS Operating Orders, notices, and regulations. This proposal is based on analysis of the MMS Operating Orders and the conclusion that they require adequate spill prevention, control, and countermeasures practices that are directed more specifically to the facilities subject to these requirements.

As described in section II.A of this preamble, EPA is proposing a new facility notification requirement as § 112.1(e). Notification would be provided to EPA on a standard form, which is proposed as appendix B of 40 CFR part 112.

EPA is proposing to amend current § 112.1(e) (redesignated as proposed § 112.1(f)) to clarify that adherence to the SPCC regulation does not relieve facility owners and operators from complying with applicable local, State, and Federal regulations. These regulations include, but are not limited to, those issued by the USCG, the Occupational Safety and Health Administration (OSHA), the Federal Emergency Management Agency (FEMA), and EPA's UST program. The Agency is also proposing that owners and operators consider current applicable regulations, standards, and codes, including certain standards and recommended practices established by the American Petroleum Institute (API) (series 12, 620, and 650), the National Fire Protection Association (NFPA) (30 and 30A), the American Society of Mechanical Engineers (ASME) Standards, the National Association of Corrosion Engineers (NACE) Standards, American National Standards Institute (ANSI) (B31.3), and Underwriters Laboratories (UL) Standards, in determining practices that may be required for particular facilities by the requirement that all SPCC Plans be prepared in accordance with good engineering practice. The standard of good engineering practice, which applies to all SPCC Plans, will require that

⁴ Amendments to the CWA made by the OPA in 1990 broaden the concept of quantities that may be harmful to include not only "the public health or welfare" but also "the environment."

appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility.

B. Section 112.2—Definitions

Definitions for the following terms have been proposed to be revised, added or modified as follows:

- A definition of "discharge" has been revised to reflect changes to the definition in the 1978 amendments to the CWA. Discharges in compliance with a permit under section 402 of the CWA are not considered a discharge for the purposes of this part.
- A definition of "navigable waters" has been revised to conform with revisions to the regulation on the discharge of oil (40 CFR part 110).
- A definition of "offshore facility" has been revised to conform with the CWA and the March 8, 1990, revisions to the NCP. Offshore facilities are any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.
- A definition of "United States" has been revised to conform with revisions to the definition of the United States in the 1978 amendments to the CWA. The Commonwealth of the Northern Mariana Islands has been added to the definition.
- A definition of "contiguous zone" has been added to conform with the amendments to the CWA in 1978 and the March 8, 1990, revisions to the NCP.
- A definition of "wetlands" has been added to define the term as used in the definition of "navigable waters." The definition conforms with the definition in the oil discharge regulation (40 CFR part 110).
- Definitions for the terms "breakout tank" and "bulk storage tank" have been added to clarify the distinction between facilities regulated by DOT and EPA. EPA regulates facilities with bulk storage tanks. Breakout tanks are used to compensate for pressure surges or control and maintain pressure through pipelines. These tanks are frequently in-line and are regulated by DOT.
- A definition of "bunkered tank" has been added to clarify that bunkered tanks are a subset of "partially buried tanks." Bunkered tank means a tank constructed or placed in the ground by cutting the earth and recovering in a manner whereby the tank breaks the natural grade of the land. As such, bunkered tanks are subject to the provisions of 40 CFR part 112 as aboveground tanks.
- A definition of "facility" has been added based on the MOU between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 (38 FR 24080). More detailed discussion of the types of facilities covered is in Appendix A.
- Definitions of "oil production facilities (onshore)" and "oil drilling, production, or workover facilities (offshore)" have been moved from existing § 112.7(e)(5)(i) and § 112.7(e)(7)(i), respectively.
- A definition of "partially buried tank" has been added to clarify the distinction between partially buried tanks and underground storage tanks, the latter being, defined in this proposed rulemaking for SPCC purposes as those tanks completely covered with earth. Partially buried tanks are subject to the provisions of 40 CFR part 112 as aboveground tanks.
- A definition of "permanently closed" was added to clarify the scope of facilities and tanks excluded from coverage by this part. EPA solicits comments on the requirement to ensure that tank vapors remain below the lower explosive limit.
- A definition of "SPCC Plan" has been added to further explain its purpose and scope. The Plan provides a written explanation of a facility's compliance with the requirements of the regulation, including equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill.
- The definition of "spill event" was modified to correspond to the changes described in the applicability section of this rule relating to the expanded scope of CWA jurisdiction.
- A definition for "storage capacity" has been added to clarify that it includes the total capacity of a tank or container capable of storing oil or oil mixtures. Because the percentage of oil in a mixture is determined by the operator and can be changed at will, the total capacity of a tank or container is considered in determining applicability under this part, regardless of whether the tank or container is filled with oil or a mixture of oil and another substance, as long as the mixture would violate standards in 40 CFR part 110.
- A definition of "underground storage tank" has been added. The SPCC program defines the term more narrowly than the UST program under RCRA Subtitle I. Under the SPCC program, EPA proposes to regulate any tanks that are not completely buried as aboveground tanks, because tanks with exposed surfaces exhibit a potential to discharge into navigable waters and adjoining shorelines. See also the discussion in the preamble regarding the relationship between the SPCC and the UST programs.

EPA is not proposing any changes to the definition of "oil" (except its redesignation from § 112.2(a) to § 112.2(i)).

C. Section 112.3—Requirement to Prepare and Implement a Spill Prevention, Control, and Countermeasures Plan

This section describes the requirements for the preparation and implementation of SPCC Plans. Most of the proposed modifications to § 112.3 have been provided for clarification. However, in paragraph (b) of the current rule, a new facility is required to prepare a Plan within six months after operations begin and to implement the Plan within one year. In proposed paragraph (b), a new facility is required to prepare and fully implement a Plan before beginning operations, unless an extension has been granted by the Regional Administrator (proposed

§ 112.5(a) requires that Plans be amended before any change is made that materially affects the facility's potential for discharge of oil into the waters of the United States). Experience with the implementation of this regulation shows that many types of failures occur during or shortly following facility startup and that virtually all prevention, containment, and countermeasures practices are a part of the facility design or construction. Therefore, the Agency believes that new facilities should be required to plan and execute the provisions governing spill prevention prior to starting operations. EPA assumes for the purpose of this proposed provision that all existing facilities subject to this rule have had their SPCC Plans prepared since the regulation was issued, therefore, only new facilities would be affected by this proposed change in timing for the submittal of their Plans.

EPA also assumes in § 112.3(c) that owners/operators of existing onshore and offshore mobile or portable facilities have prepared and implemented a facility SPCC Plan as required by § 112.3(b); therefore, only new facilities are affected by the change in timing for the submission of the SPCC Plans.

Additional requirements concerning Plan certification by a Registered Professional Engineer are specified in § 112.3(d). The existing language states that "no SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way . . ."

This existing language states that the Professional Engineer (PE) must only be certified. The Agency is soliciting comments on the advantages and disadvantages associated with the PE being registered in the State in which the facility is located and the additional requirement that this PE should not be an employee of the facility or have any other direct financial interest in the facility.

The U.S. General Accounting Office (GAO), in a 1989 report, "Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents" (GAO/RCED-89-85), recommended that EPA evaluate the advantages and disadvantages of

requiring facilities to obtain certification from independent engineers.

The Agency notes that not having the PE otherwise associated with the facility may avoid any potential conflicts of interest or appearance of conflicts of interest that could arise from allowing an employee of a regulated party to certify a SPCC Plan. The Agency also notes that a requirement that a PE be licensed in the State in which the facility is located would allow the State licensing board to more easily address the actions of the PE under its jurisdiction, and that the PE may have greater familiarity with the State and local requirements related to the facility under review.

The Agency notes that disadvantages associated with the above approaches have been expressed by several organizations, who object to such requirements as challenging the integrity of professional engineers. They also point out that these requirements would impose substantial costs without enhancing the integrity of the certification process.

To assist the Agency in addressing the GAO and Task Force recommendations cited above, EPA specifically solicits comments or data regarding the ramifications of requiring that the certifying professional engineer not be an employee of the owner or operator.

In addition, under the proposed rule, the Engineer must attest that required testing has been completed and that the Plan meets the requirements of regulation for the facility. These revisions promote the Agency's intent in the original promulgation of § 112.3(d) that SPCC Plans be certified by a Registered Professional Engineer exercising independent judgment. The Agency intends these new requirements to be met when a new Plan is prepared after promulgation of this proposed rule, or an existing Plan is amended, pursuant to § 112.5. During inspections for compliance with the current SPCC requirements, some facility owners and operators have argued that they have not interpreted the current regulatory language to require that the certifying Engineer physically visit the facility. EPA believes the current regulatory language (e.g., requiring the engineer to examine the facility) clearly requires the certifying Engineer to visit the facility prior to certifying the SPCC Plan. The proposed change clarifies this requirement by specifying that the Professional Engineer must be physically present to examine the facility.

As described in paragraph (e), the SPCC Plan must be available at a facility if the facility is normally

attended eight hours per day. Some owners or operators at facilities operating one shift per day have interpreted this requirement as not applying to a facility that is in operation only seven and one half hours per day, deducting a half hour for lunch. The Agency strongly believes that to be most useful in preventing and mitigating discharges, the SPCC Plan must be an integral part of manned facility operations. Therefore, the Agency has chosen a four-hour minimum attendance requirement in the proposed rule to ensure that facilities operating one shift per day are required to maintain SPCC plans at the facility.

In paragraph (f), the owner or operator of new facilities described in paragraph (b) may in defined circumstances apply for an extension of time to comply with the requirements of this part. Existing facilities described in paragraphs (a) and (c) have had since 1973 to comply with the requirement and have their SPCC Plans in place, and therefore, this provision does not apply to those facilities.

D. Section 112.4—Amendment of SPCC Plans by Regional Administrator

This section describes the review of a Plan by the Regional Administrator in the event of certain types of spills and procedures for requiring an amendment to the Plan. In proposed paragraph (a)(4), owners or operators are required to provide the Regional Administrator with information on the name and address of any registered agent. In some instances, a registered agent of the owner or operator may have information needed by the Regional Administrator. The Regional Administrator may also need to contact the agent with further questions or transmit his review of the Plan back to the agent.

In proposed paragraph (a)(10), information on the nature and volume of oil spilled is required, in addition to the information currently required. Information on the nature and volume of oil spilled provides the Agency with additional information to identify select problem areas where additional regulatory emphasis may be needed. EPA also believes that this information will assist the Regional Administrator in determining if amendment of the SPCC Plan is necessary and in determining future oil pollution prevention policies.

In proposed paragraph (b), the references to § 112.3(a), (b), and (c) have been deleted because the times allowed in these paragraphs for the preparation and implementation of the Plan are proposed for deletion.

Paragraph (c) of the current rule requires that a complete copy of all

information provided to the Regional Administrator be provided to the State agency in charge of water pollution control activities in which the facility is located. Proposed paragraph (c) would require that the information be sent to the State agency in charge of oil pollution control activities. The EPA is proposing this change because it is the appropriate agency to contact in many States.

In proposed § 112.4(d), a sentence has been added that discusses the review by the Regional Administrator of materials submitted under proposed § 112.7(d). Proposed § 112.7(d) requires, among other things, the owner or operator to submit to the Regional Administrator certain materials, such as a contingency plan, if the installation of structures or equipment listed in § 112.7(c) is not practicable.

E. Section 112.5—Amendment of SPCC Plans by Owners or Operators

EPA is proposing to revise § 112.5(a) to require that Plans be amended before any change is made in facility design, construction, operation, or maintenance affecting the facility's potential for discharge of oil into waters of the United States unless an extension has been granted by the Regional Administrator. This provision is consistent with the provision proposing that SPCC Plans for new facilities be prepared and implemented before facility operations begin. EPA is also proposing to clarify which changes require Plan amendments by listing the following types of changes as examples: (1) Commission or decommission of tanks; (2) replacement, reconstruction, or movement of tanks; (3) reconstruction, replacement, or installation of piping systems; (4) construction or demolition that might alter secondary containment structures; or (5) revision of standard operation or maintenance procedures at a facility. These examples are not an exclusive list of changes that require a Plan amendment.

The owner or operator of a facility subject to § 112.3(a), (b), or (c) is required by the current § 112.5(b) to review and evaluate the facility SPCC Plan at least every three years, and to amend the Plan within six months to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill from the facility; and (2) the technology has been field-proven at the time of the review.

The current § 112.5(c) states that, to be effective, all amendments to a facility's Plan must be certified by a

Professional Engineer in accordance with § 112.3(d). EPA is proposing an exception to this provision for any changes to the SPCC Plan emergency contact list (required by the proposed § 112.7(a)(3)(ix)). This change does not affect the technical/engineering aspects of the SPCC Plan, or the characteristics of the facility and, therefore, does not require certification by a Professional Engineer. It is important that the SPCC Plan emergency contact list be current in order to rapidly respond to spills.

F. Section 112.6—Civil Penalties for Violation of Oil Pollution Prevention Regulation

This section describes the penalties associated with failure to comply with certain listed sections of the rule. In this proposed rule, §§ 112.1(e), 112.7, 112.8, 112.9, 112.10, and 112.11 are added to the list of required provisions.

The OPA changes the penalty structure under the CWA (see Section I.C. of this preamble, Oil Pollution Act of 1990, for changes in liability limits and penalties). All violations of this regulation on or after August 18, 1990 are subject to the procedures set out in section 311 of the CWA as amended by the OPA. The Agency is reviewing the need for clarifying changes to § 112.6 and to 40 CFR part 114 in light of the OPA amendments.

G. Section 112.7—Spill Prevention, Control, and Countermeasures Plan General Requirements

The Agency is proposing to separate existing provisions of 40 CFR 112.7 into five sections (§§ 112.7, 112.8, 112.9, 112.10, and 112.11) based on facility type. Proposed § 112.7 provides general requirements for preparing SPCC Plans while §§ 112.8, 112.9, 112.10, and 112.11 address detailed Plan requirements for onshore facilities (excluding production facilities); onshore production facilities; onshore oil drilling and workover facilities; and offshore oil drilling, production, and workover facilities, respectively. The purpose of the reorganization of the current § 112.7 is for clarity and ease in using the regulation but is not intended to make substantive changes to the regulation; the new regulatory citations created by the reorganization do not by themselves require rewriting or recertification of SPCC Plans.

Section 112.3(a) of the current rule requires that SPCC Plans be prepared in accordance with § 112.7. The Agency believes, however, that clarification of the existing regulation is necessary because of confusion on the part of some owners or operators who have interpreted the current rule's use of the

words "should" and "guidelines" as indications that compliance with applicable provisions of § 112.7 is optional. The current regulation requires that all SPCC Plans be prepared in accordance with good engineering practice. The Agency originally promulgated § 112.7 (now reorganized as proposed §§ 112.7, 112.8, 112.9, 112.10, and 112.11) to require that SPCC Plans be prepared in accordance with the appropriate provisions in that section in the belief that such practices are good engineering practice for facilities described in the regulation. However, the regulatory language "should" was used in most provisions to provide flexibility for facilities with unique circumstances that could show that such practices do not represent good engineering practice.

To eliminate any misunderstanding, the words "requirements" and "shall" have generally been substituted for the words "guidelines" and "should" in the proposed revisions to §§ 112.7, 112.8, 112.9, 112.10, and 112.11.

Nevertheless, because of the differences in facility design, the Agency continues to recognize that it is not always feasible or consistent with good engineering practice to mandate the same requirements for every facility to prevent and to contain oil spills. Thus, the Agency has reviewed each of the provisions of proposed §§ 112.7, 112.8, 112.9, 112.10, and 112.11 and, where appropriate, is proposing the provision, as a recommendation for consideration by facility owners or operators in evaluating the requirements of good engineering practice.

Furthermore, as is the case in the current regulation, the proposed revision continues to provide for deviation from the requirements of § 112.7 where the owners or operators cannot meet the specific requirements set forth in the rule. A new proposed technical waiver in § 112.7(a)(2) allows for the owner or operator to provide equivalent alternate protection that is not specified in §§ 112.7(c), 112.8, 112.9, 112.10, and 112.11. EPA, in the exercise of its authority to inspect facilities and SPCC plans, of course, retains the authority to find that such alternative methods of protection do not provide equivalent protection.

In addition to clarifying language, the Agency has proposed in today's rule two other series of changes. First, the Agency has specified many of the inspection and monitoring time periods referred to in §§ 112.7, 112.8, 112.9, 112.10, and 112.11. In the current rule, many time periods are determined by the owner or operator and listed in the SPCC Plan, in accordance with good

engineering practice. The Agency is proposing to define most of the time periods, while leaving only a few to interpretation by the owner or operator. By specifying time periods based on engineering practice, the Agency intends to provide the regulated community with greater certainty concerning its obligations. However, because of the diversity of facilities subject to this regulation, not all time periods can be standardized based on engineering practice.

Second, in various places in §§ 112.8 and 112.9 of the proposed rule, recommendations have been added to follow relevant industry standards or recommended practices, such as API series 12, 620, 650, and 2000; ASME B31.3, B96.1, and section VIII; NFPA 30, 31, and 31a; and UL 142. While the proposed rule does not specifically incorporate these standards, the Agency believes that adherence to appropriate industry standards is, in most cases, strong evidence of adherence to good engineering practice. The Agency recommends that these publications and others on recommended practices and procedures be consulted when developing a Plan.

The following discussion focuses on revised provisions, new requirements, and new recommendations in each paragraph in proposed § 112.7.

In § 112.7(a) of the current rule, facilities are required to include in the Plan information about spill events occurring prior to the effective date of the original Oil Pollution Prevention rule (1973). Because such information has little current relevance, the provision is proposed to be deleted. Proposed paragraph (a) includes a general description of the SPCC Plan, which is in the introductory text of § 112.7 of the current rule. Four new paragraphs have been proposed for addition to paragraph (a).

In proposed paragraph (a)(2), deviation from the requirements of paragraph (c) of this section and the requirements of §§ 112.8, 112.9, 112.10, and 112.11, which apply to a specific facility and which include specific provisions for structures and equipment, is allowed, as long as that equivalent protection is provided by other means. This provision is intended to provide much of the flexibility to incorporate differences in a diverse regulated community that was previously intended by the use of the regulatory language "should." Taken together with provisions clearly defined as requirements, this provision provides a clearer description of the Agency's

expectations for the purposes of Plan preparation.

Proposed paragraph (a)(3) clarifies the characteristics of a facility that must be described in the Plan, including unit-by-unit storage capacity, type and quantity of oil stored, estimates of quantity of oils potentially discharged, possible spill pathways, spill prevention measures, spill control measures, spill countermeasures, provisions for disposal of recovered materials, and a contact list with appropriate phone numbers. The description of the facility's physical plant must also include a facility diagram on which the location and contents of all tanks must be marked, regardless of whether the tanks are subject to all the provisions of 40 CFR part 280. A complete facility diagram will assist in response actions.

Proposed paragraph (a)(4) requires documentation in the Plan to enable a person reporting a spill to provide essential information (based on Agency experience) to organizations on the contact list. As the result of Agency experience during emergency conditions, proposed paragraph (a)(5) requires that portions of the Plan describing procedures to be used in emergency circumstances be organized in a manner to make them readily useable in an emergency.

Paragraph (b) of the proposed rule (§ 112.7(b) of the current rule) changes the "should" to "shall" for purposes of clarification. Section 112.7(c) of the current rule lists appropriate containment and diversionary structures and requires that dikes, berms, or retaining walls be sufficiently impervious to contain spilled oil. A proposed revision to this paragraph clarifies that the entire containment system, including walls and floor, must be impervious to oil for 72 hours. EPA believes that the specificity of a 72-hour standard provides the regulated community with greater clarification and flexibility than the phrase "sufficiently impervious" currently in the regulation.

The Agency recognizes that spills occur while facilities are unattended; however, EPA believes that most facilities are attended at some time during a 72-hour period. Therefore, a containment system that is impervious to oil for 72 hours will allow time for discovery and removal of an oil spill in most cases. This requirement is consistent with the provision for diked areas surrounding bulk storage tanks in proposed § 112.8(c)(2). Another proposed revision to this paragraph clarifies and further defines the phrase "containment system that is impervious to oil" as being a system constructed so

that spills will not permeate, drain or infiltrate or otherwise escape to surface waters before cleanup occurs.

The Agency is aware that for certain facilities, such as some electrical substations that have gravel beds surrounding equipment to prevent electrical and fire hazards, compliance with proposed § 112.7(c) may not be practicable. For these facilities, § 112.7(d) of the current rule describes the procedures for facilities where the installation of structures and equipment listed in paragraph (c) is not practicable. The Agency believes that the alternative requirements of § 112.7(d) provide the regulated community with additional flexibility on complying with the Oil Pollution Prevention regulation while fulfilling the intent of the CWA.

The proposed rule would add several new requirements. First, facilities would be required to conduct integrity testing of tanks every five years at a minimum. This is in contrast to the proposed requirement in § 112.8(c)(6) for integrity testing of tanks every ten years at facilities that are able to incorporate secondary containment features. In addition, the proposed rule would require facilities without secondary containment to conduct integrity and leak testing of the valves and piping every year at a minimum. Annual testing has been proposed because valve and piping system failures are a major contributor to oil spills.⁵

The current § 112.7(d) requires that a strong oil spill contingency plan and a written commitment of manpower, equipment, and materials for spill control and removal be provided for facilities without secondary containment. Since these facilities do not have oil spill technology that uses secondary containment, prevention and countermeasures become of primary importance and these measures will have to be implemented immediately to prevent spills from reaching navigable waters. Proposed paragraph (d) clarifies that the contingency plan must be provided to the Regional Administrator. In addition, proposed paragraph (d) references proposed § 112.4(d), allows the Regional Administrator to approve the Plan or require amendment of the Plan.

The contingency plan is a subsection of an SPCC Plan. An SPCC Plan can be divided into two major concepts: (1) Design, operation, and maintenance procedures to prevent and control spills, and (2) how a facility's personnel are to

respond to a discharge. The contingency plan is designed to deal with the second concept. It is proposed that the contingency plan shall be a separate section of the SPCC Plan because it would be more accessible during emergencies.

One of the first steps in developing a contingency plan is to define the potential hazard. Requirements to define a hazard are in § 112.7(b). Typically, to determine the potential hazard, the following would be examined: Potential failures, the size of a spill resulting from each type of failure, how fast and long the spill event would take to occur, and what the spill might impact. To determine what the spill may impact, the potential spill size, rate of flow, and direction of travel needs to be analyzed. The OPA requires facilities that pose a substantial threat or harm (e.g., facilities without secondary containment) to the navigable waters to prepare a facility specific response plan. This requirement will be addressed in Phase II revisions to the SPCC regulation.

Paragraph (d)(1) of the current rule states that an oil contingency plan must follow the provisions of 40 CFR part 109. The proposed paragraph no longer refers to 40 CFR part 109, but, specifies basic requirements for an oil contingency plan. The proposed revisions to this paragraph would require that the Plan include a description of response plans, personnel needs, methods of mechanical containment, removal of spilled oil, and access and availability of sorbents, booms, and other equipment. Proposed paragraph (d)(1) would require that the Plan not rely upon response methods other than containment and physical removal of oil from the water, unless such response methods have been approved for the contingency plan by the Regional Administrator. The additional approval for the actual use of dispersants and other chemicals to respond to oil spills in navigable waters would continue to be governed by 40 CFR part 300, subpart J of the National Contingency Plan.

Proposed paragraph (d)(2) contains a recommendation that the facility owner or operator consider factors such as financial capability in making the written commitment of manpower, equipment, and materials.

Section 112.7(e) of the existing regulation lists the provisions specific to various types of facilities. This section has been reorganized and divided into §§ 112.8, 112.9, 112.10, and 112.11. The remaining paragraphs in proposed in § 112.7 are discussed below.

Proposed Section 112.7(e): Inspection, tests and records. This is § 112.7(e)(8) in

⁵ Twelve percent of all releases are caused by pipe leaks and valve failures. "Aboveground Storage Tank Incident Information Project." API. Washington, DC, December 20, 1988.

the current regulation. A facility should continually conduct self-inspections and regular maintenance on its equipment. In the proposed rule, all records of inspections and tests are to be maintained with the SPCC Plan because these records need to be readily accessible to EPA personnel and the certifying PE. The proposed rule changes from three to five years the period for which records of inspections and all test results (along with the written procedures for performing the inspections and tests) must be maintained with the SPCC Plan. The records of tests, inspections, and maintenance should be updated continuously. If these records were part of the Plan, as stated in the existing rule, the Plan would need to be amended each time old records were removed and new records added. The use of "maintained with" is intended to eliminate this problem.

The proposed rule change from three to five years for retention of records of inspections, test results, and written procedures for performance is consistent with the Federal statute of limitations on assessment of civil penalties for SPCC regulatory violations. Extending this requirement to five years will ensure that facility owners or operators have records needed to establish compliance with the Oil Pollution Prevention regulation. The provision requiring inclusion of all records of test results is a clarification of what inspections include.

Proposed § 112.7(f): Personnel, training, and spill prevention procedures. This section is § 112.7(e)(10) in the current regulation. Included in this section are requirements for training facility personnel. A new recommendation that training exercises be conducted yearly and that new employees be trained within their first week of work is proposed in § 112.7(f)(1). A high percentage of spills are caused by operator error, therefore, training and briefings are important for the safe and proper functioning of a facility. Training encourages up-to-date planning for the control and response to a spill. Training courses help sharpen operating and response skills, introduce the latest ideas and techniques, and promote contact with the emergency response organization and familiarity with the SPCC Plan. Refresher training must be carried out in a consistent and regular manner to ensure currency and capability of employees. New employees may have a higher probability for operation errors and, therefore, need training as soon as possible after their employment. Facility

training in emergency response operations could be held in conjunction with local contingency planning efforts in accord with SARA Title III requirements.

Proposed § 112.7(g): Security (excluding oil production facilities). This section is § 112.7(e)(9) in the current regulation. Requirements for fencing, locks, lighting, and other security measures at facilities are described in this section.

Vandalism is a factor in many spills from facilities, therefore, there is a need for adequate and effective security to prevent access to the site by unauthorized persons and to prevent tampering with equipment and tanks. Paragraph (e)(9)(ii) of the current rule requires that master flow and drain valves be securely locked in the closed position when in non-operating or non-standby status. Because of changes in technology and the use of manual and electronic valving, the Agency believes that this provision should be clarified to require closure of valves; however, the method of securing valves is left to the discretion of the facility and good engineering practice, as described in proposed § 112.7(g)(2).

Paragraph (e)(9)(iv) of the current rule requires that the loading/unloading connections of oil pipelines be securely capped or blank-flanged when not in service or stand-by service for an extended time. Proposed paragraph (g)(4) clarifies "an extended time" to be a time greater than "six months." This time period is based on experience in the Regions. Regional personnel found that some spills were caused by loading or unloading oil through the wrong pipeline or turning the wrong valve when the pipeline in question was actually out-of-service. Since this rule applies to facilities and tanks operating seasonally and since a number of loading/unloading connections are used seasonally, a period of six months is proposed.

Proposed § 112.7(h): Facility tank car and tank truck loading/unloading rack (excluding offshore facilities). This section is § 112.7(e)(4) in the current regulation. Because many onshore facilities subject to the SPCC regulation have tank car and tank truck loading/unloading racks, this paragraph was kept in the general applicability section.

Proposed § 112.7(i). This section references conformance with the applicable provisions in proposed §§ 112.8, 112.9, 112.10, and 112.11 and if more stringent, with State rules, regulations, and guidelines.

H. Section 112.8: Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Facilities (Excluding Production Facilities)

This section combines §§ 112.7(e)(1), 112.7(e)(2), and 112.7(e)(3) of the current regulation. The word "plant" is changed to "facility" to clarify EPA's intent. Current § 112.7(e)(1) discusses facility drainage systems and is proposed to be renumbered as paragraph (b).

Proposed § 112.8(b)(3) clarifies that only undiked areas of a facility's property that are located such that they have a reasonable potential to be contaminated by an oil spill are required to drain into a pond, lagoon, or catchment basin. A good SPCC Plan should seek to separate reasonably foreseeable sources of contamination and non-contamination.

In proposed § 112.8(b)(4), "plant drainage" is changed to "facility drainage"; "ditches" is changed to "drainage" to clarify the meaning of the section. It is proposed that spilled oil shall be retained in the plant rather than returned to the plant. This change follows the spill prevention and control intent of this rule. Furthermore, it should be easier to retain spilled oil rather than retrieve oil that has been spilled and discharged from the facility. This should enhance efforts to prevent the discharge from reaching navigable waters.

Current § 112.7(e)(i)(v) is proposed as § 112.8(b)(5) and has been reworded to improve its clarity.

Proposed § 112.8(b)(6) includes a clarification that compliance with the SPCC regulation does not preclude the need for owners or operators to comply with the requirements of Federal, State and local agencies such as those for facilities in areas subject to flooding. The Plan should address these additional measures related to flooding. This is consistent with the FEMA promulgated requirements in 44 CFR part 60 for aboveground storage tanks located in flood hazard areas. For further discussion of FEMA's flood plain management requirements, see section IV.E. of this preamble.

Current § 112.7(e)(2) discusses bulk storage containers and is proposed to be renumbered as § 112.8(c). Proposed § 112.8(c)(1) contains a new recommendation that tanks conform with relevant industry standards as "good engineering practice". Paragraph (e)(2)(ii) of the current rule requires that tank installations include a secondary means of containment for the contents of the largest single tank and sufficient freeboard to allow for precipitation. Although the current rule and the

proposed revisions do not set a standard for "sufficient" freeboard, EPA recommends freeboard sufficient to contain a 25-year storm event. Certain facilities may have equipment such as electrical transformers that contain significant quantities of oil for operational purposes rather than storage purposes. EPA has determined for safety and other considerations that such oil filled equipment should not be subject to the provisions of proposed § 112.8(c) or § 112.9(d) addressing bulk storage containers at onshore facilities because the primary purpose of this equipment is not the storage of oil in bulk. Consequently, facilities with equipment containing oil for ancillary purposes do not need to provide secondary containment for this equipment nor implement the other provisions of proposed § 112.8(c) or § 112.9(d). Oil-filled equipment must meet other applicable SPCC requirements including the general requirements and the requirements of § 122.7, including § 112.7(c), to provide appropriate containment and or diversionary structures to prevent discharged oil from reaching a navigable water course. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also meet the goals of section 311(j)(1)(c) of the CWA. The oil storage capacity of the equipment, however, must be included in determining the total storage capacity of the facility, which determines whether a facility is subject to the Oil Pollution Prevention regulation. The Agency believes that this interpretation will ensure that facilities containing oil storage capacity above the quantity cut-offs prepare SPCC Plans while, at the same time, recognizing that certain types of equipment use oil in specialized ways for which the provisions of proposed § 112.8(c) or § 112.9(d) are not necessary.

The SPCC Plan, however, will not require that specific oil spills prevention measures designed for storage tanks, such as dikes, be installed. EPA also solicits comments and data that might identify operational rather than storage uses of oil, other than electrical transformers, for facilities that may not currently use secondary containment as a common industry practice.

The current rule also requires that diked areas must be sufficiently impervious to contain spilled oil. The proposed § 112.8(c)(2) clarifies that these diked areas must be able to contain spilled oil for at least 72 hours

(see previous discussion of § 112.7(c) in this preamble).

Current paragraph (e)(2)(iv) addresses underground metallic storage tanks and is proposed to be renumbered as § 112.8(c)(4). Because tanks currently subject to the technical requirements of the UST regulation (40 CFR part 280) would be generally exempted from SPCC requirements under proposed § 112.1(d)(4), proposed § 112.8(c)(4) would only apply to tanks not covered by the UST requirements.

Paragraph (e)(2)(iv) in the current rule requires buried tanks to be subjected to regular pressure testing. Under proposed § 112.8(c)(4), regular leak testing is recommended for such tanks. Leak testing is specified, rather than pressure testing, in order to be consistent with many State regulations. The Agency is not proposing to require leak testing under the Oil Pollution Prevention rule until further data are generated. The Agency is aware that this technology is evolving rapidly with new volumetric testing designs, acoustic detection methods, and tracer gas techniques in various stages of commercial development. EPA's Office of Underground Storage Tanks will be reviewing these new techniques and subsequently may issue technical requirements for tanks for which technical provisions under 40 CFR part 280 are currently deferred. These technical provisions may be incorporated into this regulation.

Under § 112.7(e)(2)(v) of the current rule, partially buried metallic tanks are to be avoided unless the shell is coated. Under proposed § 112.8(c)(5), it is recommended that partially buried or bunkered metallic tanks be avoided altogether. If such tanks are used, however, they must be protected from corrosion by coatings, cathodic protection, or other methods. This proposed provision is consistent with the requirements for completely buried tanks.

Paragraph (e)(2)(vi) of the current rule requires that aboveground tanks be subject to periodic integrity testing and lists suggested testing techniques. Proposed § 112.8(c)(6) specifies that the testing must be performed every ten years and when material repairs are conducted. An example of such testing is a full hydrostatic test performed when a tank is reconstructed or when the tank has undergone major repairs or major alterations. A major repair or alteration may include removing or replacing the annular plate ring, replacement of the tank bottom, or jacking of a tank shell. EPA believes that a ten-year testing interval is standard industry practice

although many types of tanks, such as those storing types of crude oil, may require more frequent testing. In addition to hydrostatic testing, visual testing, and a system of non-destructive shell testing, as listed in the current rule, the Agency recommends such techniques as radiographic, ultrasonic, or acoustic emissions testing for testing the integrity of aboveground tanks. The Agency does not believe that visual tests alone are sufficient for an integrity test, and that they should be used in combination with the aforementioned techniques.

Studies of the Ashland oil spill suggest that the tank collapse resulted from a brittle fracture in the shell of the tank. Adequate fracture toughness of the base metal of existing tanks is an important consideration in spill prevention, especially in cold weather. Although no definitive non-destructive test exists for testing fracture toughness, the API 650 standard establishes material toughness criteria that reduce the risk of brittle fracture; therefore, the Agency recommends that this standard be used as a starting point.

Section 112.7(e)(2)(vii) of the current rule discusses the factors to be considered to control leakage from defective internal heating coils. Under paragraph (e)(2)(vii)(A) of the current rule, steam return or exhaust lines from internal heating coils that discharge into an open water course must be monitored or passed through a settling tank, skimmer, or other separation or retention system. In proposed § 112.8(c)(7)(i), the Agency recommends that these systems be designed to hold the entire contents of the affected tank, be of sufficient size to contain a spill that may occur when the system is not being monitored, or have fail-safe oil leakage detectors. The revision in proposed § 112.8(c)(7)(ii) clarifies that consideration of the feasibility of installing an external heating system is a discretionary provision.

Paragraph (e)(2)(viii) of the current rule lists several devices to ensure that new and old tank installations are fail-safe engineered; one or more of these devices is required at a facility. Testing frequency of these devices may vary depending on the type of sensor and the manufacturer. The Agency is not specifying a time frame for testing sensing devices, but recommends regular testing in accordance with manufacturer specifications and schedules. Proposed § 112.8(c)(8)(v) allows for the use of other newly developed sensing devices if these devices will provide equivalent protection consistent with § 112.7(a).

Paragraph (e)(2)(x) of the current rule requires that oil leaks from tank seams, gaskets, rivets, and bolts sufficiently large to cause accumulation of oil in diked areas be promptly corrected. Proposed § 112.8(c)(10) adds a requirement that the accumulated oil or oil-contaminated materials must be removed within 72 hours from the time the spill event occurs. This time frame is consistent with the requirement for diked areas as specified in proposed § 112.7(c).

Paragraph (e)(2)(xi) of the current rule discusses the requirements for mobile or portable oil storage tanks. In proposed § 112.8(c)(11), it is recommended that these systems have a secondary means of containment for the largest container. Since many mobile and portable tanks are sited for a short duration at construction sites and moved frequently from location to location, EPA recognizes that it will not always be feasible to have secondary containment. If it is not technically feasible, the SPCC plan should include a complete discussion of why it is not feasible, and state the countermeasures to be used in case of a spill.

Section 112.7(e)(3) of the current regulation discusses facility transfer operations, pumping, and in-plant process and is proposed to be renumbered § 112.8(d). The current § 112.7(e)(3)(i) requires that buried piping installations have a protective coating and be cathodically protected if soil conditions warrant. Proposed § 112.8(d)(1) requires protective coating and cathodic protection for new or replaced buried piping, regardless of soil conditions. Based on EPA experience, the Agency believes that all soil conditions warrant protection of buried piping. However, the Agency is not requiring currently in-place buried piping to have a protective wrapping and be cathodically protected. The owner or operator of a facility in the past may have determined that soil conditions do not warrant these protection methods. Further, the Agency also believes that the activities associated with replacing all unprotected buried piping would possibly cause more spills than it would prevent. The proposed paragraph would allow facilities the option of complying with other corrosion protection standards for piping specified in 40 CFR part 280.

In proposed § 112.8(d)(1), it is recommended that piping installations shall be placed aboveground whenever possible. The Agency encourages the placement of these installations in leak-proof galleys that feed to the facility's

oil/water separator. Paragraph (e)(3)(ii) of the current rule requires that the terminal connection of oil pipelines be securely capped or blank-flanged when not in service or in stand-by service for an extended time. Proposed paragraph (d)(2) clarifies "an extended time" to be "six months or more."

Proposed § 112.8(d)(4) clarifies that all aboveground valves, piping, and appurtenances must be subjected to monthly examinations. In the current rule, this provision requires "regular" examinations of "aboveground valves and pipelines" only. It has been the Agency's experience that other appurtenances may be a major cause of oil spills and should be regularly examined. The current rule also suggests that periodic pressure testing may be warranted for piping in certain areas. The proposed rule recommends that facilities conduct annual integrity and leak testing of buried piping or monitor buried piping monthly following the monitoring requirements of 40 CFR part 280. In addition, records of this testing or monitoring are to be maintained for a period of at least five years (see section III.G., and § 112.7(e)). The Agency recommends that all valves, pipes, and appurtenances conform to relevant industry codes, such as ASME Standards.

Proposed § 112.8(d)(5) adds a recommendation that facilities post vehicle weight restriction to prevent damage to underground piping.

1. Section 112.9: Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Production Facilities

This section is § 112.7(e)(5) in the current regulation. Paragraph (e)(5)(ii)(B) of the current rule requires that accumulations of oil from ditches, oil traps, sumps, or skimmers be removed. Proposed § 112.9(c)(2) clarifies that oil-contaminated soil, as well as accumulation of oil, must be removed. EPA encourages facilities to remove such accumulations immediately, or within the 72 hour required period if immediate removal is not feasible. EPA recognizes that many production facilities are not staffed during a given 72 hours, and therefore cleanup and discovery times may lag. EPA solicits comments on the appropriate amount of time for discovery and removal of spilled oil at production facilities. Proposed § 112.9(c)(3) is a new recommendation, for oil production facilities in areas subject to flooding, that the Plan address additional precautionary measures related to flooding. FEMA's requirements for aboveground storage tanks located in

flood hazard areas are discussed in Section IV. E. of this preamble.

Proposed § 112.9(d)(1) contains a recommendation that tanks conform with relevant industry standards, similar to the recommendation in proposed § 112.8(c). Paragraph (e)(5)(iii)(B) in the current rule requires secondary containment for the contents of the largest single tank, if feasible; the proposed revision in § 112.9(d)(2) clarifies that the containment must include sufficient freeboard to allow for precipitation. Agency experience has determined that freeboard for precipitation at production facilities to be very important because these facilities are frequently left unattended and water is more likely to accumulate in diked areas. Paragraph (e)(5)(iii)(C) of the current rule requires that production tanks must be visually examined on a scheduled periodic basis. Proposed § 112.9(d)(3) clarifies that the examination must occur at least once a year. It is also proposed that facility owners and operators be required to maintain the schedule and records for examinations of tanks for a period of five complete years, irrespective of changes in ownership (see Section III.G., and § 112.7(e)).

Paragraph (e)(5)(iv)(A) of the current rule requires that aboveground valves and piping be examined periodically on a scheduled basis. Proposed § 112.9(e)(1) clarifies that the examination must occur monthly, that the schedule of examinations must be included in the SPCC Plan, and that records must be maintained for five years (see Section III.G., and § 112.7(e)). EPA has found that failures in a facility's internal piping system are a major cause of oil spills. The Agency believes that monthly examinations will prove effective in the discovery and remediation of potential problems. Paragraph (e)(5)(iv)(B) of the current rule requires oil field brine disposal facilities to be examined often. EPA is not proposing a change to this requirement because the circumstances of location and staffing schedules vary greatly for such facilities. EPA, however, suggests that weekly examination will be an appropriate engineering standard for most facilities. Low temperature conditions, sudden temperature changes, or periods of low flow rates may require more frequent inspections.

Paragraph (e)(5)(iv)(C) of the current rule requires production facilities to have a program of flowline maintenance at the facility's transfer operations. EPA is proposing to change this requirement to a recommendation because the circumstances of locations, staffing, and design vary greatly for production

facilities. EPA suggests that monthly examinations are appropriate for most facilities.

J. Section 112.10: Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Drilling and Workover Facilities

This section is § 112.7(e)(6) in the current rule and includes requirements for onshore oil drilling and workover facilities. Paragraph (e)(6)(i) of the current rule requires that mobile drilling or workover equipment be located so as to prevent spilled oil from reaching navigable waters.

Proposed § 112.10(d) requires that "when necessary," a blowout prevention assembly and well control system be installed that is capable of controlling any anticipated wellhead pressure that is expected to be encountered while that blowout assembly is on the well. EPA recognizes that a blowout prevention assembly is not necessary where pressures are not great enough to cause a blowout (gauge negative) and need not be required in all cases. However, a gauge negative reading must be evaluated in conjunction with an examination of the known history of the pressures encountered when drilling on the oil reservoir. The history of the reservoir may indicate that a blowout prevention assembly and well control system is needed. Where the history of the reservoir is not known, then a blowout prevention assembly and well control system must be installed.

K. Section 112.11: Spill Prevention, Control, and Countermeasures Plan Requirements for Offshore Oil Drilling, Production, or Workover Facilities

This section is § 112.7(e)(7) in the current regulation and includes the requirements for offshore oil drilling, production, and workover facilities. The definition of these facilities has been moved to § 112.2 (j). Numerous other editorial changes have been made to clarify the intent of this section.

As indicated in § 112.11(b) of this proposed regulation, offshore oil drilling, production, and workover facilities that are subject to the Operating Orders, notices, and regulations of the MMS are not subject to this part. Paragraph (e)(7)(ii) of the current rule requires removal of oil in collection equipment as often as necessary to prevent overflow. The proposed § 112.11(c) has been amended to require removal of collected oil at least once a year. EPA believes that yearly oil removal will prevent buildup of accumulated oils. A protracted removal period could lead to an accidental excess buildup and resultant overflow.

Paragraph (e)(7)(iii) of the current rule requires a regularly scheduled maintenance program for the liquid removal and pump start-up device. Because offshore facilities have less ability to control spills in navigable waters than onshore facilities, their containment devices are particularly important. In the proposed § 112.11(d), "regularly scheduled" is clarified as "monthly."

With regard to corrosion protection in proposed § 112.11(h), the Agency recommends that the appropriate NACE standards be followed in determining suitable corrosion protection for tanks. Proposed § 112.11(j) cites simulated spill testing as a preferred method to test and inspect oil spill prevention equipment and systems. Experience has demonstrated that properly maintained and functioning pollution prevention equipment is the most cost-effective way to control oil spills. These systems are crucial at offshore oil drilling, production, and workover facilities where a reduced ability to prevent oil from reaching navigable waters exists. Therefore, proposed § 112.11(j) has also been revised to require scheduled periodic testing and inspection of pollution prevention equipment not less than monthly.

Paragraph (e)(7)(x) of the current rule requires the owner or operator to describe well shut-in valves and devices and to keep detailed records for each well. Proposed § 112.11(k) clarifies that this documentation must be maintained at the facility for a period of no less than five years (see Section III.G. and § 112.7(e)).

Paragraph (e)(7)(xii) of the current rule describes extraordinary well control measures for emergency conditions. In proposed § 112.11(m), such measures are restated as recommendations. Further measures will be examined in the context of spill contingency planning. Contingency planning will be a major topic of the Phase Two rulemaking and the provisions in this proposed paragraph will be reviewed at that time.

The order of sections in the current § 112.7(e)(7)(xiii) has been changed for clarity. Section 112.7(e)(7)(xiii) of the current rule is proposed to be renumbered as § 112.11(s), and paragraphs (e)(7)(xiv) through (e)(7)(xviii) of the current rule are proposed to be renumbered as § 112.11 (n) through (r), accordingly.

IV. Relationship to Other Programs

A. Underground Storage Tanks

A number of underground and aboveground petroleum storage tanks (as defined by the proposed revisions to

40 CFR part 112) are subject to both the Oil Pollution Prevention regulation and the UST regulation (40 CFR part 280) issued under subtitle I of the Resource Conservation and Recovery Act (RCRA).

A goal of both the SPCC and UST programs is to prevent releases of petroleum, although there are differences in applicability, approach, and the regulated community. For example, the current Oil Pollution Prevention regulation is applicable to the owners or operators of facilities: (1) Possessing either underground storage capacity greater than 42,000 gallons of petroleum (or any other oil), or total aboveground storage capacity greater than 1,320 gallons of oil (or greater than 660 gallons of oil in a single aboveground tank); and (2) that, because of their location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. The UST regulations apply to owners or operators of underground petroleum tank systems (as defined in 40 CFR part 280) that have a volume at least ten percent beneath the surface of the ground. (The UST program also regulates underground storage tanks containing hazardous substances as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA)).

In addition, the SPCC program is designed to protect surface waters, whereas the UST program under RCRA subtitle I is intended, in part, to provide protection for ground water. Finally, the regulatory focus of the SPCC and UST programs currently differs significantly as they relate to underground storage tanks. The SPCC program regulates facilities with relatively large underground storage capacity, whereas the bulk of the currently regulated universe under the UST technical standards (40 CFR part 280) is small-capacity USTs at facilities such as gasoline filling stations. Because EPA believes that the UST program offers equivalent protection, EPA is proposing to exclude from SPCC coverage (with two limited exceptions described below) underground storage tanks that are covered by all of the UST program provisions in 40 CFR part 280.

It is important to note that application of the technical standards under the UST regulation has been deferred for several types of UST systems, including systems with field-constructed tanks (40 CFR 280.10(c)(5)). Therefore, such systems are not "subject to all of the UST provisions" and, thus, are subject to SPCC requirements under this

proposal. Further, this exclusion from SPCC coverage for underground storage tanks subject to all UST program provisions is limited to USTs meeting the proposed SPCC regulation definition of an underground storage tank, i.e., a tank completely covered with earth. The definition used in the UST program, 40 CFR part 280, is broader and includes partially buried tanks. The SPCC program proposes to regulate any tanks that are not completely buried because tanks with exposed surfaces exhibit a greater potential to discharge into navigable waters of the United States and other surface waters. Thus, a facility may have some tanks that are exempt from SPCC requirements and some tanks that are not exempt.

The applicability of 40 CFR part 112 is limited to facilities with underground or aboveground capacity as previously outlined (i.e., facilities possessing underground oil storage capacity greater than 42,000 gallons, total aboveground oil storage capacity greater than 1,320 gallons, or oil storage capacity greater than 660 gallons in a single aboveground tank). As a result of the proposed exclusion from SPCC program coverage for tanks currently subject to all UST program provisions in 40 CFR part 280, the calculation of a facility's underground storage capacity should not include those tanks.

Finally, there is a qualification in this proposed rule that affects the general exclusion for USTs currently regulated under 40 CFR part 280. Although an UST may be exempt from the SPCC requirements, if the facility has non-exempt tanks for which it must prepare a facility SPCC Plan, the location and contents of the exempt tanks must be marked on the facility diagram. All tanks must be marked on the facility diagram so that response personnel are able to easily identify dangers from either fire or explosion, or physical impediments during spill response activities. In addition, facility diagrams may be referred to in the event of design modifications.

B. State Programs

State and local governments are encouraged to supplement the Federal SPCC program using their own authorities. An increasing number of States have established or are considering State-authorized oil pollution prevention programs. Some of the State programs have imposed requirements more stringent than the Federal requirements or have added new requirements, such as tank licensing, tank standards, and location specifications. In addition, many States are currently assessing the adequacy of

related programs or are considering legislation on aboveground oil storage tanks. Compliance with the SPCC program requirement does not alleviate the responsibility of owners and operators of affected facilities to comply with these various State requirements.

C. Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III Integration With Local Emergency Planning

Section 311 of the CWA does not authorize EPA to delegate elements of the SPCC program to the States. The Agency does recognize, however, that local officials, such as fire marshals, frequently inspect the installation of aboveground storage tanks to enforce local codes and are often the first on-scene responders to oil spills. Therefore, to ensure better local involvement and awareness of a potentially harmful spill, the Agency is proposing to require that the facility SPCC Plan include telephone numbers to contact various local authorities. The Agency believes that this contact list will aid in emergency planning and response in the event of an oil spill.

Beyond this, coordination between Federal/State/local agencies is possible through additional authorities—in particular, sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or SARA Title III (42 U.S.C. 11021, 11022). These provisions require facilities that are directed to prepare or have available material safety data sheets (MSDSs) under regulations of the Occupational Safety and Health Administration (OSHA), to submit MSDSs and annual inventory data for "hazardous chemicals" to State Emergency Response Committees (SERCs). Local Emergency Planning Committees (LEPCs), and fire departments, if the amount present on site at any time exceeds specified threshold levels. Petroleum products fall within the definition of "hazardous chemicals" under SARA Title III. This reporting requirement affects all types of facilities.

Beyond State-authorized oil pollution prevention programs, the community right-to-know requirements of sections 311 and 312 of SARA Title III can be an effective component of State and local involvement in spill prevention and control activities. Specifically, by receiving MSDSs for all petroleum and other hazardous chemical facilities, the LEPC, using hazard analysis techniques, can establish priorities for addressing hazards in the community. Instead of addressing a regulated population of over 400,000 facilities, as the Federal government does in the SPCC program,

each LEPC can identify and focus on a smaller population of priority local facilities in evaluating preparedness and available response resources and preparing a local emergency response plan, thus supplementing and complementing the Federal SPCC program, and later, local area committee plans. The LEPC, industries, and other interest groups can develop a constructive dialogue that assists in developing prevention techniques and identifying procedures for responding to releases. EPA expects to work closely with States to develop mechanisms for sharing information about facilities and oil spills to improve the protection of navigable waters from discharges of oil, and human health and the environment.

In addition to coordination among Federal, State, and local regulatory entities under SARA Title III, facility owners or operators should ensure that their contingency plans, developed under the SPCC regulations, are compatible and coordinated with local emergency plans, including those developed under SARA Title III. As discussed in Section II of this preamble, although the proposed revisions to the SPCC regulation do not amend materially the contingency planning requirements contained in the existing regulation, EPA will address this issue in depth in the Phase Two modifications to the regulation. To implement the provisions of the OPA, EPA will propose to require certain facilities to prepare and submit a plan for responding, to the maximum extent practicable, to the largest foreseeable discharge in adverse weather conditions. Under the current regulation, facilities are required to implement a contingency plan when it is impracticable to implement certain oil spill prevention practices.

D. Wellhead Protection

Compliance with the requirements of section 311 of the CWA and their facility's SPCC Plan does not alleviate the need for facility owners or operators to be in compliance with State Wellhead Protection (WHP) programs required by section 1428 of the Safe Drinking Water Act (SDWA). Many public water supply wells are located in permeable formations bordering streams or surface waters, which at times recharge these surface waters. These wells may be vulnerable to contamination if an oil spill should occur and, therefore, may require added protection. WHP programs are designed to protect public water-supply wells located in these type of settings.

Section 1428 of the SDWA requires that each State adopt and submit to

EPA, a WHP program that, at a minimum:

- Specifies the duties of State agencies, local government entities, and public water supply systems with respect to the development and implementation of programs;
- For each wellhead, determines the wellhead protection area (WHPA), as defined in section 1428(e), based on all reasonably available hydrogeologic information;
- Identifies within each WHPA all potential anthropogenic sources of contaminants that may have adverse effects on human health;
- Describes a program that contains, as appropriate, technical and financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within WHPAs from contaminants;
- Includes contingency plans for the provision of alternative drinking water supplies in the event of contamination;
- Includes a requirement to consider all potential sources of such contaminants within the expected wellhead area of a new water well, which serves a public water supply system; and
- Includes a requirement for public participation in the development of the WHP program.

At this time, EPA has received WHP submittals for review from 30 States. This proposed rule indicates that owners and operators must comply with both the State WHP program and the SPCC regulations. Meeting the requirements of the SPCC program does not necessarily ensure compliance with a State WHP program.

E. Flood-Related Requirements

In § 112.8(b)(6) and § 112.9(c)(3) of the proposed rule, it is recommended, in accordance with Executive Order 11988, Floodplain Management, that the SPCC Plan address precautionary measures for facilities in locations subject to flooding. The National Flood Insurance Program (NFIP) definition of structures includes aboveground oil storage tanks. At a minimum, acceptable mitigation measures are specified in Executive Order 11988 and reference the NFIP's flood loss reduction standards; those standards should be addressed in the SPCC Plan for aboveground storage tanks located in a flood hazard area. Standards for newly constructed or substantially improved aboveground storage tanks are contained in 44 CFR 60.3.

NFIP requires, among other things, that tanks be designed so that the

lowest floor is elevated to or above the base flood level or be designed so that the structure below the base level is watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads, and with the capability to resist effects of buoyancy. For structures that are intended to be made watertight below the base flood level, a Registered Professional Engineer must develop and/or review the structural design, specifications, and plans for construction, and certify that they have been prepared in accordance with accepted standards of practice.

Additionally, the NFIP has specific standards for coastal high hazard areas. Existing tanks located in coastal high hazard areas will be subject to high velocity waters, wave action, and the accompanying potential for severe erosion and scour. Retrofitting measures for tanks should be tailored to the unique hazards of the coast and may include flood protection works, floodproofing, and other modifications to facilities that will reduce the damage potential. In complying with the requirements of the SPCC regulation while developing a SPCC Plan, owners or operators are encouraged to consider and comply with the requirements in 44 CFR 60.3.

F. Occupational Safety and Health Administration

A number of aboveground storage tanks are subject to OSHA requirements under 29 CFR 1910.106. OSHA regulates occupational settings where flammable and combustible liquids are present. Requirements for tanks and ancillary equipment, secondary containment, inspections and testing, and contingency planning are set forth in the OSHA regulations.

OSHA requires tanks to be spaced three to 20 feet apart, and proper venting and fire resistant supports to be installed. API 620 and 2000, the ASME Boiler and Pressure Code, ANSI 31, and UL standards are incorporated into OSHA guidelines. Dikes must be able to contain 100 percent of each tank's capacity, the dike walls must average six feet in height, and earthen dikes must be more than three feet in height and two feet in width at the top. OSHA requires only a one-time test (including hydrostatic testing) for strength and tightness; however, compliance with ASME, API, or UL standards must be marked on all tanks prior to use.

OSHA requirements outlined in 29 CFR 1910.106 are important to good spill prevention programs and should be incorporated into SPCC Plans whenever

doing so represents good engineering practice.

V. Request For Comments

As discussed in section II of this preamble, the Agency is soliciting comments and data on the proposed notification requirements, spill contingency planning needs, the discretionary nature of certain provisions, and the possibility of making certain provisions requirements only for large facilities. Also in Section II of the preamble, EPA requests comments on other practices that are not proposed at this time, including: (1) That owners or operators attach a signed and dated statement to the SPCC Plan upon completion of Plan review; and (2) that owners or operators of onshore facilities other than production facilities describe the design capabilities of their drainage systems in the SPCC Plan. Section III of the preamble contains a request for comments on the advantages and disadvantages associated with the professional engineer being registered in the State in which the facility is located and the additional requirement that the professional engineer not be an employee of the facility or have any direct financial ties to the facility. EPA also solicits comments and data on criteria for defining "permanently closed" tanks.

In addition to the specific requests described above, EPA solicits comments and information on several other issues. One particular issue involves facilities with equipment, such as electrical transformers, that contain significant quantities of oil used for operational purposes. As described in section III.H, the Agency has determined that such equipment is not subject to the provisions addressing bulk storage containers. EPA solicits comments on whether there are examples of other facilities with similar equipment containing oil for ancillary purposes that should not be subject to the proposed bulk storage provisions. Also, EPA solicits comments from owners or operators of facilities with SPCC plans currently in place as to whether they believe existing plans would be adequate to meet the requirements of the regulation, as proposed. In particular the Agency would like comments on this issue from owners and operators of farms, electrical facilities, and facilities storing food oils. Including information as to the extent to which the proposed requirements may impose new compliance costs.

VI. Regulatory Analyses

A. Economic Analyses

EPA has prepared two preliminary economic analyses to support today's proposed rule: an initial economic impact analysis and a supplemental cost/benefit analysis. Both analyses estimate the societal benefits resulting from fewer oil spills, and the economic effects on the SPCC-regulated community on the following proposed revisions: (1) The proposed one-time notification form; (2) The proposed regulatory language modifications; and (3) two new proposed discretionary practices. However, these two analyses differ primarily in assumptions regarding how the regulated community would interpret certain proposed revisions, and, therefore, how the behavior of SPCC-regulated facilities would change.

The initial economic impact analysis developed cost estimates only for the proposed notification form. No costs or benefits were estimated for the proposed changes in regulatory language and the two new proposed discretionary practices because these were assumed not to alter significantly the behavior of the SPCC-regulated community. Based

on the findings of the initial economic impact analysis, the proposed rule would be expected to be non-major because the economic effects would result in estimated costs of approximately \$9.9 million during the first year the rule is in effect and approximately \$200,000 in each subsequent year. The present value of the cost, discounting at 10-percent over a 10-year period, is about \$10 million.

EPA performed an additional analysis to estimate the economic effects of the proposed rule based on alternative expectations about how the regulated community would interpret certain proposed revisions. Specifically, a supplemental cost/benefit analysis was performed to estimate the economic effects of: (1) Certain proposed revisions (described in Section III of the preamble) to the regulatory language based on the assumption that a substantial proportion of the regulated community would need to change their behavior to comply with these provisions; and (2) two new proposed discretionary provisions (described in Section II.C of the preamble) based on the assumption that a substantial proportion of the regulated community would need to change their behavior as

a result of these new requirements. The estimated cost and benefits of the proposed notification form as calculated in the initial analysis also were presented. Based on this supplemental analysis, the proposed rule would be a major rule as defined by Executive Order No. 12291, because the annualized estimated cost (based on a 10-year time horizon and a 10-percent discount rate) is about \$145 million. Both the "Economic Impact Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation" and the "Supplemental Cost/Benefit Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation" are available for inspection as part of the administrative record for this proposed regulation (Docket Number SPCC-1P). This record is available to the public in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The estimated cost and benefits of the three groups of proposed revisions are summarized below.

The present and annualized value of the cost and benefit estimates of the proposed notification form, based on a 10-year time horizon and a 10-percent discount rate, are presented in Table 1.

TABLE 1.—PROPOSED NOTIFICATION PROVISION

	Benefits ¹	Costs	Net benefits
Present Value	\$26 million	\$10 million	\$16 million.
Annualized	\$4.2 million	\$1.6 million	\$2.6 million.

¹ The monetized benefits as a result of the proposed notification form were estimated in the supplemental cost/benefit analysis. The methodology used to estimate these benefits is included in appendix 2-A and 2-B of the Supplemental Cost/Benefit Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation. EPA invites comment on both the methodology used and the results obtained, especially information which might indicate that substantial benefits or costs have been included.

Tables 2 and 3 show the present and annualized value of the cost and benefit estimates of the proposed regulatory language changes and the two new

proposed discretionary provisions. These estimates were developed in the supplemental cost/benefit analysis, based on assumptions about how the

behavior of the regulated community would change as a result of interpreting these proposed revisions as substantive changes in required conduct.

TABLE 2.—PROPOSED CHANGES IN REGULATORY LANGUAGE

	Benefits	Costs	Net benefits
Present Value	\$1,000 million	\$441 million	\$559 million.
Annualized	\$162.8 million	\$71.8 million	\$91.0 million.

The cost estimates for the proposed changes in regulatory language presented above are based on a detailed analysis of six of approximately 60 changes in regulatory language ("should" to "shall" changes). These major provisions are expected to generate the largest total costs and,

therefore, are expected to capture virtually all compliance cost for all SPCC-regulated facilities to comply with all the "should" to "shall" regulatory changes. The methodology used to estimate these costs is included in appendix 1-C of the Supplemental Cost/Benefit Analysis of the Proposed

Revisions to the Oil Pollution Prevention Regulation. EPA invites comment on both the methodology used and the results obtained, especially information which might indicate that substantial benefits or costs have been included.

TABLE 3.—PROPOSED DISCRETIONARY PROVISIONS ¹

	Benefits	Costs	Net benefits
Upper Bound:			
Present value	\$495 million.....	\$441 million.....	\$54 million.
Annualized	\$80.5 million.....	\$71.8 million.....	\$8.7 million.
Lower Bound:			
Present Value.....	\$248 million.....	\$441 million.....	\$- 193 million.
Annualized	\$40.4 million.....	\$71.8 million.....	\$- 31.4 million.

¹ While upper and lower bound monetary benefit estimates were developed in the supplemental cost/benefit analysis, upper and lower bound cost estimates for these two new proposed discretionary provisions were not developed in the initial economic analysis.

In addition, EPA is soliciting comments on two other practices that are not included in today's proposed revisions but are described in section II.C of this preamble. Specifically, these two provisions are: (1) A statement by the facility owner or operator that the SPCC Plan review has occurred; and (2) a statement to be included in the SPCC Plan that addresses the design capabilities of a facility's drainage system to control oil spills or leaks. By recommending that facility owners or operators state that a triennial review has been performed, EPA would expect to increase the degree to which upper management takes an active role to ensure that the Oil Pollution Prevention regulation is fully implemented at the facility. Increased managerial oversight may improve the overall quality and effectiveness of SPCC Plans, thereby reducing the number and severity of oil spills from SPCC-regulated facilities. Similarly, by including in the Plan a written statement indicating the adequacy of the facility's drainage system in handling leaking oil, those facility personnel responsible for drafting this statement could be encouraged to take a more active role to ensure that these existing systems are adequately designed to control oil leaks. While cost estimates were developed for these two practices, monetized benefit estimates were not developed because these two provisions involve paperwork activities and no data or case studies are available to adequately analyze the degree to which their implementation will lead to avoided oil spills. EPA requests data and analysis indicating the extent to which these recommendations would further improve the effectiveness of the Oil Pollution Prevention regulation, as well as data and analysis concerning appropriate analytical methods to estimate these benefits and costs, especially information indicating how the Agency could improve its analytical methods prior to promulgation of the final rule. The present value of the cost of these two provisions is estimated at \$128 million.

In summary, the present value of the cost of the proposed rule based on the results of the supplemental cost/benefit analysis for the proposed notification form, the proposed changes in regulatory language, and the two new proposed discretionary provisions is estimated at about \$892 million, while the present value of the monetized benefits range from \$1.3 billion to \$1.5 billion. Based on these preliminary analyses, the present value of the monetized benefit estimate exceeds the cost by about \$382 to \$539 million. In addition, quantified estimates of the benefits associated with the proposed revisions analyzed include only two benefits associated with reducing the number of oil spills: avoided cleanup costs and the value of the lost product (i.e., the value of the product in commerce prior to being lost in a spill). In addition, society is expected to gain other benefits in the form of avoided losses to commercial and recreational fishing and other resource damages, avoided lost recreational opportunities including beach use, boating, and waterfowl hunting, avoided damage to private property, and avoided public health risks, among others. EPA invites comments on the methodology used to estimate these benefits and costs, especially information indicating how the Agency could improve its analytical method prior to promulgation of the final rule.

B. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

- (1) An annual effect on the economy of \$100 million or more; or
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the assumption that regulated parties interpret both the proposed changes in regulatory language and the two new proposed recommendations as requiring substantive changes in conduct, the results of economic analyses performed by the Agency indicate that the proposed rule is expected to be major rule because the annual estimated costs would exceed \$100 million. Specifically, the upper bound annualized value of the cost of the proposed rule is estimated to be \$145 million and the annualized value of the benefit estimate is expected to range from \$207 million to \$248 million. This proposed rule has been submitted to OMB for review as required by E.O. No. 12291.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis was necessary for this proposed rule, a preliminary analysis was conducted. The results of Regulations, Chapter 6, January 1991, available for inspection in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Therefore, because this proposed rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. A draft Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1548.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y).

U.S. Environmental Protection Agency,
401 M Street, SW., Washington, DC
20460 or by calling 1-202-260-2740.

Public reporting burden for the proposed notification form affecting all SPCC-regulated facilities is estimated to range from one half hour to 1.5 hours per response, and the reporting burden for the recommended recordkeeping provision affecting medium and large SPCC-regulated facilities is estimated to range from 5 hours to 10 hours annually. Overall, the public reporting burden for both proposed provisions is estimated to range from one half an hour to 11.5 hours with an average reporting burden of approximately 1.9 hours per response. These reporting burden estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, storing the data, estimating the information required, and completing and reviewing the collection on information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 112

Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Petroleum, Tanks, Water pollution control, Water resources.

Dated: October 3, 1991.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations, is proposed to be amended as set forth below.

1. Part 112 is revised to read as follows:

PART 112—OIL POLLUTION PREVENTION

Sec.

- 112.1 General applicability and notification.
- 112.2 Definitions.
- 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasures Plan.

Sec.

- 112.4 Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator.
- 112.5 Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators.
- 112.6 Civil penalties for violation of the Oil Pollution Prevention regulation.
- 112.7 Spill Prevention, Control, and Countermeasures Plan general requirements.
- 112.8 Spill Prevention, Control, and Countermeasures Plan requirements for onshore facilities (excluding production facilities).
- 112.9 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil production facilities.
- 112.10 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil drilling and workover facilities.
- 112.11 Spill Prevention, Control, and Countermeasures Plan requirements for offshore oil drilling, production, or workover facilities.

Appendix A—Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency. Section II—Definitions

Appendix B—Notification Form for Oil Storage Tanks

Authority: 33 U.S.C. 1321 and 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971-1975 Comp., p. 791.

PART 112—OIL POLLUTION PREVENTION

§ 112.1 General applicability and notification.

(a) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources, belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

(b) Except as provided in paragraph (d) of this section:

(1) This part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil and oil products, which due to their location could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this

chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

(2) This part applies to facilities having containers that are used for standby storage, for seasonal storage, or for temporary storage, or not otherwise considered "permanently closed" under § 112.2(o).

(3) This part applies to facilities having "bunkered tanks" and "partially buried tanks" as defined in § 112.2(c) and § 112.2(n), respectively, as well as tanks in subterranean vaults, all of which are considered aboveground storage containers for the purposes of this part.

(c) As provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

(d) Except as provided in paragraph (e) of this section and the first sentence of § 112.7(a)(3), this part does not apply to:

(1) Facilities, equipment, or operations that are not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section 311(j)(1)(C) of the CWA, as follows:

(i) Onshore and offshore facilities that, due to their location, could not reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part. This determination shall be based solely upon a consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.), and shall exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities that are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation

and the EPA Administrator, dated November 24, 1971, 36 FR 24080.

(2) Those facilities that meet both of the following requirements:

(i) The underground storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the underground storage capacity of a facility does not include the capacity of underground storage tanks, as defined in § 112.2(v), that are currently subject to the technical requirements of 40 CFR part 280. The underground storage capacity of a facility does not include the capacity of underground storage tanks that are "permanently closed," as defined in § 112.2(o).

(ii) The aboveground storage capacity of the facility is 1,320 gallons or less of oil, provided no single container has capacity in excess of 660 gallons. For purposes of this exemption, the aboveground storage capacity of a facility does not include the capacity of tanks that are underground storage tanks as defined in § 112.2(v) or that are "permanently closed" as defined in § 112.2(o).

(3) Offshore oil drilling, production, or workover facilities that are subject to the Operating Orders, notices, and regulations of the Minerals Management Service.

(4) Underground storage tanks, as defined in § 112.2(v), at any facility, where such tanks are subject to the technical requirements of 40 CFR part 280.

(e) Notification requirements. (1) Notification must be provided by the owner or operator of facilities that are subject to EPA jurisdiction under the CWA and have total aboveground storage capacities greater than 1,320 gallons of oil or aboveground storage in a single container greater than 660 gallons of oil. The owner or operator of these facilities must submit a written notice to EPA by *(Insert date two months after date of publication of the final rule)*. This notice is required on a one-time basis for current facility owners or operators. Owners or operators of facilities that begin operations or who increase storage capacity so as to comply under the jurisdiction of this rule after *(Insert date 60 days after date of publication of the final rule)* also must notify the Regional Administrator before beginning facility operations.

(2) The written notice shall include the following: (i) The name of the owner and/or operator of the facility;

(ii) The name, address, and zip code of the facility; and

(iii) A listing of the total number and size of aboveground tanks at the facility, total aboveground storage capacity of

the facility, distance to the nearest navigable waters, and where applicable and available, the facility's primary Dun & Bradstreet number and the primary Standard Industrial Classification.

(3) The notice does not require information concerning the number and size of underground storage tanks defined in § 112.2(v).

(f) This part provides for the preparation and implementation of Spill Prevention, Control, and Countermeasures (SPCC) Plans prepared in accordance with §§ 112.7, 112.8, 112.9, 112.10, and 112.11 designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules, to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. The SPCC Plan shall address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

§ 112.2 Definitions.

For the purposes of this part: (a) *Breakout tank* means a container that is part of a pipeline facility regulated by the Department of Transportation and is used solely for the purpose of compensating for pressure surges or to control and maintain the flow of oil through pipelines. Such tanks are frequently in-line.

(b) *Bulk storage tank* means any container used to store oil. These tanks are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce.

(c) *Bunkered tank* means a storage tank constructed or placed in the ground by cutting the earth and recovering in a manner whereby the tank breaks the natural grade of the land.

(d) *Contiguous zone* means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.

(e) *Discharge* includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record

with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of this part, the term "discharge" shall not include any discharge of oil that is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407).

(f) *Facility* means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline used in oil well drilling operations, oil production, oil refining, oil storage, and waste treatment, as described in Appendix A to this part. The boundaries of a facility may depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

(g) *Navigable waters* means the waters of the United States, including the territorial seas. The term includes:

(1) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:

(i) That are or could be used by interstate or foreign travelers for recreational or other purposes; or,

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(iii) That are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this section;

(5) Tributaries of waters identified in paragraphs (g)(1) through (4) of this section;

(6) The territorial sea; and

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (g)(1) through (6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

(h) *Offshore facility* means any facility of any kind (other than a vessel or public vessel) located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.

(i) *Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(j) *Oil drilling, production, or workover facilities (offshore)* may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(k) *Oil production facilities (onshore)* may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(l) *Onshore facility* means any facility of any kind located in, on, or under any land within the United States, other than submerged lands.

(m) *Owner or operator* means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to such abandonment.

(n) *Partially buried tank* means a storage tank that is partially inserted or constructed in the ground, but not fully covered with earth.

(o) *Permanently closed* is any tank or facility that has been closed in the following manner:

(1) All liquid and sludge must be removed from each tank and connecting lines. Any waste products removed must be disposed of in accordance with all applicable State and Federal requirements.

(2) Each tank must be rendered free of explosive vapor by testing the tank with a combustible gas indicator, or explosimeter, or other type of atmospheric monitoring instrument in order to determine the lower explosive limit (LEL). The EPA and Occupational Safety and Health Administration standard for a hazardous atmosphere, based on extensive industrial

experience, is one that contains a concentration of combustible gas, vapor, or dust greater than 25 percent of the LEL of the material. Provisions must be made to eliminate the danger imposed by the tank as a safety hazard due to the presence of flammable vapors. Facilities are to ensure that closure is permanent, and that the tank vapors remain below the LEL.

(3) All connecting lines must be blanked off, and valves are to be closed and locked. Conspicuous signs are to be posted on the tank warning that it is a permanently closed tank and that vapors above the LEL are not present.

(p) *Person* includes an individual, firm, corporation, association, or a partnership.

(q) *Regional Administrator* means the EPA Regional Administrator or a designee of the Regional Administrator, in and for the Region in which the facility is located.

(r) *SPCC Plan or Plan* means the document required by § 112.3 of this part that details the equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill. The Plan is a written description of the facility's compliance with the procedures in this part.

(s) *Spill event* means a discharge of oil as described in § 112.1(b)(1) of this part.

(t) *Storage capacity* of a tank or container, for purposes of determining the applicability of this part, means the total capacity of the tank or container, whether the tank or container is filled with oil or a mixture of oil and other substances.

(u) *Transportation-related and non-transportation-related*, as applied to an onshore or offshore facility, are defined in Appendix A of this part, the Memorandum of Understanding between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971, 36 FR 24080.

(v) *Underground storage tank* means any tank completely covered with earth. Tanks in subterranean vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for the purpose of this part.

(w) *United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

(x) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

(y) *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasures Plan.

(a) Owners or operators of onshore and offshore facilities in operation on or before *(Insert date 60 days after date of publication of the final rule)* that have discharged or, due to their location, could reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall maintain a prepared and fully implemented facility SPCC Plan in writing and in accordance with § 112.7, and in accordance with §§ 112.8, 112.9, 112.10, and 112.11 as applicable to the facility.

(b) Owners or operators of onshore and offshore facilities that become operational after *(Insert date 60 days after date of publication of the final rule)*, and could reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall prepare a facility SPCC Plan in accordance with § 112.7, and in accordance with any of the following sections that apply to the facility: §§ 112.8, 112.9, 112.10, and 112.11. The Plan shall be prepared and fully implemented before a facility begins operations, unless an extension has been granted by the Regional Administrator as provided for in paragraph (f) of this section.

(c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare, implement, and maintain a facility SPCC Plan as required by paragraph (a), (b), and (d) of this section. The owners or operators of such facility need not prepare a new Plan each time the facility is moved to a new site. The Plan may be a general plan, prepared in accordance with § 112.7, and in accordance with §§ 112.10 and 112.11 where applicable to the facility, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility. No mobile or

portable facility subject to this regulation shall operate unless the Plan has been implemented. The Plan shall only apply while the facility is in a fixed (non-transportation) operating mode.

(d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified by the Registered Professional Engineer. By means of this certification, the Engineer shall attest: (1) That the Engineer is familiar with the requirements of this part; (2) that the Engineer has visited and examined the facility; (3) that the Plan has been prepared in accordance with good engineering practice and with the requirements of this part; (4) that required testing has been completed; and, (5) that the Plan is adequate for the facility. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of the duty to prepare and fully implement such Plan in accordance with § 112.7; in accordance with §§ 112.8, 112.9, 112.10, and 112.11 where applicable; and as required by paragraphs (a), (b), and (c) of this section.

(e) Owners and operators of a facility for which a facility SPCC Plan is required pursuant to paragraph (a), (b), or (c) of this section shall:

(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended; and

(2) Have the Plan available for the Regional Administrator or authorized representative for on-site review during normal working hours

(f) Extensions of time.

(1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan beyond the time permitted for the preparation and implementation of a Plan pursuant to paragraph (b) of this section where it is determined that the owner or operator of a facility subject to paragraph (b) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees.

(2) Any owner or operator seeking an extension of time pursuant to paragraph (f)(1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include:

(i) A copy of the Plan, if completed;

(ii) A full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;

(iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition, such owner or operator may present additional oral or written statements in support of the letter of request.

(3) The submission of a letter of request for extension of time pursuant to paragraph (f)(2) of this section shall in no way relieve the owner or operator from the obligation to comply with the requirements of § 112.3(b). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of § 112.3(b) with respect to other equipment or other specific aspects of the Plan for which an extension has not been expressly authorized.

§ 112.4 Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator.

(a) Notwithstanding compliance with § 112.3, whenever a facility subject to § 112.3(a), (b) or (c) has discharged, in a single spill event, more than 1,000 U.S. gallons of oil as described in § 112.1(a), or discharged oil as described in § 112.1(b)(1) in two spill events occurring within any consecutive twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following:

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Name and address of the registered agent of the owner or operator, if any;

(5) Date and year of initial facility operation;

(6) Maximum storage or handling capacity of the facility and normal daily throughput;

(7) Description of the facility, including maps, flow diagrams, and topographical maps;

(8) A complete copy of the Plan with any amendments;

(9) The cause(s) of such spill, including a failure analysis of the system or subsystem in which the failure occurred;

(10) Exactly what and how much was spilled;

(11) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(12) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

(13) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

(b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of the Plan pursuant to § 112.3(f).

(c) The owner or operator shall send to the agency in charge of oil pollution control activities in the State in which the facility is located a complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other requirements for equipment necessary to prevent and to contain discharges of oil from such facility.

(d) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the Plan if she/he finds that the Plan does not meet the requirements of this part or that amendment of the Plan is necessary to prevent and to contain discharges of oil from such facility. After review of the materials submitted by the owner or operator of a facility as required in § 112.7(d), the Regional Administrator may approve the Plan or require amendment of the Plan.

(e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, the facility operator shall be notified by certified mail addressed to, or by personal delivery to, the facility owner or operator, that the Regional Administrator proposes to require an amendment to the Plan, and the terms of such amendment shall be specified. If the facility owner or operator is a corporation, a copy of such notice also shall be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and

arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, specifies another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to the SPCC Plan. The appeal shall be made to the EPA Administrator and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator or her/his designee may request additional information from the owner or operator, or from any other person. The EPA Administrator or her/his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of the decision.

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators.

(a) Owners or operators of facilities subject to § 112.3 (a), (b), or (c) shall amend the SPCC Plan for such facility in accordance with § 112.7, and with §§ 112.8, 112.9, 112.10, and 112.11 where applicable, when there is a change in facility design, construction, operation, or maintenance that materially affects the facility's potential to discharge oil as described in § 112.1(b)(1) of this part. Changes requiring amendment of the Plan include, but are not limited to: Commission or decommission of tanks; replacement, reconstruction, or movement of tanks; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; or revision of standard operation or maintenance procedures at a facility.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to

§ 112.3 (a), (b), or (c) shall complete a review and evaluation of their respective Plans at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility; and (2) such technology has been field-proven at the time of the review.

(c) Except for changes to the contact list required by § 112.7(a)(3)(ix), no amendment to a Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Registered Professional Engineer in accordance with § 112.3(d).

§ 112.6 Civil penalties for violation of the Oil Pollution Prevention regulation.

Owners or operators of facilities subject to § 112.3 (a), (b), or (c) who violate the requirements of part 112 by failing or refusing to comply with any of the provisions of §§ 112.1(e), 112.3, 112.4, 112.5, 112.7, 112.8, 112.9, 112.10, or 112.11 shall be liable for a civil penalty in accordance with the CWA, as amended by the OPA of 1990.

§ 112.7 Spill Prevention, Control, and Countermeasures Plan general requirements.

(a) The SPCC Plan shall be a carefully thought-out written description of the facility's compliance with the requirements of all applicable elements of §§ 112.7, 112.8, 112.9, 112.10, and 112.11 and shall be prepared in accordance with good engineering practice. The Plan shall have the full approval of management at a level with authority to commit the necessary resources to fully implement the Plan.

(1) The complete Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the requirements listed.

(2) The Plan may deviate from the requirements in paragraph (c) of this section and §§ 112.8, 112.9, 112.10, and 112.11, where applicable to a specific facility provided equivalent protection is provided by some other means of spill prevention, control, or countermeasures. Where the Plan does not conform to the applicable requirements of paragraph (c) of this section or §§ 112.8, 112.9, 112.10, and 112.11, the Plan shall state the reasons for non-conformance and describe in detail alternate methods and how equivalent protection will be achieved. The Regional Administrator can overrule the waiver/equivalent

alternative measure if it is not adequately protective.

(3) The complete Plan must describe the facility's physical plant and include a facility diagram, which must have the location and contents of all tanks marked. The Plan must also address the following:

- (i) Unit-by-unit storage capacity;
- (ii) Type and quantity of oil stored;
- (iii) Estimates of quantity of oils potentially discharged;
- (iv) Possible spill pathways;
- (v) Spill prevention measures, including procedures for routine handling of products (loading, unloading, and facility transfers, etc.);
- (vi) Spill controls such as secondary containment around tanks and other structures, equipment, and procedures for the control of a discharge;
- (vii) Spill countermeasures for spill discovery, response, and cleanup (facility's capability and those that might be required of a contractor);
- (viii) Disposal of recovered materials in accordance with applicable legal requirements; and
- (ix) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors, fire departments, Local Emergency Planning Committee, State Emergency Response Commission, and downstream water suppliers who must be contacted in case of a discharge to navigable waters.

(4) Documentation in the Plan shall enable a person reporting a spill to provide information on the exact address and phone number of the facility, the spill date and time, the type of material spilled, estimates of the total quantity spilled, estimates of the quantity spilled into navigable water, the source of the spill, a description of the affected medium, the cause of the spill, any damages or injuries caused by the spill, actions being used to stop, remove, and mitigate the effects of the discharge, whether an evacuation may be needed, and the names of individuals and/or organizations who have also been contacted.

(5) Portions of the Plan describing procedures to be used in emergency circumstances shall be organized in a manner to make them readily useable in an emergency with appropriate supporting material included as appendices.

(b) Experience has indicated that a reasonable potential for oil discharge from tank overflow, rupture, or leakage, and faulty ancillary equipment exists. Therefore, the Plan shall include a prediction of the direction, rate of flow, and total quantity of oil that could be

discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or drainage control structures or equipment to prevent discharged oil from reaching a navigable water course shall be provided. The entire containment system, including walls and floor, shall be impervious to oil for 72 hours and shall be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not permeate, drain, infiltrate, or otherwise escape to surface waters before cleanup occurs. One or more of the following prevention systems or its equivalent shall be used as a minimum:

(1) Onshore facilities:

(i) Dikes, berms, or retaining walls;

(ii) Curbing;

(iii) Culverting, gutters, or other drainage systems;

(iv) Weirs, booms, or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds; or

(vii) Sorbent materials

(2) Offshore facilities:

(i) Curbing, drip pans; or

(ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator shall clearly demonstrate such impracticability; conduct integrity testing of tanks every five years at a minimum; conduct integrity and leak testing of the valves and piping every year at a minimum; and provide the Regional Administrator for approval under § 112.4(d) the following:

(1) An oil spill contingency plan that must include, at a minimum, a description of response plans, personnel needs, and methods of mechanical containment; steps to be taken for removal of spilled oil; access and availability of sorbents, booms, and other equipment; and such other information as required by the Regional Administrator. The oil spill contingency plan is part of the Plan and, therefore, is subject to review and approval by the Regional Administrator. The oil spill contingency plan shall be a stand-alone section of the SPCC Plan. Oil spill contingency plans provided to satisfy the provisions of this paragraph shall not rely in whole or in part upon the use of dispersants and other chemicals listed under subpart J of the National Contingency Plan (NCP) (40 CFR part 300) unless the Regional Administrator explicitly approves the inclusion of such methods in the contingency plan. A separate and additional approval is required by subpart J of the NCP for the

use of such dispersants and other chemicals.

(2) A written commitment of manpower, equipment, and materials required to control expeditiously and remove any quantity of oil that may be discharged. It is recommended that the owner or operator consider factors such as financial capability in making a written commitment of manpower, equipment, and materials.

(e) *Inspection, tests, and records.* Inspections and tests required by this part shall be in accordance with written procedures developed for the facility by the owner or operator or the certifying engineer. These written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, shall be maintained with the SPCC Plan and maintained for a period of five years.

(f) *Personnel, training, and spill prevention procedures.* (1) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent discharges of oil and in applicable pollution control laws, rules, and regulations. Training exercises should be conducted at least yearly for all personnel, and training should be given to new employees within one week of beginning work.

(2) Each applicable facility shall have a designated person who is accountable for oil spill prevention and who reports to line management.

(3) Owners or operators shall schedule and conduct spill prevention briefings for their operating personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings shall highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

(g) *Security (excluding oil production facilities).*

(1) It is recommended that all plants handling, processing, and storing oil be fully fenced and when fenced, entrance gates shall be locked and/or guarded when the plant is not in production or is unattended.

(2) The master flow and drain valves and any other valves permitting direct outward flow of the tank's contents to the surface shall have adequate security measures to ensure that they remain in the closed position when in non-operating or non-standby status.

(3) The starter control on all pumps shall be locked in the "off" position and be located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status.

(4) The loading/unloading connections of oil piping shall be securely capped or blank-flanged when not in service or when in standby service for a period of six months or more. This security practice also shall apply to piping that is emptied of liquid content either by draining or by inert gas pressure.

(5) It is recommended that facility lighting be commensurate with the type and location of the facility.

Consideration shall be given to: (i) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (ii) prevention of spills occurring through acts of vandalism.

(h) *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).* (1) Tank car and tank truck loading/unloading procedures shall meet the minimum requirements and regulations established by State or Federal law.

(2) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system shall be used for tank truck loading and unloading areas. The containment system shall be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(3) An interlocked warning light or physical barrier system, or warning signs, shall be provided in loading/unloading areas to prevent vehicular departure before complete disconnection of flexible or fixed transfer lines.

(4) Prior to filling and departure of any tank car or tank truck, the lower-most drain and all outlets of such vehicles shall be closely examined for leakage, and, if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(i) In addition to the minimal prevention standards listed under § 112.7 (c), (e), (f), (g), and (h), sections of the Plan shall include a complete discussion of conformance with the applicable requirements and other effective spill prevention and containment procedures listed in §§ 112.8, 112.9, 112.10, and 112.11 (or, if more stringent, with State rules, regulations, and guidelines).

§ 112.8 Spill Prevention, Control, and Countermeasures Plan requirements for onshore facilities (excluding production facilities).

(a) In addition to the specific spill prevention and containment procedures

listed under this section, onshore facilities (excluding production facilities) must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) *Facility drainage (onshore);*

(excluding production facilities). (1)

Drainage from diked storage areas shall be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or in-plant effluent treatment system, except where facility systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these shall be manually activated and the condition of the accumulation shall be examined before starting to ensure no oil will be discharged into the water.

(2) Flapper-type drain valves shall not be used to drain diked areas. Valves used for the drainage of diked areas shall, as far as practical, be of manual, open-and-closed design. When facility drainage drains directly into water courses and not into wastewater treatment plants, retained storm water shall be inspected as provided in paragraphs (c)(3) (ii), (iii), and (iv) of this section before drainage.

(3) Facility drainage systems from undiked areas with a potential for oil spill contamination shall flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. It is recommended that catchment basins not be located in areas subject to periodic flooding.

(4) If facility drainage is not engineered as above, the final discharge of all in-plant drainage shall be equipped with a diversion system that would, in the event of an uncontrolled spill, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit, it is recommended that natural hydraulic flow be used. If pump transfer is needed, two "lift" pumps shall be provided, and at least one of the pumps shall be provided, and at least one of the pumps shall be permanently installed when such treatment is continuous. Whatever techniques are used, facility drainage systems shall be adequately engineered so that, in the event of equipment failure or human error at the facility, oil will be prevented from reaching navigable waters of the United States, adjoining shorelines, or other waters that would be affected by discharging oil as described in § 112.1(b)(1) of this part.

(6) For facilities in locations subject to flooding, it is recommended that the SPCC Plan address additional requirements for events that occur during a period of flooding.

(c) *Bulk storage containers (onshore);*
(excluding production facilities). (1) No

tank shall be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure, temperature, etc. It is recommended that the construction, materials, installation, and use of tanks conform with relevant portions of industry standards such as API, NFPA, UL, or ASME standards, which are required in the application of good engineering practice for the construction and operation of the tank.

(2) All bulk storage tank installations shall be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank and sufficient freeboard to allow for precipitation. Diked areas shall be sufficiently impervious to contain spilled oil for at least 72 hours. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternate system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(3) Drainage of rainwater from the diked area into a storm drain or an effluent discharge emptying into an open watercourse, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(i) The bypass valve is normally sealed closed.

(ii) Inspection of the run-off rainwater ensures compliance with applicable water quality standards and will not cause a discharge that may be harmful, as described in 40 CFR part 110.

(iii) The bypass valve is opened, and resealed following draining under responsible supervision.

(iv) Adequate records are kept of such events.

(4) Underground metallic storage tanks represent a potential for undetected spills. A new buried installation shall be protected from corrosion by coatings, cathodic protection, or other effective methods compatible with local soil conditions. It is recommended that such buried tanks at least be subjected to regular leak testing.

(5) It is recommended that partially buried or bunkered metallic tanks be avoided, since partial burial in earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface. Partially buried and bunkered tanks shall be protected from corrosion by coatings, cathodic protection, or other effective methods compatible with local soil conditions.

(6) Aboveground tanks shall be subject to integrity testing every ten years and when material repairs, etc. are done, taking into account tank design (floating roof, for example) and using such techniques or combinations of such techniques as hydrostatic testing, radiographic testing, visual inspections, ultrasonic testing, acoustic emissions testing, or a system of non-destructive shell testing. Comparison records shall be kept, and tank supports and foundations shall be included in these inspections. In addition, the outside of the tank shall frequently be observed by operating personnel for signs of deterioration, leaks, or accumulation of oil inside diked areas.

(7) To control leakage through defective internal heating coils:

(i) The steam return or exhaust lines from internal heating coils, which discharge into an open water course, shall be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system. It is recommended that these systems be designed to hold the entire contents of the affected tank, be of sufficient size to contain a spill that may occur when the system is not being monitored or observed, or have fail-safe oil leakage detectors.

(ii) It is recommended that the feasibility of installing an external heating system also be considered.

(8) New and old tank installations shall, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. One or more of the following devices shall be provided:

(i) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(ii) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(iii) Direct audible or code signal communication between the tank gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage tank, such as digital computers, telepulse, or direct vision gauges or the equivalent.

(v) Other devices can be considered for installation as alternate technologies, as allowed under § 112.7(a)(2).

(vi) Liquid level sensing devices shall be regularly tested to ensure proper operation.

(9) Effluents that are discharged into navigable waters shall have disposal

facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(10) Visible oil leaks, which result in a loss of oil from tank seams, gaskets, rivets, and bolts sufficiently large to cause the accumulation of oil in diked areas, shall be promptly corrected. Accumulated oil or oil contaminated materials resulting from such discharge shall be completely removed within 72 hours from the time the spill event occurs.

(11) Mobile or portable oil storage tanks (onshore) shall be positioned or located so as to prevent oil discharges. It is recommended that a secondary means of containment, such as dikes or catchment basins, be furnished for the largest single compartment or tank. It is recommended that these facilities be located where they will not be subject to periodic flooding or washout.

(d) *Facility transfer operations, pumping, and in-plant process (onshore) (excluding production facilities).* (1) It is recommended that all piping shall be placed aboveground, where possible. New or replaced buried piping installations shall have a protective wrapping and coating and shall be cathodically protected or otherwise satisfy the corrosion protection standards for piping in 40 CFR part 280. If a section of buried line is exposed for any reason, it shall be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action shall be taken as indicated by the magnitude of the damage. It is recommended that buried piping installations comply to the extent applicable with all of the relevant provisions in 40 CFR part 280.

(2) When piping is not in service or in standby service for six months or more, the terminal connection at the transfer point shall be capped or blank-flanged, and marked as to origin.

(3) Pipe supports shall be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(4) All aboveground valves, piping, and appurtenances shall be subjected to monthly examinations by operating personnel, at which time the general condition of items such as flange joints, expansion joints, valve glands and bodies, catch pans, pipe supports, locking of valves, and metal surfaces shall be assessed. In addition, it is recommended that facility owners or operators conduct annual integrity and leak testing of buried piping or monitor buried piping on a monthly basis. Records of such testing or monitoring shall be maintained for five years. It is recommended that all valves, pipes, and

appurtenances conform to relevant industry codes such as ASME standards.

(5) Vehicular traffic granted entry into the facility shall be warned orally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger aboveground piping or other oil transfer operations. It is recommended that weight restrictions be posted, as applicable, to prevent damage to underground piping.

§ 112.9 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil production facilities.

(a) In addition to the specific spill prevention and containment procedures listed under this section, onshore production facilities must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) Onshore oil production facilities are defined in § 112.2(k).

(c) *Oil production facility (onshore) drainage.* (1) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent measures required under § 112.7(c)(1) shall have drains closed and sealed at all times, except when rainwater is being drained. Prior to drainage, the diked area shall be inspected and actions taken as provided in § 112.8(c)(3) (ii), (iii), and (iv). Accumulated oil on the rainwater shall be removed and returned to storage or disposed of in accordance with approved methods.

(2) Field drainage ditches, road ditches, and oil traps, sumps, or skimmers, if such exist, shall be inspected at regularly scheduled intervals for accumulation of oil or oil-contaminated soil that may have escaped from small leaks. Any such accumulations shall be removed within 72 hours.

(3) For facilities in locations subject to flooding, it is recommended that the SPCC Plan address additional requirements for events that occur during a period of flooding.

(d) *Oil production facility (onshore) bulk storage tanks.* (1) No tank shall be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage. It is recommended that the construction, materials, installation, and use of new tanks conform with relevant portions of industry standards, which are required in the application of good engineering practice for the construction and operation of the tank.

(2) All tank battery and central treating plant installations shall be provided with a secondary means of containment for the entire contents of the largest single tank in use and sufficient freeboard to allow for precipitation, if feasible, or alternate systems, such as those outlined in § 112.7(c)(1). Drainage from undiked areas showing a potential for contamination shall be safely confined in a catchment basin or holding pond.

(3) All tanks containing oil shall be visually examined for deterioration and maintenance needs at least once a year. Such examination shall include the foundation and supports of tanks above the ground surface. The schedule and records for examinations of tanks shall be maintained by the owner or operator for a period of five complete calendar years irrespective of changes in ownership.

(4) It is recommended that new and old tank battery installations, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. It is recommended that appropriate API, NFPA, and ASME standards be referenced. Consideration shall be given to providing one or more of the following:

(i) Adequate tank capacity to assure that a tank will not overflow if a pumper/gauger is delayed in making regular rounds.

(ii) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(iii) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(iv) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(e) *Facility transfer operations, oil production facility (onshore).* (1) All aboveground valves and piping shall be examined monthly for general condition of items such as flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves. The schedule of examinations shall be included in the SPCC Plan and records of the examinations shall be maintained for a period of five years.

(2) Salt water (oil field brine) disposal facilities shall be examined often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing an oil discharge.

(3) Production facilities shall have a program of flowline maintenance to prevent spills from this source. It is

recommended that the program include monthly examinations, corrosion protection, flowline replacement, and adequate records.

§ 112.10 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil drilling and workover facilities.

(a) In addition to the specific spill prevention and containment procedures listed under this section, onshore oil drilling and workover facilities must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) Mobile drilling or workover equipment shall be positioned or located so as to prevent spilled oil discharges.

(c) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(d) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system shall be installed, when necessary, that is capable of controlling any well-head pressure expected to be encountered while that BOP assembly is on the well. Casing and BOP installations shall be in accordance with State regulatory agency requirements.

§ 112.11 Spill Prevention, Control, and Countermeasures Plan requirements for offshore oil drilling, production, or workover facilities.

(a) In addition to the specific spill prevention and containment procedures listed under this section, offshore oil drilling, production or workover facilities must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) Offshore oil drilling, production, and workover facilities are defined in § 112.2(j). As provided in § 112.1(d)(3), such facilities that are subject to the Operating Orders, notices, and regulations of the Minerals Management Service are not subject to this part.

(c) Oil drainage collection equipment shall be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Facility drains shall be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent the facility from discharging oil as described in § 112.1(b)(1) of this part. Where drains and sumps are not practicable, oil contained in collection equipment shall be removed as often as necessary to prevent overflow, but not less than once a year.

(d) For facilities employing a sump system, the sump and drains shall be

adequately sized and a spare pump or equivalent method shall be available to remove liquid from the sump and assure that oil does not escape. A monthly preventive maintenance inspection and testing program shall be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(e) At facilities with areas where separators and treaters are equipped with dump valves for which the predominant mode of failure is in the closed position and pollution risk is high, the facility shall be specially equipped to prevent the escape of oil. Prevention of escaped oil can be accomplished by extending the flare line to a diked area if the separator is near shore, equipping the separator with a high liquid level sensor that will automatically shut-in wells producing to the separator, installing parallel redundant dump valves, or using other feasible alternatives to prevent oil discharges.

(f) Atmospheric storage or surge containers shall be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(g) Pressure tanks shall be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or with other acceptable alternatives to prevent oil discharges.

(h) Tanks shall be equipped with suitable corrosion protection. It is recommended that appropriate National Association of Corrosion Engineers standards for corrosion protection be followed.

(i) A written procedure for inspecting and testing pollution prevention equipment and systems shall be prepared and maintained at the facility. Such procedures shall be included as part of the SPCC Plan.

(j) Testing and inspection of the pollution prevention equipment and systems at the facility shall be conducted by the owner or operator on a scheduled periodic basis, but not less than monthly, commensurate with the complexity, conditions, and circumstances of the facility or other appropriate regulations. Simulated spill testing shall be the method used for testing and inspecting human and equipment pollution control and countermeasures systems unless the owner or operator demonstrates that another method provides equivalent alternative protection.

(k) Surface and subsurface well shut-in valves and devices in use at the

facility shall be sufficiently described to determine their method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the Plan, shall be kept by the owner or operator for a period of not less than five years.

(l) Before drilling below any casing string and during workover operations, a BOP preventor assembly and well control system shall be installed that is capable of controlling any well-head pressure expected to be encountered while that BOP assembly is on the well. Casing and BOP installations shall be in accordance with State regulatory agency requirements.

(m) It is recommended that extraordinary well control measures be provided if emergency conditions, including fire, loss of control and other abnormal conditions, occur. It is recommended that the degree of control system redundancy vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems include redundant or "fail close" valving. Subsurface safety valves may not be needed in producing wells that will not flow, but they should be installed as required by applicable State regulations.

(n) All manifolds (headers) shall be equipped with check valves on individual flowlines.

(o) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline shall be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over-pressuring.

(p) All piping appurtenant to the facility shall be protected from corrosion. It is recommended that the method used, such as protective coatings or cathodic protection, be discussed.

(q) Sub-marine piping appurtenant to the facility shall be adequately protected against environmental stresses and other activities, such as fishing operations.

(r) Sub-marine piping appurtenant to the facility shall be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections shall be documented and maintained at the facility for a period of five years.

(s) To prevent misunderstanding of joint and separate duties and

obligations for performing work in a safe and pollution-free manner, it is recommended that written instructions be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures shall be maintained at the offshore production facility. Under certain circumstances and conditions, such contractor activities may require the presence at the facility of an authorized representative of the owner or operator who would intervene when necessary to prevent a spill event.

Appendix A—Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency.

Section II—Definitions

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term:

(1) Non-transportation-related onshore and offshore facilities means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally

associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural, or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a non-transportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a non-

transportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a non-transportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) Transportation-related onshore and offshore facilities means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a non-transportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a non-transportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a non-transportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

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SECTION C

- * INTERIM FINAL RULE FOR 40 CFR 112
DATED NOVEMBER 4, 1992**

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federal register

**Wednesday
November 4, 1992**

Part V

Environmental Protection Agency

40 CFR Part 112, et al.

**Civil Penalty Provisions for the Oil
Pollution Prevention Regulations, Clean
Water Act Notification Provision and
Prohibition Against Unauthorized
Discharges of Oil and Hazardous
Substances; Interim Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 112, 114 and 117

(FRL-4529-4)

Civil Penalty Provisions for the Oil Pollution Prevention Regulations, Clean Water Act Notification Provision and Prohibition Against Unauthorized Discharges of Oil and Hazardous Substances

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) today publishes an interim final rule which limits the applicability of the administrative penalty assessment provisions of the Agency's regulations on oil pollution prevention and reportable quantities for hazardous substances. These provisions are being amended in light of new authorities for the assessment of civil administrative and judicial penalties under the Oil Pollution Act (OPA).

DATES: Effective date: The interim final rule shall be effective November 4, 1992. Comments: EPA will accept post-publication comments until December 4, 1992.

ADDRESSES: Persons may mail two copies of all comments on this interim final rule to Cecilia L. Smith, Office of Waste Programs Enforcement, (OS-516), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The administrative record of this rulemaking is available and persons may inspect comments at the above address.

FOR FURTHER INFORMATION CONTACT: Cecilia L. Smith, Office of Waste Programs Enforcement, 5508C, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 603-8943.

SUPPLEMENTARY INFORMATION:

I. Preamble

Oil Pollution Prevention Regulations

The civil penalty provision of the oil pollution prevention regulations (40 CFR 112.6), and the related civil penalty provisions and procedures at 40 CFR part 114 were promulgated in 1974 pursuant to section 311(j) of the Federal Water Pollution Control Act, 33 U.S.C. 1321, also known as the Clean Water Act (CWA) (39 FR 31602, August 29, 1974). Part 112 sets out, for onshore and offshore non-transportation-related facilities, requirements designed to prevent discharges of oil into "navigable waters and adjoining shorelines." 40

CFR 112.6 and 114.1 each provide that violations of the oil pollution prevention regulations may result in the assessment of an administrative penalty of not more than \$5,000 per day of violation. 40 CFR 112.6 and 114.1 are based on authority in CWA section 311(j)(2), which, before its amendment by the Oil Pollution Act of 1990 (OPA), limited civil penalties assessed for violations of regulations issued under section 311(j) to "not more than \$5,000 for each such violation."

The OPA repealed CWA section 311(j)(2) and amended CWA section 311(b)(6) to provide that violators of CWA section 311(j) may be assessed a Class I penalty of up to \$10,000 per violation (up to a maximum assessment of \$25,000), or a Class II penalty of up to \$10,000 per day of violation (up to a maximum assessment of \$125,000). Further, section 311(b)(6) now provides for different administrative proceedings for these two classes of penalties. Respondents in Class I cases are given a reasonable opportunity to be heard and to present evidence, but the hearing need not meet the requirements of the Administrative Procedure Act (APA) for formal adjudications (5 U.S.C. 554). Class II hearings, however, are on the record and subject to 5 U.S.C. 554.

As a result of the savings provision in section 6001 of the OPA, §§ 112.6 and 114.1 continue in effect until repealed, amended or superseded. Today's regulation amends 40 CFR 112.6 and 114.1 by making them applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act.

The OPA also amended CWA section 311(b) to provide for the judicial assessment of civil penalties of up to "\$25,000 per day of violation."

Notification of Discharge(s)

40 CFR 117 generally establishes the reportable quantities for hazardous substances designated under 40 CFR 116 for purposes of CWA section 311. 40 CFR 117.21 sets out the notification requirement for discharges of designated hazardous substances pursuant to CWA section 311(b)(5). 40 CFR 117.22(a) provides that violation(s) of the notification requirement may result in a fine of not more than \$10,000 or imprisonment for not more than one year, or both. 40 CFR 117.22(a) is based on language in former CWA section 311(b)(5), which was later amended by the OPA. Section 4301 of the OPA amended CWA section 311(b)(5) to provide that any criminal penalty for violation of the notification requirement in CWA section 311(b)(5) be "in accordance with title 18, United States Code, or imprisoned for not more than 5

years, or both." As a result of the savings provision in section 6001 of the OPA, 40 CFR 117.22(a) continues in effect until repealed, amended or superseded. Today's regulation amends § 117.22(a) by making it applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act.

Prohibition Against Unauthorized Discharges

40 CFR 117.22(b) provides that an owner, operator or a person in charge of a vessel or facility that has discharged a designated hazardous substance exceeding the reportable quantity may be subject to a civil administrative penalty assessment of up to \$5,000 per violation. The regulation also states that the Agency may pursue a judicial civil penalty action, seeking up to \$50,000 per violation: where the discharge resulted from willful negligence or willful misconduct, the maximum judicial civil penalty is \$250,000. 40 CFR 117.22(b) is based on language in former CWA section 311(b)(6)(A), which was amended by the OPA.

Section 4301 of OPA repealed CWA section 311(b)(6) and replaced it with a new penalty assessment framework. CWA section 311(b)(6) now provides that violators of the prohibition against unauthorized discharges in section 311(b)(3) may be assessed a Class I penalty of up to \$10,000 per violation (up to a maximum assessment of \$25,000) or a Class II penalty of up to \$10,000 per day of violation (up to a maximum assessment of \$125,000).

As a result of the savings provision in section 6001 of the OPA, 40 CFR 117.22 continues in effect until repealed, amended or superseded. Today's regulation amends 40 CFR 117.22 by making it applicable only to violations occurring prior to August 18, 1990, the date of enactment of the Oil Pollution Act.

Section 4301 of OPA also added CWA section 311(b)(7), which provides for the judicial assessment of civil penalties for violations of CWA section 311(b)(3) of up to "\$25,000 per day of violation" or up to "\$1,000 per barrel of oil or unit of reportable quantity of hazardous substances." For violations of section 311(b)(3) that are a result of gross negligence or willful misconduct, the violator now is subject to a civil penalty of "not less than \$100,000 and not more than \$1,000 per barrel of oil or unit of reportable quantity or hazardous substance discharged."

Today's Interim Final Regulation

Congress clearly intended that violations of the oil pollution prevention regulations, violations of the section 311(b)(5) notification requirement, and violations of the prohibition against unauthorized discharges in section 311(b)(3), occurring after the OPA's passage should be subject to a more rigorous penalty framework than previously was the case. Furthermore, the OPA establishes procedures that differ from those set forth in 40 CFR 114. The Agency's intent under 40 CFR parts 112, 114 and 117 has always been to allow civil penalty assessments up to the maximum amount allowed under the statute. In light of the recent statutory change to the maximum amount of civil penalties provided for violations of CWA section 311(f) regulations, CWA section 311(b)(5) and CWA section 311(b)(3), the Agency's existing regulations on this matter need to be changed to conform to the statutory amendments. The Agency believes that such a conforming change reflecting explicit Congressional intent does not warrant notice and opportunity for comment under the Administrative Procedure Act, and that there is good cause for publishing this rule in interim final form. For the same reason, the Agency believes there is good cause for making the rule effective immediately. Consequently, this rule is published as an interim final rule amending 40 CFR 112.8, 114.1 and 117.22 with regard to any violations occurring after the date of the OPA's enactment (August 18, 1990). 40 CFR 112.8, 114.1 and 117.22 still apply, however, to violations that occurred prior to August 18, 1990.

Interim Procedures

As a result of today's interim final rule, there will be no promulgated rules containing procedures for assessing administrative penalties for CWA Section 311 regulatory violations or violations of section 311(b)(3) occurring after August 18, 1990. The Agency, however, will use two existing sets of procedures as guidance until it completes a rulemaking to implement the new CWA penalty provisions. For Class I penalties, the Agency will follow generally the procedures set forth in the recently proposed 40 CFR 28. Non-APA Consolidated Rules of Practice for Administrative Assessment of Civil Penalties (56 FR 29996, July 1, 1991). These procedures will be used as guidance until the regulation is published in the Federal Register as final, at which time they will have the force of law. For the assessment of CWA section 311 Class II penalties, the

Agency intends to use as guidance the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits at 40 CFR 22. 40 CFR 22 satisfies the requirements of the APA for adjudicatory hearings on the record. The Agency intends in the near future to amend 40 CFR 22 to incorporate the OPA Amendments to the CWA.

II. Procedural Requirements**A. Review Under Executive Order 12291**

Executive Order No. 12291 requires that all Proposed and final regulations be classified as major or non-major rules. The Agency has determined that this final rule is not a major rule under Executive Order 12291 because it will not result in any of the impacts delineated in the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." This regulation will not impose significant costs on any small entities. The overall impact on small entities is expected to be slight. In addition, the rule is procedural and does not impose additional regulatory requirements on small entities. Therefore, as required by the Regulatory Flexibility Act, EPA hereby certifies that this final rule will not have a significant impact on small entities.

C. Review Under the Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

III. Additional Opportunity for Public Comment

EPA has issued today's rule as an interim final rule in order to provide a limited opportunity until December 4, 1992 for public comment. After evaluating any comments which are received, EPA will decide whether a response is warranted.

List of Subjects**40 CFR Part 112**

Oil pollution. Penalties. Reporting and recordkeeping requirements.

40 CFR Part 114

Administrative practice and procedure. Oil pollution. Penalties.

40 CFR Part 117

Hazardous substances. Penalties. Reporting and recordkeeping requirements. Water pollution control.

Dated: October 28, 1992.

William K. Ruffey,

Administrator

For the reasons set out in the preamble, parts 112, 114 and 117 of chapter I of title 40 of the Code of Federal Regulations, are amended as set forth below.

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 is revised to read as follows:

Authority: Sec. 311, 501(a), Federal Water Pollution Control Act (sec. 2, Pub. L. 92-500, 86 Stat. 818 *et seq.* (33 U.S.C. 1251 *et seq.*)); sec. 4(b), Pub. L. 92-500, 86 Stat. 837; 5 U.S.C. Reorg. Plan of 1970 No. 3 (1970), 35 FR 15623, 2 CFR 1986-1970 Comp.; E.O. 11735, 38 FR 21243, 3 CFR, superseded by E.O. 12777, 56 FR 54757.

2. Section 112.8 is revised to read as follows:

§ 112.8 Civil penalties for violation of oil pollution prevention regulations.

(a) Applicability of section. This section shall apply to violations specified in paragraph (b) of this section which occurred prior to August 18, 1990.

(b) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) who violate the requirements of this part 112 by failing or refusing to comply with any of the provisions of § 112.3, § 112.4 or § 112.5 shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be imposed in accordance with procedures set out in part 114 of this subchapter D.

PART 114—CIVIL PENALTIES FOR VIOLATION OF OIL POLLUTION PREVENTION REGULATIONS

1. The authority citation for part 114 is revised to read as follows:

Authority: Secs. 311, 501(a), Pub. L. 92-500, 86 Stat. 818, 835 (33 U.S.C. 1321, 1361(a)).

2. Section 114.1 is revised to read as follows:

§ 114.1 General applicability.

(a) Applicability of section. This section shall apply to violations specified in paragraph (b) of this section which occurred prior to August 18, 1990.

(b) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) of this subchapter who violate the requirements of part 112 of this subchapter D by failing or refusing to comply with any of the provisions of §§ 112.3, 112.4, or 112.5 of this subchapter shall be liable for a civil penalty of not more than \$5,000 for each day such violation continues. Civil penalties shall be assessed and compromised in accordance with this part. No penalty shall be assessed until the owner or operator shall have been given notice and an opportunity for hearing in accordance with this part.

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 is revised to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), ("the Act") and Executive Order 11735, superseded by Executive Order 12777, 56 FR 34757.

2. Section 117.22 is revised to read as follows:

§ 117.22 Penalties.

(a) Applicability of section. This section shall apply to violations specified in paragraphs (b) and (c) of this section which occurred prior to August 18, 1990.

(b) Any person in charge of a vessel or an onshore or offshore facility who fails to notify the United States Government of a prohibited discharge pursuant to § 117.21 (except in the case of a discharge beyond the contiguous zone, where the person in charge of a vessel is not otherwise subject to the jurisdiction of the United States) shall be subject to a fine of not more than \$10,000 or imprisonment for not more than one year, or both, pursuant to section 311(b)(5).

(c) The owner, operator or person in charge of a vessel or an onshore or offshore facility from which is discharged a hazardous substance designated in 40 CFR part 118 in a quantity equal to or exceeding in any 24-hour period, the reportable quantity established in this part (except in the case of a discharge beyond the contiguous zone, where the person in charge of a vessel is not otherwise subject to the jurisdiction of the United States, shall be assessed a civil penalty

of up to \$5,000 per violation under section 311(b)(6)(A). Alternatively, upon a determination by the Administrator, a civil action will be commenced under section 311(b)(6)(B) to impose a penalty not to exceed \$50,000 unless such discharge is the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, in which case the penalty shall not exceed \$250,000.

Note: The Administrator will take into account the gravity of the offense and the standard of care manifest by the owner, operator, or person in charge in determining whether a civil action will be commenced under section 311(b)(6)(B). The gravity of the offense will be interpreted to include the size of the discharge, the degree of danger or harm to the public health, safety, or the environment, including consideration of toxicity, degradability, and dispersal characteristics of the substance, previous spill history, and previous violation of any spill prevention regulations. Particular emphasis will be placed on the standard of care and the extent of mitigation efforts manifest by the owner, operator, or person in charge.

[FR Doc. 92-28861 Filed 11-3-92; 8:45 am]
BILLING CODE 4301-55-M

SECTION D

- * SPCC/FRP OUTREACH CONTACT NUMBERS**
- * MOST COMMONLY USED CWA-OPA-SPCC ACRONYMS**
- * SPCC IMPORTANT DEFINITIONS**

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SPCC/FRP OUTREACH:

SPILL PREVENTION CONTROL AND COUNTERMEASURE/FACILITY RESPONSE PLAN

WHO CAN YOU CALL?

FRP Infoline 215-597-9562

SPCC/OPA Hotline 202-260-2342

National Response Center 800-484-8802

Region III SPCC Personnel, Their Title and Phone Extension:

Dave Wright, Chief, Oil and Title III Section--597-5998

Vince Zenone, OSC/SPCC Coordinator--597-3038

Linda Ziegler, Oil Program/FRP Coordinator--597-1395

Regina Starkey, Oil Enforcement/FRP Co-Lead Coordinator--597-1395

Paula Curtain, Oil Enforcement Specialist--304-234-0256

Bernie Stepanski, Investigator--597-3184

Frank Cosgrove, SPCC Oil Inspector--597-1357

Tony Faranca, FRP Inspector--597-3152

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COMMONLY USED CWA-OPA-SPCC ACRONYMS

ACP	Area Contingency Plan
AST	Aboveground Storage Tank
CERCLA	Comprehensive Environmental Response, Compensation, & Liability Act of 1980
CWA	Clean Water Act
DOJ	Department of Justice
DOT	Department of Transportation
EPA	United State Environmental Protection Agency
ERNS	Emergency Response Notification System
FRP	Facility Response Plan
MOU	Memorandum of Understanding
NCP	National Contingency Plan
NPDES	National Pollutant Discharge Elimination System
NRC	National Response Center
NRT	National Response Team
OPA	Oil Pollution Act of 1990
PE	Professional Engineer
RA	Regional Administrator
RCP	Regional Contingency Plan
RCRA	Resource Conservation & Recovery Act
RQ	Reportable Quantity
SIC	Standard Industrial Classification (Code)
SPCC	Spill Prevention Control and Countermeasure (Plan)
USCG	United States Coast Guard
UST	Underground Storage Tank
WHPA	Wellhead Protection Area

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IMPORTANT SPCC DEFINITIONS

Oil is defined as "oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil." Interpretations of this definition include non-petroleum oils such as vegetable and animal oils.

Discharge involves but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping of a material. However, some "discharges" are allowed as authorized by a permit issued under to section 13 of the River and Harbor Act of 1899, or section 402 or 405 of the Federal Water Pollution Control Act (FWPCA) Amendments of 1972.

Spill Event is a discharge of in a harmful quantity into the navigable waters of the US or the adjoining shorelines.

RQ or Reportable Quantity is established under the Superfund, Emergency Planning, and Community Right-To-Know Program (40 CFR Part 302) as the quantity of a given material, which when released by an owner or operator, requires notification of the National Response Center.

Harmful Quantity is a quantity of oil which

- (1) Violates applicable water quality standards; or
- (2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or
- (3) Causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

* - Discharges from properly operating vessel engines are exempted.

Applicable Water Quality Standards are water quality standards adopted by a state pursuant to Section 303 of the FWPCA or promulgated by the EPA pursuant to that section.

Navigable waters of the United States are defined in section 502(7) of the FWPCA, and includes:

- (1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA, and tributaries of such waters;
- (2) Interstate waters, including interstate wetlands;
- (3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and
- (4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

Owner or operator means any person owning or operating an onshore or an offshore facility, and in the case of an abandoned offshore facility, the person who owned or operated the facility immediately prior to abandonment.

Non-transportation related facility is defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the EPA, as all fixed facilities, including support equipment, but excluding interstate pipelines, railroad tank cars en route, transport trucks en route, and terminals associated with the transfer of bulk oil to and from a water transportation vessel. The term also includes mobile or portable facilities such as onshore drilling or workover rigs, barge-mounted offshore drilling or workover rigs, and portable fueling facilities while they are in a fixed, operating mode.

Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

Offshore facility is defined as any facility of any kind located in, on or under any of the navigable waters of the United States, which is not a transportation-related facility.

SECTION E

*** SPCC COURSE SLIDES**

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History/Background Information

Sources Of Oil Spills

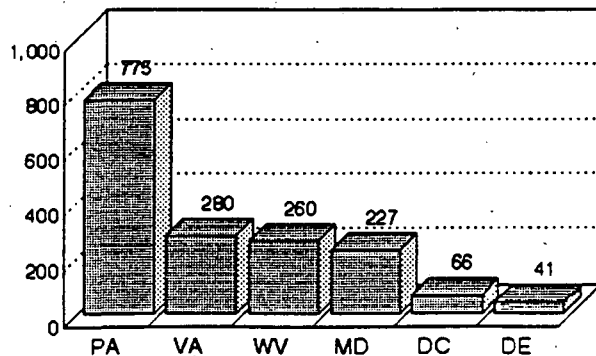
Transportation



Non-Transportation



Breakdown of Oil Spill Reports Region III - Fiscal Year 1992



Source: Regional Response Center (Six Year Trends)

Inland Spill Classification

< 1,000 gallons	--->	MINOR
1,000 - 10,000 gallons	--->	MEDIUM
> 10,000 gallons	--->	MAJOR

Source: 40 CFR 300.5 (NCP)

SPCC HISTORY

Oil Pollution Prevention Regulation



- Spill Prevention, Control and Countermeasures (SPCC), became effective January 10, 1974.
 - ▶ Derives authority from Section 311 of the Clean Water Act (CWA).

WETA

SPCC History

SPCC HISTORY

Memorandum of Understanding (MOU)



- Developed between the EPA and DOT to clarify the meanings of "Transportation and Non-Transportation-Related Facilities".



WETA

SPCC History

SPCC HISTORY

Amendments to SPCC Regulation

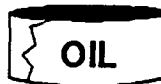


- August 29, 1974:
 - ▶ Set forth EPA's policy on civil penalties for violating Section 311 of CWA.
- March 26, 1976:
 - ▶ Clarified SPCC applicability criteria.
 - ▶ Specified that SPCC plans must be written.
 - ▶ Outlined procedures for developing an SPCC plan for mobile facilities.

HS14

SPCC History

SPCC HISTORY



- Major Oil Spill - January 2, 1988.
- ▶ 4 million gallon AST collapsed and spilled 3.8 million gallons of diesel fuel.
 - ▶ Approximately 750,000 gallons entered into the Monongahela River.
 - ▶ Affected the water supplies of 70 communities across 3 States.

HS56

SPCC History

SPCC HISTORY

SPCC Task Force Report



- Focused on prevention of large catastrophic spills.
- Made recommendations regarding the Federal SPCC program.

HS14

SPCC History

SPCC HISTORY

PROPOSED RULE



- October 22, 1991:
 - ▶ Developed to clarify that certain provisions in the regulation are mandatory.
 - ▶ May require facilities to notify EPA for the purpose of developing a comprehensive inventory of SPCC-regulated facilities.

RB12

SPCC History

SPCC HISTORY

OPA-1990



- Signed into law on August 18, 1990.
- Made significant modifications to Section 311 of CWA.

RB14

SPCC History

OPA KEY PROVISIONS

- Expands Federal Role In Response
- Establishes Oil Spill Liability Trust Fund
- Requires Contingency Planning (FRP)
- Requires Double Hulls
- Provides For Research And Development
- Increases Liability For Spills

OPA-1990

Liability Caps Can Be Broken

1. Spill was caused by gross negligence, willful misconduct or the violation of federal safety, construction, or operating regulations.
2. Failure to report a known spill.
3. Failure or refusal to cooperate with removal actions.
4. Failure to comply with an order issued under the CWA or the Intervention on the High Seas Act.

08140

SPCC History

Evaluation of the Plan/Program

- Is your plan current and effective?
- Do your people know what to do when a spill occurs?
- Does the equipment work?
- Can your people use the equipment safely and effectively?
- Do they know who to call for help?

EVAL-1

112.2

Definitions

Section 112.2

Important Definitions

Source: 40 CFR 110.1 & 112.2

- Oil
- Discharge; Spill Event
- Harmful Quantity; Applicable Water Quality Standards
- Navigable Waters; Adjoining Shorelines
- Owner or Operator
- Non-Transportation Related Facility
- Onshore and Offshore Facility

SPCC-1

112.1

General Applicability

Section 112.1

SPCC applies to:

- Non-transportation-related facilities that:
 - ▶ Due to their location, could reasonably be expected to discharge oil into or upon the navigable waters of the U.S. or adjoining shorelines.
 - ▶ Have a total under-ground storage capacity > 42,000 gallons, or
 - ▶ Have a total above-ground storage capacity > 1,320 gallons, or
 - ▶ Have a single, above-ground storage tank with a capacity > 660 gallons.

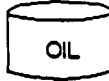
SPCC

112.1 General Applicability

Section 112.1

The SPCC regulation

- Establishes procedures, methods, and equipment to prevent oil discharges into or upon the navigable waters of the U.S. or adjoining shorelines.
- Does not relieve the owner/operator from compliance with other existing Federal, State, and Local laws.
- Concentrates on prevention, not response to discharges of oil in "harmful quantities".
- Complements existing laws, regulations, rules, standards, policies and procedures.



SEC 1-1A

Section 112.1

General Information

Organizations that should be considered for current regulations, standards and codes:

- American Petroleum Institute (API)
- National Fire Protection Association (NFPA)
- American Society of Mechanical Engineers (ASME)
- American National Standards Institute (ANSI)
- Underwriters Laboratory (UL)

SEC-1B

112.1 Applicability

112.3

Requirements for Preparation and Implementation of Spill Prevention Control and Countermeasures Plans

Section 112.3

Time Requirements



- Facilities are required to:
 - develop a plan within 6 months of starting operations.
 - fully implement the plan within 1 year of starting operations.

112.3.1

Section 112.3

Mobile Facilities

- Must have an SPCC plan prepared in accordance with 40 CFR Part 112.7
- No mobile facility can legally operate without having an SPCC plan implemented.



112.3.2

Section 112.3

Other Requirements

- The SPCC plan must be reviewed and certified by a PE, and
- Must be available to the RA for review during normal working hours.



112.3.3

Section 112.3

Extensions of Time



- Can be granted by the RA because of the non-availability of qualified personnel or delays in construction or equipment delivery, beyond the control of the owner/operator.

112.3.4

112.4

Amendment of SPCC Plans by the
Regional Administrator

Section 112.4

Submitting Plans to EPA

- Inspector requests a copy, or
- Oil is discharged into or upon the navigable waters of the U.S. or adjoining shorelines:
 - at > 1,000 U.S. gallons in a single spill event, or
 - in "harmful quantities" in two spill events in any 12 month period.

SEC-1

112.4 RA Plan Amendments

Section 112.4

Written Reports Include:

- Copy of SPCC plan.
- Facility name
- Owner/operator name.
- Location of facility.
- Date of initial operation.
- Maximum oil storage capacity and average daily throughput.

SE064

112.4 RA Plan Amendments

Section 112.4

Written Reports (cont.)

- Facility description
- Cause(s) of the spill(s).
- Corrective measures taken.
- Additional preventative measures.
- Other information requested by the RA.

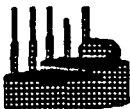
SE064

112.4 RA Plan Amendments

Section 112.4

If the RA Proposes Amendment(s)

- The owner/operator will be notified via certified mail, and must
 - make the amendment(s) part of the plan within 30 days.
 - implement the amendment(s) within 6 months.



SE064

112.4 RA Plan Amendments

Section 112.4

Appeals

- Informal appeal to RA:
 - Written statements or views opposing the amendment.
- Formal appeal to the EPA Administrator:
 - Clear, concise statement of the issues.
 - Additional information from any other person.

112.4

112.4 RA Plan Amendments

112.5

Amendment of SPCC Plans by
Owners or Operators

Section 112.5

Owner/Operator Amendments

- The owner or operator must review the facility's SPCC plan every 3 years.
- The plan shall be amended within 6 months of the review to include a more effective technology if:
 - ▶ The technology significantly reduces the likelihood of a spill event at the facility.
 - ▶ The technology has been field-proven.

112.5

112.5 Owner/operator Plan Amendments

Section 112.5

Owner/Operator Amendments

- A facility's SPCC plan must be amended when there is a "change" in facility design, construction, operation or maintenance that materially affects the facility's potential to discharge oil.
- The amendment(s) must be fully implemented within 6 months.

SEC-4

112.5 Owner/operator Plan Amendments

Section 112.5

Examples of changes:

- Commission or decommission of tanks.
- Replacement, reconstruction, or movement of tanks.
- Replacement, reconstruction, or installation of piping systems.
- Construction or demolition that might alter secondary containment structures.
- Revision of standard operation or maintenance procedures at a facility.

SEC-4

112.7

**Guidelines for the Preparation
and Implementation of a SPCC
Plans**

Section 112.7

General Information

- SPCC plans should be prepared using good engineering practices, and
- Have the full approval of management with the authority to commit the necessary resources.



SECTION

112.7 Plan Preparation Guidelines

Section 112.7

General Information (cont.)

- An SPCC plan includes:
 - ▶ Predictions of equipment failure.
 - ▶ Appropriate containment or diversionary structures.

SECTION

112.7 Plan Preparation Guidelines

Section 112.7

Containment or Diversionary Structures

- For onshore facilities:
 - Dikes, berms or retaining walls sufficiently impervious to contain the spilled oil.
 - Curbing.
 - Culverting, gutters or other drainage systems.
 - Weirs, booms or other barriers.
 - Retention ponds.
 - Sorbent materials.
 - Vaulted and doubled walled tanks.

SECTION

112.7 Plan Preparation Guidelines

Section 112.7

Containment or Diversionary Structures

- For offshore facilities:
 - ▶ Curbing, drip pans.
 - ▶ Sumps and collection systems.

112.7-4

112.7 Plan Preparation Guidelines

Section 112.7

Containment or Diversionary Structures

- If installing structures or equipment is not practicable, you must:
 - ▶ Maintain a written spill contingency plan (40 CFR 109), and
 - ▶ Have a written commitment of equipment and materials to contain and abate a spill.

112.7-5

112.7 Plan Preparation Guidelines

Section 112.7

Guidelines

1. Facility drainage, onshore. *
2. Bulk storage tanks, onshore. *
3. Facility transfer operations, pumping, and in-plant processes. *
4. Facility tank car and tank truck loading/unloading, onshore.
5. Inspection and records.

* Excludes production facilities

112.7-6

112.7 Plan Preparation Guidelines

Section 112.7

Guidelines (cont.)

- 6. Security.*
- 7. Personnel training and spill prevention procedures.
- 8. Oil production facilities, onshore.
- 9. Oil drilling and workover facilities, onshore.
- 10. Oil drilling, production, or workover facilities, offshore.

* Excludes production facilities

SECTION

112.7 Plan Preparation Guidelines

Section 112.7

*** Facility Drainage - Onshore**

- Drainage from diked storage areas
 - ▶ Should have positive restraint.
 - ▶ Should be manually activated.
 - ▶ Should be inspected.
- Drainage from undiked areas
 - ▶ Should flow to a containment area or a diversionary system.
- Treatment systems
 - ▶ Should be engineered to prevent overflow.

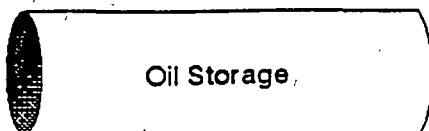
SECTION

112.7 Plan Preparation Guidelines

Section 112.7

*** Bulk Storage Tanks - Onshore**

- Tanks must be made of materials compatible with the oil to be stored.
- There must be secondary containment for all tanks.



SECTION

112.7 Plan Preparation Guidelines

Section 112.7

* Bulk Storage Tanks - Onshore (cont.)

- Rainwater from a diked area may bypass in-plant treatment if:
 - ▶ The bypass is normally kept in the closed position.
 - ▶ The discharge is inspected prior to release.
 - ▶ The discharge does not violate applicable water quality standards.
 - ▶ The valve is opened and resealed under proper supervision.
 - ▶ Proper records are kept.

112.7.40

112.7 Plan Preparation Guidelines

Section 112.7

* Bulk Storage Tanks - Onshore (cont.)

- Buried metallic tanks
 - ▶ Protect from corrosion
 - ▶ Pressure test regularly
- Partially buried metallic tanks
 - ▶ Should be avoided unless the buried portion is protected from corrosion.

112.7.41

112.7 Plan Preparation Guidelines

Section 112.7

* Bulk Storage Tanks - Onshore (cont.)

- Aboveground tanks
 - ▶ Periodic integrity testing.
 - ▶ Frequent visual inspections.
- Internal heating coils
 - ▶ Exhaust should be monitored or treated.

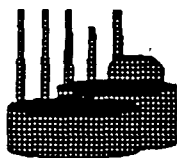
112.7.42

112.7 Plan Preparation Guidelines

Section 112.7

* Bulk Storage Tanks - Onshore (cont.)

- New and old tanks should be fail safe.
- Leaking tanks should be repaired promptly.
- Portable oil tanks need secondary containment.



1127J2

1127 Plan Preparation Guidelines

Section 112.7

* Transfer Operations, Pumping, & In-Plant Process - Onshore

- Buried pipes should be protected from corrosion.
- Out-of-service or standby status pipes should be capped or blank flanged.
- Pipe racks should be designed to account for expansion and minimize corrosion.
- Aboveground piping and valves should be inspected regularly.
- Warnings must be posted to warn traffic of aboveground piping.

1127J2

1127 Plan Preparation Guidelines

Section 112.7

Tank Car & Tank Truck Loading/Unloading racks - Onshore

- Facilities must meet the minimum DOT standards.
- Rack areas should have secondary containment to handle a spill from the largest tank compartment filled at that location.
- A system should be established to prevent vehicle departures before disconnecting.
- All tank car and tank truck openings should be inspected for leaks before and after loading.



1127J2

1127 Plan Preparation Guidelines

Section 112.7

Inspections and Records

- Inspections should be performed in accordance with a written procedure.
- Inspection records should be signed by an appropriate supervisor or inspector.
- Both the written procedures and the inspection records should be made part of the facility's SPCC plan for a period of 3 years.



112.7.1

112.7 Plan Preparation Guidelines

Section 112.7

* Security

- Facilities should be fenced with entrance gates locked and/or guarded.
- Master flow and drain valves, pump controls, and loading/unloading connections should be protected when not in use.
- Facility lighting should aid in spill detection as well as deter vandals.



112.7.2

112.7 Plan Preparation Guidelines

Section 112.7

Personnel Training and Spill Prevention Procedures

- Owners and operators are responsible for proper instruction of personnel.
- Each facility should designate an individual to be accountable for spill prevention.
- Operational personnel should be briefed regularly to assure that the facility SPCC plan is adequately understood.

112.7.3

112.7 Plan Preparation Guidelines

Section 112.7

Oil Production Facilities - Onshore

- **Drainage:**
 - ▶ Dikes must be sealed closed except when being drained.
 - ▶ Drainage ditches should be checked regularly for accumulation of oil.
- **Bulk storage tanks:**
 - ▶ Must be compatible with the oil to be stored.
 - ▶ Must have secondary containment.
 - ▶ Undiked areas should flow to a catchment basin or holding pond.
 - ▶ Must be visually inspected on a regular basis.

SECT.48

112.7 Plan Preparation Guidelines

Section 112.7

Oil Production Facilities: Bulk Storage Tanks - Onshore

- **Tanks should be fail-safe engineered, including:**
 - ▶ Adequate tank capacities.
 - ▶ Overflow equalizing lines installed between tanks.
 - ▶ Vacuum protection.
 - ▶ Level sensor alarm

SECT.49

112.7 Plan Preparation Guidelines

Section 112.7

Oil Production Facilities: Facility Transfer Operations - Onshore

- **Aboveground pipes must be examined periodically.**
- **Frequent examination of saltwater disposal facilities must be conducted.**
- **The facility must maintain a program of flowline maintenance.**

SECT.50

112.7 Plan Preparation Guidelines

Section 112.7

Drilling and Workover Facilities - Onshore

- Mobile equipment must be positioned so as to prevent a spill into the water.
- Blowout prevention assemblies and well controls should be used.

SE 07.01

112.7 Plan Preparation Guidelines

Section 112.7

Drilling, Production, or Workover Facilities - Offshore

- Surface and sub-surface shut-in valves should be easily identifiable.
- Prior to drilling, a blowout prevention assembly and well control system should be installed.
- Extra-ordinary well control measures should be in place in case of emergencies.
- Sub-marine pipelines should be protected from environmental stress and other activities.

SE 07.02

112.7 Plan Preparation Guidelines

PROPOSED RULE

Revision of Section 112.7



- Section 112.7 - SPCC plan general requirements.
- Section 112.8 - SPCC plan requirements for onshore facilities (excluding production facilities).
- Section 112.9 - SPCC plan requirements for onshore oil production facilities.
- Section 112.10 - SPCC plan requirements for onshore drilling and workover facilities.
- Section 112.11 - SPCC plan requirements for offshore oil drilling, production, or workover facilities.

SE 07.03

112.6 Civil Penalties

What to Expect During an SPCC Inspection

Who is present at an inspection:

- Facility
 - Facility representative(s) responsible for maintaining the SPCC Plan.
- EPA
 - EPA OSC
 - EPA SPCC Program Representative, or
 - Designated EPA Contractor

When can a facility be inspected:

- Facility's may be inspected because of:
 - Spill history
 - Complaints
 - Official request (State, Local), or
 - Without advanced notification

What will be done at the inspection:

1. Complete and sign Acknowledgement and Record of SPCC Inspection/Plan Review.
2. Verify P.E. Certification (signature, reg. #, seal).
3. Verify 3-year Plan review and/or amendment re-certification, if applicable.
4. Site tour/evaluation of effectiveness of the SPCC Plan.
5. Other site-specific information (site maps, list of tanks and storage capacity, route of entry to nearest waterway, storm sewers, photo documentation, etc.).

112.6

**Civil Penalties for Violation
of Oil Pollution Prevention
Regulations**

EPA's Goal:

COMPLIANCE

Civil Penalties

- Penalties are determined using the following factors:
 - seriousness of violation.
 - economic benefit to violator resulting from violation.
 - degree of culpability involved.
 - penalties for same incident from other agencies.
 - violation history.
 - efforts by the violator to minimize effects of discharge.
 - economic impact of the penalty on violator.
 - any other matters as justice may require.

81004

112.6 Civil Penalties

Section 112.6

Civil Penalties

- The November 4, 1992 Interim Rule amends both Section 112.6 and 114.1.

- ▶ These sections are now only applicable to violations occurring prior to 8/18/90.
- ▶ Violations occurring after 8/18/90 will be subject to either a Class I or Class II civil penalty, as outlined in Section 311(b)(6) of the OPA amended CWA.



81004A

112.6 Civil Penalties

Section 112.6

Types of Civil Penalties

1. Class I Penalties:
 - ▶ Can not exceed \$10,000 per violation.
 - ▶ Maximum penalty of \$25,000.
2. Class II Penalties:
 - ▶ Can not exceed \$10,000 per day for each day the violation continues.
 - ▶ Maximum penalty of \$125,000.
3. DOJ referrals:



81004

112.6 Civil Penalties

NOTES

Company X	
NUMBER OF VIOLATIONS	1 VIOLATION
TYPE	FAILURE TO PREPARE PLAN (112.3)
STORAGE CAPACITY	1. OVER 1 MILLION (M) (M GALLONS) 2. ALL ABOVE GROUND
SPILL HISTORY	1 MINOR SPILL
DISTANCE TO WATERWAY	LESS THAN 25 YARDS
POTENTIAL THREAT	SURFACE WATERS
FACILITY TYPE	1. ON-SHORE 2. OIL STORAGE AND COMMERCIAL 3. WASTE TREATMENT 4. PIPELINES 5. VEHICLES & RAIL CARS
LENGTH OF VIOLATION	5 YEAR STATUTORY LIMIT
PROPOSED PENALTY	\$14,400

Company Y	
NUMBER OF VIOLATIONS	1 VIOLATION
TYPE	FAILURE TO PREPARE PLAN (112.3)
STORAGE CAPACITY	1. LESS THAN 50,000 GALLONS AST 2. LESS THAN 42,000 GALLONS UST
SPILL HISTORY	NONE
DISTANCE TO WATERWAY	25 TO 50 YARDS
POTENTIAL THREAT	SURFACE WATERS/SHOARELINE
FACILITY TYPE	1. ON-SHORE 2. COMMERCIAL
LENGTH OF VIOLATION	5 YEAR STATUTORY LIMIT
PROPOSED PENALTY	\$4,500

Company Z	
NUMBER OF VIOLATIONS	1 VIOLATION
TYPE	FAILURE TO PREPARE PLAN (112.3)
STORAGE CAPACITY	136,000 GALLONS AST
SPILL HISTORY	NONE
DISTANCE TO WATERWAY	200 YARDS
POTENTIAL THREAT	SURFACE WATERS
FACILITY TYPE	1. ON-SHORE 2. INDUSTRIAL 3. COMMERCIAL 4. VEHICLES & RAIL CARS
LENGTH OF VIOLATION	5 YEAR STATUTORY LIMIT
PROPOSED PENALTY	\$17,500

NOTES

Recap of Penalties for Companys X, Y & Z

	COMPANY		
	X	Y	Z
PROPOSED PENALTY	\$14,400	\$4,500	\$17,500
PENALTY PAID	\$12,960	\$2,000	\$14,040

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SECTION F

- * WHAT TO EXPECT DURING AN
SPCC INSPECTION**
- * ACKNOWLEDGEMENT AND RECORD
OF SPCC INSPECTION/PLAN REVIEW**

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WHAT TO EXPECT DURING AN SPCC INSPECTION

When an SPCC inspector visits your facility, there are a few tips that can make the inspection proceed smoothly. The inspector will announce him/herself and ask for the person responsible for the facility SPCC plan. The inspector should be directed to a person who can present the inspector with the written SPCC plan and answer questions about the plan. The inspection will start with the completion of a form called an Acknowledgement and Record of SPCC Inspection/Plan Review. Important information for the completion of this form includes the facility address and phone number, owner or operator address and phone number if different, a company contact and a brief synopsis of the facility operations. The facility contact will be asked to sign the acknowledgement form, and a copy will be given to him/her as a record of the inspection.

The inspection is an evaluation of the effectiveness of your written SPCC plan and the application of that plan at your facility. The SPCC plan must have been reviewed and certified by a professional engineer, and the inspector will want to see the PE's registration number, signature and seal on the plan. The plan must also contain documentation verifying that the Plan was reviewed every three years. In addition, the inspector will want to verify if the Plan has been amended as required and that the amendments were certified by a registered PE.

After reviewing the written plan, the inspector will conduct a site tour and ask specific questions regarding the implementation of the facility Plan. Other information that will be helpful include a site map, a list of tanks and their storage capacity, and the location of the nearest navigable waters, storm sewers etc. Any questions regarding the inspection can be posed to the OSC in charge of the inspection.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

ACKNOWLEDGEMENT AND RECORD OF SPCC/FRP INSPECTION/PLAN REVIEW

SPCC CASE NUMBER: _____ FRP REGIONAL ID#: _____ DATE: _____

TO: Vincent E. Zenone, OSC/SPCC Coordinator (3HW34)
CC: Linda J. Ziegler, FRP Coordinator (3HW34) (only if FRP applicable)

Inspector's Printed Name/Signature: _____

Inspection Team Members: _____

Name/Location of Facility: _____

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Facility Contact/Title: _____

Telephone Number: _____

Name of Owner/operator: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: _____

•• See pages 12 to 14 for FRP only information

Synopsis of business operations: _____

Route of entry and estimated distance to waterway: _____

Acknowledgement:

I acknowledge that an SPCC/FRP inspection of this facility was conducted on the _____ day of

19 _____

Facility Representative Printed Name/Signature: _____

NOTE: During this inspection the owner/operator of the facility was asked to provide an extra copy of the SPCC Plan, which will be submitted with this report to the SPCC Coordinator. An extra copy of the SPCC Plan was provided to the inspector (Y/N). If no, the owner/operator of the facility has been asked to send a copy of the SPCC Plan, if available, via certified mail, return receipt requested, within 14 days of the date of this inspection to the SPCC Coordinator (mail code 3HW34) at the address on this letterhead (Y/N).

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SECTION G

*** FACT SHEET: OPA Q's & A's**

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OPA Q's & A's: Overview of the Oil Pollution Act of 1990

Office of Emergency and Remedial Response
Emergency Response Division OS-210

Quick Reference Fact Sheet

Thousands of oil spills occur in the United States each year. Over the three-year period from 1988 through 1990, the Federal government received 42,000 notifications of oil discharges -- an average of 15,000 per year, or about 40 notifications per day. In 1990 alone, there were 24 oil spills that exceeded 100,000 gallons, five of which were greater than 1 million gallons. In 1989, 38 oil spills exceeded 100,000 gallons, including the devastating *Exxon Valdez* spill in Alaska's Prince William Sound. In response to the new public awareness of the damaging effects of major oil spills, Congress unanimously enacted tougher oil spill legislation and, on August 18, 1990, the President signed into law the Oil Pollution Act of 1990 (OPA or the Act).

On October 18, 1991, the President issued Executive Order 12777, delegating the authority for implementing provisions of the OPA to several Federal agencies and departments, including the U.S. Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG). These "OPA Q's & A's" are part of a series of fact sheets that provide up-to-date information on EPA's implementation of the OPA. This first fact sheet provides an overview of the various provisions of the OPA and the Agency's responsibilities under the new law.

General Overview

Q1. What is the OPA?

- A. The OPA (Pub. L. 101-380) is a comprehensive statute designed to expand oil spill prevention, preparedness, and response capabilities of the Federal government and industry. The Act establishes a new liability and compensation regime for oil pollution incidents in the aquatic environment and provides the resources necessary for the removal of discharged oil. The OPA consolidates several existing oil spill response funds into the Oil Spill Liability Trust Fund, resulting in a \$1-billion fund to be used to respond to, and provide compensation for damages caused by, discharges of oil. In addition, the OPA provides new requirements for contingency planning both by government and industry and establishes new construction, manning, and licensing requirements for tank vessels. The OPA also increases penalties for regulatory noncompliance, broadens the response and enforcement authorities of the Federal government, and preserves State authority to establish laws governing oil spill prevention and response.

Q2. How does the OPA affect existing laws and regulations?

- A. The OPA amends section 311 of the Federal Water Pollution Control Act (the Clean Water Act or CWA, 33 U.S.C. 1321 *et seq.*), to clarify Federal response authority, increase penalties for spills, establish USCG response organizations, require tank vessel and facility response plans, and provide for contingency planning in designated areas. Many of the statutory changes will require corresponding changes to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), codified at 40 CFR Part 300. In addition, the OPA repeals the following statutory provisions and merges the funds established under these laws with the Trust Fund: (1) CWA section 311(k); (2) Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. §1811 *et seq.*); (3) section 18(f) of the Deepwater Port Act of 1974 (33 U.S.C. §1502 *et seq.*); and (4) section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. §1651 *et seq.*), except for amounts necessary to pay remaining claims. The OPA also makes the Trust Fund available for actions taken in accordance with the Intervention on the High Seas Act (33 U.S.C. §1486 *et seq.*). The OPA, however, does not preempt States' rights to impose additional liability or other

requirements with respect to the discharge of oil within a State or to any removal activities in connection with such a discharge.

Q3. Which Federal agencies are responsible for implementing the OPA?

- A. On October 18, 1991, the President issued Executive Order 12777, delegating authority to implement the OPA to various Federal agencies and departments, including EPA and the USCG (via the U.S. Department of Transportation or DOT). Forthcoming memoranda of understanding between EPA and the USCG will address how the two agencies will interact in carrying out their respective responsibilities. In general, EPA is responsible for oil spill prevention, preparedness, and response activities associated with non-transportation-related onshore facilities. The Agency has lead responsibility for implementing many of the OPA provisions in the inland zone, including revising the NCP, developing non-transportation-related facility response plan regulations, reviewing and approving facility response plans, designating areas, appointing Area Committee members, and establishing requirements for Area Contingency Plans.

In addition, the DOT (including, in some cases, the USCG) generally is responsible for oil spill planning and response activities for tank vessels, transportation-related onshore facilities, and deepwater ports. The U.S. Department of Interior generally is responsible for oil spill planning and response activities for offshore facilities except deepwater ports. Under the OPA, the National Oceanic and Atmospheric Administration is developing regulations for natural resource trustees to assess damages to natural resources caused by oil discharges.

Q4. How are the EPA program offices carrying out their responsibilities under the OPA?

- A. Most OPA provisions delegated to EPA are being implemented by EPA's Emergency Response Division (ERD), a part of the Office of Emergency and Remedial Response within the Office of Solid Waste and Emergency Response. Within ERD, the newly created Oil Pollution Response and Abatement Section will play a major role in carrying out the Agency's responsibilities under the OPA. Moreover, to coordinate the many efforts required under the Act, EPA formed the OPA Implementation Workgroup, chaired by the Director of ERD. A variety of Headquarters and Regional offices are represented on this workgroup; EPA Region 2 currently participates as the lead Regional representative. Within the overall workgroup, a number of other workgroups are implementing specific OPA provisions (see Highlight 1).

Highlight 1: EPA Workgroups to Implement the OPA

- The Regional Implementation workgroup is developing recommendations on EPA's expanded role and responsibilities in preventing and responding to oil spills.
- The Area Contingency Plans workgroup is studying issues associated with designating areas for which Area Committees and Area Contingency Plans are to be established.
- The Facility Response Plans workgroup, which has been incorporated into the existing Spill Prevention, Control, and Countermeasures (SPCC) Phase Two Workgroup, is developing regulations for facility response plans, as well as interim guidance for reviewing such plans.
- The NCP Revisions workgroup is developing the revisions to the NCP required by the OPA. A subworkgroup has been established to focus on revising Subpart J to establish procedures for using chemical agents to respond to oil spills.
- The Enforcement workgroup is reviewing EPA enforcement responsibilities in light of the new penalty provisions added by the OPA.
- The Liner Study workgroup is preparing a report to Congress on whether liners or secondary containment should be used to prevent discharges from onshore facilities.
- The Research and Development workgroup is coordinating EPA's program of oil pollution research and technology development and demonstration.

Federal and State Roles

Q5. What is the Federal government's role when responding to releases of oil?

- A. Under section 311(c) of the CWA, as amended by section 4201(a) of the OPA, the Federal government must ensure the effective and immediate removal of a discharge (or a substantial threat of a discharge) of oil or hazardous substance: (1) into or on navigable waters and adjoining shorelines; (2) into or on the waters of the exclusive economic zone; or (3) that may affect natural resources of the U.S. In carrying out this provision, the Federal government may: (1) remove or arrange for the removal of a discharge, subject to reimbursement from the responsible party; (2) direct or monitor all Federal, State, and private actions to remove a discharge; or (3) remove and, if necessary,

destroy a vessel discharging, or threatening to discharge. If the discharge is of such size or character as to pose a substantial threat to the public health or welfare, the Federal government is required to direct all public and private efforts to remove the discharge. For all other discharges, the Federal government has the discretion to take action, direct, or monitor public or private actions to remove the discharge. To facilitate and expedite emergency responses to discharges that pose a substantial threat to the public health or welfare, OPA section 4201 amends the CWA to exempt the Federal government from certain laws governing contracting procedures and the employment of personnel. In addition, an amendment to section 311(c) of the CWA provides an exemption from liability for response costs and damages which result from actions taken, or not taken, by a person rendering care, assistance, or advice consistent with the NCP. This exemption does not apply: (1) to a responsible party; (2) to a response conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*); (3) with respect to personal injury or wrongful death; or (4) if the person is grossly negligent or engages in willful misconduct. The intent of the OPA is to enable the Federal government to direct responses that are both immediate and effective.

Q6. Many States have laws governing oil spill prevention and response. Does the OPA preempt State laws?

- A. No; section 1018(a) of the OPA specifically provides that the Act does not preempt State law. States may impose additional liability (including unlimited liability), funding mechanisms, requirements for removal actions, and fines and penalties for responsible parties. Section 1019 of the OPA provides States the authority to enforce, on the navigable waters of the State, OPA requirements for evidence of financial responsibility. States are also given access to Federal funds (up to \$250,000 per incident) for immediate removal, mitigation, or prevention of a discharge, and may be reimbursed by the Trust Fund for removal and monitoring costs incurred during oil spill response and cleanup efforts that are consistent with the NCP.

Liability and Financial Responsibility

Q7. What provisions for oil spill liability does the OPA establish?

- A. Title I of the OPA contains liability provisions governing oil spills modeled after CERCLA and sec-

tion 311 of the CWA. Specifically, section 1002(a) of the OPA provides that the responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge, is liable for: (1) certain specified damages resulting from the discharged oil; and (2) removal costs incurred in a manner consistent with the NCP. Highlight 2 identifies the types of "damages" that responsible parties are potentially liable for under the OPA. Section 1002(d) also provides that if a responsible party can establish that the removal costs and damages resulting from an incident were caused solely by an act or omission of a third party, the third party will be held liable for such costs and damages. In these cases, however, the responsible party is still required to pay the removal costs and damages resulting from the incident, but is entitled by subrogation to recover all costs and damages from the third party or the Trust Fund.

Highlight 2: Damages for Which Responsible Parties Are Potentially Liable

The scope of damages for which oil dischargers may be liable under section 1002 of the OPA includes:

- Natural resource damages, including the reasonable costs of assessing these damages;
- Loss of subsistence use of natural resources;
- Real or personal property damages;
- Net loss of tax and other revenues;
- Loss of profits or earning capacity; and
- Net cost of additional public services provided during or after removal actions.

Q8. Does the OPA provide defenses to its oil spill liability provisions?

- A. Yes; section 1002(c) of the OPA provides exceptions to the statute's liability provisions. The exceptions include: (1) discharges of oil authorized by a permit under Federal, State, or local law; (2) discharges of oil from a public vessel; or (3) discharges of oil from onshore facilities covered by the liability provisions of the Trans-Alaska Pipeline Authorization Act.

In addition, section 1003 of the OPA provides the responsible party with defenses to liability imposed under section 1002 of the Act if the responsible party establishes that the spill was caused solely by: (1) an act of God; (2) an act of war; (3) an act or

omission of a third party; or (4) any combination of these events. To prevail in a third-party defense, the responsible party must prove that it took due care in handling the oil and took precautions against any foreseeable acts of the third party and any foreseeable consequences of those actions. However, the defenses contained in section 1003 are not available to responsible parties that: (1) do not report an incident of which they are aware; (2) do not cooperate with response officials during removal actions; or (3) without sufficient cause, do not comply with an order issued under section 311 of the CWA, as amended, or the Intervention on the High Seas Act.

Q9. Does the OPA establish limits on liability?

- A. Yes; the OPA establishes significantly higher limits of liability for tank vessels, facilities, and deepwater ports than existed previously under section 311 of the CWA. Specifically, section 1004 of the OPA increases the liability for tank vessels larger than 3,000 gross tons to \$1,200 per gross ton or \$10 million, whichever is greater. Responsible parties at onshore facilities and deepwater ports are liable for up to \$350 million per spill; holders of leases or permits for offshore facilities, except deepwater ports, are liable for up to \$75 million per spill, plus removal costs. Section 1004(d)(1) of the OPA, however, provides the Federal government with the authority to adjust, by regulation, the \$350-million liability limit established for onshore facilities, "taking into account size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility." The Agency is currently assessing the desirability of adjusting the liability limit for onshore non-transportation-related facilities based on these factors.

In addition, the OPA establishes the following conditions under which liability would be unlimited: (1) discharges caused by gross negligence, willful misconduct, or violation of Federal safety, construction, or operating regulations; (2) failure to report a known spill; (3) failure or refusal to cooperate in a removal action; or (4) failure or refusal to comply with an order issued under section 311 of the CWA, as amended, or the Intervention on the High Seas Act. In addition, the owner or operator of an Outer Continental Shelf facility, or vessel carrying oil as cargo from such a facility, is required to pay for all removal costs incurred by the U.S. Government or any State or local agency in connection with a discharge, or substantial threat of a discharge, of oil.

Q10. What penalties are responsible parties subject to under the OPA?

- A. Section 4301(a) of the OPA amends the CWA to increase the criminal penalties for failure to notify the appropriate Federal agency of a discharge. Specifically, the fine is increased from a maximum of \$10,000 to a maximum of \$250,000 for an individual or \$500,000 for an organization. The maximum prison term is also increased from one year to five years.

In addition, section 4301(b) of the OPA amends the CWA to authorize a civil penalty of \$25,000 for each day of violation or \$1,000 per barrel of oil discharged. These penalties are higher in cases of gross negligence or willful misconduct. Failure to comply with a Federal removal order can result in civil penalties of up to \$25,000 for each day of violation or three times the resulting costs incurred by the Trust Fund. Under section OPA 4301(c), criminal penalties can range up to \$250,000 and 15 years in prison. EPA and the USCG also have the authority to administratively assess civil penalties of up to \$125,000 against violators of the Oil Pollution Prevention Regulations (40 CFR Part 112) or those responsible for the discharge of oil or hazardous substances.

Q11. Are all parties regulated under the OPA required to provide evidence of financial responsibility?

- A. No; owners and operators of onshore facilities are not required to maintain financial assurance mechanisms. Owners and operators of offshore facilities, certain vessels, and deepwater ports, however, must provide evidence of financial responsibility. Specifically, section 1016 of the OPA requires that offshore facilities maintain evidence of financial responsibility of \$150 million and vessels and deepwater ports must provide evidence of financial responsibility up to the maximum applicable liability limitation amount. Any vessel subject to this requirement that cannot produce evidence of financial responsibility is not allowed to operate in U.S. waters. Methods of assuring financial responsibility under the OPA include evidence of insurance, surety bond, guarantee, letter of credit, or qualification as a self-insurer. Also, OPA section 1016(f) provides that claims for removal costs and damages may be asserted directly against the guarantor providing evidence of financial responsibility.

Q12. Are there funds available if cleanup costs and damages cannot be recovered from responsible parties?

- A. Yes; the OPA authorizes the expenditure of funds from the Oil Spill Liability Trust Fund, established

under section 9509 of the Internal Revenue Act of 1986 (26 U.S.C 9509), to pay for removal costs and/or damages resulting from discharges of oil into U.S. waters or supplement existing sources of funding. The Trust Fund, which is administered by the USCG, is based on a five-cent-per-barrel environmental fee on domestic and imported oil. The OPA amends section 9509 of the Internal Revenue Act of 1986 to consolidate funds established under other statutes and to increase permitted levels of expenditures. Specifically, section 9001(a) of the OPA consolidates the assets and liabilities remaining with, and the penalties paid pursuant to, the funds established under: (1) section 311 of the CWA; (2) section 18(f) of the Deepwater Port Act of 1974; (3) Title III of the Outer Continental Shelf Lands Act of 1978; and (4) section 204 of the Trans-Alaska Pipeline Authorization Act (after settlement of existing claims). The OPA amends the resulting Trust Fund by expanding permissible expenditures from \$500 million per incident, and a separate \$250-million per incident limit on natural resource claims, to \$1 billion per incident and a \$500-million per incident spending limit on natural resource damages. In addition, the OPA increases the Trust Fund borrowing limit from \$500 million to \$1 billion.

Oil Spill Preparedness and Prevention

Q13. How will implementation of the OPA help oil spill planning and prevention efforts?

- A. Section 4202 of the OPA strengthens planning and prevention activities by: (1) providing for the establishment of spill contingency plans for all areas of the U.S.; (2) mandating the development of response plans for individual tank vessels and certain facilities; and (3) providing requirements for spill removal equipment and periodic inspections. These efforts are intended to result in more prompt and effective cleanup or containment of oil spills, thereby preventing spills from becoming larger and reducing the amount of damage caused by oil spills.

The development of Area Contingency Plans will assist the Federal government in planning response activities. In addition, owners and operators of tank vessels, offshore facilities, and any onshore facilities that because of their location could cause substantial harm to the environment from a discharge, are required to prepare and submit to the Federal government plans for responding to discharges, including a worst case discharge or a threat of such discharge. If response plans are not developed and approved as required by section 311(j)(5) of the CWA, as amended by the OPA, the tank vessel or facility will

be prohibited from handling, storing, or transporting oil unless the tank vessel or facility submits a plan to the Federal government and receives temporary approval to continue operations (see Question #16 of this fact sheet). In addition, containment booms, skimmers, vessels, and other major spill removal equipment must be inspected periodically; tank vessels must carry removal equipment that uses the best technology economically feasible and is consistent with the safe operation of the vessel.

Moreover, the higher limits on liability and the broader scope of damages for which dischargers may be liable under the OPA should serve as added incentives for facilities and vessels to prevent spills. In addition, EPA is taking the lead or participating in several studies and research and development efforts that will aid in spill prevention. Other requirements of the OPA being implemented by the USCG -- such as establishing a National Response Unit and District Response Groups and new standards for tank vessel construction, crew licensing, and manning -- also will help to prevent or mitigate spills.

Q14. What are Area Committees and Area Contingency Plans?

- A. Area Committees, to be composed of qualified Federal, State, and local officials, will be created to develop Area Contingency Plans. At a minimum, Area Contingency Plans are intended to ensure the removal of a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel or facility in or near the area covered by the plan. In the case of an onshore facility, a worst case scenario is defined as the largest foreseeable discharge under adverse weather conditions. Area Contingency Plans will describe areas of special environmental importance, outline the responsibilities of government agencies and facility or vessel operators in the event of a spill, and detail procedures on the coordination of response plans and equipment. In accordance with Executive Order 12777, EPA is responsible for reviewing and approving Area Contingency Plans for the inland zone, whereas the USCG has similar responsibilities for the coastal zone.

Q15. Does the OPA require onshore facilities to prepare and submit a facility response plan?

- A. Yes; section 4202 of the OPA amends section 311(j)(5) of the CWA to require the owner or operator of a tank vessel, offshore facility, and certain onshore facilities to prepare and submit to the Federal government a plan for responding, to the maximum extent practicable, to a worst case discharge, or substantial threat of such a discharge, of oil or hazardous substances. Specifically, OPA

section 4202(a)(6) revises CWA section 311(j)(5) to require the owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause "substantial harm" to the environment as the result of an oil discharge, to submit a response plan to the Federal government. The OPA revisions to CWA section 311(j)(5) also require the Federal government to review and either approve, or require amendments to, the response plans of tank vessels, offshore facilities, and those onshore facilities that could reasonably be expected to cause significant and substantial harm to the environment from a discharge. Under Executive Order 12777, the President has delegated the authority to review and approve response plans for non-transportation-related onshore facilities to EPA.

Q16. What deadlines does the OPA place on the preparation and submission of facility response plans?

- A. Section 4202(b) of the OPA establishes deadlines for the preparation and approval of facility response plans. Regulations addressing facility response plans are required to be promulgated 24 months after the date of enactment of the OPA (i.e., August 18, 1992). Owners and operators of affected facilities are required to prepare and submit their plans 30 months after the date of enactment (i.e., February 18, 1993). Section 4202(b) of the OPA also states that if the owner or operator of a facility required to submit a plan has not done so by the deadline, that facility must stop handling, storing, or transporting oil. Furthermore, a facility required to prepare and submit a response plan may not handle, store, or transport oil unless: (1) the plan has been approved (when plan approval is required); and (2) the facility is operating in compliance with the plan. EPA may authorize a facility which has submitted a plan to operate without approval for up to two years if the owner or operator certifies the availability of personnel and equipment necessary to respond to a worst case discharge or the substantial threat of such a discharge.

Q17. What types of information must facility response plans include?

- A. The OPA requires owners or operators of a facility to submit a response plan that is: (1) consistent with the NCP and Area Contingency Plans; (2) updated periodically; and (3) resubmitted for approval with each significant change. Highlight 3 provides additional information that must be included in the facility response plan. In conjunction with the SPCC Phase II workgroup, the Facility Response Plans workgroup is making preparations to meet with trade associations representing the regulated community to provide information and seek comments on the possible contents, the level of

Highlight 3: Information That Must be Included in Facility Response Plans

OPA section 4202(a) requires that each facility response plan, at a minimum:

- Identify the individual with full authority to implement removal actions, and requires immediate communications between that individual, the appropriate Federal official, and those providing response personnel and equipment;
- Identify and ensure the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge; and
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge.

detail, and guidance that may be useful for preparing response plans.

Q18. Does the OPA contain provisions that address tank vessel construction?

- A. Yes; a major spill prevention feature of the OPA is the requirement that tank vessels be equipped with double hulls. Specifically, under section 4115 of the OPA, newly constructed tank vessels must be equipped with double hulls, with the exception of vessels used only to respond to discharges of oil or hazardous substances. In addition, newly constructed tank vessels less than 5,000 gross tons are exempt from the double-hull requirement if they are equipped with a double containment system proven to be as effective as a double hull for the prevention of a discharge of oil. Existing tankers without double hulls are to be phased out by size, age, and design beginning in 1995, and are required to be escorted by two towing vessels in specially designated high-risk areas. Most tankers without double hulls will be banned by 2015.

Q19. What other OPA requirements are designed to prevent oil spills from tank vessels?

- A. The OPA contains additional provisions that are intended to prevent tank vessel spills from occurring, including: (1) strict licensing requirements; and (2) manning and safety standards.

To ensure that the USCG can identify vessel personnel with motor vehicle offenses related to the use of alcohol and drugs, OPA section 4101 requires anyone applying for a license, certificate of registry, or merchant mariners' document to provide a copy of their driving record obtained from the National Driver Registry. This requirement is intended to provide background information on potential vessel personnel with motor vehicle offenses related to the use of alcohol and drugs. Applicants must also submit to drug testing. Further, OPA section 4103 provides additional authority for the expeditious suspension of licenses and documents of merchant mariners suspected of alcohol or drug abuse. OPA section 4104 provides authority for the orderly removal or relief of a vessel master or individual in charge of the vessel suspected of being under the influence of alcohol or a dangerous drug. The inclusion of these provisions reflects the concern that alcohol or drug impairment are serious threats to safe vessel operation.

Section 4114 of the OPA also requires that new tank vessel manning standards be set, both for U.S. and foreign tank vessels. For U.S. tank vessels, licensed seamen are not permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period. Forthcoming regulations will designate the conditions under which tank vessels may operate with the autopilot engaged or the engine room unattended. Crew members also must be trained in maintenance of the navigation and safety features of the tank vessel. For foreign tank vessels, a USCG review will determine whether tank vessel safety practices are at least the equivalent of U.S. requirements. Tank vessels that do not satisfy this standard will be prohibited from entering U.S. waters. These new requirements, emanating from issues raised in the investigation of the *Exxon Valdez* spill, should lead to better trained and more well-rested crews on tank vessels.

Other Provisions

Q20. What oil pollution research and development efforts are mandated by the OPA?

- A. Section 7001 of the OPA requires that an interagency committee be established to coordinate

the establishment of a program for conducting oil pollution research, technology development, and demonstration. This program is specifically required by the statute to provide research, development, and demonstration in a number of areas, including:

- Innovative oil pollution technologies (e.g., development of improved tank vessel design or improved mechanical, chemical, or biological systems or processes);
- Oil pollution technology evaluation (e.g., controlled field testing and development of testing protocols and standards);
- Oil pollution effects research (e.g., development of improved fate and transport models);
- Marine simulation research (e.g., use and application of geographic and vessel response simulation models); and
- Simulated environmental testing (e.g., use of the Oil and Hazardous Materials Simulated Environmental Test Tank).

Q21. What provisions are included in the OPA to protect Alaska's Prince William Sound?

- A. Title V of the OPA contains several provisions aimed at preventing future spills in Prince William Sound. Specifically, the OPA: (1) authorizes the Prince William Sound Oil Recovery Institute in Cordova, Alaska; (2) establishes Oil Terminal Oversight and Monitoring Committees for Prince William Sound and Cook Inlet; (3) authorizes and appropriates funds for construction of a navigation light on Bligh Reef; and (4) requires all tank vessels in Prince William Sound to be under the direction and control of a pilot, who cannot be a member of the crew of the tank vessel, licensed by the Federal government and the State of Alaska. In addition, section 8103 of the OPA establishes a Presidential Task Force on the Trans-Alaska Pipeline System. The Task Force will conduct a comprehensive audit of the pipeline system (including the terminal in Valdez, Alaska) to assess compliance with applicable laws.

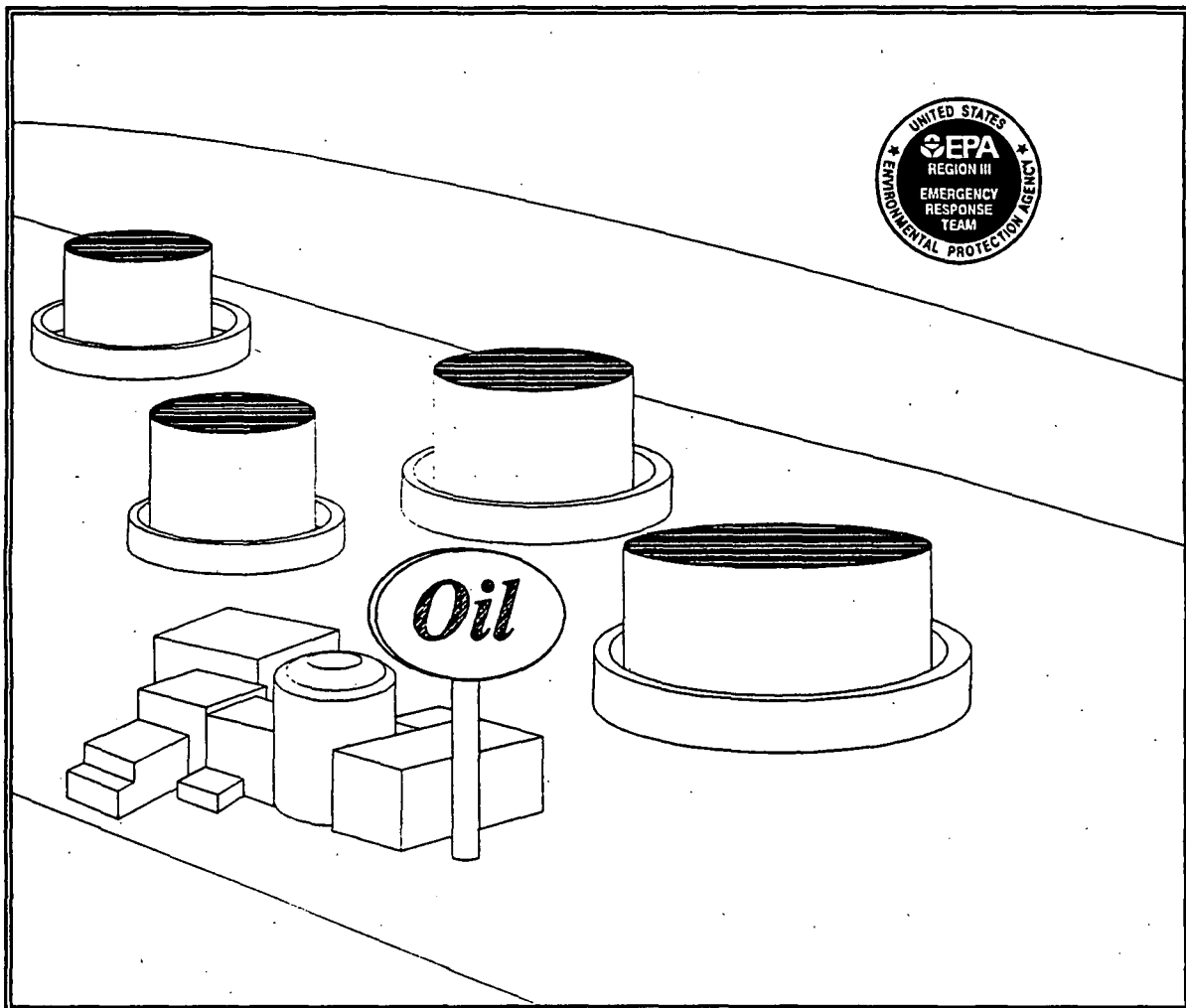


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Environmental Protection
Agency (OS-120)
Washington, DC 20460

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FACILITY RESPONSE PLAN (FRP) COURSE MODULE



SECTION H

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OPA HOTLINE (202) 260-2342

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response

Publication 9360.8-06FS
February 1993



Facility Response Plans

Office of Emergency and Remedial Response
Emergency Response Division 5202G

Quick Reference Fact Sheet

In 1990, Congress passed the Oil Pollution Act (OPA) in part to expand the scope of public and private planning and response activities associated with discharges of oil. The OPA amends §311 of the Clean Water Act (CWA) to augment Federal response authority, increase penalties for unauthorized spills, expand the organizational structure of the Federal response framework, and provide a greater emphasis on preparedness and response activities. CWA §311 requires the preparation of plans to respond to a worst-case discharge of oil, and sets forth specific requirements for development of such plans. These response plan requirements apply to an owner/operator of any onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by a discharge of oil into navigable waters,¹ adjoining shorelines, or the exclusive economic zone (i.e., "substantial harm facilities"). Section 311 of the CWA requires that owner/operators of such "substantial harm facilities" must submit their response plans by February 18, 1993, or stop handling, storing, or transporting oil. CWA §311 also provides that a subset of "substantial harm facilities" (i.e., facilities that could reasonably be expected to cause significant and substantial harm to the environment by discharging oil, or "significant and substantial harm facilities") must have their plans approved by the Federal government.

The President has delegated the authority to regulate non-transportation-related onshore facilities to the Administrator of EPA. EPA is implementing the CWA §311 response plan requirements in a proposed revision to the Oil Pollution Prevention regulation (40 CFR Part 112). The purpose of this fact sheet is to provide general information on how EPA intends to implement the CWA §311 requirements. Specifically, the fact sheet addresses who must prepare plans, which plans must be approved, and what a facility response plan should contain.

WHO MUST PREPARE PLANS? ("SUBSTANTIAL HARM FACILITIES")

Under CWA §311, only certain facilities are required to prepare and submit response plans, i.e., those facilities that could cause substantial harm to the environment. EPA has proposed two ways in which a facility may be identified as posing substantial harm: (1) through a self-selection process; or (2) by determination of the Regional Administrator (RA).

For the self-selection process, §112.20(f)(i) of the proposed rule lists specific criteria to help owner/operators evaluate whether their facilities pose

substantial harm (see Highlight 1). The proposed rule also provides more detailed information to help owner/operators interpret these criteria to determine whether their facility should be regarded as a "substantial harm facility." For example, Appendix C of the proposed rule provides formulas to help evaluate whether a facility is located at a distance that could cause injury to an environmentally sensitive area or shut down operations at a public drinking-water intake. (NOTE: Facility owner/operators may also use an alternative formula provided that they document such use, as appropriate.) Appendix D of the proposed rule provides information on environmentally sensitive areas.

¹ Navigable waters are defined in CWA §502(7) and at 40 CFR 110.1 as waters of the United States, including the territorial seas. This definition includes, among other things, lakes, rivers, streams (including intermittent streams), mudflats, and wetlands.

Highlight 1 SELF-SELECTION CRITERIA

Under the proposed rule, a facility would fall under the "substantial harm" category if it meets at least one of the following criteria:

- The facility has a total storage capacity greater than or equal to 42,000 gallons and performs over-water oil transfers to or from vessels; OR
- The facility has a total storage capacity greater than or equal to one million gallons, and meets any one of the following conditions:
 - Does not have adequate secondary containment for each aboveground storage area;
 - Is located such that a discharge could cause "injury" to an environmentally sensitive area;
 - Is located such that a discharge would shut down a public drinking-water intake; or
 - Has had, in the past 5 years, a reportable spill greater than or equal to 10,000 gallons.

The owner/operator of any facility currently regulated by the existing Oil Pollution Prevention regulation may consult the proposed rule for details on the self-selection screening process. If the self-selection process does indicate that a facility poses a threat of "substantial harm" to the environment, the owner/operator would be required prepare and submit a facility response plan to the appropriate EPA RA. CWA §311 requires that owner/operators of "substantial harm facilities" must submit their response plans by February 18, 1993, or stop handling, storing, or transporting oil.

Under the proposal, the RA also would have the authority to determine that a facility may cause substantial harm, regardless of the results of the self-selection screening process. As set forth in §112.20(b) of the proposed rule, the RA's determination would be based on factors similar to the criteria used in the self-selection screening process, as well as other site-specific characteristics and environmental factors.

IN ADDITION TO THE SELF-SELECTION PROCESS, THE RA MAY DETERMINE THAT A FACILITY POSES SUBSTANTIAL HARM.

Under the proposal, if an owner/operator determines that the facility does not have the potential to cause substantial harm, the owner/operator would have to complete the certification form contained in Appendix C of the proposed response plan rulemaking. This form would be maintained at the facility. In addition, if the self-selection process is completed using an alternative formula, the owner/operator would be required to notify the RA in writing and provide information on the reliability and analytical soundness of the alternative formula.

WHICH PLANS MUST BE APPROVED? ("SIGNIFICANT AND SUBSTANTIAL HARM FACILITIES")

In addition to the requirement to prepare response plans, CWA §311 establishes further requirements for a subset of facilities that could cause significant and substantial harm. CWA §311 requires that EPA must review and approve the response plans submitted for these facilities.

Under §112.20(f)(3) of the proposed rule, the RA would identify these "significant and substantial harm facilities" using a series of risk-based screening considerations. These considerations include factors similar to the criteria to determine substantial harm, as well as the age of the tanks, proximity to navigable waters, and spill frequency. Facilities would be notified in writing of their status as posing significant and substantial harm.

Under CWA §311, if EPA does not review and approve a "significant and substantial harm facility" plan by August 18, 1993, the facility must stop handling, storing, or transporting oil. However, the number of plans needing review may prevent RAs from approving all response plans by the statutory deadline. CWA §311 allows a "significant and substantial harm facility" owner/operator to seek Federal authorization to operate for up to two years after the plan has been submitted where the owner/operator certifies that he or she has ensured by contract or other approved means the availability of private personnel and equipment necessary to respond to a worst-case discharge.

Under §112.20(b) of the proposed rule, owner/operators who seek such authorization may submit to the RA a certification statement and proof that a written contractual agreement or other approved means is in place. Examples of "other approved means" may include:

- Certification that the owner/operator has access to the necessary personnel and equipment;
- Active membership in spill organization that ensures adequate access to the necessary personnel and equipment; or
- Other specific arrangements approved by the RA upon the request of the owner/operator.

WHAT SHOULD A FACILITY RESPONSE PLAN CONTAIN?

As discussed above, CWA §311 requires that the response plan must address certain critical items. CWA §311 requires that the response plan:

- Be consistent with the National Contingency Plan and Area Contingency Plans;
- Identify a qualified individual having full authority to implement removal actions, and require immediate communication between that person and appropriate Federal authorities and responders;
- Identify and ensure availability of resources to remove, to the maximum extent practicable, a worst-case discharge;
- Describe training, testing, unannounced drills, and response actions of persons at the facility;
- Be updated periodically; and
- Be resubmitted for approval of each significant change.

To assist owners or operators in preparing response plans, Appendix G of the proposed rule includes a model facility response plan that addresses CWA §311 provisions in a comprehensive and well-organized manner. **Highlight 2** outlines elements of the model plan.

Under the proposal, the organization of the model plan and the information contained in it would be representative of the format and level of detail needed to address the required response plan elements in an acceptable manner. However, EPA recognizes that there may be many facilities with existing response plans. Therefore, owner/operators generally

Highlight 2 RESPONSE PLAN ELEMENTS

Under the proposed rule, elements of an effective response plan would include the following:

- Emergency Response Action Plan*
- Facility name, type, location, owner, operator information
- Emergency notification, equipment, personnel, and evacuation information
- Identification and evaluation of potential spill hazards and previous spills
- Identification of small, medium, and worst-case discharge scenarios and response actions
- Description of discharge detection procedures and equipment
- Detailed implementation plan for containment and disposal
- Facility and response resource self-inspection, training, and meeting logs
- Diagrams of facility and surrounding layout, topography, and evacuation paths
- Security (fences, lighting, alarms, guards, emergency cut-off valves and locks, etc.)

* A response plan would serve as both a planning and action document, and the action portion should be maintained as an easily-accessible, stand-alone section of the overall plan.

would not need to prepare a separate plan to comply with CWA §311 if they have already prepared a plan, provided that the original plan: (1) satisfies the appropriate requirements and is equally stringent; (2) includes all the elements described in the model plan; (3) is cross-referenced appropriately; and (4) contains an Action Plan for use during a discharge.

Although Spill Prevention, Control, and Countermeasure (SPCC) plans (i.e., prevention plans) and response plans are different, and should be maintained as separate documents, some sections of the plans may be the same. The proposed rule would allow the owner/operator to reproduce and use those sections of the SPCC Plan in the response plan.

SPILL PREVENTION (SPCC) PLANS AND FACILITY RESPONSE PLANS ARE DIFFERENT

The CWA §311 requirements to develop a response plan will affect many facilities that are already subject to the Oil Pollution Prevention regulation. This regulation, which has been in effect since 1973, applies to facilities that meet the characteristics set forth at 40 CFR §112.1 (see Highlight 3).

The owner/operator of any facility subject to the Oil Pollution Prevention regulation is required to prepare and implement an SPCC Plan. SPCC Plans focus on procedures to prevent and control oil spills. In contrast, the facility response plans required by CWA §311 are intended to focus on reactive measures, such as how facility personnel are to respond to a discharge. The response plan should be maintained as a separate document from the SPCC Plan and be easily accessible during an emergency.

Under CWA §311, certain facilities are required to submit only the response plan to EPA.

Highlight 3 FACILITIES SUBJECT TO THE OIL POLLUTION PREVENTION REGULATION

The Oil Pollution Prevention regulation applies to facilities with the following characteristics:

- **Facility Type:** Non-transportation-related on-shore facilities.
- **Oil Product Storage:** The total aboveground storage capacity at the facility is greater than, 1,320 gallons (or greater than 660 gallons in a single container), or the total underground storage capacity is greater than 42,000 gallons.
- **Location:** Facilities that, because of their location, could reasonably be expected to discharge oil into the navigable waters of the U.S. or adjoining shorelines.

FOR MORE INFORMATION

For more information, please call the SPCC Information Line at (202) 260-2342, or the specific EPA Regional office. The mailing addresses for the offices and a map showing the geographic boundaries of the Regions are contained in the proposed regulation.

EPA Region 1
(617) 860-4361

EPA Region 2
(908) 321-6656

EPA Region 3
(215) 597-5998/1357

EPA Region 4
(404) 347-3931

EPA Region 5
(312) 886-6236

EPA Region 6
(214) 655-2270

EPA Region 7
(913) 551-5000

EPA Region 8
(303) 293-1788

EPA Region 9
(415) 744-1500

EPA Region 10
(206) 553-1090

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REGION III FACILITY RESPONSE PLAN COORDINATOR: Linda Ziegler

NOTE: REGION III FACILITY RESPONSE PLAN INFORMATION LINE (215) 597-9562

SECTION I

*** FRP DEFINITIONS**

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IMPORTANT FRP DEFINITIONS

Complex - a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the CWA.

Contract or other approved means

- (1) A written contractual agreement with a response contractor that identifies and ensures the availability of the necessary personnel or equipment within appropriate response times;
- (2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times;
- (3) Active membership in a local or regional oil spill removal organization that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic areas; or
- (4) Other specified arrangements approved by the Regional Administrator upon request of the owner or operator.

Maximum extent practicable - the limitations used to determine oil spill planning resources and response times for on-water recovery and shoreline protection and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. The appropriate limitations for such planning are available technology and the practical and technical limits on an individual facility owner or operator.

Permanently manifolded tanks - tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit.

Worst case discharge

- (A) For an onshore non-transportation-related facility:
- (1) Single-tank facilities, the greater of:
 - (a) the volume of the single tank (plus 10% if adjacent to navigable waters); or
 - (b) the combined capacity of a group of aboveground storage tanks permanently manifolded together (plus 10% if adjacent to navigable waters).
 - (2) Multiple-tank facilities, the greater of:
 - (a) the capacity of the largest tank within a common secondary containment area or the largest tank within a single secondary containment area, whichever is greater. Plus the total aboveground capacity of tanks without adequate secondary containment; or

- (b) for permanently manifolded tanks that function as one storage unit; the combined storage capacity of all manifolded tanks or the capacity of the largest single tank within a secondary containment area, whichever is greater. Plus the total aboveground capacity of tanks without adequate secondary containment. (Permanently manifolded tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined).
- (3) Onshore production facilities, the greater of:
 - (a) the capacity of the largest tank within a common secondary containment area or the largest tank within a single secondary containment area, whichever is greater. Plus the total aboveground capacity of tanks without adequate secondary containment and the production volume of the well with the highest output (forecasted output for exploratory wells producing under pressure); or
 - (b) for permanently manifolded tanks that function as one storage unit; the combined storage capacity of all manifolded tanks or the capacity of the largest single tank within a secondary containment area, whichever is greater. Plus the total aboveground capacity of tanks without adequate secondary containment and the production volume of the well with the highest output (forecasted output for exploratory wells producing under pressure); (Permanently manifolded tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined).

Adverse weather conditions - the weather conditions that make it difficult for response equipment and personnel to cleanup or remove spilled oil, such as ice, extreme temperatures and weather-related reduced visibility

Vessel - applies to any type of watercraft (e.g., barges), other than a public vessel, which can be used as means of transportation on water.

Injury - is defined as having a measurable adverse change, either long or short term, in the physical or chemical quality or the viability of a natural resource. The change can result from direct or indirect exposure to a discharge of oil.

SECTION J

- * FINAL RULE MAKING for 40 C.F.R. PART 9
AND 112 dated JULY 1, 1994**

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Federal Register

Friday
July 1, 1994

Part III

**Environmental
Protection Agency**

**40 CFR Parts 9 and 112
Oil Pollution Prevention; Non-
Transportation-Related Onshore Facilities;
Final Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 112

[SW H-FRL 5002-6]

RIN 2050-AD30

Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the Oil Pollution Prevention regulation, promulgated under the Clean Water Act for transportation-related onshore and offshore facilities. The revision incorporates new requirements added by the Oil Pollution Act of 1990 that direct certain facility owners and operators to prepare plans for responding to a worst case discharge of oil and to a substantial threat of such a discharge. Requirements to plan for a small and medium discharge of oil, as appropriate, are also added by this revision.

EFFECTIVE DATE: August 30, 1994.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket, Room M2615 at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 [Docket Number SPCC-2P]. The docket is available for inspection between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202-260-3046. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a \$25.00 administrative fee.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, Oil Pollution Response and Abatement Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 703-356-8774; the ERNS/SPCC Information line at 202-260-2342; or the RCRA/Superfund Hotline at 800-424-9346 (in the Washington, DC metropolitan area, 703-412-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800-553-7672 (in the Washington, DC metropolitan area, 703-412-3323).

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Introduction
 - A. Statutory Authority
 - B. The Oil Pollution Act of 1990
 - C. Background of the Rulemaking
- II. Summary of Revisions to the Oil Pollution Prevention Regulation
 - A. Summary of Approach to Implementing Facility Response Plan Requirements
 - B. Response to Major Issues Raised by Commenters
 - C. Section-by-Section Analysis
- III. Regulatory Analyses
 - A. Executive Order 12866
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Display of OMB Control Numbers

I. Introduction

A. Statutory Authority

Section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA), Public Law 101-380, amends section 311(j) of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), and under CWA section 311(j)(5) (See 33 U.S.C. 1321(j)(5)) directs the President to issue regulations that require owners or operators of tank vessels, offshore facilities, and certain onshore facilities to prepare and submit to the President plans for, among other things, responding, to the maximum extent practicable, to a worst case discharge of oil and to a substantial threat of such a discharge.

Section 311(j)(1)(C) of the CWA authorizes 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. (See 33 U.S.C. 1321(j)(1)(C).) The President has delegated the authority to regulate non-transportation-related onshore facilities under sections 311(j)(1)(C) and 311(j)(5) of the CWA to the U.S. Environmental Protection Agency (EPA or the Agency). (See Executive Order (E.O.) 12777, section 2(b)(1), 56 FR 54757 (October 22, 1991), superseding E.O. 11735, 38 FR 21243.) By this same E.O., the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands,

and the Gulf Coast barrier islands from DOI to EPA. (See E.O. 12777 § 2(i) regarding authority to redelegate.) The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080, December 18, 1971), establishes the definitions of non-transportation-related facilities and transportation-related facilities. The definitions from the MOU are currently included in Appendix A to 40 CFR part 112.

B. The Oil Pollution Act of 1990

The OPA (Public Law 101-380, 104 Stat. 484) was enacted to expand prevention and preparedness activities, improve response capabilities, ensure that shippers and oil companies pay the costs of spills that do occur, provide an additional economic incentive to prevent spills through increased penalties and enhanced enforcement, establish an expanded research and development program, and establish a new Oil Spill Liability Trust Fund, administered by the U.S. Coast Guard (USCG). As provided in sections 2002(b), 2003, and 2004 of the OPA, the new Fund replaces the fund originally established under section 311(k) of the CWA and other oil pollution funds.

Section 4202(a) of the OPA amends CWA section 311(j) to require regulations for owners or operators of facilities to prepare and submit "a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance." This requirement applies to all offshore facilities and any onshore facility that, "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone" ("substantial harm facilities"). As stated in the February 17, 1993 proposed rule (58 FR 8824), this rulemaking addresses only plans for responding to discharges of oil.

Under CWA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States has developed a National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and has established Area Committees to develop Area Contingency Plans (ACPs) as elements of a comprehensive oil and hazardous substance spill response system. As amended by the OPA, CWA section 311(j)(5)(C) sets forth certain

minimum requirements for facility response plans. The plans must:

- Be consistent with the requirements of the NCP and ACPs;
- Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing removal personnel and equipment;
- Identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;
- Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent a discharge or the substantial threat of a discharge; and
- Be updated periodically.

Under section 311(j)(5)(D), additional review and approval provisions apply to response plans prepared for offshore facilities and for onshore facilities that, because of their location, "could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone" (emphasis added) ("significant and substantial harm facilities"). Under authority delegated in E.O. 12777, EPA is responsible for the following activities for each of these response plans at non-transportation-related onshore facilities:

- Promptly reviewing the response plan;
- Requiring amendments to any plan that does not meet the section 311(j)(5) requirements;
- Approving any plan that meets these requirements; and
- Reviewing each plan periodically thereafter.

The CWA and the OPA require that owners or operators of "substantial harm facilities" submit their response plans to EPA (as delegated by the President in E.O. 12777) by February 18, 1993, or stop handling, storing, or transporting oil. In addition, under CWA section 311(j)(5) and OPA section 4202(b)(4), a facility required to prepare and submit a response plan under the OPA may not handle, store, or transport oil after August 18, 1993 unless: (1) in the case of a facility for which a plan is reviewed by EPA, the plan has been approved by EPA; and (2) the facility is

operating in compliance with the plan. The statute provides that a "significant and substantial harm facility" may be allowed to operate without an approved response plan for up to two years after the facility submits a plan for review (no later than February 18, 1995), if the owner or operator certifies that he or she has ensured by contract or other approved means the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge of oil, or a substantial threat of such a discharge. Owners or operators of "substantial harm facilities" are not required to have their plans approved by EPA, but, are required to operate in compliance with their plans after August 18, 1993.

Under the OPA, facility owners or operators who fail to comply with section 311(j) requirements are subject to new administrative penalties and more stringent judicial penalties than those imposed previously under the CWA. Section 4301(b) of the OPA amends CWA section 311(b) to authorize a civil judicial penalty of \$25,000 per day of violation for failure to comply with regulations under CWA section 311(j). In addition to these civil penalties, OPA section 4301(b) amends CWA section 311(b) to authorize administrative penalties for failure to comply with section 311(j) regulations of up to \$10,000 per violation, not to exceed \$25,000 for Class I penalties, and up to \$10,000 per day per violation, not to exceed \$125,000 for Class II penalties. The differences between "Class I" and "Class II" administrative penalties are the amounts of the potential penalties and the hearing procedures used (for instance, Class II procedures will generally ensure the owner or operator a more extensive opportunity to be heard through the proceedings). These revised penalty provisions are applicable to violations occurring after the August 18, 1990, enactment of the OPA. Violations occurring before enactment of the OPA remain subject to penalty provisions originally set forth in CWA section 311.

C. Background of the Rulemaking Jurisdictional Issues

Although the issue was not raised specifically in the proposed rule, the question of clarifying jurisdiction is a pervasive issue in this rulemaking, because there are a number of regulatory agencies with OPA authority over the same or similar entities.

By E.O. 12777, the President delegated certain OPA authorities to EPA, DOI, and DOT. By terms of the

E.O., EPA must develop response plan regulations for onshore non-transportation-related facilities, while the Minerals Management Service (MMS) in DOI is granted similar authority for offshore non-transportation-related facilities. The USCG must develop requirements for vessels and offshore transportation-related facilities, and the Research and Special Programs Administration (RSPA) has responsibility for onshore pipelines and rolling stock. (The USCG and RSPA are agencies in DOT.)

As it applies to the CWA, the term "offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel. (See CWA section 311(a)(ii).) The combined effect of this definition and the delegations under E.O. 12777 gives DOI (MMS) responsibility for non-transportation-related fixed offshore facilities in inland lakes and rivers. (See E.O. § 2(b)(3).)

However, EPA, DOI-MMS, and DOT have agreed that EPA responsibility should extend to these non-transportation-related fixed offshore facilities in inland lakes and rivers, because EPA has the expertise to provide oversight of facility functions, and because the maintenance of continuity in oversight will facilitate compliance for the regulated community. Under § 2(i) of E.O. 12777, the President authorized EPA, DOI, and DOT to redelegate any of their responsibilities under the OPA to the head of any Executive department or agency with the consent of the agency head. The Secretaries of DOI and DOT, and the Administrator of EPA signed an MOU on February 3, 1994, that gives to EPA jurisdiction all non-transportation-related fixed facilities located landward of the "coast line." For purposes of the MOU, the term "coast line" is defined as in the Submerged Land Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters." MMS has prepared detailed charts that reflect the position of the "coast line" and can be contacted for additional information on the status of a particular facility.

EPA does not address response plan requirements for non-transportation-related fixed offshore facilities in this final rule, but will do so under a separate rulemaking. However, because EPA now has jurisdictional responsibility over such facilities,

response plans for these facilities must be submitted to EPA rather than to MMS. Until EPA promulgates a rule for non-transportation-related fixed offshore facilities formerly under MMS authority, the Agency will review response plans for these facilities under the OPA statutory criteria. Until such a rule is promulgated, these facilities should look to this final rule as guidance.

Coordination with Other Federal Programs

Federal and State Government Coordination Efforts. EPA and other Federal agencies with jurisdiction under the OPA and E.O. 12777 (including the USCG, the Office of Pipeline Safety in RSPA, and MMS) met during the development of this rule to create an implementation strategy that minimizes duplication wherever practicable and recognizes State oil pollution prevention and response programs. The Agency also participated in a workgroup with representatives from the National Oceanic and Atmospheric Administration (NOAA), the Fish and Wildlife Service, the National Park Service, and other Federal agencies. These meetings and workgroup sessions were held to develop a consistent approach among Federal agencies and between Federal and State governments for oil response planning, and to develop guidelines and evaluation criteria for drills/exercises and training conducted to meet the OPA requirements and for identification of "environmentally sensitive areas" (now "fish and wildlife and sensitive environments").¹ These meetings were held at various times from January 1993 to January 1994.

One of the critical outgrowths of these efforts was the development of a consistent approach to regulate "complexes." (A complex is a facility with a combination of transportation-related and non-transportation-related components, e.g., a marine transfer facility with aboveground storage tanks.) A complex is subject to the jurisdiction of more than one Federal agency under the President's delegation implementing section 311(j) of the CWA. Among the ways EPA has reduced the complexity of planning requirements for these facilities is to better align EPA's

Appendix E (Appendix F in the proposed rule renamed in this final rule as "Determination and Evaluation of Required Response Resources for Facility Response Plans") with USCG response resource rules developed for marine transfer facilities (February 5, 1993, 58 FR 7330). (A complete discussion of Appendix E appears later in this preamble.) For non-transportation-related facilities that handle or store non-petroleum oils, EPA also has adopted an approach similar to the USCG's regulatory approach for response equipment strategies (58 FR 7362).

The coordination efforts resulted in several key decisions which are described below and discussed in greater depth later in this preamble. A common theme of discussion among agency representatives was the need to facilitate the regulated community's efforts to implement multiple sets of response planning requirements. EPA emphasizes that it will accept a response plan prepared to meet State or other Federal requirements as long as the plan meets the requirements of this final rule and is appropriately cross-referenced. In response to the need to provide owners or operators with additional direction on conducting drills/exercises to meet the OPA requirements, the National Preparedness for Response Exercise Program (PREP) was developed through a joint effort of the Federal agencies implementing OPA response plan regulations with involvement from other Federal representatives (e.g., natural resource trustees), State agencies, members of the regulated community, and oil spill response organizations. These efforts resulted in the creation of guidelines to assist owners or operators in following the PREP. EPA references, as guidance, PREP guidelines at § 112.21 of today's final rule. The PREP draft guidelines are available from Petty Officer Daniel Caras at (202) 267-6570 or fax 267-4085/4065. (See Appendix E to this part, section 10, for availability.) The USCG has developed similar guidance for training, and EPA references these training guidelines at § 112.21 of today's final rule, indicating that following these guidelines (or demonstrating a comparable program) is an acceptable means to satisfy the OPA requirement to describe training.

Another interagency effort that resulted in a coordinated approach to develop response plan requirements involved the identification of fish and wildlife and sensitive environments. The Federal agencies implementing OPA regulations contributed to the development of a guidance document

prepared by the natural resource trustees to assist owners or operators in identifying fish and wildlife and sensitive environments for the evaluation of the substantial harm criteria and for the development of a response plan, if required. Although EPA has removed the proposed Appendix D that covered this subject, facility owners and operators still must consider fish and wildlife and sensitive environments. EPA refers facility owners or operators to Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" published by NOAA within the Department of Commerce (DOC) in the Federal Register at 59 FR 14714, March 29, 1994. This document will provide guidance on fish and wildlife and sensitive environments until geographic-specific annexes of ACPs are fully developed. (See the discussion of ACPs later in this preamble.) Owners or operators are encouraged to contact the appropriate Area Committee, EPA Regional office (inland areas), USCG Captain of the Port (coastal areas), or natural resource agencies listed in the DOC/NOAA Guidance for information on fish and wildlife and sensitive environments as it becomes available.

A final critical area where Federal agencies implementing the OPA reached agreement was the review of response plans. For response purposes, the NCP divides the United States into inland and coastal zones, with EPA responsible for providing On-Scene Coordinators (OSCs) for the inland zone, and the USCG responsible for providing OSCs for the coastal zone. EPA will provide an opportunity for designated USCG OSCs to review and comment on response plans for non-transportation-related onshore facilities subject to 40 CFR part 112, and geographically located in the coastal zone. For facilities subject to 40 CFR part 112, EPA will maintain the responsibility for final approval of the response plan; however, the Regional Administrator (RA) will consider any USCG OSC objection to a response plan and attempt to resolve any issues through interagency discussions.

The NCP and ACPs. Section 311(j)(5)(C) of the CWA requires that facility response plans be consistent with the requirements of the NCP and ACPs. The NCP provides the general organizational structure and procedures for addressing discharges of oil and hazardous substances under the CWA, as well as releases of hazardous substances, pollutants, and contaminants under CERCLA. Among other things, the NCP specifies

¹ The term "environmentally sensitive areas" has been changed to the term "fish and wildlife and sensitive environments" throughout this preamble and the final rule to be consistent with the terminology used in proposed revisions to the NCP (See 58 FR 54702) that implement OPA requirements. The terms have the same meaning and the change is not meant to imply an expansion in the types of areas identified for protection under the OPA.

responsibilities among Federal, State, and local governments; describes resources available for response; summarizes State and local emergency planning requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA or SARA Title III); and establishes procedures for undertaking removal actions under the CWA. Until a revised NCP is published, as mandated under OPA section 4201(c), facility response plans should be consistent with the current NCP and, if necessary, revised to be consistent with the pending NCP revisions when they are promulgated. (Revisions to the NCP were proposed on October 22, 1993, at 58 FR 54702.)

ACPs are mandated under CWA section 311(j)(4) and prepared by Area Committees comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies. When implemented in conjunction with other elements of the NCP, ACPs must be adequate to remove a worst case discharge from a facility operating in or near the area covered by the plan. ACPs cover discharges affecting all U.S. waters and adjoining shorelines. EPA and the USCG are responsible for establishing Area Committees for the inland and coastal zones, respectively. In the inland Regions, ACPs have been completed and approved by EPA. The ACP process, however, is dynamic, and Area Committees will continue to refine the ACPs to provide more detailed information on protection priorities, develop protection strategies, and identify appropriate cleanup strategies for inland areas. Area Committees have the option to further subdivide their areas into smaller, geographically distinct subareas and develop geographic-specific annexes for these subareas. Members of the public may contribute to the ACP refinement process through involvement with Area Committees in the development of geographic-specific annexes.

Resource Conservation and Recovery Act (RCRA). EPA regulations in Subpart D of 40 CFR part 264, and Subpart D of 40 CFR part 265 promulgated under RCRA, require owners and operators of hazardous waste facilities to develop facility-specific contingency plans. The plans must include response procedures; a list of each person qualified to act as a facility emergency coordinator; a list of all emergency equipment and, when required, decontamination equipment at the facility; evacuation plans, when evacuation could be necessary; and arrangements agreed to by local police departments, fire departments,

hospitals, contractors, and State and local emergency response teams to coordinate emergency services. In addition, newly promulgated 40 CFR part 279 establishes facility-specific contingency planning and emergency procedure requirements for used oil at reprocessing and refining facilities. To avoid duplication of effort, owners or operators of facilities subject to the regulations in 40 CFR parts 264, 265, and 279 may incorporate these RCRA provisions and the response planning requirements of other applicable Federal regulations into their facility response plans.

EPCRA. Among other things, EPCRA requires local emergency planning committees (LEPCs) to develop local emergency response plans for their community and review them at least annually. Under EPCRA, the owner or operator of a facility where a listed "extremely hazardous substance" is present in an amount in excess of the threshold planning quantity must notify the State emergency response commission (SERC). In addition, upon request of the LEPC, the owner or operator must provide the LEPC with any information necessary to develop and implement the local emergency response plan. Because of the requirement that certain facilities participate in emergency planning under EPCRA, some overlap may exist with response plan requirements outlined in today's rule.

The OPA Conference Report states that OPA facility response plans should be consistent with plans prepared under other programs, and that any information developed under section 311(j) should be made available to SERCs and LEPCs. (See OPA Conference Report, H.R. Rep. No. 101-653, 101st Cong., 2d Sess. 1990 at p. 151.) Therefore, a facility response plan should be consistent with the local emergency response plan for the community in which the facility is located, and to ensure such consistency, facility owners or operators should review the appropriate local emergency response plan. In addition, upon request of the LEPC or SERC, the facility should provide a copy of the facility response plan.

Clean Air Act. Under section 112(r) of the Clean Air Act (CAA), as amended in 1990, EPA is to promulgate risk management program regulations for the prevention and detection of accidental releases and for responses to such releases, including requirements for a risk management plan (RMP) for chemical accidental release prevention. The regulation listing the covered chemicals and threshold quantities was

published in the Federal Register on January 31, 1994 (59 FR 4478). The proposed rule for the risk management program was published in the Federal Register on October 20, 1993 (58 FR 54190).

Regulated facilities are required to do three things: register with EPA; develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program; and develop and submit an RMP to the Chemical Safety and Hazard Investigation Board, the implementing agency, the SERC, and the LEPC. The RMP is to be made available to the public.

EPA anticipates that facilities affected by both regulations can prepare one response plan that meets the Oil Pollution Act requirements for oil and the CAA requirements for chemicals.

Prevention Technical Requirements

EPA's proposed rule for the facility response plan rulemaking contained certain provisions related to aspects of 40 CFR part 112 that did not address the OPA facility response plan requirements. EPA has decided not to include these provisions in today's final rule. These provisions are more closely related to the 40 CFR part 112 revisions proposed on October 22, 1991 (56 FR 54612), and will be finalized when that proposal is finalized. The proposed provisions not included in today's final rule are as follows:

- § 112.1(d)(4)—Reiterating that Underground Storage Tanks are to be Marked on Diagrams;
- § 112.1(g)—Regional Administrator Authority to Require SPCC Plan Preparation;
- § 112.2—Definitions of "Alteration" and "Repair";
- § 112.4(d)—Amendment of SPCC Plan by Regional Administrator;
- § 112.7(a)(2)—Submission of SPCC Plans for Waiver of Technical Requirements;
- § 112.7(d)—Requirement to Prepare a Contingency Plan When the Installation of Secondary Containment Structures is not Practicable;
- § 112.7(f)—Prevention Training; and
- § 112.7(i)/Appendix H—Ensuring Against Brittle Fracture.

Only proposed changes to §§ 112.2 (except for the definitions of "alteration" and "repair") and 112.20, and the addition of § 112.21 are included in today's final rule. The content of § 112.21 is adapted from § 112.7 of the proposed rule which addressed training and drills/exercises for both prevention and response.

II. Summary of Revisions to the Oil Pollution Prevention Regulation

This section provides a summary of the response planning provisions included in today's final rule. Section II.A provides a brief summary of the overall approach to implementation of response plan requirements. In Section II.B, EPA summarizes and responds to major issues raised by the public during the comment period. Finally, Section II.C provides a section-by-section discussion of changes from the proposed rule to the final rule.

A. Summary of Approach to Implementing Facility Response Plan Requirements

EPA is finalizing an approach for identifying facilities subject to response planning requirements similar to that outlined in the proposed rule. Only owners or operators of "substantial harm facilities" are required to prepare and submit plans. EPA will approve only those plans submitted for "significant and substantial harm facilities." Risk-based factors for evaluating the potential to cause substantial harm and significant and substantial harm are established in § 112.20(f) of today's rule and include: type of transfer operation; oil storage capacity; lack of secondary containment; proximity to fish and wildlife and sensitive environments (described as "environmentally sensitive areas" in the proposal), navigable waters, and drinking water intakes; spill history; age of oil storage tanks; and other facility-specific and Region-specific information.

There are two methods by which an onshore facility may be determined to be a "substantial harm facility." The first involves the use of substantial harm criteria provided in § 112.20(f)(1) and in the flowchart in Appendix C to 40 CFR part 112 by owners or operators to identify "substantial harm facilities." The second provides each RA the authority to determine whether any facility subject to the Oil Pollution Prevention regulation is a "substantial harm facility" based on the specific criteria in § 112.20(f)(1), the factors in § 112.20(f)(2)(A)-(F), or other site-specific characteristics and environmental factors that may be relevant under § 112.20(f)(2)(G). In applying these factors, the RA may seek input on specific facilities from other agencies such as the USCG and natural resource trustee agencies. The RA also may consider petitions from the public to determine whether a facility is a "substantial harm facility."

To determine whether an onshore facility could be a "significant and substantial harm facility," the RA will consider the substantial harm criteria in § 112.20(f)(2) as well as additional factors in § 112.20(f)(3), including site-specific information such as local impacts on public health.

In today's final rule, facility owners or operators are provided with a process to appeal the substantial harm and significant and substantial harm determinations or the RA's decision not to approve a response plan for which approval is required.

Finally, under § 112.20(e), owners or operators who are not required to submit plans must maintain onsite at the facility a signed certification form, which indicates that the facility has been determined by the facility owner or operator not to meet the criteria in § 112.20(f)(1).

Discussion of Response Plans

Those facility owners or operators who submit plans must include a signed response plan cover sheet (as provided in 40 CFR part 112, Appendix F, Attachment F-1), which indicates that the information contained in the plan is accurate, and that gives a basic summary of facility information, including the results of the substantial harm determination.

The required elements for response planning in § 112.20(h) of this rule are designed to direct a facility owner or operator in gathering the information needed to prepare a response plan. The response plan elements address requirements under CWA section 311(j)(5) (as amended by the OPA), including requirements for response training and participation in response drills/exercises. Appendix F to the rule includes a model response plan that further describes the required elements in § 112.20(h). The majority of elements in the model plan are taken directly from § 112.20(h) or are logical extensions of the general requirements in § 112.20(h) and are therefore requirements prefaced by use of the word "must" or "shall." EPA recognizes that certain other elements may not be applicable in all cases. To provide flexibility for facilities with unique circumstances, certain elements are prefaced by use of the words "shall, as appropriate" or are modified by use of the words "or an equivalent." Finally, other elements are presented as recommendations and are prefaced by use of the word "may."

As discussed previously in this preamble, the requirements in § 112.20(h) and the model response plan in Appendix F do not preclude the use

of a preexisting response plan. Owners or operators may submit a plan prepared to meet other Federal or State requirements, as long as the elements in § 112.20 are addressed (including the requirement for an emergency response action plan), and a cross-reference to the model response plan is provided.

Under today's rule, owners or operators of "substantial harm facilities" must prepare plans to respond to a worst case discharge, and small and medium discharges as appropriate. Such response planning by facilities will help ensure protection of public health and welfare and the environment by facilitating effective response to discharges to navigable waters or adjoining shorelines. The requirement to plan for several different spill sizes is consistent with other agencies' (such as the USCG's) implementation of OPA response planning requirements. For example, the average most probable discharge and the maximum most probable discharge under the USCG interim final rule set out the same values in barrels as EPA sets out in gallons for small and medium spills (58 FR 7358, February 5, 1993). EPA is authorized to require owners or operators to plan for small and medium discharges by § 311(j)(1)(C) of the CWA.

OPA section 4201(b) (CWA section 311(a)(24)) defines "worst case discharge" for a facility as the largest foreseeable discharge in adverse weather conditions. The OPA Conference Report indicates that facility owners or operators are expected to prepare plans for responding to discharges that are worse than either the largest spill to date at the facility or the maximum probable spill for that facility type. (See H.R. Rep. No. 101-653, 101st Cong., 2d Sess. 1990 at pp. 149-150.) Today, EPA finalizes a requirement for a facility's worst case discharge planning amount based on the capacity of the largest single tank within a secondary containment area, or the combined capacity of a group of aboveground tanks permanently manifolded together within a common secondary containment area lacking internal subdivisions, whichever is greater; plus an additional quantity based on lack of secondary containment, as appropriate. (For facilities that lack secondary containment for all tanks, the worst case discharge would be the total storage capacity at the facility.) Production facilities would also need to consider production volumes. Single tank facilities are allowed to reduce the worst case discharge volume for the presence of adequate secondary containment.

EPA has provided worksheets in Appendix D, which owners or operators of storage and production facilities are required to use in the calculation of worst case discharge amounts. For complexes, the worst case discharge volume is the larger of the amounts calculated for each component of the facility regulated by a different agency using procedures contained in the respective regulations. EPA requires that owners or operators of complexes (a complex is a facility with a combination of transportation-related and non-transportation-related components, e.g., a marine transfer facility with aboveground storage tanks) plan for the single largest worst case discharge at the facility. To facilitate this process, EPA has modified Appendix E as described in Section II.B of this preamble to be consistent with the USCG's "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans."

In addition to planning for a worst case discharge, under proposed § 112.20, facility owners and operators are required to plan for (1) a small spill, defined as any spill volume less than or equal to 2,100 gallons, provided that this amount is less than the worst case discharge amount; and (2) a medium spill, defined as any spill volume greater than 2,100 gallons, and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For facilities where the worst case discharge is a medium spill, the owner or operator is required to plan for two amounts, a worst case spill and a small spill. For facilities where the worst case discharge is a small spill, the owner or operator must plan only for a worst case discharge.

For medium spills at complexes, the owner or operator must first determine a medium spill volume for the transportation-related and non-transportation-related components at the facility. (The USCG's term "maximum most probable discharge" is generally equivalent to a medium spill. See 58 FR 7354.) The owner or operator must then compare the medium planning amounts for each component of the facility. Following this comparison, the owner or operator must select the larger of the quantities as the medium planning amount for the overall facility. A similar procedure must be followed for a small spill. (The USCG's term "average most probable discharge" is generally equivalent to a small spill. See 58 FR 7353.) EPA requires that owners or operators of complexes plan for a single small and

medium spill at the facility in accordance with the requirements in Appendix E.

Equipment Requirements

In Appendix E to today's rule, EPA establishes requirements to determine for planning purposes the quantity of resources and response times necessary to respond to the "maximum extent practicable" to a worst case discharge, and to other discharges, as appropriate. The requirements were adapted from similar requirements developed by the USCG for vessel response plans and facility response plans for marine transportation-related onshore facilities. These procedures recognize practical and technical limits on response capabilities that an individual facility owner or operator can provide in advance and on response times for resources to arrive on scene. To address these limitations, Appendix E establishes operability criteria for oil response resources and caps on response resources that facility owners or operators must identify and ensure the availability of, through contract or other approved means. The caps reflect an estimate of the response capability at a given facility that is considered a practical target to be met by 1993 and beyond.

Appendix E (Appendix F in the proposed rule) has been renamed "Determination and Evaluation of Required Response Resources for Facility Response Plans." EPA made this change to clarify that facility owners and operators must use this appendix to determine whether they have appropriate and adequate amounts of resources to meet the planning requirements in this final rule. In this appendix, EPA has substituted the words "shall" or "shall, as appropriate" for the word "should" to clarify whether the requirements are mandatory, regardless of the circumstances. The phrase "shall, as appropriate" is consistent with EPA's intent in the proposal to provide owners or operators flexibility for facilities with unique circumstances. As required at § 112.20(h)(3)(i), in cases where it is not appropriate to follow part of Appendix E to identify response resources to meet the facility response plan requirements, owners or operators must clearly demonstrate in the plan why use of Appendix E is not appropriate at the facility and make comparable arrangements for response resources.

Section 311(j)(5)(C)(iii) of the CWA requires the facility response plan to identify and ensure the availability, by contracts or other means approved by the President (as delegated to EPA), of

private personnel and equipment necessary to respond to the maximum extent practicable, to a worst case discharge. For the purposes of today's rule, "contract or other approved means" is defined in § 112.2 of today's final rule as:

- A written contractual agreement with an Oil Spill Removal Organization (OSRO(s)). The agreement must identify and ensure the availability of the necessary personnel and equipment within appropriate response times; and/or

- Written certification that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

- Active membership in a local or regional OSRO(s), which has identified and ensures adequate access, through membership, to necessary personnel and equipment within appropriate response times in the specified geographic areas; and/or

- Other specific arrangements approved by the RA upon request of the owner or operator.

If the owner or operator plans to rely on facility-owned equipment to satisfy the requirement at § 112.20(h)(3) to identify and ensure the availability of response resources, then equipment inventories must be provided. When relying on other arrangements, evidence of contracts or approved means must be included in the response plan so that the availability of resources can be verified during plan review. It is not necessary to list specific quantities of equipment in the facility response plan when listing a USCG-classified OSRO(s) that has sufficient removal capacity to recover up to the rate indicated by the associated caps. (See Section II.B of this preamble for additional discussion on this issue.)

Final Rule Application to Affected Facilities

The following paragraphs present EPA's approach to implement the response plan requirements of OPA and of this final rule. Section 112.20(a) of the rule has been revised to reflect this approach.

The Agency proposed in the February 17, 1993 Federal Register (58 FR 8824) its facility response plan rule for non-transportation-related onshore facilities under its jurisdiction. Before this publication, EPA made available outreach materials describing its basic approach for implementation of the OPA response plan requirements to allow facility owners or operators the opportunity to prepare and submit

response plans by the February 18, 1993, OPA deadline. EPA received over 4,500 plans from owners or operators of facilities that met the criteria to be a "substantial harm facility." EPA Regional personnel have identified the subset of "significant and substantial harm facilities" from those facilities that submitted response plans by February 18, 1993 and, as appropriate, issued authorizations to these facilities to continue to operate after August 18, 1993, based on a review of a facility's certification of response resources. These plans will be reviewed and, if appropriate, approved under the OPA statutory requirements by February 18, 1995. For *inadequate plans* submitted before the February 18, 1993 statutory deadline, RAs may notify facility owners or operators that additional information or plan revisions are necessary in advance of February 18, 1995, for plan approval.

To recognize the compliance efforts of owners or operators of those facilities in existence on or before February 18, 1993 who submitted response plans to meet the OPA requirements by the statutory deadline, EPA will allow them until February 18, 1995 to revise their response plan, if necessary, to satisfy the requirements of this rule and resubmit their plans (or updated portions) to the RA. (See § 112.20(a)(1)(i).) The revised plans for "significant and substantial harm facilities" will be reviewed periodically thereafter on a schedule established by the RA provided that the period between plan reviews does not exceed five years. (See § 112.20(c)(4).) RAs may institute a process by which such plan reviews are staggered so that not all plans will need to be reappraised in the same year.

Owners or operators of existing facilities that were in operation on or before February 18, 1993 who failed to submit a facility response plan to meet the OPA requirements by February 18, 1993 must submit a response plan that meets the requirements of this rule to the RA by the effective date of the final rule. (See § 112.20(a)(1)(ii).) EPA recognizes that such facilities may have prepared and submitted to the RA some form of a response plan after the statutory deadline. Owners or operators may submit revised portions of the plan to bring the plan into compliance with the final rule requirements. Plans for "significant and substantial harm facilities" will be reviewed for initial approval by RAs within a reasonable time. Such plans will be reviewed periodically thereafter on a schedule established by the RA provided that the period between plan reviews does not

exceed five years. RAs may choose to stagger such plan reviews.

Owners or operators of facilities that commenced operations after February 18, 1993 but before the effective date of this final rule must submit a response plan that meets the requirements of this final rule to the RA by its effective date. EPA recognizes that such facilities may have prepared and submitted some form of a response plan to the RA prior to the publication of this rule. Owners or operator may submit revised portions of the plan to bring the plan into compliance with the final rule requirements. (See § 112.20(a)(2)(i).) RAs will review plans for "significant and substantial harm facilities" for initial approval within a reasonable time. The plans will then be placed on the Region's review cycle as described in the preceding paragraphs.

The Agency recognizes that identification of "substantial harm facilities" will continue to occur as new facilities come on-line and existing facilities newly meet the criteria for substantial harm as a result of a change in operations or site characteristics. EPA is requiring in § 112.20(a)(2)(ii) and (iii) that: (1) newly constructed facilities (facilities that come into existence after the effective date of the final rule) that meet the applicability criteria must prepare and submit a response plan in accordance with the final rule prior to the start of operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days); and (2) existing facilities that become subject to the response plan requirements as the result of a planned change in operations (after the effective date of the final rule) must prepare and submit a response plan in accordance with the final rule prior to the implementation of changes at the facility. RAs will review plans submitted for such newly designated "substantial harm facilities" to determine if a facility is a "significant and substantial harm facility." RAs will review for approval plans for "significant and substantial harm facilities" within a reasonable time and then place the plans on the Region's review cycle as discussed previously.

An existing facility, however, may become subject to the response plan requirements through one or a combination of unplanned events, such as a reportable spill or the identification of fish and wildlife and sensitive environments adjacent to the site during the ACP refinement process. In the event of such an unplanned change, the owner or operator is required to prepare

and submit a response plan to the RA within six months of when the change occurs (See § 112.20(a)(2)(iv).) The Agency believes that allowing six months from when a change caused by an unplanned event occurs to prepare and submit a plan is reasonable.

Under § 112.20(g)(2), facility owners or operators are required to review appropriate sections of the NCP and ACP annually and revise their response plans accordingly. In addition, § 112.20(d)(1) requires the owner or operator of a facility for which a response plan is required to resubmit relevant portions of the plan within 60 days of each material change in the plan. For "substantial harm facilities," Regions will review such changes to determine if the facility should be reclassified as a "significant and substantial harm facility." For "significant and substantial harm facilities," the Regions will review such changes for approval as described in § 112.20(d)(4).

B. Response to Major Issues Raised by Commenters

A total of 1282 comments were received on the proposed rule. The majority of these comments were one-page form letters from members of, and on behalf of, numerous environmental professional groups and addressed the issue of whether certification of response plans by an independent party was appropriate. A document entitled "Response to Comments Document for the Facility Response Plan Rulemaking" that summarizes and provides responses to all comments received on the proposed rule is available in the public docket. The major issues raised by the commenters and the Agency's responses are described in this section.

Option One vs. Option Two

In the preamble to the proposed rule, the Agency discussed two options for identifying facilities subject to facility response plan requirements under this rulemaking. In the proposed rule, EPA proposed the first option, but requested comment on the merits of both options. The two alternatives are outlined briefly in the next paragraph.

Under Option 1, EPA proposed to require under CWA sections 311(j)(5) and 311(j)(1)(C) that: (1) the owner or operator of a "substantial harm facility" prepare and submit a response plan, and (2) "significant and substantial harm facilities" have their plans promptly reviewed for approval by EPA. Criteria provided in § 112.20(f)(1) coupled with RA determinations would be used to identify "substantial harm facilities"

and a subset of "significant and substantial harm facilities."

EPA's second approach was also based on the authority contained in CWA sections 311(j) (1) and (5). Under Option 2, all facilities regulated under 40 CFR part 112 would be required to prepare facility response plans; certain small, low-risk facilities with secondary containment structures would be allowed to prepare an abridged version of a response plan. Only "substantial harm facilities" would only be required to submit plans to EPA. "Significant and substantial harm facilities" would submit plans to EPA and have their plans reviewed and approved.

The Agency received numerous comments on the two options, with the vast majority favoring Option 1. Supporters of Option 1 stated that Option 2 would create too great a burden on facilities and EPA, in relation to the relatively low environmental benefits derived from planning. Commenters representing small, lower-risk facilities expressed concern that being required to prepare response plans would impose unnecessary financial burdens. In addition, commenters felt that 40 CFR part 112 was sufficiently protective of the environment for non-substantial-harm facilities. A small number of commenters representing both industry and environmental groups supported Option 2, stating that it most closely reflected the mandates of the OPA and that it would provide a more comprehensive emergency response planning network.

In today's final rule, EPA finalizes Option 1. The Agency believes that this option targets high-risk facilities in a cost effective manner that is nevertheless protective of the environment. Owners or operators of facilities covered by the Oil Pollution Prevention regulation must evaluate their facilities against a series of substantial harm screening criteria. Although EPA encourages all oil storage facilities under its jurisdiction to prepare oil spill response plans, owners or operators of those facilities not meeting the criteria provided in § 112.20(f)(1) are only required to prepare a facility response plan if the RA independently determines that the facility is a "substantial harm facility." Because of the size and diversity of the regulated community under EPA's jurisdiction pursuant to the OPA and the tight timeframe established by the OPA, EPA is implementing a substantial harm selection process with two components (i.e., published criteria and an RA determination). The published criteria are designed to capture the vast

majority of "substantial harm facilities." To simplify the process, EPA developed specific selection criteria to be applied in a consistent manner by all owners and operators. Nevertheless, EPA believes that there are facilities that do not meet the criteria in § 112.20(f)(1), but may, due to facility-specific or location-specific circumstances, pose sufficient risk to the environment to be designated as "substantial harm facilities." Accordingly, RAs, as the designated representatives of EPA, are granted authority to designate a facility on a case-by-case basis as a "substantial harm facility."

Substantial Harm Criteria

As required by § 112.20(f)(1) and the flowchart in Appendix C to 40 CFR part 112, a facility is a "substantial harm facility" if either of the following two criteria are met:

(1) The facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or

(2) The facility's total oil storage capacity is greater than or equal to 1 million gallons, and one or more of the following is true:

- The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground storage tank within each storage area plus sufficient freeboard to allow for precipitation;

- The facility is located at a distance (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments;

- The facility is located at a distance (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility would shut down operations at a public drinking water intake; or

- The facility has had a reportable spill greater than or equal to 10,000 gallons within the last 5 years.

A number of commenters suggested that EPA is attempting to regulate transportation-related facilities that are covered by USCG regulations. Several of these commenters stated that EPA's approach would result in redundant and conflicting regulations for such facilities.

The Agency considered these comments and decided to retain the over-water transfers criterion (§ 112.20(f)(1)(i)). The criterion was designed to identify as posing a risk of substantial harm to the environment those facilities that store oil above a certain quantity located in close

proximity to navigable waters. EPA is not attempting to regulate marine transfer operations. In 40 CFR 112.1, EPA clearly explains which facilities fall under its authority. The section states that EPA jurisdiction does not extend to transportation-related facilities. The Agency has the authority, however, to regulate the non-transportation-related storage component of facilities that may have a marine transfer component.

Several commenters indicated that the 42,000 gallon cutoff for transfers over-water is appropriate. Other commenters questioned the potential of a 42,000 gallon spill to cause substantial harm to the environment.

EPA has decided that non-transportation-related storage components of complexes should be regulated at a lower capacity threshold than storage facilities without an over-water transfer component (i.e., 42,000 gallons versus 1 million gallons), because the location of over-water transfer facilities poses a higher risk to navigable waters. Spills at such facilities are more likely to reach navigable waters than spills from facilities located further from navigable waters. Also, it is likely that a higher percentage of the total amount released will reach navigable waters at a facility directly adjacent to navigable waters than at a facility located further away. Data indicate that for oil discharges above 42,000 gallons, the number of incidents with reported effects including fishkills, wildlife damage, or fire is greater than for oil discharges below 42,000 gallons. At the 0.01 level of significance, the size of the release is related to the occurrence of reported effects. For certain release size thresholds other than 42,000 gallons, however, a similar statistically significant relationship could not be shown.²

EPA requested comment in the proposed rule on the appropriateness of the use of a proposed 1 million gallon or a 200,000 gallon size cut-off for total storage capacity to determine a threshold for substantial harm. (See § 112.20(f)(1)(ii).)

The Agency received numerous comments suggesting that the 1 million gallon cutoff was appropriate. A smaller number of commenters including other Federal government agencies and environmental associations, indicated that the size cut-off for substantial harm should be 200,000 gallons or lower.

² Study prepared for EPA titled "Analysis of Data Relating to Facility Size, Oil Discharges, and Environmental Effects." Available for inspection in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Advocates for a lower cut-off contended that small facilities with a high throughput may have a higher potential to cause substantial harm than large facilities with low throughput. These commenters also suggested that the OPA Conference Report indicated that the requirement to prepare and submit response plans should be applied broadly, because even small discharges from an onshore facility could result in substantial harm under certain circumstances.

Although EPA recognizes that large storage capacity is a substantial harm risk factor, the Agency also recognizes that the intent of OPA was not to exclude certain smaller facilities, such as those near public drinking water intakes or fish and wildlife and sensitive environments, from consideration as having the potential to cause substantial harm. EPA intends that the RA determination process be used to identify additional high-risk facilities that do not meet the criteria in § 112.20(f)(1) although nonetheless pose substantial harm.

The Agency decided to identify certain high-risk facilities that pose a threat of substantial harm because of their size in combination with facility-specific characteristics (i.e., secondary containment and spill history) or location-specific (i.e., proximity to fish and wildlife and sensitive environments and public drinking water intakes). The largest oil spills, which could pose the greatest risk to the environment, occur at large facilities. Data on the effects of spills from aboveground storage tanks indicate that when larger quantities of oil are discharged, fish and wildlife damage, off-site soil pollution, and property damage are greater than for smaller discharges.³ The Agency believes that regulatory coverage and protection of the environment will be ensured, since facilities that are smaller than 1 million gallons, but that could cause substantial harm because of their proximity to navigable waters or fish and wildlife and sensitive environments, could be selected under the RA's authority to require a facility to submit a response plan, regardless of whether the facility meets the criteria in § 112.20(f)(1) (although the RA considers these factors as part of the determination).

In addition, several commenters suggested that the average oil storage inventory of a facility should be used instead of capacity to determine the oil storage threshold for substantial harm. Commenters indicated that the normal amount of oil stored at a facility is often

less than the total capacity, because facilities are oversized to meet seasonal demands. Commenters also contended that tanks dedicated for standby service and tanks not in service should not be counted in determining a facility's capacity, and that certification methods could be employed to ensure that excess capacity is not being used.

In today's final rule, EPA retains capacity rather than inventory as the basis for assessing risk to the environment. The decision was based largely on the fact that substantial harm determinations using inventory would be difficult or impossible to enforce and might not accurately reflect the true worst case for the facility. EPA would be unable to inspect facilities often enough to ensure that their inventory is actually below the substantial harm threshold. Moreover, owners or operators would likely find it difficult to constantly track inventory to ensure that changes in inventory did not trigger additional regulatory requirements and at some time the tank could be filled to capacity. In addition, there is a need to maintain consistency in the Oil Pollution Prevention regulation, and the original regulation uses storage capacity for threshold determinations instead of using inventory. However, EPA has proposed in a separate rulemaking published on October 22, 1991 (58 FR 54612), to allow owners or operators to exclude permanently closed tanks (as defined in § 112.2 of the proposed rule published on October 22, 1991) from the total capacity of the facility for the purposes of the Oil Pollution Prevention regulation. If these changes are finalized, permanently closed tanks would not have to be considered in the substantial harm evaluation.

Several commenters argued that the 10,000 gallon reportable spill criterion (proposed at § 112.20(f)(ii)(D), 58 FR 8849) should be modified to allow a facility owner the opportunity to petition the RA for exclusion based upon modifications to the facility or to its spill prevention procedures made after the release.

EPA agrees that continuous improvements in spill prevention procedures are important and that owners and operators that have significantly upgraded their facility within five years of a spill greater than or equal to 10,000 gallons (by replacing tanks or adding secondary containment, for example) should be allowed to request exclusion from the substantial harm category.

The Agency includes a two-stage appeals process in § 112.20(i) of today's rule. The appeals process allows an owner or operator to petition the RA to

remove a facility from the category of substantial harm because of improvements at the facility that lead to greatly reduced risk to the environment. The appeals process is discussed in greater detail in the "Appeals Process" section of this preamble. Of course, even if a facility obtains relief through appeal, the RA still retains authority to require a Plan, under § 112.20(b) should the circumstances on which the relief was granted change in the future.

In the proposed rule, EPA provided formulas in Appendix C for owners or operators to determine appropriate distances to fish and wildlife and sensitive environments and drinking water intakes for purposes of evaluating the substantial harm criterion. EPA also proposed to allow the use of an alternative formula acceptable to the RA. EPA solicited data and comments on the appropriateness of the distance calculations in Appendix C for inland areas.

Several commenters supported the overall approach of using a calculated distance to define proximity. However, numerous commenters indicated that the formulas used to calculate the planning distances in Appendix C are too complex, cumbersome, or impracticable for general use.

The Agency does not agree. The planning distance formulas proposed in Appendix C are appropriate based on an evaluation of engineering principles and input from an interagency technical workgroup that included representatives from the Natural Resource Trustee agencies, as well the agencies responsible for measuring river height and flow. The Agency's primary goal was to provide a series of formulas that were technically supportable. EPA has provided the least complex formulas that are still technically supportable. Moreover, EPA allows owners or operators to use comparable formulas to calculate appropriate distances provided that the formula is acceptable to the RA and they send supporting documentation on the reliability and analytical soundness of the formulas (see § 112.20(a)(3)).

Several commenters noted that the formulas proposed in Appendix C did not account for tides, currents, wind direction, and other weather-dependent flow rates. One commenter recommended that EPA use the USCG planning distances for discharges into tidal waters. To more accurately account for the range of movement of spilled oil in certain aquatic environments, EPA includes in Appendix C of today's final rule a section on oil transport in tidal influence areas as a separate type of calculation. EPA adopts the tidal

³ Ibid.

influence area criteria from the USCG's interim final rule for Marine Transportation-Related (MTR) Facilities (58 FR 7358, February 5, 1993).

Some commenters stated that the proposed response times in Table 3 of Appendix C for calculating the planning distances were inappropriate and would overpredict the area of the spill. Some commenters noted that actual response times could be considerably faster than those proposed because some facilities have their own response resources. Conversely, one commenter expressed concern that the response times are too short and do not account for adverse weather conditions or phased planning required for certain discharges. Other commenters noted that the proposed response times in Table 3 of Appendix C were inconsistent with the response times listed in Appendix F of the proposed rule for determining response resources for a worst case discharge and should be changed. No data were provided by commenters to support alternative response times for use in the distance calculations.

In today's rule, to clarify the information presented, EPA reformats Table 3 of Appendix C. EPA used the same geographic areas for facility location (i.e., higher volume port area, Great Lakes, and all other river and canal, inland, and nearshore areas) as those specified in the equipment appendix (Appendix E) to maintain consistency between different sections of the regulation and because the facility location directly impacts the arrival time of response resources.

The specified time intervals in Table 3 of Appendix C are to be used only to aid in the determination of whether a facility is a "substantial harm facility." Once it is determined that a plan must be developed for the facility, the owner or operator would consult Appendix E to determine appropriate resource levels and response times. The specified time intervals in Table 3 of Appendix C are less than the Tier 1 response times specified in Appendix E for the corresponding operating areas, because EPA assumes that, for purposes of determining whether a facility is a "substantial harm facility," no response planning has been done. This conservative assumption is only used for screening purposes and is not used for other aspects of the rulemaking. Owners or operators are reminded that EPA has included at § 112.20(i) of the final rule an appeals process for, among other things, the determination of substantial harm.

EPA believes that these times accurately estimate the times needed to respond to spills from EPA-regulated

facilities that have not pre-planned their response to spills (i.e., a facility owner or operator who has not pre-planned response activities would be able to contact a local spill response company, coordinate response actions, and deploy resources within 15 or 27 hours following discovery of the spill, depending on facility location). In general, facilities located in higher volume port areas have a higher density of response contractors and resources nearby. Therefore, EPA estimated a shorter time interval for these facilities compared with facilities located in all other operating areas.

One commenter noted an inaccuracy in the formula proposed in Attachment C-III of Appendix C of the proposed rule, Oil Transport on Still Water, (which converts an oil discharge volume into a surface area), when the volume of the spilled oil is converted to units other than cubic meters. In Attachment C-III of Appendix C of today's rule, EPA incorporates a conversion factor into the formula to address the inaccuracy by allowing facility owners and operators to directly input the worst case discharge volume in gallons and to obtain a spill surface area in square feet.

EPA requested comment on the appropriateness of using specified distances to environmentally sensitive areas (fish and wildlife and sensitive environments) in the substantial harm criterion. Many commenters suggested that EPA allow a facility owner or operator to use alternative methods or set distances to determine the appropriate distance from the facility for screening purposes. In today's rule, the Agency allows the use of formulas comparable to the Appendix C formula to calculate the planning distance to fish and wildlife and sensitive environments or public drinking water intakes (see § 112.20(a)(3) and § 112.20(f)(i) (B) and (C)), provided that facility owners and operators attach documentation to the response plan cover sheet on the reliability and analytical soundness of the comparable formula. EPA believes that calculating a planning distance using the formulas in Appendix C is more appropriate than using set distances to fish and wildlife and sensitive environments, because of the wide variety of site-specific conditions that may surround a particular facility and the various flow characteristics of water bodies.

In § 112.2 of the proposed rule, EPA defined "injury" as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or

exposure to a product of reactions resulting from a discharge of oil." This definition is adopted from the Natural Resource Damage Assessments (NRDA) rule at 43 CFR 11.14(v) to assist facility owners and operators and RAs to determine whether a facility is located at a distance from fish and wildlife and sensitive environments such that an oil spill will cause "injury." The Agency requested comment on the appropriateness of defining "injury" in such a manner.

Several commenters stated that the definition of "injury" was so broad that it would include almost every facility that stores greater than or equal to one million gallons of oil and would result in excessive regulation, economic burden, and unnecessary lawsuits. Several commenters stated that EPA should limit the definition of "injury" so that facility owners and operators would only have to consider the potential to cause substantial harm, rather than the potential to cause any harm. Some commenters supported EPA's choice to incorporate a definition of "injury" that was already promulgated under other regulatory programs.

The Agency carefully considered comments on the definition of "injury" and consulted with NOAA and other Natural Resource Trustees agencies as to the merits of using an alternative definition. EPA maintains that the definition of "injury" is appropriate to assess substantial harm based on the extensive experience of Natural Resource Trustees in conducting evaluations of oil spill impacts on natural resources. Federal officials authorized by the President and the authorized representatives of Indian tribes and State and foreign governments act as public trustees to recover damages to natural resources under their trusteeship. Under the NCP, each trustee has responsibilities for protection of resources; mitigation and assessment of damage; and restoration, rehabilitation, replacement, or acquisition of resources equivalent to those affected. Because of the need to maintain consistency with the NCP, the Agency believes it is appropriate to use the definition of injury as established by the Natural Resource Trustees for this rule. In the preamble to the NRDA final rule (51 FR 27706), DOI indicates that the injury definition does not measure insignificant changes and that the definition relies on changes that have been demonstrated to adversely impact the resources in question, or services provided by those resources. EPA notes that there is nothing in the definition of "injury" that refers to the term harm (or

substantial harm), and that the term "injury" is not equivalent to these terms. The potential for a spill to cause any injury to a fish and wildlife and sensitive environment coupled with a total oil storage capacity of greater than or equal to 1 million gallons forms one of the substantial harm criteria. The criterion is designed as an indicator of the potential for a discharge from a facility to cause substantial harm to the environment.

The Agency requested comment on whether private drinking water supplies should be included in the criteria for determination of substantial harm. Some commenters supported the same treatment for private water intakes as for public water supplies if the private drinking water supplies are surface water intakes rather than groundwater wells. One commenter recommended that the RA consider private drinking water intakes in the determination of significant and substantial harm. Conversely, several commenters opposed the use of proximity to private drinking water intakes as a criterion for the substantial harm determination because most private drinking water intakes use groundwater. These commenters stated that such private intakes would be difficult to identify and locate. Two commenters suggested that EPA should define public drinking water intakes based on the definition of "public water systems" at 40 CFR 143.2(c) which excludes private water intakes.

EPA agrees with the commenters that most private drinking water intakes are difficult to identify and that most use groundwater. In today's rule, EPA does not include proximity to private drinking water intakes as a criterion for use by owners or operators to identify whether their facility is a "substantial harm facility." The RA, however, may consider a facility's proximity to private drinking water intakes in the determination of substantial harm or significant and substantial harm. In Appendix C to today's rule, EPA clarifies that public drinking water intakes are analogous to "public water systems" as defined at 40 CFR 143.2.

Several commenters opposed the requirements to calculate a planning distance to determine substantial harm if a facility has adequate secondary containment. Some commenters stated that the planning distance calculations should reflect the presence of secondary and tertiary containment and give credit for flow reduction measures and inspection programs. The Conference Report states that in defining a worst case discharge as the largest foreseeable discharge at a facility, Congress

intended to describe a spill that is worse than either the largest spill to date or the maximum probable spill for the facility type. (Conference Report No. 101-653, p. 147.) EPA interprets this language to mean that facility response plans should address cases where prevention measures could fail. Indeed, as detailed in the Technical Background Document⁴ supporting this rulemaking, in some cases, containment systems fail resulting in the discharge of oil to surface waters. Therefore, EPA maintains that proximity to fish and wildlife and sensitive environments and drinking water intakes must be considered despite the presence of secondary containment. This is an example of EPA's long established policy set forth in § 112.1(d)(1)(i), that the determination of proximity "shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes . . ." It is also consistent with the statutory definition of worst case discharge for vessels, which includes the entire cargo tank capacity, whether or not the vessel has a double hull or other spill prevention measures.

RA Determination

Several commenters indicated their support for the provision in the proposed rule that states factors that the RA may use (§ 112.20(f)(2)) to determine whether a facility is a "substantial harm facility" irrespective of the substantial harm criteria in § 112.20(f)(1). One of these commenters suggested that this authority provides a system of checks and balances that should ensure that all facilities subject to the regulation will be required to comply. Other commenters expressed concern that the authority granted to the RA in § 112.20(b)(1) provides the RA with too much discretion in determining whether a facility is a "substantial harm facility." Some of these commenters suggested that the criteria used by the RA should be objective and consistent with the criteria used by owners or operators, and expressed confusion about the RA's authority to use "other site-specific characteristics or environmental factors" to select facilities. One commenter indicated that, as proposed, the RA would not be required to look at

the relationship of the specified criteria provided in § 112.20(f)(1) (e.g., the RA may consider that one criterion is enough to require a response plan to be submitted). One commenter felt that there is insufficient justification in the proposed rule for allowing the RA to select facilities that do not meet the criteria in § 112.20(f)(1).

EPA recognizes that RAs possess unique knowledge of Region-specific considerations that may have a bearing on whether to identify a facility as a "substantial harm facility." This RA authority is necessary, because the OPA through E.O. 12777 directs EPA ultimately to determine which facilities are "substantial harm facilities" and "significant and substantial harm facilities." As such, EPA retains the RA determination component of substantial harm selection in the final rule. In § 112.20(b)(1), EPA clarifies that if such a determination is made, the Regional Administrator shall notify the facility owner or operator in writing and shall provide a basis for the determination. Further, EPA notes that an appeals process is included to allow owners or operators the opportunity to challenge the RA's determination.

EPA is developing a guidance document to assist the RA with the identification of "substantial harm facilities." This guidance would outline specific screening procedures for use by RAs and will foster consistency in the way the substantial harm factors are applied. Further, RAs may use "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and information from the ACPs, when available, to identify fish and wildlife and sensitive environments as part of the substantial harm determination process.

Public Petitions

Section 112.20(f)(2)(ii) allows any person who believes that a facility may be a "substantial harm facility" to provide information to the RA through a petition for his or her use in determining whether the facility should be required to prepare and submit a response plan. This petition must include a discussion of how the substantial harm factors in § 112.20(f)(2)(i) apply to the facility.

Commenters in favor of allowing the public to have input in the determination of whether a facility is a "substantial harm facility" argued that the public should play a larger role in the selection and review process. However, many of these commenters argued that the proposed procedures are

⁴ The Technical Background Document to Support the Implementation of the OPA Response Plan Requirements, U.S. EPA, February 1993. Available for inspection in the Superfund Docket, room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

too burdensome for petitioners and that the facility owner or operator should have the responsibility to provide the necessary information. Commenters against allowing public petitions felt that the public petition process would be burdensome to EPA and the regulated community. Some commenters argued that the public does not have enough information to participate in the process.

In today's final rule, EPA establishes a process to allow the public the opportunity to provide input on a voluntary basis and welcomes such involvement. The Agency has decided to broaden the language in § 112.20(f)(2)(ii) from the proposed rule to clarify that other government agencies in addition to the public may provide information to RAs for the determination of substantial harm and that the RA shall consider such petitions and respond in an appropriate amount of time. The Agency believes that information provided by the public and other government agencies will assist rather than burden the RA. However, reviewing non-transportation-related facilities' response plans for approval is a governmental function delegated to EPA.

EPA wishes to clarify that it is not necessary for petitioners to determine quantitatively whether the facility meets one of the specific criteria in § 112.20(f)(1), but rather to provide a reasonable basis, from the factors in § 112.20(f)(2)(i), for asserting that the facility may pose a risk to the environment. A petition that fails to document the reasons why a facility should be classified as a "substantial harm facility" (e.g., the facility is near a drinking water supply or a priority sensitive environment listed in an ACP, the facility has a history of frequent spills or poor maintenance, etc.) may not be considered by the RA. However, petitioners would not have to provide detailed analyses and calculations. Other avenues of participation for the public in the response planning process include involvement in the ACP development process or participation in the LEPC.

Determination of Significant and Substantial Harm

As discussed in Section II.A of this preamble, RAs will review submitted plans to identify facilities that are "significant and substantial harm facilities" using the substantial harm factors set out in § 112.20(f)(2), and additional significant and substantial harm factors in § 112.20(f)(3).

Several commenters supported the proposed factors to determine

significant and substantial harm, indicating that EPA's use of risk-based screening criteria for substantial harm and significant and substantial harm determinations would reduce the prospect of excessive regulation for those facilities that do not pose a significant risk. Others indicated that EPA should define more clearly the criteria that the RA would use to determine significant and substantial harm to help ensure consistent application of the criteria both within an EPA Region and across EPA Regions. Several commenters suggested that EPA develop a screening mechanism that would provide the RA with some concrete guidelines to follow but still allow some latitude to exercise his or her expert judgment.

EPA Headquarters has provided written guidance⁵ to Regional personnel to assist them to determine which facilities are "significant and substantial harm facilities." The guidance provides a series of screens and instructions on how to evaluate the risk factors included at § 112.20(f)(3) of today's rule. In general, the screens provide various combinations of the risk factors that indicate increased levels of risk posed by a particular facility. For example, a facility that has an oil storage capacity greater than 1 million gallons and meets more than one of the risk-based criteria described in § 112.20(f)(1)(ii) (A) through (D) would be a "significant and substantial harm facility." The guidance document will help ensure a greater degree of consistency in Regional determinations of "significant and substantial harm facilities," but preserves the RA's ability to make case-by-case determinations based on unique facility- or location-specific concerns.

One commenter noted that EPA and the USCG chose different approaches for separating "substantial harm facilities" and "significant and substantial harm facilities." The commenter said that EPA's case-by-case determination of significant and substantial harm is more subjective than the USCG's, and has the potential for treating facility owners unequally.

EPA believes that its approach to determine substantial harm and significant and substantial harm is consistent with the OPA and does not diverge from the USCG's approach. The agencies' approaches are parallel in that each accounts for the higher risk of harm associated with transfers of high

volumes of oil over water (i.e., at locations adjacent to navigable waters). Because EPA regulates a larger and more diverse universe of facilities than the USCG, it would be difficult to publish a few general criteria that include the majority of high-risk facilities without also including many low-risk facilities. Therefore, as discussed previously, EPA decided to implement a substantial harm selection process with two components (i.e., published criteria and an RA determination). The OPA Conference Report explicitly states that significant and substantial harm criteria should include, at a minimum, oil storage capacity, location of fish and wildlife and sensitive environments, and location of potable water supplies. (H.R. Rep. No. 101-653, 101st Cong., 2d Sess. 1991 at p. 150.) These criteria are among the elements the RAs may consider, as set forth in §§ 112.20(f)(1) and (2) in making the significant and substantial harm determination. Further, where the Conference Report states that the criteria should not result in selection of facilities based solely on the size or age of storage tanks (See H.R. Rep. No. 101-653, 101st Cong., 2d Sess. 1990 at p. 150), it implies that these may be among the criteria. EPA does not agree that its case-by-case approach to identify a "significant and substantial harm facility" is overly subjective. As previously discussed, EPA has provided written guidance to Regions on the determination of significant and substantial harm to promote a more objective and consistent approach across all EPA Regions.

As the President's designee for regulating non-transportation-related onshore facilities, EPA has decided that Region-specific and facility-specific information is relevant in the determination of significant and substantial harm, because these elements may vary materially between Regions and facilities. For example, some facilities may be located on karst or unstable terrain because of the presence of underground streams or fault lines while other facilities are situated on more stable terrain where the risk of discharge may be lower.

Some commenters argued that the RA should review and approve plans submitted by "substantial harm facilities." They indicated that without such approval, these plans are likely to vary widely in their capacity to assure adequate response, and may even propose inappropriate use of dispersants or other treatment technologies.

EPA agrees that a review of plans from "substantial harm facilities" may be desirable. The OPA legislative

⁵ "Interim Guidance for the Determination of Significant and Substantial Harm," U.S. EPA, June 15, 1993. Available for inspection in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

history indicates that criteria should be developed to select for review and approval plans for onshore facilities that could cause both significant and substantial harm. (See H.R. Rep. No. 101-653, 101st Cong., 2d Sess. 1990 at p. 150.) Congress expected that only some proportion of all submitted onshore facility response plans would be reviewed and approved. The highest priority for EPA's use of limited resources must be directed to those facilities on which Congress has focused. The Agency has and will continue to undertake a limited review of all plans to identify "significant and substantial harm facilities."

Submission and Resubmission Process

In §§ 112.20(a)(2)(ii) and (iii) of the proposed rule, EPA proposed that newly constructed or modified facilities, which become subject to the response plan requirements, must prepare and submit a response plan prior to the start of operations of the new facility or modified portions of the facility. For unplanned changes that result in a facility meeting the substantial harm screening criteria, EPA proposed to allow the facility owner or operator six months to prepare and submit a response plan. Several commenters urged EPA to give owners and operators time following completion of construction or modification to prepare and submit a response plan to EPA (implying that operations should be allowed to proceed before submission of the response plan). Most commenters felt that the six-month time period was sufficient for submitting a facility response plan after unplanned changes.

EPA does not require owners or operators to prepare and submit a plan before beginning or completing construction, but prior to the handling, storing, or transporting of oil. An owner or operator can prepare a plan during the construction phase, and complete and submit it before the facility is ready to come on line. EPA recognizes that changes to a facility's operations are common during the start-up phase of a new facility or new component of a facility. As stated in the proposed rule preamble (58 FR 8829), adjustments to the response plan can be made and submitted to the Agency after an operational trial period of 60 days. In today's final rule, the Agency adds this recommendation as a requirement at § 112.20(a)(2)(ii) and (iii) (§ 112.20(a)(2)(i)(B) and (C) of the proposed rule) and clarifies that adjustments to the plan to reflect changes that occur at the facility during the start-up phase must be submitted after an operational trial period of 60

days. EPA believes that this revision will ensure that the information contained in the plan is reflective of the normal operating conditions at the facility.

Section 311(j)(5)(C) of the CWA states that facility response plans must be updated periodically, and under section 311(j)(5)(D), EPA (as the President's delegatee) is required to review periodically, and, if appropriate, approve each plan for a "significant and substantial harm facility." In § 112.20(g), the proposed rule provided that owners or operators must review relevant portions of the NCP and applicable ACP annually and revise the response plan to ensure consistency with these plans. Section 112.20(g) of the proposed rule also proposed to require owners or operators to update their plans periodically when changes at the facility warrant such updates. In § 112.20(c), the proposed rule stated that the RA would review periodically response plans for "significant and substantial harm facilities." No other specific time periods for plan review were proposed, but in the preamble EPA solicited comments on how frequently the RA should review approved response plans.

Several commenters suggested that the rule should provide definite time periods for plan review, and some supported annual plan review by each facility. Many commenters had an opinion about the frequency of review of approved plans by the RA. Some supported a three-year time period, but the majority preferred five years. A few commenters expressed concern that specific reevaluation and reapproval intervals were not part of the proposed rule.

As described in the proposed rule, the owner or operator of a "substantial harm facility" must review the NCP and the ACP annually and revise the plan, if necessary, to be consistent with these documents. (See § 112.20(g)(2).) To clarify other review requirements, EPA has reorganized § 112.20(g) by removing the requirement for periodic review and update of the plan from paragraph (g)(1) and moving it to new paragraph (g)(3). In § 112.20(c) of the final rule, EPA revises paragraph (c)(4) to indicate that approved plans will be reviewed by the RA periodically on a schedule established by the RA provided that the period between plan reviews does not exceed five years. As discussed previously, RAs may choose to stagger such reviews to facilitate the review process. This five-year time period is consistent with the USCG interim final rule for MTR facilities. (See 33 CFR part 154.) Within the five-year period, EPA

will undertake a full reevaluation of the plan and, if necessary, require amendments. With regard to commenters' concerns that specific review intervals were not identified in the proposal, periodic review is expressly required by OPA, and EPA requested comment on what review interval would be appropriate (See 58 FR 8828).

Proposed § 112.20(d) would require owners or operators of "significant and substantial harm facilities" to revise and resubmit the plan for approval within 60 days of each material change at the facility. EPA revises § 112.20(d)(1) to indicate that owners or operators of all facilities for which a response plan is required ("substantial harm facilities" and "significant and substantial harm facilities") must revise the plan (and resubmit relevant portions to the RA) when there are facility changes that materially may affect the response to a worst case discharge. This change is necessary to ensure that EPA receives the necessary information to determine if "substantial harm facilities" undergo changes that could lead to their being designated as "significant and substantial harm facilities." The requirement for the RA to review for approval changes to plans for "significant and substantial harm facilities" that was proposed at § 112.20(d)(1) has been moved to new § 112.20(d)(4). Some commenters supported the 60-day time period, some thought it was too short, and others thought it was too long. One commenter pointed out that proposed § 112.20(d)(2) implied that material changes must be approved prior to being made. A few commenters requested clarification on which material changes trigger resubmission, and two commenters opposed resubmitting the entire plan, rather than a plan amendment. EPA requested comments on the proposal in § 112.20(d)(2) that owners and operators must submit changes to the emergency notification list to the RA as these changes occur, without resubmitting the plan for approval. Some commenters supported the proposal and others opposed it as an unnecessary burden.

As stated in the preamble to the proposed rule, a material change is one that could affect the adequacy of a facility's response capabilities. The material changes listed in the final rule are not inclusive, but are similar to those in the USCG regulations at 33 CFR 154.1065 for revisions that must be submitted by a MTR facility for inclusion in an existing plan or for approval. Because of the scope of facilities that EPA regulates, it is difficult to provide a definitive list of all

containment area, whichever is greater. For purposes of the worst case discharge calculation, permanently manifolded oil storage tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.6 Discharge Detection Systems

In this section, the facility owner or operator shall provide a detailed description of the procedures and equipment used to detect discharges. A section on spill detection by personnel and a discussion of automated spill detection, if applicable, shall be included for both regular operations and after hours operations. In addition, the facility owner or operator shall discuss how the reliability of any automated system will be checked and how frequently the system will be inspected.

1.6.1 Discharge Detection by Personnel

In this section, facility owners or operators shall describe the procedures and personnel that will detect any spill or uncontrolled discharge of oil or release of a hazardous substance. A thorough discussion of facility inspections must be included. In addition, a description of initial response actions shall be addressed. This section shall reference section 1.3.1 of the response plan for emergency response information.

1.6.2 Automated Discharge Detection

In this section, facility owners or operators must describe any automated spill detection equipment that the facility has in place. This section shall include a discussion of overfill alarms, secondary containment sensors, etc. A discussion of the plans to verify an automated alarm and the actions to be taken once verified must also be included.

1.7 Plan Implementation

In this section, facility owners or operators must explain in detail how to implement the facility's emergency response plan by describing response actions to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent discharges described in section 1.5 of the response plan. This section shall include the identification of response resources for small, medium, and worst case spills; disposal plans; and containment and drainage planning. A list of those personnel who would be involved in the cleanup shall be identified. Procedures that the facility will use, where appropriate or necessary, to update their plan after an oil spill event and the time frame to update the plan must be described.

1.7.1 Response Resources for Small, Medium, and Worst Case Spills

1.7.1.1 Once the spill scenarios have been identified in section 1.5 of the response plan, the facility owner or operator shall identify and describe implementation of the response actions. The facility owner or operator shall demonstrate accessibility to the proper response personnel and equipment to effectively respond to all of the identified spill scenarios. The determination and demonstration of adequate response capability are presented in Appendix E to this part. In addition, steps to expedite the cleanup of oil spills must be discussed. At a minimum, the following items must be addressed:

- (1) Emergency plans for spill response;
- (2) Additional response training;
- (3) Additional contracted help;
- (4) Access to additional response equipment/experts; and
- (5) Ability to implement the plan including response training and practice drills.

1.7.1.2A recommended form detailing immediate actions follows.

Oil Spill Response—Immediate Actions

1. Stop the product flow.	Act quickly to secure pumps, close valves, etc.
2. Warn personnel	Enforce safety and security measures.
3. Shut off ignition sources.	Motors, electrical circuits, open flames, etc.
4. Initiate containment	Around the tank and/or in the water with oil boom.
5. Notify NRC	1-800-424-8802
6. Notify OSC	
7. Notify, as appropriate	

Source: FOSS, Oil Spill Response—Emergency Procedures, Revised December 3, 1992.

1.7.2 Disposal Plans

1.7.2.1 Facility owners or operators must describe how and where the facility intends to recover, reuse, decontaminate, or dispose of materials after a discharge has taken place. The appropriate permits required to transport or dispose of recovered materials according to local, State, and Federal requirements must be addressed. Materials that must be accounted for in the disposal plan, as appropriate, include:

- (1) Recovered product;
- (2) Contaminated soil;
- (3) Contaminated equipment and materials, including drums, tank parts, valves, and shovels;
- (4) Personnel protective equipment;
- (5) Decontamination solutions;
- (6) Adsorbents; and
- (7) Spent chemicals.

1.7.2.2 These plans must be prepared in accordance with Federal (e.g., the Resource Conservation and Recovery Act [RCRA]), State, and local regulations, where applicable. A copy of the disposal plans from the facility's SPCC Plan may be inserted with this section, including any diagrams in those plans.

	Material	Disposal facility	Location	RCRA permit/manifest
1.				
2.				
3.				
4.				

1.7.3 Containment and Drainage Planning

A proper plan to contain and control a spill through drainage may limit the threat of harm to human health and the environment. This section shall describe how to contain and control a spill through drainage, including:

- (1) The available volume of containment (use the information presented in section 1.4.1 of the response plan);
- (2) The route of drainage from oil storage and transfer areas;
- (3) The construction materials used in drainage troughs;

- (4) The type and number of valves and separators used in the drainage system;
- (5) Sump pump capacities;
- (6) The containment capacity of weirs and booms that might be used and their location (see section 1.3.2 of this appendix); and
- (7) Other cleanup materials.

plan, and ensure greater consistency with the response plan rules of other Federal agencies.

In the proposed rule, EPA proposed that owners or operators identify and describe the duties of the facility's "emergency response coordinator" in the facility response plan. This person was to be the "qualified individual" required by section 311(j) of the CWA, and would have full authority, including contracting authority, to implement removal actions. Proposed § 112.20(h)(3)(ix) set out the duties of the emergency response coordinator. The USCG's interim final rule (58 FR 7330, February 5, 1993) requires the owner or operator to name a "qualified individual" who has the duties of EPA's "emergency response coordinator." Several commenters suggested EPA and the USCG adopt uniform terms in their final rules for identifying this individual. One commenter specifically suggested that EPA replace "emergency response coordinator" with the USCG's term, "qualified individual."

EPA agrees, and has changed the term "emergency response coordinator" wherever it appears in today's rule to "qualified individual." Although EPA is not amending the necessary qualifications or description of duties for the qualified individual, the Agency stresses that the qualified individual should be able to respond immediately (i.e., within 2 hours) to a spill at the facility.

In section 1.1 of Appendix G of the proposed rule (Appendix F in the final rule), the Agency indicated the Emergency Response Action Plan (ERAP) shall include a description of immediate actions, and referenced section 1.7 of the model plan. Several commenters requested clarification on what should be described in this section. To clarify what constitutes a description of immediate actions, EPA has changed the reference for immediate actions to section 1.7.1, which focuses on the implementation of response actions. For the purpose of the ERAP, immediate actions include, at a minimum: (1) Stopping the flow of spilled material (e.g., securing pumps, closing valves); (2) warning personnel; (3) shutting off ignition sources (e.g., motors, electrical circuits, open flames); (4) initiating containment; (5) notifying the National Response Center; and (6) notifying appropriate State and local officials. A sample form for describing immediate actions in the plan is also included in Appendix F.

In § 112.20(h)(3)(vii) of the proposed rule, EPA proposed to require facility owners or operators to include plans for evacuation of facilities and surrounding

communities to ensure the safety of individuals that are at high risk in the event of a spill or other release (this information was also to be included in the emergency response action plan). Several commenters stated that requiring facilities to assume primary responsibility for the development of evacuation plans for the surrounding community is unreasonable. These commenters stated that Federal, State, and local agencies, which have expertise in emergency evacuation, are responsible for the preparation and implementation of community evacuation plans.

EPA does not intend for facilities to develop community evacuation plans, but any plans affecting the area surrounding the facility must be referenced in the response plan. Sections 112.20 (h)(1)(vi) and (h)(3)(vii) are revised to clarify the requirement to reference community evacuation plans. Facility owners or operators should contact the Fire Department and LEPC to assure coordination with existing community evacuation plans.

In section 1.4.3 of proposed Appendix G (Appendix F in this final rule), EPA recommended that facility owners or operators complete a quantitative analysis of spill potential to aid in developing discharge scenarios and response techniques, and consider factors such as tank age, spill history, horizontal range of a potential spill, and vulnerability to natural disasters. Several commenters stated that the analysis was unnecessary and burdensome, and requested guidance about the level of effort the Agency expects to be expended to analyze a facility's spill potential (e.g., tank by tank evaluation, general site study).

In response to commenters' concerns, EPA has reworded section 1.4.3 of the appendix by deleting the word "quantitative" from the description of the spill probability analysis. This should decrease the burden on the regulated community by giving facility owners and operators the flexibility to determine what factors to consider and allowing them to perform a more general analysis, including quantitative and/or qualitative factors, using the information in section 1.4.3 of the model plan as a guide.

In section 1.8 of Appendix G of the proposed rule, EPA proposed to require facilities to maintain training and meeting logs in the response plan to aid facility owners, operators, and employees in spill prevention awareness and response requirements. Several commenters stated that including logs within the response plan would detract from their effectiveness.

In response to these commenters' concerns, the Agency indicates in § 112.20(h)(8)(iv) and in Appendix F of the final rule that logs may be included in the facility response plan or kept as an annex to the plan.

To facilitate the review of response plans for complexes, EPA requires in today's final rule that the owner or operator of a complex identify, on the facility diagram submitted with the response plan, the interface between portions of the complex that are regulated by different agencies. (See section 1.9 of Appendix F.) EPA requires this interface to be consistent with the USCG's interim final rule for MTR facilities.

Facility Response Plan Certification

In Section III.G of the preamble to the proposed rule, EPA requested comment on a requirement for certification by a Registered Professional Engineer (PE) for certain portions of the response plan, such as determination of worst case discharge. EPA also solicited comment on which professions may be suitable to evaluate and certify the contents of the response plan if EPA determines a certification requirement is appropriate. In particular, the Agency requested comment on the suitability of Certified Hazardous Materials Managers to perform the plan certification function.

The Agency received many comments on the issue of certification of response plans. In general, commenters expressed support for the rulemaking effort and the certification provision, and sought EPA's consideration on the suitability of different professions to review and approve response plans. Among the remaining commenters (those not affiliated with an environmental professional organization), almost two-thirds felt that certification was unnecessary and cited cost, PE's unfamiliarity with the facility, and EPA review as the major reasons for their opposition. Some commenters indicated that, at most, certification should be limited to construction or structural aspects of the facility described in the response plan, because oil spill response training and knowledge is not widespread among many environmental professionals. Others said they would favor certification only if an in-house employee could perform the function. In addition, many commenters who supported the certification provision requested that EPA develop uniform standards for certifying, ranking, and approving the use of different types of environmental professionals.

The Agency considered these comments and has decided not to require plan certification by an outside

Response Equipment Checklist

1. Inventory (item and quantity);
2. Storage location;
3. Accessibility (time to access and respond);
4. Operational status/condition;

Please note any discrepancies between this list and the available response equipment.

[Use section 1.3.2 of the response plan as a checklist]

[illegible]

E. Valve conditions.

3. Retention and drainage ponds

- A. Erosion;
- B. Available capacity;
- C. Presence of spilled or leaked material;
- D. Debris; and
- E. Stressed vegetation.

- A. Level of precipitation in dike/available capacity;
- B. Operational status of drainage valves;
- C. Dike or berm permeability;
- D. Debris;
- E. Erosion;
- F. Permeability of the earthen floor of diked area; and
- G. Location/status of pipes, inlets, drainage beneath tanks, etc.

- A. Cracks;
- B. Discoloration;
- C. Presence of spilled or leaked material (standing liquid);
- D. Corrosion; and

During inspection, make note of discrepancies in any of the above mentioned items, and report them immediately to the proper facility personnel. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section.

(A) CWA section 311(j)(5), as amended by OPA, requires the response plan to contain a description of facility drills/exercises. According to 40 CFR 112.21(c), the facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. Following the PREP

guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this part. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the Regional Administrator based on the description of the program provided in the response plan.

(B) The PREP Guidelines specify that the facility conduct internal and external drills/exercises. The internal exercises include: qualified individual notification drills, spill management team tabletop exercises, equipment deployment exercises, and unannounced exercises. External exercises include Area Exercises. Credit for an Area or Facility-specific Exercise will be given to the facility for an actual response to a spill in the area if the plan was utilized for response to the spill and the objectives of the Exercise were met and were properly evaluated, documented and self-certified.

available that the demand for their services to meet worst case discharge planning volumes would place an undue financial burden on facility owners and operators who must procure those services. Another commenter suggested a revision to the definition to delegate authority to the RA to decide what "maximum extent practicable" means. Some said that EPA should revise the definition to make it more consistent with the USCG's.

EPA has factored costs into the definition of maximum extent practicable through procedures contained in Appendix E to today's rule to be used by owners or operators to determine appropriate levels of response resources. (As discussed later in this preamble, the requirements in Appendix E were prepared from a similar set of instructions developed by the USCG.) For example, in determining what is "practicable," Appendix E sets caps for the facility on the amount of response resources for which a facility owner or operator must contract or ensure by other approved means. These caps reflect the limits of currently available technology and private removal capabilities, and will be adjusted upward to reflect anticipated increases in private removal capabilities through the year 2003. Appendix E also includes tiered arrival times for response resources so that a facility owner or operator does not have to plan for all required resources to be located at the facility or in its immediate area.

With regard to the involvement of Federal response resources in determining maximum extent practicable, EPA notes that a major objective of the OPA amendments to section 311(j)(5) of the CWA is to create a system in which private parties supply the bulk of response resources needed for an oil spill response in a given area. A worst case discharge will likely require the use of both public and private resources. However, section 311(j)(5)(C)(iii) states specifically that a facility owner or operator must identify and ensure by contract or other approved means the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge. EPA cannot, in defining "maximum extent practicable," abrogate this statutory requirement.

In response to the comment that the rule will benefit response contractors at great cost to owners and operators, EPA notes that the statute requires owners and operators to ensure the availability of private resources. In setting out four ways to ensure availability (only one of which is a written contractual

agreement), EPA has attempted to give private parties the maximum possible flexibility to construct arrangements to meet this statutory objective.

EPA agrees with the commenters who suggested that the definition of maximum extent practicable be made more consistent with the USCG's and that the RA have the ability to evaluate "maximum extent practicable" in a given Region. Therefore, in § 112.2 of the final rule, the definition of "maximum extent practicable" is revised to be more consistent with the USCG's and to include a provision on RA authority.

Other Definitional Changes

Commenters suggested that EPA and the USCG should better coordinate certain parts of their respective regulations to allow complexes to follow a single set of requirements. As discussed in Section I.C of this preamble, EPA and the USCG participated in a series of cross-agency meetings to facilitate consistency in response plan requirements. In today's final rule, EPA has revised the definitions of "adverse weather" and "contracts or other approved means" in § 112.2 of the rule; added a definition of "oil spill removal organization" in § 112.2 of the rule; and revised "Great Lakes," "higher volume port area," and "inland area" in Appendix C of the rule to more closely follow the USCG's definitions in its interim final rule for MTR facilities. In addition, EPA adds to Appendix E definitions for the terms "nearshore," "ocean," "operating area," and "operating environment," also adopted from the USCG's interim final rule for MTR facilities. These revisions are conforming changes and are for the most part non-substantive. A summary of the changes follows. (The definitions of "contracts or other approved means" and "oil spill removal organization" are discussed elsewhere in this preamble.)

- The definition of "adverse weather" is revised to include references to weather conditions such as wave height, ice conditions, temperatures, weather-related visibility, and currents within the area in which the equipment is to function. These changes result in an expanded definition of "adverse weather" that is as consistent as possible with the USCG definition of the same term, that incorporates relevant weather conditions which contribute to adverse weather, and that maintains a standard against which to evaluate weather conditions.

- A definition of "oil spill removal organization" (OSRO) has been added, because this term is included in the

definition of "contract or other approved means."

- The definition of "Great Lakes" is revised to match the USCG's definition.

- The definition of "higher volume port area" was revised to add several port areas contained in the USCG's definition.

- The definition of "inland area" was changed to remove rivers and canals from the water bodies that are excluded in the USCG's definition.

- The definition of "nearshore" was added to ensure greater consistency with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E.

- The definition of "ocean" as it applies to facilities in EPA's jurisdiction was added to be consistent with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E. "Ocean" describes the operating environment normally found in nearshore areas.

- The definition of "operating area" was added to be consistent with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E. "Operating area" means the geographic location in which a facility is handling, storing, or transporting oil. The four operating areas applicable to EPA's jurisdiction are Rivers and Canals, Inland Areas, Nearshore, and Great Lakes. The operating area classification may not be changed by the OSC and the boundaries of each area are specified in their definition.

- The definition of "operating environment" was added to be consistent with the USCG's interim final rule for MTR facilities and facilitate the use of Appendix E. "Operating environment" means the conditions in which the response equipment is designed to function. The four operating environments are Rivers and Canals, Inland Areas, Great Lakes, and Oceans. The OSC may reclassify a specific body of water in the ACP to better reflect conditions expected to be encountered in an operating area during response activities.⁶

⁶ The conditions present in each operating environment (i.e., significant wave height and sea state) are listed in Table 1 of Appendix E and will normally be conditions present in each corresponding operating area. For example, an owner or operator whose facility is located on a river (i.e., the Rivers and Canals operating area) will normally have to plan to respond to a spill using equipment capable of functioning in the Rivers and Canals operating environment, (i.e., the conditions described by a significant wave height of less than or equal to 1 foot or a sea state of 1). The Ocean operating environment normally describes the conditions present in the Nearshore operating area (i.e., significant wave height of less than or equal to 6 feet and a sea state between 3 and 4). While

1.9 Diagrams

The facility-specific response plan shall include the following diagrams. Additional diagrams that would aid in the development of response plan sections may also be included.

- (1) The Site Plan Diagram shall, as appropriate, include and identify:
 - (A) the entire facility to scale;
 - (B) above and below ground bulk oil storage tanks;
 - (C) the contents and capacities of bulk oil storage tanks;
 - (D) the contents and capacity of drum oil storage areas;
 - (E) the contents and capacities of surface impoundments;
 - (F) process buildings;
 - (G) transfer areas;
 - (H) secondary containment systems (location and capacity);
 - (I) structures where hazardous materials are stored or handled, including materials stored and capacity of storage;
 - (J) location of communication and emergency response equipment;
 - (K) location of electrical equipment which contains oil; and
 - (L) for complexes only, the interface(s) (i.e., valve or component) between the portion of the facility regulated by EPA and the portion(s) regulated by other Agencies. In most cases, this interface is defined as the last valve inside secondary containment before piping leaves the secondary containment area to connect to the transportation-related portion of the facility (i.e., the structure used or intended to be used to transfer oil to or from a vessel or pipeline). In the absence of secondary containment, this interface is the valve manifold adjacent to the tank nearest the transfer structure as described above. The interface may be defined differently at a specific facility if agreed to by the RA and the appropriate Federal official.
- (2) The Site Drainage Plan Diagram shall, as appropriate, include:
 - (A) major sanitary and storm sewers, manholes, and drains;
 - (B) weirs and shut-off valves;
 - (C) surface water receiving streams;
 - (D) fire fighting water sources;
 - (E) other utilities;
 - (F) response personnel ingress and egress;
 - (G) response equipment transportation routes; and
 - (H) direction of spill flow from discharge points.
- (3) The Site Evacuation Plan Diagram shall, as appropriate, include:
 - (A) site plan diagram with evacuation route(s); and
 - (B) location of evacuation regrouping areas.

1.10 Security

According to 40 CFR 112.7(e)(9), facilities are required to maintain a certain level of security, as appropriate. In this section, a description of the facility security shall be provided and include, as appropriate:

- (1) emergency cut-off locations (automatic or manual valves);
- (2) enclosures (e.g., fencing, etc.);
- (3) guards and their duties, day and night;

- (4) lighting;
- (5) valve and pump locks; and
- (6) pipeline connection caps.

The SPCC Plan contains similar information. Duplicate information may be photocopied and inserted in this section.

2.0 Response Plan Cover Sheet

A three-page form has been developed to be completed and submitted to the RA by owners or operators who are required to prepare and submit a facility-specific response plan. The cover sheet (Attachment F-1) must accompany the response plan to provide the Agency with basic information concerning the facility. This section will describe the Response Plan Cover Sheet and provide instructions for its completion.

2.1 Page One—General Information

Owner/Operator of Facility: Enter the name of the owner of the facility (if the owner is the operator). Enter the operator of the facility if otherwise. If the owner/operator of the facility is a corporation, enter the name of the facility's principal corporate executive. Enter as much of the name as will fit in each section.

(1) **Facility Name:** Enter the proper name of the facility.

(2) **Facility Address:** Enter the street address, city, State, and zip code.

(3) **Facility Phone Number:** Enter the phone number of the facility.

(4) **Latitude and Longitude:** Enter the facility latitude and longitude in degrees, minutes, and seconds.

(5) **Dun and Bradstreet Number:** Enter the facility's Dun and Bradstreet number if available (this information may be obtained from public library resources).

(6) **Standard Industrial Classification (SIC) Code:** Enter the facility's SIC code as determined by the Office of Management and Budget (this information may be obtained from public library resources).

(7) **Largest Oil Storage Tank Capacity:** Enter the capacity in GALLONS of the largest aboveground oil storage tank at the facility.

(8) **Maximum Oil Storage Capacity:** Enter the total maximum capacity in GALLONS of all aboveground oil storage tanks at the facility.

(9) **Number of Oil Storage Tanks:** Enter the number of all aboveground oil storage tanks at the facility.

(10) **Worst Case Discharge Amount:** Using information from the worksheets in Appendix D, enter the amount of the worst case discharge in GALLONS.

(11) **Facility Distance to Navigable Waters:** Mark the appropriate line for the nearest distance between an opportunity for discharge (i.e., oil storage tank, piping, or flowline) and a navigable water.

2.2 Page Two—Applicability of Substantial Harm Criteria

Using the flowchart provided in Attachment C-I to Appendix C to this part, mark the appropriate answer to each question. Explanations of referenced terms can be found in Appendix C to this part. If a comparable formula to the ones described in Attachment C-III to Appendix C to this part is used to calculate the planning

distance, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet.

2.3 Page Three—Certification

Complete this block after all other questions have been answered.

3.0 Acronyms

ACP: Area Contingency Plan
 ASTM: American Society of Testing Materials
 bbls: Barrels
 bpd: Barrels per Day
 bph: Barrels per Hour
 CHRIS: Chemical Hazards Response Information System
 CWA: Clean Water Act
 DOI: Department of Interior
 DOC: Department of Commerce
 DOT: Department of Transportation
 EPA: Environmental Protection Agency
 FEMA: Federal Emergency Management Agency
 FR: Federal Register
 gal: Gallons
 gpm: Gallons per Minute
 HAZMAT: Hazardous Materials
 LEPC: Local Emergency Planning Committee
 MMS: Minerals Management Service (part of DOI)
 NCP: National Oil and Hazardous Substances Pollution Contingency Plan
 NOAA: National Oceanic and Atmospheric Administration (part of DOC)
 NRC: National Response Center
 NRT: National Response Team
 OPA: Oil Pollution Act of 1990
 OSC: On-Scene Coordinator
 PREP: National Preparedness for Response Exercise Program
 RA: Regional Administrator
 RCRA: Resource Conservation and Recovery Act
 RRC: Regional Response Centers
 RRT: Regional Response Team
 RSPA: Research and Special Programs Administration
 SARA: Superfund Amendments and Reauthorization Act
 SERC: State Emergency Response Commission
 SDWA: Safe Drinking Water Act of 1986
 SI: Surface Impoundment
 SIC: Standard Industrial Classification
 SPCC: Spill Prevention, Control, and Countermeasures
 USCG: United States Coast Guard

4.0 References

CONCAWE. 1982. Methodologies for Hazard Analysis and Risk Assessment in the Petroleum Refining and Storage Industry. Prepared by CONCAWE's Risk Assessment Ad-hoc Group.

U.S. Department of Housing and Urban Development. 1987. Siting of HUD-Assisted Projects Near Hazardous Facilities: Acceptable Separation Distances from Explosive and Flammable Hazards. Prepared by the Office of Environment and Energy, Environmental Planning Division, Department of Housing and Urban Development, Washington, DC.

U.S. DOT, FEMA and U.S. EPA. Handbook of Chemical Hazard Analysis Procedures.

approach to determine response resources for non-petroleum oils.

This adaptation means that in calculating required response resources for non-petroleum facilities, an owner or operator will not use emulsification or evaporation factors in Table 3 of Appendix E. Rather, these facility owners or operators must: (1) Show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified will work in the conditions expected in the relevant geographic areas, and respond within the required times (according to Table 1 of Appendix E); and (4) ensure the availability of required resources by contract or other approved means. At such time as there are results from research on such factors as emulsification or evaporation of non-petroleum oil, additional changes may be made to the rule for response resources for response planning for non-petroleum oil facilities. Section 7.7 has been added to Appendix E to reflect these changes.

Several commenters noted that the statutory definition of oil includes a wide variety of oils, such as petroleum oils and non-petroleum oils that can affect the environment by a variety of mechanisms. Response strategies associated with non-petroleum oils may differ from those associated with petroleum oils. Therefore, EPA is providing these definitions to assist owners or operators in distinguishing between oil types.

- Petroleum oil means petroleum in any form including crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

- Non-petroleum oil means oil of any kind that is not petroleum-based. It includes animal fat, vegetable oil, and other non-petroleum oil.

- Animal fat means a non-petroleum oil, fat, or grease derived from animal oils not specifically identified elsewhere.

- Vegetable oil means a non-petroleum oil or fat derived from plant seeds, nuts, kernels or fruits not specifically identified elsewhere.

- Other non-petroleum oil means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

Additional changes made to the equipment requirements to match the USCG's requirements are as follows:

- Section 2.3.1 is added. This section indicates that the RA may require owners or operators to identify in the facility response plan boom that meets

the boom criteria in Table 1 of Appendix E. If documentation that the boom meets the Table 1 criteria is unavailable, the RA may require that the boom be tested in accordance with ASTM standards.

- The on-water speed for determining the travel time to the site of the discharge was adjusted from 10 knots to 5 knots in section 2.6 of Appendix E.

- A provision was added to section 3.3.1 of Appendix E for complexes with a marine transfer component to provide an amount of boom that is equal to two times the length of the largest vessel that transfers oil at the facility or 1,000 feet, whichever is greater. For complexes, the non-transportation-related portion of the facility response plan need not include reference to boom length if it is already referenced in the MTR portion of the facility response plan.

- Language was added to section 5.4 of Appendix E to indicate that facility owners or operators whose planning volume exceeds the caps in Table 5 of Appendix E must identify sources of additional equipment; and clarify that facility owners or operators who have identified USCG-classified OSROs are not required to list specific quantities of available equipment in their response plan.

- A provision was added to section 6.2 of Appendix E to allow the RA to assign lower efficiency factors to equipment when warranted.

- A provision was added to section 6.3 of Appendix E to allow the facility owner or operator to use equivalent tests of effective daily recovery rates when approved by EPA.

- Section 6.4 has been renumbered to 6.3.2 and provisions added for RA determination of acceptable alternative efficiency factors and effective daily recovery capacity.

- Sections 7.4, 7.6.3, and 7.7.5 are added to clarify that owners or operators must identify firefighting resources in addressing response resources under the plan.

- Criteria for containment boom in the ocean operating environment were added to Table 1 of Appendix E.

EPA considered whether to adopt language in Appendix E to address the use of dispersants and in-situ burning. Some commenters suggested that the Agency address these response measures using Section 8 of the USCG's Appendix C as a model. In today's final rule, EPA has included some information from Section 8 of the USCG's Appendix C to address the use of dispersants listed on the NCP Product Schedule. Use of dispersants during spill response will be based on the

provisions of the NCP⁷ and applicable ACP. The USCG permits a limited offset against required response resources if the use of dispersants or in-situ burning is part of the response strategy. EPA will not include such an offset for non-transportation-related facilities for two reasons. To date, the ACPs do not allow use of dispersants in inland waters and a facility under EPA jurisdiction in a coastal area cannot use dispersants given the shallow water depth.

Verification of Response Capability

In the preamble to the proposed rule, EPA stated that it may use various methods (including an OSRO certification or approval program) during the plan review process to evaluate the availability and adequacy of personnel and equipment to respond to a worst case discharge, to the maximum extent practicable. The Agency has reviewed the USCG OSRO classification process. This is a voluntary process whereby OSROs can submit a description of their resources and capabilities to the USCG National Strike Force Coordination Center and be evaluated for classification according to their capabilities. This process assists vessel and facility owners trying to locate appropriate resources, and simplifies the planning process by allowing these owners (who identify an OSRO(s) to meet response resource requirements) simply to list the OSRO(s) and its classification in the response plan, rather than list equipment recovery, containment, and storage resources in the plan. The Agency specifically requested comments on the criteria to evaluate OSRO agreements, a mechanism for approving OSROs, and the advisability of establishing an OSRO approval process.

Most commenters agreed that EPA should establish its own OSRO classification process or use the USCG's classification process to streamline the development of facility response plans. Many of these commenters agreed that EPA should coordinate with the USCG in planning such a program, if it is to be different from the USCG's classification process. Several commenters specifically mentioned that details of response resources should not be required within the response plans. These commenters felt that this information would distract from the emergency purpose of the document. A few commenters offered additional criteria to be used in the evaluation of response resources. In dissent, some

⁷ Facility owners or operators may call the NCP Hotline at 202 260-2343 for information on the current NCP Product Schedule.

commenters requested a "standardization approach" using performance criteria instead of a classification process.

EPA is not implementing a new OSRO classification program at this time. Facility owners or operators can rely on the USCG OSRO classification process or other appropriate OSRO evaluation programs in place at the State level for defined geographic areas (e.g., State of Washington) to identify in the plan resources to respond to a worst case discharge, to the maximum extent practicable. However, where the provider of response resources is not a USCG-classified OSRO (or State-evaluated OSRO), RAs have the option to perform their own evaluation or verification to ensure that equipment is available and is in proper condition. In this evaluation, the RA may consider several factors including: the proximity of response resources to the facility; the adequacy of equipment and personnel resources; the OSRO's past performance and safety record; the number of additional facilities the OSRO has agreed to support; knowledge of state-of-the-art response techniques; knowledge of local fish and wildlife and sensitive environments and the ACP; the adequacy of the incident command structure; record-keeping practices for personnel safety equipment; and proficiency in spill management. This evaluation may involve visiting such organizations to determine whether equipment is available and in good working order. Facility owners or operators also should consider such factors when they evaluate the capabilities of an OSRO(s) to be listed in the response plan. RAs also may evaluate an OSRO's capabilities (including the facility owner's equipment and response resources when this is the case) during PREP area drills/exercises. EPA chose not to adopt a specific classification program of its own to avoid an additional step in the process to prepare and review facility response plans.

Fish and Wildlife and Sensitive Environments

EPA has identified proximity to fish and wildlife and sensitive environments as a factor in the substantial harm determination. EPA intended for owners or operators to use Appendix D of the proposed rule as interim guidance for the identification of environmentally sensitive areas until ACPs were available. Several commenters urged EPA to allow facility owners or operators to use the NCP or ACPs for the identification of environmentally sensitive areas. Other commenters

stated that the definition of "environmentally sensitive areas" was too broad, making it difficult to use in the determination of substantial harm. Some commenters objected to the listing of particular areas (e.g., wetlands, national monuments) as sensitive, while others requested that additional areas (e.g., water intakes for electric utilities and municipalities, National and State parks, and National forests) be included in the definition of sensitive environments.

As discussed previously, EPA does not include proposed Appendix D in this final rule. To serve the purpose of proposed Appendix D (i.e., to guide owners or operators in identifying fish and wildlife and sensitive environments), EPA adds a general definition of "fish and wildlife and sensitive environments" at § 112.2 of the final rule and references certain documents for further information. The definition, adapted from the text of proposed Appendix D, reads as follows: "areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinators spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats." To help facility owners or operators better address required fish and wildlife and sensitive environments concerns, EPA contributed to a governmental committee formed by various Federal agencies to develop a consistent definition of fish and wildlife and sensitive environments. The committee was made up of representatives from various Natural Resource Trustee agencies and from the agencies with OPA response plan authority. After considering comments on the EPA's proposed rule, the committee developed an interagency guidance document based on the information contained in Appendix D of the proposed rule. The

introductory text has been expanded to explain in more detail some environmental sensitivity issues, and address the substance of the public comments that EPA and the USCG received on this subject. To ensure more comprehensive response planning and to better protect fish and wildlife and sensitive environments, Attachment D-IV ("Vulnerability of Aquatic Ecosystems") and Attachment D-V ("Vulnerability Scale of Aquatic Habitats Impacted by Oil Spills") of proposed Appendix D have been replaced by Appendix IV ("Sensitive Biological and Human-Use Resources") and Appendix V ("Ranking of Shoreline Habitats Impacted by Oil Spills"), respectively in the DOC/NOAA guidance.

In addition, other environmental areas were added to those listed in Appendix D, Attachment D-I ("Responsible Federal Agencies for Specific Environmental Resources"), such as the National Forest System, Areas of Critical Environmental Concern, and cultural resources. This guidance also contains additional mailing addresses and phone numbers of government offices where facility owners or operators may obtain additional information. The document titled, "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," was published in the Federal Register by DOC/NOAA at 59 FR 14714, March 29, 1994. In today's rule, EPA has removed the Environmentally Sensitive Areas appendix that was proposed in the proposed rule and references to the appendix contained in proposed § 112.20. EPA refers facility owners and operators to Appendices I, II, and III of DOC/NOAA's guidance for guidance to identify fish and wildlife and sensitive environments until geographic-specific annexes to the ACPs are refined to the point where they address fish and wildlife and sensitive environments concerns in detail. As discussed previously, in the inland zone (as defined in 40 CFR 300.5), ACPs have been developed and will undergo continuous refinement. Facility owners or operators may contact the appropriate Regional office for fish and wildlife and sensitive environments information as it becomes available.

Worst Case Discharge

Under § 112.20(h)(5) of the proposed rule, owners or operators who must prepare a facility response plan under § 112.20 must calculate a worst case discharge quantity as described in proposed Appendix E. (Appendix E has been relabeled as Appendix D in today's final rule.) This worst case discharge

scenario, in turn, directly influences the quantity of spill response resources that must be available to the facility, as outlined in Appendix D. In the proposed rule, the determination of the worst case discharge volume is based on the facility's oil storage capacity, with additional factors taken into account for multiple-tank facilities with secondary containment or adjacent to navigable waters. EPA requested comments on allowing a reduction in the worst case discharge planning amount for facilities with adequate secondary containment in place.

One commenter stated that no reduction should be allowed for secondary containment, because oil spills frequently occur during transfer operations that take place outside of secondary containment. The commenter added that, even for those spills that occur within contained areas, a worst case discharge scenario should assume some failure of containment systems (as has happened historically in spills from facilities with secondary containment). Numerous commenters requested that EPA grant credit for secondary containment in the formula to calculate a facility's worst case discharge, thereby reducing the amount of response resources for which the facility would need to plan. Many of these commenters generally supported credit for secondary containment, because containment will reduce the quantity of a spill that escapes from the facility and impacts the environment. Other commenters argued that credit for secondary containment would provide an incentive to the regulated community to enhance facility spill prevention systems, while others contended that the probability of both the tank and its secondary containment failing simultaneously is extremely small.

In response to commenters' concerns, EPA has modified Appendix D to allow a 20 percent reduction in the worst case discharge amount at single-tank facilities for the presence of adequate secondary containment (i.e., containment equal to 100 percent of tank capacity plus sufficient freeboard for precipitation). The amount of this percentage reduction is based on an analysis of the percentage of released oil reaching navigable waters in the historical spill record from EPA's Emergency Response Notification System database.⁸ EPA believes that the data do not support granting a larger

credit, nor do they show that a smaller credit should be established. Historical data illustrate that secondary containment is not always completely effective, due to wave effects, breaches in containment walls, or operator error (such as an open secondary containment drainage valve).

With respect to multiple-tank facilities, EPA notes that it is finalizing the proposed credit for secondary containment at these facilities. As in the proposed rule, the calculation method in the final rule focuses on the oil storage capacity of the largest tank within a secondary containment area or a group of tanks permanently manifolded together within a common secondary containment area as a planning amount for the worst case discharge. This amount reflects a credit for secondary containment resulting in a lesser planning amount than the capacity of all tanks within secondary containment or the capacity of all tanks at the facility. Facilities that lack secondary containment would therefore be required to include the capacity of all storage tanks without secondary containment in their worst case discharge volume, while those facilities with credit for secondary containment would only need to consider the capacity of the largest tank or group of tanks within a single secondary containment area. As such, the presence of secondary containment leads to a significant credit that reduces the worst case discharge planning amount and the associated response resource requirements.

Numerous commenters requested that EPA grant credit for facility spill prevention measures and practices (other than secondary containment) in the calculation of the worst case discharge. Specific preventive measures mentioned by commenters include tertiary containment, conformance with American Petroleum Institute tank standards, automatic shutdown systems, high-level alarms, corrosion protection, and hydrostatic testing. Many commenters generally supported credit for specific preventive measures because of the capacity of such measures to reduce spill size or spill migration. Many commenters also argued that credit for other spill prevention measures would provide incentives to the regulated community to enhance spill prevention systems. Owners or operators would implement such measures to decrease the worst case discharge volume, and thus, decrease necessary expenditures for planning and response resources.

In today's final rule, EPA retains the credit for secondary containment at the

facility, but does not provide additional credits to facilities for the presence of such preventive measures in the calculation of the worst case discharge. Although EPA encourages facilities to implement additional preventive measures such as those cited by the commenters, the Agency believes that the effects of these measures on the size and impact of a potential spill are not readily quantifiable, nor as easily supported with historical spill evidence, as those of secondary containment. In addition, the Agency believes that granting credit for these prevention measures likely would require a more detailed verification and inspection process than would granting credit for secondary containment. Further, Congress' intent was that planning reflect the worst case discharge, and that the private sector be encouraged to increase its spill response capability.

In the calculation of a worst case discharge, EPA proposed to require multiple-tank facilities with secondary containment for which the nearest opportunity for discharge (i.e., storage tank, piping, or flowline) is adjacent to navigable water, to incorporate an additional 10 percent factor in the calculation of the worst case discharge quantity. (See Parts A3 and B3 of Appendix E of the proposed rule.) The Agency proposed the 10 percent distinction in the calculation of a worst case discharge volume between multiple-tank facilities adjacent to navigable waters and those not adjacent to navigable waters as a safety factor to address the potential for releases from multiple tanks.

Many commenters opposed the use of a 110 percent planning volume for facilities located adjacent to navigable water, because a facility could not discharge more than 100 percent of its capacity. Some commenters apparently did not realize that the provision only applied to multiple-tank facilities, and argued that the 110 percent planning volume factor should be eliminated because it is impossible for a single tank to discharge more than 100 percent of its capacity.

EPA has considered these comments and has decided to eliminate consideration of a facility's location adjacent to navigable waters from the calculation of the worst case discharge. Adding an additional 10 percent to the planning volume is unnecessary, because the emulsification table in Appendix E will account for removing material in excess of tank capacity for all petroleum facilities for which an owner or operator must plan under this rule. There is no need to impose an additional cost burden on multiple-tank

⁸ The Technical Background Document to Support the Implementation of the OPA Response Plan Requirements, U.S. EPA, February 1993. Available for inspection in the Superfund Docket, room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

facility owners and operators for proximity to navigable waters. In Appendix D of today's final rule, the worksheets have been changed accordingly; this change will simplify the calculation and reduce confusion in the regulated community.

Several commenters requested that EPA clarify its definition of "permanently manifolded tanks" used in the calculation of a worst case discharge volume. Several commenters expressed confusion about whether permanently manifolded tanks connected by piping systems with valves that are normally shut, and permanently manifolded tanks that are separated by internal divisions in the secondary containment area, are considered separate tanks for purposes of the worst case discharge calculation.

The proposed definition of "permanently manifolded tanks" indicated that such systems were to be considered as separate tanks for the worst case discharge calculation. However, to better clarify EPA's intent, the definition of "permanently manifolded tanks" has been modified slightly in Appendix D of the final rule. The changes make it clear that within a common secondary containment area, interconnected tanks are considered to be single tanks if one or more of the manifolded tanks functions as an overflow container for another tank (i.e., is connected by piping at the top). In this case, individual manifolded tank volumes are not combined when calculating the worst case discharge planning volume. The owner or operator must provide evidence in the response plan that tanks with common piping or piping systems are not operated as one unit.

EPA recognizes that failures associated with multiple tanks that are hydraulically connected could result in the discharge of a greater volume of oil than the capacity of any one of the tanks. The definition of "permanently manifolded tanks" adequately accounts for this possibility. The owner or operator of a facility with permanently manifolded tanks would combine the capacities of all tanks manifolded together to calculate the worst case discharge planning volume for the facility.

Owners or operators of onshore production facilities must consider both storage capacity and production activities in the determination of a worst case discharge planning volume. In the proposed rule, EPA defined production volume for production wells (producing by pumping) as the pumping rate of the highest output well at the facility, multiplied by 1.5 times the number of

days the facility is unattended (Appendix E, Part B). Several commenters stated that EPA had not provided sufficient justification for requiring the calculation of the worst case discharge planning volume to include use of the 1.5 multiplier. Commenters believed that the pumping rate of the highest rate well could easily be determined and should not be artificially inflated, and suggested that the multiplier be used only when the rate of the highest rate well is unknown.

In response to commenters' concerns, EPA revised the worst case discharge calculation in Appendix D of the final rule to require facility owners or operators to use the 1.5 multiplier only if the rate of the well with the highest output or the number of days the facility is unattended cannot be estimated with certainty. EPA believes that the use of the 1.5 multiplier is appropriate in these instances because it provides a conservative basis upon which to incorporate these uncertain estimates of discharge potential in the calculation of a worst case discharge. If the facility owner or operator knows the rate of the well with the highest output and can predict the number of days that the facility will be unattended, then the production volume for each production well (producing by pumping) is equal to the pumping rate of the well, multiplied by the greatest number of days the facility will be unattended. If the actual pumping rate will exceed the planned pumping rate, or the facility will be unattended for longer than the time indicated in the facility response plan, then the owner or operator must amend the facility response plan to reflect this operational change at the facility. The owner or operator must resubmit the appropriate sections of the plan in accordance with § 112.20(d)(1).

In Appendix E of the proposed rule, the proposed worst case discharge planning volume for facilities with exploratory wells or production wells producing under pressure was the forecasted production volume for the highest output well at the facility plus the appropriate oil storage capacity component. The proposed rate for exploratory wells and production wells producing under pressure was the maximum 30-day forecasted well rate for wells 10,000 feet deep or less, or the maximum 45-day forecasted well rate for wells more than 10,000 feet deep. Several commenters from the oil industry stated that the forecasted well rates were unwarranted because cleanup procedures will begin before the entire volume of the discharge reaches the environment. Commenters suggested that EPA consider inspection frequency

or time intervals equal to the appropriate response tier as factors to determine the worst case discharge planning volume. In considering revisions to the proposed worst case discharge planning volume calculation, EPA also solicited input from MMS, which is in the process of promulgating response plan regulations for certain offshore production facilities.

EPA compared the response efforts required and damage resulting from discharges from production wells producing under pressure or exploratory wells to the response efforts required and damage resulting from discharges from storage tanks or production wells producing by pumping. Because discharges from storage tanks or production wells are discrete events, the volume of oil that is discharged is not influenced by response actions after they have been discovered. For production wells producing under pressure and exploratory wells, response efforts can mitigate the effects of the discharge during the time it takes response personnel to stop the flow of oil. For these reasons, EPA has revised the calculations for worst case discharge planning volume for facilities with exploratory wells or production wells producing under pressure.

The final version of the appendix (Appendix D in the final rule) requires the facility owner or operator to compare the forecasted rate of the highest output well to the capacity of response equipment and personnel to recover the volume of oil that could be discharged to calculate the production volume. If the well rate would overwhelm the response efforts, the worst case discharge planning volume would be calculated in a manner similar to that described in the proposed rule. (See Method A of Attachment D-1.) If the emergency response effort would match or exceed the forecasted rate of the highest output well, then the facility owner or operator would calculate the production volume based on the sum of: 1) the volume of oil discharge from the well between the time of the blowout and the expected time the response resources are on scene and recovering oil; and 2) the volume of oil discharged after the response resources begin operating until the spill is stopped (adjusted for the amount of oil recovered). (See Part B of Attachment D-2.) As in the case of production facilities with wells producing by pumping, Part B of Appendix D requires that the appropriate storage oil capacity also be added to the production volume to determine the worst case discharge planning volume. EPA describes these methods to calculate the production

volume for production facilities with wells producing under pressure or exploratory wells in Attachment D-1, "Methods to Calculate the Production Volumes for Production Facilities with Exploratory Wells or Production Wells Producing Under Pressure," to Appendix D.

Response Planning Levels

As part of the response planning requirements, EPA proposed in § 112.20(h)(5) that "substantial harm facilities" must evaluate smaller, more probable discharge quantities for their facility response plan in addition to the worst case discharge specified by the OPA. As proposed, the owner or operator of a facility would plan for small (2,100 gallons or less) and medium (between 2,100 gallons and 36,000 gallons, or ten percent of the capacity of the largest tank, whichever is less) discharge quantities, provided that these amounts are less than the worst case discharge amount.

EPA received comments both in support of, and opposed to, the concept of planning for various response levels. Some commenters indicated that the establishment of such additional planning requirements was beyond the OPA mandate. Other commenters argued that planning for smaller spills will be encompassed in planning for a worst case discharge, that planning for smaller spills is a function of good management practices and should not be regulated, or that pre-existing SPCC Plans adequately address smaller spills.

EPA has considered these comments and decided to retain the planning approach outlined in the proposed rule. Although planning for several discharge amounts is not mandated specifically under OPA, EPA has broad and ample regulatory authority under CWA section 311(j)(1)(C) for such a requirement. The Agency believes that discharges less severe than a worst case scenario may pose a serious threat to navigable waters, especially from the cumulative effects of several discharges, and that preparation to respond to smaller spills could lead to better overall protection of the nation's navigable waters. In addition, this three-level approach is consistent with the USCG's implementation of planning scenarios under OPA and some State response plan rulemakings.

Various sizes of discharges can require different types and amounts of equipment, products, and personnel, and must therefore be addressed separately. For example, a facility may want to hire a contractor to support response to a worst case discharge scenario, but handle smaller,

operational spills using its own personnel and equipment. To the extent that facility personnel are better able to address immediate actions associated with smaller spills, they will be better prepared to initiate a response to a worst case discharge until back-up resources arrive on-scene. Increased proficiency in handling the initial stages of a discharge can result in significant reductions in the extent of spill movement and associated impacts to the environment.

As many commenters recognized, planning for responses to more commonly occurring discharges may be more beneficial to facilities than planning for a worst case discharge that has a lower probability of occurrence—nevertheless, EPA continues to recognize that this planning approach may not be appropriate for all facilities, including those where the range of possible spill scenarios is small. Under today's final rule, as in the proposed rule, large facilities would still need to plan for three discharge amounts, but a small facility may only need to plan for two scenarios or a single scenario if its worst case discharge falls within one of the specified ranges.

To address the planning requirements, the owner or operator must consider the different types of facility-specific scenarios that may result in discharges at the facility. To the extent possible, the scenarios should account for the range of different operations that take place at the facility. Appendix F of the rule contains guidance on the development of such scenarios including a list of areas of operation to consider (e.g., oil storage tanks, piping, vehicle refueling areas, and tank car and tank truck loading and unloading areas), and a list of factors that may affect response efforts at the facility (e.g., direction of spill pathways, weather conditions, and available response equipment). As part of this process, owners or operators shall describe the threat posed by mobile facilities operating on site, especially during loading or unloading operations where the risk of a discharge is increased. Also, owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location (e.g., oil storage areas at opposite ends of a single, continuous parcel of property) shall, as appropriate, develop separate sections of the response plans for each area where oil is stored, used, or distributed.

Several commenters expressed confusion between the tiered planning amounts described in proposed § 112.20(h)(5) and the response tiers in

proposed Appendix F for mobilizing resources in response to a worst case discharge. To avoid confusion in the final rule, EPA replaces the term "tiered planning scenarios" with "response planning levels" to describe small, medium, and worst case response planning amounts.

Drills/Exercises and Training

The proposed rule contained general requirements for response training and drills/exercises; but did not specify what the training and drills/exercises should entail. Specifically, proposed § 112.7(f)(1)(iii) required that all personnel involved in oil-handling activities participate in unannounced drills/exercises, at least annually. Proposed § 112.20(h)(8)(ii) required that the facility response plan contain a description and record of training courses and periodic unannounced drills/exercises to be carried out under the response plan.

Some commenters suggested that training should be required only for employees of "substantial harm facilities" and that only response personnel should be required to participate in drills/exercises. EPA notes that a general training program is required at 40 CFR 112.7(e)(10) for all facilities subject to the rule. However, the final rule limits the requirement for response training and drills/exercises to facilities that must prepare a response plan.

One commenter argued that the OPA does not mandate employee training. EPA notes that the OPA added CWA section 311(j)(5)(C) to specify that the response plan must describe training and periodic unannounced drills/exercises to be carried out under the plan. The Agency interprets this requirement to mean that Congress intended for facilities to conduct a program of training and drills/exercises for response to oil spills.

EPA has moved some subject matter on response training and drills/exercises from proposed § 112.7 to a new § 112.21 so that all requirements relevant to implementation of the OPA (i.e., requirements for response training) are addressed in this final rule. Requirements for oil spill prevention training that are not necessary for the OPA implementation will remain in proposed § 112.7(f) and will be addressed in a separate rulemaking.

To provide additional direction to the regulated community on what constitutes an acceptable training program, EPA expands the discussion of training in today's final rule. As set forth at § 112.21, response training must be functional in nature and

commensurate with the specific duties of each type of facility personnel with responsibilities under the plan. A facility's training program can be based on the USCG's Training Elements for Oil Spill Response, to the extent applicable to facility operations, or another response training program acceptable to the RA. The training elements are available from Petty Officer Daniel Caras at (202) 267-6570 or fax 267-4085/4065.

As set forth in the OPA, drills/exercises are evolutions that are designed to periodically test the ability of response personnel to ensure the safety of the facility and to mitigate or prevent discharges of oil. A drill/exercise program is comprised of facility drills/exercises, including tabletop and deployment exercises, both announced and unannounced, as well as participation in larger area drills/exercises and evaluation of these drills/exercises. The requirement to develop a drill/exercise program is included at § 112.21. This section references the National PREP. As described in Section I.C of this preamble, PREP is a joint industry/government effort to establish recognized national guidelines for conducting drills/exercises to meet the OPA requirements. Following the PREP guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this final rule. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the RA based on the description of the program provided in the response plan.

Descriptions of training and drills/exercises for facility personnel engaged in oil spill response must be provided in the plan as stated in § 112.20(h)(8). To satisfy this requirement, facilities must describe conformance with the PREP guidelines as part of their response plan or provide a detailed description of an alternative drill/exercise program. Lessons learned from the facility owner's or operator's evaluation of response drills/exercises may help identify other relevant subject areas for training. As part of the PREP development process, the USCG, with assistance from other Federal agencies, OSROs, and the regulated community, is preparing a reference document to assist facility owners and operators in the evaluation of their drills/exercises.

As described in Section II.B of this preamble, some commenters objected to including logs for training and drills/exercises in the response plan. EPA will not require training records and records of drills/exercises to be included in the

response plan, because that is impracticable without constantly revising the plan. Section 112.20(h)(8)(iv) of the final rule makes it clear that the logs may be included in the response plan or maintained as an annex to the response plan.

C. Section-by-Section Analysis

This section lists sequentially the major changes from the proposed rule that have been incorporated into today's final rule. The revisions listed below result from consideration of public comments on the proposed rule (as previously discussed, the Response to Comments Document for the Facility Response Plan Rulemaking maintained at the docket contains detailed summaries of, and responses to, all comments received on the proposed rule) and from efforts to coordinate EPA and other Federal agencies' requirements for implementing response plan regulations under the OPA. A detailed discussion of the reasoning behind most of these changes can be found in Section I.C or II.B of this preamble. In addition to the major changes detailed below, EPA has also made a series of minor editorial changes to correct typographical and grammatical errors, to conform more closely with language from different sections of today's rule and language from the USCG's interim final rule for MTR facilities, and to improve the clarity of the requirements.

As discussed in Section I of this preamble, EPA will defer finalizing changes to certain sections of the regulation as proposed in the proposed rule. EPA plans to address these changes in a subsequent rulemaking. Changes to the following paragraphs from the proposed rule are not included in today's final rule: paragraphs (d)(4) and (g) of § 112.1 (General Applicability and Notification); paragraph (d) of § 112.4 (Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator); and paragraphs (a)(2), (d), (f), (i), and (j) of § 112.7 (Spill Prevention, Control, and Countermeasure Plan general requirements). Also, Appendix H (Brittle Fracture Considerations in API Standard 653) as proposed at 58 FR 8824 is not included in today's final rule.

Section 112.2 Definitions

In § 112.2, the definitions of "adverse weather," "contract or other approved means," "maximum extent practicable," and "worst case discharge" are revised; the definitions of "alteration" and "repair" from the proposed rule are not

included; and definitions of "fish and wildlife and sensitive environments" and "oil spill removal organization" are added.

Section 112.20 Facility Response Plans

Throughout § 112.20, the term "emergency response coordinator" is replaced with the term "qualified individual," and the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments."

Paragraph (a) is reorganized and revised to specify EPA's approach to implement the facility response plan requirements of OPA and of this final rule.

Paragraphs (a)(2)(ii) and (iii) (paragraphs (a)(2)(ii) and (iii) from the proposed rule) are expanded to specify that for new facilities and facilities undergoing a planned change in operations, adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the RA after an operational trial period of 60 days.

Paragraph (b)(1) is revised to clarify that if the RA makes a determination of substantial harm then he or she shall notify the facility owner or operator in writing and shall provide a basis for the determination.

Paragraph (c)(4) is revised to specify, for plans to be reviewed by the RA, that the RA will review plans periodically on a schedule established by the RA provided that the period between plan reviews does not exceed five years.

Paragraph (d)(1) is revised to extend its applicability to all facilities for which a response plan is required and to clarify that only revised portions of a response plan need to be resubmitted for approval and inclusion in the existing plan. The requirement for the RA to review for approval changes to plans for "significant and substantial harm facilities" that was proposed at § 112.20(d)(1) has been moved to new § 112.20(d)(4).

Paragraphs (d)(1)(iii) and (d)(2) are revised to clarify that a change in the identity of an OSRO(s) that does not result in a material change in support capabilities is not a material change requiring approval but that a copy of such a change must be provided to the RA.

Paragraph (d)(2) is revised to state that certain amendments do not require "approval" by the RA, rather than "prior approval."

Paragraph (d)(3) is added to indicate that the EPA-issued facility identification number (where one has been assigned) must accompany any

changes to the plan that are submitted to the RA. This number is issued when the plan was received and is included on all EPA correspondences to the facility. Including this number on all subsequent submissions by the facility to EPA will ensure proper tracking and handling of information.

Paragraph (f)(1)(i) is revised to clarify that total oil storage capacity and not total storage capacity is the criteria to be evaluated.

Paragraph (f)(1)(ii)(A) is revised to clarify that adequate secondary containment must account for precipitation as required by § 112.7(e)(2)(ii).

Paragraph (f)(1)(ii)(D) is revised to clarify it addresses reportable oil spills.

Paragraphs (f)(1)(ii)(B) and (f)(2)(i)(D) are revised to remove reference to Appendix D, to add a reference to the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the appropriate ACP, and to clarify that use of an alternative formula does not require prior approval by the RA but that the formula must be comparable to the appropriate formula in Appendix C to this part. Conforming edits are made to paragraphs (a)(3) and (e).

Paragraph (f)(2)(ii) is revised to clarify that "any person" includes representatives from other government agencies in addition to the public, to more accurately describe the contents of paragraph (f)(2)(i) as factors not criteria, and to clarify that the RA shall consider petitions and respond in an appropriate amount of time.

Paragraph (f)(3)(i) is removed to reflect the deletion of Appendix D and because the RA already has authority under paragraph (f)(2) to consider proximity to other areas determined to possess ecological value. The remainder of paragraph (f)(3) is renumbered accordingly.

Paragraph (g) is reorganized by removing the requirement for periodic review and update of the plan from paragraph (g)(1) and moving it to new paragraph (g)(3).

Paragraph (h) is revised to clarify the mandatory nature of Appendix F.

Paragraphs (h)(1)(vi) and (h)(3)(vii) are revised to clarify that facility owners or operators need only reference but not include community evacuation plans in the response plan.

Paragraph (h)(1)(vii) is revised to clarify that securing the source of the discharge is among the immediate measures that must be described in the plan.

Paragraph (h)(2) is revised to clarify that a brief description of the type of facility (i.e., SIC Code) must be provided as part of the basic facility information.

Paragraph (h)(3)(x) is removed and paragraph (h)(3)(i) is revised to clarify the mandatory nature of Appendix E and allow under certain circumstances owners or operators to make comparable arrangements for response resources.

Paragraph (h)(5) is revised to replace the reference to tiered response planning with a reference to response planning levels. Conforming edits are made to Appendix F.

Paragraph (h)(5)(ii) is revised to clarify that for complexes, the small planning quantity shall be the larger of the amounts calculated for each component of the facility.

Paragraph (h)(8) is revised to clarify the requirements to describe programs for drills/exercises and response training, and indicate that logs may be kept as an annex to the response plan.

Paragraph (h)(11) is added to cross-reference the requirement at § 112.20(a)(2) to complete a response plan cover sheet provided in Section 2.0 of Appendix F.

New § 112.20(i) is added to allow owners or operators to request reconsideration of or appeal certain decisions by the RA.

Section 112.21 Facility Response Training and Drills

New § 112.21 is added to describe requirements for facility response training and drills/exercises. The requirements for annual drills/exercises in proposed § 112.7(f)(1)(iii) are replaced by a requirement to follow the PREP guidelines or an alternative program acceptable to the RA. Provisions related to spill prevention training in § 112.7(f) will be finalized in a future rulemaking.

Appendix B—Memorandum of Understanding Among DOI, DOT, and EPA

The Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency signed on February 3, 1994 is added at Appendix B to 40 CFR part 112.

Appendix C—Substantial Harm Criteria

The title of the Appendix was changed from "Determination of Substantial Harm" to "Substantial Harm Criteria."

Throughout Appendix C, the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments,"

the term "drinking water intake" is replaced with the term "public drinking water intake," the language is clarified to indicate which provisions are required, and "alternative" is changed to "comparable."

For response time estimation purposes, in section 1.1, the definitions of "Great Lakes," "Higher Volume Port Area," and "Inland Area" are revised.

The list of the substantial harm criteria in section 2.0 is removed to eliminate redundancy with § 112.20(f)(1) and the flowchart in Attachment C-I to Appendix C. Section 2.1 is renamed section 2.0.

In new section 2.0, the language is clarified to indicate that the term "public drinking water intake" is analogous to the term "public water system" at 40 CFR 143.2(c) as described at 40 CFR part 110. Footnotes clarifying that public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c) are added to this section and Attachment C-II. The definition of "injury" is removed from this section to eliminate redundancy with the definition in § 112.2.

In section 3.0, the last sentence is revised to clarify that for facilities that do not meet the substantial harm criteria using a comparable formula to calculate the planning distance, documentation of the comparable formula must not only be maintained at the facility but must be made available to EPA if requested. The first sentence in the oil transport on moving navigable waters in Attachment C-III is revised to include "or a comparable formula as described in § 112.20(a)(3)" and "for oil transport on moving navigable water." The section describing oil transport on moving navigable waters in Attachment C-III is clarified to indicate that adverse weather conditions shall be considered.

In Attachment C-III, a section describing a method to determine a planning distance for tidal-influenced navigable water is added and the appropriate cross-reference is provided. A paragraph is added to indicate that if a facility owner or operator determines that more than one type of navigable water applies, the planning distance calculation must be performed for each navigable water type, and the greatest distance must be used in the substantial harm evaluation. The third paragraph is revised to provide an example of an instance where it would not be necessary to calculate a planning distance for screening purposes. The fourth paragraph of Attachment C-III is revised to include a reference to the example for determining the planning distance for the two types of navigable waters. The format of Table 3 is revised

and further explanation of how the time intervals in Table 3 should be used to calculate a baseline planning distance is added. A conversion constant is added to the formula for calculating the surface area covered by an oil spill on still water. Conforming changes are made to the description of the formula and the sample calculation. Clarifying language is added to the description of the section on oil transport over land. Also, language is added to clarify the term "close proximity" for purposes of calculating the planning distance. Section 4.0 "References" is added to Appendix C.

*Environmentally Sensitive Areas
(Appendix D in the Proposed Rule)*

The Environmentally Sensitive Areas appendix from the proposed rule is removed. Instead, EPA refers owners or operators to Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," (see Appendix E to this part, section 10, for availability) and to the appropriate ACP for guidance in identifying fish and wildlife and sensitive environments.

Appendix D—Determination of a Worst Case Discharge (Appendix E in the Proposed Rule)

Throughout Appendix D, the language is clarified to indicate which provisions are required and which are provided only as guidance. The last sentence of the first paragraph of the instructions is revised to remove "and its proximity to navigable waters."

Parts A1 and B1 of the instructions for the determination of the worst case discharge at single-tank facilities are revised to reflect credit for adequate secondary containment.

Parts A3 and B3 of the instructions are removed and Parts A2 and B2 and explanatory notes revised to reflect elimination of the additional 10 percent factor for proximity to navigable waters and clarification of the terms "permanently manifolded tanks" and "adequate secondary containment."

Part B of the instructions for the determination of the worst case discharge for production facilities is revised to reflect changes in the calculations for production wells producing by pumping. Part B is also revised to reflect changes in the calculations for exploratory wells and production wells producing under pressure. Attachment D-1 is added to describe these changes.

Appendix E—Determination and Evaluation of Required Response Resources for Facility Response Plans (Appendix F in the Proposed Rule)

The title of the Appendix was changed from "Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans" to "Determination and Evaluation of Required Response Resources for Facility Response Plans."

Throughout Appendix E, the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments" as defined at § 112.2 and references to former Appendix D replaced with references to the Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments published by DOC/NOAA in the Federal Register on March 29, 1994 and to the appropriate ACP. The language is clarified to indicate which provisions are required. Section 1.1 is revised to specify that this appendix shall be used by facility owners and operators to determine resources for the response plan and by the RA in the review of facility response plans.

Section 1.2 is added to Appendix E, and the definitions of non-persistent and persistent oils and non-petroleum oils from Attachment F-2 of the proposed rule are moved into section 1.2 of Appendix E. Group 5 oils are added to the definition of persistent oils to account for oils that have specific gravities that are equal to or greater than 1.0. The definitions of "nearshore," "ocean," "operating area," and "operating environment" are added to section 1.2 of Appendix E. Section 1.2.8 is added to reference other definitions.

Sections 3.2 and 4.2 are revised to replace "synonymous with" with "that corresponds to."

Section 5.6 is revised to indicate that at least 20 percent of the on-water response equipment must be capable of operating in shallow water.

A reference to section 7.6 which describes the procedures for non-petroleum oils is added to section 7.1.

Section 7.4 is revised to remove the 110 percent factor from the example worst case discharge calculation. The resulting tier values are revised accordingly.

References to the definitions and response resource considerations for Group 5 and non-petroleum oils were added to Tables 2 and 3.

As described in Section II.B of this preamble, a series of changes to the remaining sections of Appendix E (e.g., the addition of separate procedures for non-petroleum oils) are made to ensure

greater consistency with the equipment instructions contained in the USCG's interim final rule for MTR facilities.

Appendix F—Model Facility-Specific Response Plan (Appendix G in the Proposed Rule)

The title of Appendix G, "Standard Facility-Specific Response Plan," is changed to "Model Facility-Specific Response Plan" in the final rule.

Throughout Appendix F, the term "emergency response coordinator" is replaced with the term "qualified individual," the term "environmentally sensitive areas" is replaced with the term "fish and wildlife and sensitive environments," the language is clarified to indicate which provisions are required, and the language is clarified to indicate "oil storage capacity," "oil storage tanks," and "aboveground oil storage tanks" where appropriate.

Section 1.0 is revised to specify that owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location shall, as appropriate, develop separate sections of the response plan for each storage area. The reference for immediate actions is changed from "(Section 1.7) condensed" to "(Section 1.7.1) complete."

Section 1.2 is revised to indicate that the home and work address of the qualified individual(s) shall be listed in the response plan. The list of States with EPA-approved wellhead protection programs is replaced with an information number for the SDWA Hotline and a definition of "wellhead protection area" is added.

Paragraph 4 (now paragraph 5) of the introduction to section 1.3, Emergency Response Information, is revised to clarify which types of emergency response personnel should be included on the personnel lists. Section 1.3.1 is revised to include the phone number of the Regional Response Center, to specify that the Federal OSC should be contacted, and to remove the item requiring notification of the Area Committee from the list. Section 1.3.2 is split into sections 1.3.2 and 1.3.3 and the remainder of section 1.3 is renumbered accordingly. Also, section 1.3.2 is revised to improve clarity and to indicate that the facility owner or operator must follow appropriate procedures contained in the NCP and ACP to obtain approval for the use of dispersants. New section 1.3.3 is revised to include a log for basic information on equipment testing (from section 1.3.2 of the proposed rule) and deployment drills (from the results of required drills/exercises). Section 1.3.3 (now 1.3.4) is revised by reordering the lists

and adding "pager number" to the facility response team list. Section 1.3.4 (now 1.3.5) is revised to clarify that facilities must, as appropriate, reference existing community evacuation plans.

The language in section 1.4 is revised to clarify the mandatory nature of the hazard evaluation provisions. A definition of surface impoundment is added to section 1.4.1. In section 1.4.2, examples of areas of economic importance are added. Section 1.4.3 is revised to remove the word "quantitative."

Section 1.5.2 is revised to remove details on the calculation of worst case discharge planning volume to avoid redundancy with Appendix D.

A form detailing recommended immediate actions is added to section 1.7.1.

Section 1.8 is revised to clarify the requirements to describe the facility's drill/exercise and training programs and to reflect that logs may be included in the response plan or kept as an annex to the plan. Conforming changes are made to the sample logs throughout the appendix.

Section 1.9 is revised to add provision L, that requires the owner or operator of a complex to identify the interface between portions of the facility that are regulated by different agencies. EPA believes that this will help reinforce

owners or operators understanding of jurisdictional issues at certain facilities.

The response plan cover sheet is revised to a fill-in-the-blank form. A footnote is added to explain where to locate Dun & Bradstreet and SIC code information. Conforming changes are made to Section 2.0.

The acronyms DOC, MMS, PREP, RRC, and RSPA are added to section 3.0.

III. Regulatory Analyses

A. Executive Order 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this rule is a "significant regulatory action" because it will have an annual effect on the economy of more than \$100 million. An economic analysis performed by the Agency, available for inspection in Room M2615 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, shows that this rule would result in estimated costs to affected facilities of greater than \$100 million in the first year. As such, this action was submitted to OMB for review as required by E.O. 12866. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The analysis shows that the action will result in costs to the regulated community of approximately \$107.2 million during the first year that the rule is in effect and approximately \$41.6 million in each subsequent year. The first-year, subsequent-year, and annualized costs of the revisions to affected facilities are presented in Table 1.

TABLE 1.—TOTAL COST TO AFFECTED FACILITIES OF THE FINAL RULE
(In millions of dollars)

Requirement	First-year costs	Subsequent-year costs	Annualized value of total costs
Rule Familiarization	12.2	0	1.7
Facility Response Plan	95.0	41.6	48.7
Total	107.2	41.6	50.4

EPA is also expected to incur costs estimated at \$1.3 million in the first year and \$1.2 million in the second year to implement the program.

The Regulatory Impact Analysis (RIA) prepared in support of this rule also includes an assessment of the environmental benefits associated with the proposed revisions. This quantified benefit estimate includes only the benefits of avoided clean-up costs, value of lost product, avoided natural resource damages, and avoided property damages as a result of the mitigation of the severity of spills that occur. Other damages caused by oil spills that are not included in the quantitative estimate, include lost profit by business, public health risks, and foregone existence/option value. Assuming that response plans effectively reduce oil spill damage

by 30 percent, benefits that have been quantified in the RIA are estimated to range from \$20.3 million to \$40.6 million depending on assumptions regarding the volume of discharged oil that escapes secondary containment systems.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–611) requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." The results of a preliminary analysis indicate that this rule will not have significant adverse impacts on small businesses because small businesses are unlikely to meet the criteria to prepare and submit a response plan and are

therefore unlikely to be affected by the facility response planning requirements, which account for virtually all of the total costs of the final rulemaking (see the "Regulatory Impact Analysis of Revisions to the Oil Pollution Prevention Regulation to Implement the Facility Response Planning Requirements of the Oil Pollution Act of 1990," Appendix F, March 1994, available for inspection in Room M2615 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460). Therefore, EPA certifies that this proposed rule is not expected to have a significant impact on small entities, and therefore that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned control number 2050-0135.

Preparation of a response plan has an estimated first-year reporting burden ranging from 131.75 hours to 350 hours per respondent, averaging 194.5 hours, and an estimated first-year recordkeeping burden ranging from 13.5 hours to 34 hours per respondent, averaging 21.5 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Maintaining, reviewing, and updating a response plan have an estimated annual reporting burden in subsequent years ranging from 52 hours to 161 hours per respondent, averaging 83 hours, and an estimated annual recordkeeping burden in subsequent years ranging from two to ten hours per respondent, averaging 4.75 hours. Facilities regulated under the Oil Pollution Prevention rule that are not required to prepare response plans have an estimated reporting burden ranging from 0.25 to 6.5 hours per respondent, averaging less than one hour.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Display of OMB Control Numbers

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative

Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

List of Subjects**40 CFR Part 9**

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: June 15, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, 40 CFR Parts 9 and 112 are amended as follows:

PART 9—OMB APPROVAL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. Section 9.1 is amended by adding a centerheading and entry to the table in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

40 CFR citation	OMB control No.
Oil Pollution Prevention; Non-Transportation-Related On-shore Facilities 112.20	2050-0135

PART 112—OIL POLLUTION PREVENTION

3. The authority citation for part 112 is revised to read as follows:

Authority: 33 U.S.C. 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

4. Section 112.2 is amended by removing the paragraph designations (a) through (l), placing definitions in alphabetical order, and adding the following new definitions in alphabetical order, to read as follows:

§ 112.2 Definitions.

Adverse weather means the weather conditions that make it difficult for response equipment and personnel to cleanup or remove spilled oil, and that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part, as appropriate, ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment are intended to function.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

Contract or other approved means: (1) A written contractual agreement with an oil spill removal organization(s) that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization(s) that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic areas; and/or

(4) Other specific arrangements approved by the Regional Administrator upon request of the owner or operator.

Fish and wildlife and sensitive environments means areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural resource areas, marine

sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or exposure to a product of reactions resulting from a discharge of oil.

Maximum extent practicable means the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It considers the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

5. Sections 112.20 and 112.21 are added to read as follows:

§ 112.20 Facility response plans.

(a) The owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit a facility response plan to the Regional Administrator, according to the following provisions:

(1) For the owner or operator of a facility in operation on or before

February 18, 1993 who is required to prepare and submit a response plan under 33 U.S.C. 1321(j)(5), the Oil Pollution Act of 1990 (Pub. L. 101-380, 33 U.S.C. 2701 *et seq.*) requires the submission of a response plan that satisfies the requirements of 33 U.S.C. 1321(j)(5) no later than February 18, 1993.

(i) The owner or operator of an existing facility that was in operation on or before February 18, 1993 who submitted a response plan by February 18, 1993 shall revise the response plan to satisfy the requirements of this section and resubmit the response plan or updated portions of the response plan to the Regional Administrator by February 18, 1995.

(ii) The owner or operator of an existing facility in operation on or before February 18, 1993 who failed to submit a response plan by February 18, 1993 shall prepare and submit a response plan that satisfies the requirements of this section to the Regional Administrator before August 30, 1994.

(2) The owner or operator of a facility in operation on or after August 30, 1994 that satisfies the criteria in paragraph (f)(1) of this section or that is notified by the Regional Administrator pursuant to paragraph (b) of this section shall prepare and submit a facility response plan that satisfies the requirements of this section to the Regional Administrator.

(i) For a facility that commenced operations after February 18, 1993 but prior to August 30, 1994, and is required to prepare and submit a response plan based on the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan or updated portions of the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator prior to August 30, 1994.

(ii) For a newly constructed facility that commences operation after August 30, 1994, and is required to prepare and submit a response plan based on the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator prior to the start of operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days).

(iii) For a facility required to prepare and submit a response plan after August

30, 1994, as a result of a planned change in design, construction, operation, or maintenance that renders the facility subject to the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator before the portion of the facility undergoing change commences operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days).

(iv) For a facility required to prepare and submit a response plan after August 30, 1994, as a result of an unplanned event or change in facility characteristics that renders the facility subject to the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator within six months of the unplanned event or change.

(3) In the event the owner or operator of a facility that is required to prepare and submit a response plan uses an alternative formula that is comparable to one contained in Appendix C to this part to evaluate the criterion in paragraph (f)(1)(ii)(B) or (f)(1)(ii)(C) of this section, the owner or operator shall attach documentation to the response plan cover sheet contained in Appendix F to this part that demonstrates the reliability and analytical soundness of the alternative formula.

(b)(1) The Regional Administrator may at any time require the owner or operator of any non-transportation-related onshore facility to prepare and submit a facility response plan under this section after considering the factors in paragraph (f)(2) of this section. If such a determination is made, the Regional Administrator shall notify the facility owner or operator in writing and shall provide a basis for the determination. If the Regional Administrator notifies the owner or operator in writing of the requirement to prepare and submit a response plan under this section, the owner or operator of the facility shall submit the response plan to the Regional Administrator within six months of receipt of such written notification.

(2) The Regional Administrator shall review plans submitted by such facilities to determine whether the facility could, because of its location, reasonably be expected to cause significant and substantial harm to the

environment by discharging oil into or on the navigable waters or adjoining shorelines.

(c) The Regional Administrator shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, based on the factors in paragraph (f)(3) of this section. If such a determination is made, the Regional Administrator shall notify the owner or operator of the facility in writing and:

(1) Promptly review the facility response plan;

(2) Require amendments to any response plan that does not meet the requirements of this section;

(3) Approve any response plan that meets the requirements of this section; and

(4) Review each response plan periodically thereafter on a schedule established by the Regional Administrator provided that the period between plan reviews does not exceed five years.

(d)(1) The owner or operator of a facility for which a response plan is required under this part shall revise and resubmit revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst case discharge, including:

(i) A change in the facility's configuration that materially alters the information included in the response plan;

(ii) A change in the type of oil handled, stored, or transferred that materially alters the required response resources;

(iii) A material change in capabilities of the oil spill removal organization(s) that provide equipment and personnel to respond to discharges of oil described in paragraph (b)(5) of this section;

(iv) A material change in the facility's spill prevention and response equipment or emergency response procedures; and

(v) Any other changes that materially affect the implementation of the response plan.

(2) Except as provided in paragraph (d)(1) of this section, amendments to personnel and telephone number lists included in the response plan and a change in the oil spill removal organization(s) that does not result in a material change in support capabilities do not require approval by the Regional Administrator. Facility owners or operators shall provide a copy of such changes to the Regional Administrator as the revisions occur.

(3) The owner or operator of a facility that submits changes to a response plan as provided in paragraph (d)(1) or (d)(2) of this section shall provide the EPA-issued facility identification number (where one has been assigned) with the changes.

(4) The Regional Administrator shall review for approval changes to a response plan submitted pursuant to paragraph (d)(1) of this section for a facility determined pursuant to paragraph (f)(3) of this section to have the potential to cause significant and substantial harm to the environment.

(e) If the owner or operator of a facility determines pursuant to paragraph (a)(2) of this section that the facility could not, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the owner or operator shall complete and maintain at the facility the certification form contained in Appendix C to this part and, in the event an alternative formula that is comparable to one contained in Appendix C to this part is used to evaluate the criterion in paragraph (f)(1)(ii)(B) or (f)(1)(ii)(C) of this section, the owner or operator shall attach documentation to the certification form that demonstrates the reliability and analytical soundness of the comparable formula and shall notify the Regional Administrator in writing that an alternative formula was used.

(f)(1) A facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines pursuant to paragraph (a)(2) of this section, if it meets any of the following criteria applied in accordance with the flowchart contained in Attachment C-I to Appendix C to this part:

(i) The facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or

(ii) The facility's total oil storage capacity is greater than or equal to 1 million gallons, and one of the following is true:

(A) The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation;

(B) The facility is located at a distance (as calculated using the appropriate formula in Appendix C to this part or a comparable formula) such that a

discharge from the facility could cause injury to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III of the "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan prepared pursuant to section 311(j)(4) of the Clean Water Act;

(C) The facility is located at a distance (as calculated using the appropriate formula in Appendix C to this part or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake; or

(D) The facility has had a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years.

(2)(i) To determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines pursuant to paragraph (b) of this section, the Regional Administrator shall consider the following:

(A) Type of transfer operation;

(B) Oil storage capacity;

(C) Lack of secondary containment;

(D) Proximity to fish and wildlife and sensitive environments and other areas determined by the Regional Administrator to possess ecological value;

(E) Proximity to drinking water intakes;

(F) Spill history; and

(G) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to protecting the environment from harm by discharges of oil into or on navigable waters or adjoining shorelines.

(ii) Any person, including a member of the public or any representative from a Federal, State, or local agency who believes that a facility subject to this section could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines may petition the Regional Administrator to determine whether the facility meets the criteria in paragraph (f)(2)(i) of this section. Such petition shall include a discussion of how the factors in paragraph (f)(2)(i) of this section apply to the facility in question. The RA shall consider such petitions and respond in an appropriate amount of time.

(3) To determine whether a facility could, because of its location,

reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the Regional Administrator may consider the factors in paragraph (f)(2) of this section as well as the following:

- (i) Frequency of past spills;
- (ii) Proximity to navigable waters;
- (iii) Age of oil storage tanks; and
- (iv) Other facility-specific and Region-specific information, including local impacts on public health.

(g)(1) All facility response plans shall be consistent with the requirements of the National Oil and Hazardous Substance Pollution Contingency Plan (40 CFR part 300) and applicable Area Contingency Plans prepared pursuant to section 311(j)(4) of the Clean Water Act. The facility response plan should be coordinated with the local emergency response plan developed by the local emergency planning committee under section 303 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 et seq.). Upon request, the owner or operator should provide a copy of the facility response plan to the local emergency planning committee or State emergency response commission.

(2) The owner or operator shall review relevant portions of the National Oil and Hazardous Substances Pollution Contingency Plan and applicable Area Contingency Plan annually and, if necessary, revise the facility response plan to ensure consistency with these plans.

(3) The owner or operator shall review and update the facility response plan periodically to reflect changes at the facility.

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. A response plan that does not follow the specified format in Appendix F to this part shall have an emergency response action plan as specified in paragraphs (h)(1) of this section and be supplemented with a cross-reference section to identify the location of the elements listed in paragraphs (h)(2) through (h)(10) of this section. To meet the requirements of this part, a response plan shall address the following elements, as further described in Appendix F to this part:

(1) *Emergency response action plan.* The response plan shall include an emergency response action plan in the format specified in paragraphs (h)(1)(i) through (viii) of this section that is

maintained in the front of the response plan, or as a separate document accompanying the response plan, and that includes the following information:

(i) The identity and telephone number of a qualified individual having full authority, including contracting authority, to implement removal actions;

(ii) The identity of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (h)(1) of this section and the appropriate Federal officials and the persons providing response personnel and equipment can be ensured;

(iii) A description of information to pass to response personnel in the event of a reportable spill;

(iv) A description of the facility's response equipment and its location;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(vii) A description of immediate measures to secure the source of the discharge, and to provide adequate containment and drainage of spilled oil; and

(viii) A diagram of the facility.

(2) *Facility information.* The response plan shall identify and discuss the location and type of the facility, the identity and tenure of the present owner and operator, and the identity of the qualified individual identified in paragraph (h)(1) of this section.

(3) *Information about emergency response.* The response plan shall include:

(i) The identity of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and other discharges of oil described in paragraph (h)(5) of this section, and to mitigate or prevent a substantial threat of a worst case discharge (To identify response resources to meet the facility response plan requirements of this section, owners or operators shall follow Appendix E to this part or, where not appropriate, shall clearly demonstrate in the response plan why use of Appendix E of this part is not appropriate at the facility and make comparable arrangements for response resources);

(ii) Evidence of contracts or other approved means for ensuring the availability of such personnel and equipment;

(iii) The identity and the telephone number of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (h)(1) of this section and the appropriate Federal official and the persons providing response personnel and equipment can be ensured;

(iv) A description of information to pass to response personnel in the event of a reportable spill;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) A description of the facility's response equipment, the location of the equipment, and equipment testing;

(vii) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(viii) A diagram of evacuation routes; and

(ix) A description of the duties of the qualified individual identified in paragraph (h)(1) of this section, that include:

(A) Activate internal alarms and hazard communication systems to notify all facility personnel;

(B) Notify all response personnel, as needed;

(C) Identify the character, exact source, amount, and extent of the release, as well as the other items needed for notification;

(D) Notify and provide necessary information to the appropriate Federal, State, and local authorities with designated response roles, including the National Response Center, State Emergency Response Commission, and Local Emergency Planning Committee;

(E) Assess the interaction of the spilled substance with water and/or other substances stored at the facility and notify response personnel at the scene of that assessment;

(F) Assess the possible hazards to human health and the environment due to the release. This assessment must consider both the direct and indirect effects of the release (i.e., the effects of any toxic, irritating, or asphyxiating gases that may be generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosion);

(G) Assess and implement prompt removal actions to contain and remove the substance released;

(H) Coordinate rescue and response actions as previously arranged with all response personnel;

(I) Use authority to immediately access company funding to initiate cleanup activities; and

(J) Direct cleanup activities until properly relieved of this responsibility.

(4) *Hazard evaluation.* The response plan shall discuss the facility's known or reasonably identifiable history of discharges reportable under 40 CFR part 110 for the entire life of the facility and shall identify areas within the facility where discharges could occur and what the potential effects of the discharges would be on the affected environment. To assess the range of areas potentially affected, owners or operators shall, where appropriate, consider the distance calculated in paragraph (f)(1)(ii) of this section to determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.

(5) *Response planning levels.* The response plan shall include discussion of specific planning scenarios for:

(i) A worst case discharge, as calculated using the appropriate worksheet in Appendix D to this part. In cases where the Regional Administrator determines that the worst case discharge volume calculated by the facility is not appropriate, the Regional Administrator may specify the worst case discharge amount to be used for response planning at the facility. For complexes, the worst case planning quantity shall be the larger of the amounts calculated for each component of the facility;

(ii) A discharge of 2,100 gallons or less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility; and

(iii) A discharge greater than 2,100 gallons and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility.

(6) *Discharge detection systems.* The response plan shall describe the procedures and equipment used to detect discharges.

(7) *Plan implementation.* The response plan shall describe:

(i) Response actions to be carried out by facility personnel or contracted personnel under the response plan to ensure the safety of the facility and to

mitigate or prevent discharges described in paragraph (h)(5) of this section or the substantial threat of such discharges;

(ii) A description of the equipment to be used for each scenario;

(iii) Plans to dispose of contaminated cleanup materials; and

(iv) Measures to provide adequate containment and drainage of spilled oil.

(8) *Self-inspection, drills/exercises, and response training.* The response plan shall include:

(i) A checklist and record of inspections for tanks, secondary containment, and response equipment;

(ii) A description of the drill/exercise program to be carried out under the response plan as described in § 112.21;

(iii) A description of the training program to be carried out under the response plan as described in § 112.21; and

(iv) Logs of discharge prevention meetings, training sessions, and drills/exercises. These logs may be maintained as an annex to the response plan.

(9) *Diagrams.* The response plan shall include site plan and drainage plan diagrams.

(10) *Security systems.* The response plan shall include a description of facility security systems.

(11) *Response plan cover sheet.* The response plan shall include a completed response plan cover sheet provided in Section 2.0 of Appendix F to this part.

(i)(1) In the event the owner or operator of a facility does not agree with the Regional Administrator's determination that the facility could, because of its location, reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, or that amendments to the facility response plan are necessary prior to approval, such as changes to the worst case discharge planning volume, the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The request and accompanying information must be submitted to the Regional Administrator within 60 days of receipt of notice of the Regional Administrator's original decision. The Regional Administrator shall consider the request and render a decision as rapidly as practicable.

(2) In the event the owner or operator of a facility believes a change in the facility's classification status is warranted because of an unplanned event or change in the facility's characteristics (i.e., substantial harm or significant and substantial harm), the

owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The Regional Administrator shall consider the request and render a decision as rapidly as practicable.

(3) After a request for reconsideration under paragraph (i)(1) or (i)(2) of this section has been denied by the Regional Administrator, an owner or operator may appeal a determination made by the Regional Administrator. The appeal shall be made to the EPA Administrator and shall be made in writing within 60 days of receipt of the decision from the Regional Administrator that the request for reconsideration was denied. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator may request additional information from the owner or operator, or from any other person. The EPA Administrator shall render a decision as rapidly as practicable and shall notify the owner or operator of the decision.

§ 112.21 Facility response training and drills/exercises.

(a) The owner or operator of any facility required to prepare a facility response plan under § 112.20 shall develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of this section. The owner or operator shall describe the programs in the response plan as provided in § 112.20(h)(8).

(b) The facility owner or operator shall develop a facility response training program to train those personnel involved in oil spill response activities. It is recommended that the training program be based on the USCG's Training Elements for Oil Spill Response, as applicable to facility operations. An alternative program can also be acceptable subject to approval by the Regional Administrator.

(1) The owner or operator shall be responsible for the proper instruction of facility personnel in the procedures to respond to discharges of oil and in applicable oil spill response laws, rules, and regulations.

(2) Training shall be functional in nature according to job tasks for both supervisory and non-supervisory operational personnel.

(3) Trainers shall develop specific lesson plans on subject areas relevant to facility personnel involved in oil spill response and cleanup.

(c) The facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. A program that follows the National Preparedness for Response Exercise Program (PREP) (see Appendix E to this part, section 10, for availability) will be deemed satisfactory for purposes of this section. An alternative program can also be acceptable subject to approval by the Regional Administrator.

6. Part 112 is amended by redesignating the appendix to Part 112 titled "Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency" as Appendix A to Part 112.

Appendices B Through F Part 112 [Added]

7. Part 112 is amended by adding Appendices B through F to read as follows:

Appendix B to Part 112—Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency

Purpose

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(c), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101-380). The Secretary of the Department of the Interior (DOI), Secretary of the Department of Transportation (DOT), and Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

Background

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

Responsibilities

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to

assume, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below. For purposes of this MOU, the term "coast line" shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

1. To EPA, DOI redelegates responsibility for non-transportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deepwater ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

Effective Date

This MOU is effective on the date of the final execution by the indicated signatories.

Limitations

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify any existing agreements between or among DOI, DOT, or EPA.

Modification and Termination

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Dated: November 8, 1993.

Bruce Babbitt,

Secretary of the Interior.

Dated: December 14, 1993.

Federico Peña,

Secretary of Transportation.

Dated: February 3, 1994.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Appendix C to Part 112—Substantial Harm Criteria

1.0 Introduction

The flowchart provided in Attachment C-1 to this appendix shows the decision tree with the criteria to identify whether a facility "could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines." In addition, the

Regional Administrator has the discretion to identify facilities that must prepare and submit facility-specific response plans to EPA.

1.1 Definitions

1.1.1 *Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

1.1.2 Higher Volume Port Areas include

- (1) Boston, MA;
- (2) New York, NY;
- (3) Delaware Bay and River to Philadelphia, PA;
- (4) St. Croix, WI;
- (5) Pascagoula, MS;
- (6) Mississippi River from Southwest Pass, LA to Baton Rouge, LA;
- (7) Louisiana Offshore Oil Port (LOOP), LA;
- (8) Lake Charles, LA;
- (9) Sabine-Neches River, TX;
- (10) Galveston Bay and Houston Ship Channel, TX;
- (11) Corpus Christi, TX;
- (12) Los Angeles/Long Beach Harbor, CA;
- (13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA;
- (14) Straits of Juan de Fuca from Port Angeles, WA to and including Puget Sound, WA;
- (15) Prince William Sound, AK; and
- (16) Others as specified by the Regional Administrator for any EPA Region.

1.1.3 *Inland Area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines as defined in 33 CFR 80.740—80.850). The inland area does not include the Great Lakes.

1.1.4 *Rivers and Canals* means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigating that have project depths of 12 feet or less.

2.0 Description of Screening Criteria for the Substantial Harm Flowchart

A facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit a facility-specific response plan to EPA in accordance with Appendix F to this part. A description of the screening criteria for the substantial harm flowchart is provided below:

2.1 *Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil.* A non-transportation-related facility with a total oil storage capacity greater than 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. Daily oil transfer operations at these types of facilities occur between barges and vessels and onshore bulk storage tanks over open water. These facilities are located adjacent to navigable water.

2.2 Lack of Adequate Secondary Containment at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons. Any facility with a total oil storage capacity greater than or equal to 1 million gallons without secondary containment sufficiently large to contain the capacity of the largest aboveground oil storage tank within each area plus sufficient freeboard to allow for precipitation must submit a response plan to EPA. Secondary containment structures that meet the standard of good engineering practice for the purposes of this part include berms, dikes, retaining walls, curbing, culverts, gutters, or other drainage systems.

2.3 Proximity to Fish and Wildlife and Sensitive Environments at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons. A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility could cause injury (as defined at 40 CFR 112.2) to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area

Contingency Plan. Facility owners or operators must determine the distance at which an oil spill could cause injury to fish and wildlife and sensitive environments using the appropriate formula presented in Attachment C-III to this appendix or a comparable formula.

2.4 Proximity to Public Drinking Water Intakes at Facilities with a Total Storage Oil Capacity Greater Than or Equal to 1 Million Gallons. A facility with a total storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). The distance at which an oil spill from an SPCC-regulated facility would shut down a public drinking water intake shall be calculated using the appropriate formula presented in Attachment C-III to this appendix or a comparable formula.

2.5 Facilities That Have Experienced Reportable Oil Spills in an Amount Greater Than or Equal to 10,000 Gallons Within the Past 5 Years and That Have a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons. A facility's oil spill history within the past 5 years shall be considered in the evaluation for substantial harm. Any facility with a total oil storage capacity greater than or equal to 1 million gallons that

has experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the past 5 years must submit a response plan to EPA.

3.0 Certification for Facilities That Do Not Pose Substantial Harm

If the facility does not meet the substantial harm criteria listed in Attachment C-I to this appendix, the owner or operator shall complete and maintain at the facility the certification form contained in Attachment C-II to this appendix. In the event an alternative formula that is comparable to the one in this appendix is used to evaluate the substantial harm criteria, the owner or operator shall attach documentation to the certification form that demonstrates the reliability and analytical soundness of the comparable formula and shall notify the Regional Administrator in writing that an alternative formula was used.

4.0 References

Chow, V.T. 1959. Open Channel Hydraulics. McGraw Hill.

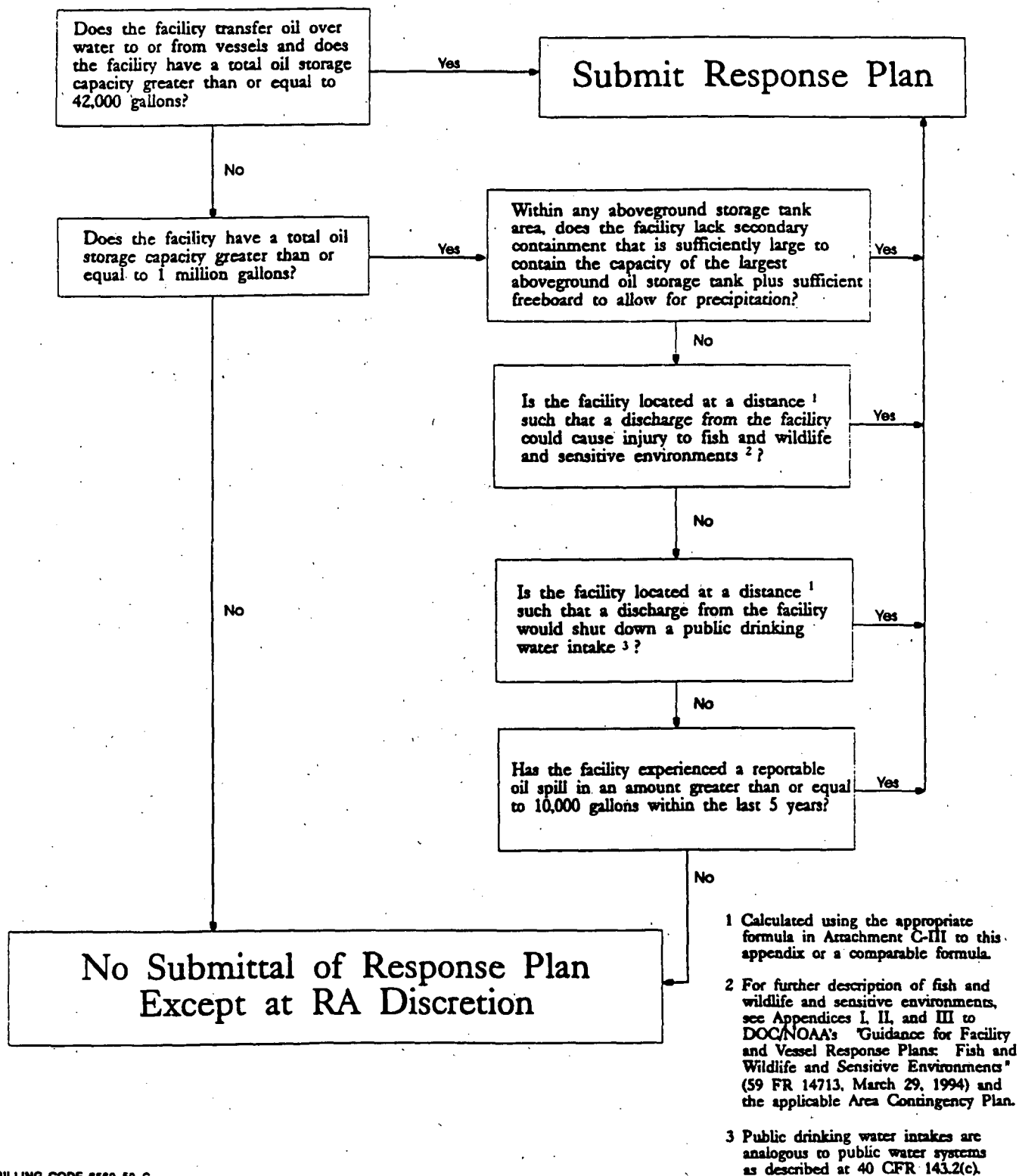
USCG IFR (58 FR 7353, February 5, 1993). This document is available through EPA's rulemaking docket as noted in Appendix E to this part, section 10.

Attachments to Appendix C

6540-60-P

Attachment C - I

Flowchart of Criteria for Substantial Harm



Attachment C-II—Certification of the Applicability of the Substantial Harm Criteria

Facility Name: _____
 Facility Addresses: _____

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?
 Yes _____ No _____

2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground oil storage tank area?
 Yes _____ No _____

3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula¹) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan.
 Yes _____ No _____

4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula¹) such that a discharge from the facility would shut down a public drinking water intake?²
 Yes _____ No _____

5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?
 Yes _____ No _____

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

Signature _____

Name (please type or print) _____

Title _____

¹ If a comparable formula is used documentation of the reliability and analytical soundness of the comparable formula must be attached to this form.

² For the purposes of 40 CFR part 112, public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c).

Date**Attachment C-III—Calculation of the Planning Distance****1.0 Introduction**

1.1 The facility owner or operator must evaluate whether the facility is located at a distance such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments or disrupt operations at a public drinking water intake. To quantify that distance, EPA considered oil transport mechanisms over land and on still, tidal influence, and moving navigable waters. EPA has determined that the primary concern for calculation of a planning distance is the transport of oil in navigable waters during adverse weather conditions. Therefore, two formulas have been developed to determine distances for planning purposes from the point of discharge at the facility to the potential site of impact on moving and still waters, respectively. The formula for oil transport on moving navigable water is based on the velocity of the water body and the time interval for arrival of response resources. The still water formula accounts for the spread of discharged oil over the surface of the water. The method to determine oil transport on tidal influence areas is based on the type of oil spilled and the distance down current during ebb tide and up current during flood tide to the point of maximum tidal influence.

1.2 EPA's formulas were designed to be simple to use. However, facility owners or operators may calculate planning distances using more sophisticated formulas, which take into account broader scientific or engineering principles, or local conditions. Such comparable formulas may result in different planning distances than EPA's formulas. In the event that an alternative formula that is comparable to one contained in this appendix is used to evaluate the criterion in 40 CFR 112.20(f)(1)(ii)(B) or (f)(1)(ii)(C), the owner or operator shall attach documentation to the response plan cover sheet contained in Appendix F to this part that demonstrates the reliability and analytical soundness of the alternative formula and shall notify the Regional Administrator in writing that an alternative formula was used.¹

1.3 A regulated facility may meet the criteria for the potential to cause substantial harm to the environment without having to perform a planning distance calculation. For facilities that meet the substantial harm criteria because of inadequate secondary containment or oil spill history, as listed in

¹ For persistent oils or non-persistent oils, a worst case trajectory model (i.e., an alternative formula) may be substituted for the distance formulas described in still, moving, and tidal waters, subject to Regional Administrator's review of the model. An example of an alternative formula that is comparable to the one contained in this appendix would be a worst case trajectory calculation based on credible adverse winds, currents, and/or river stages, over a range of seasons, weather conditions, and river stages. Based on historical information or a spill trajectory model, the Agency may require that additional fish and wildlife and sensitive environments or public drinking water intakes also be protected.

the flowchart in Attachment C-I to this appendix, calculation of the planning distance is unnecessary. For facilities that do not meet the substantial harm criteria for secondary containment or oil spill history as listed in the flowchart, calculation of a planning distance for proximity to fish and wildlife and sensitive environments and public drinking water intakes is required, unless it is clear without performing the calculation (e.g., the facility is located in a wetland) that these areas would be impacted.

1.4 A facility owner or operator who must perform a planning distance calculation on navigable water is only required to do so for the type of navigable water conditions (i.e., moving water, still water, or tidal-influenced water) applicable to the facility. If a facility owner or operator determines that more than one type of navigable water condition applies, then the facility owner or operator is required to perform a planning distance calculation for each navigable water type to determine the greatest single distance that oil may be transported. As a result, the final planning distance for oil transport on water shall be the greatest individual distance rather than a summation of each calculated planning distance.

1.5 The planning distance formula for transport on moving waterways contains three variables: the velocity of the navigable water (v), the response time interval (t), and a conversion factor (c). The velocity, v , is determined by using the Chezy-Manning equation, which, in this case, models the flood flow rate of water in open channels. The Chezy-Manning equation contains three variables which must be determined by facility owners or operators. Manning's Roughness Coefficient (for flood flow rates), n , can be determined from Table 1 of this attachment. The hydraulic radius, r , can be estimated using the average mid-channel depth from charts provided by the sources listed in Table 2 of this attachment. The average slope of the river, s , can be determined using topographic maps that can be ordered from the U.S. Geological Survey, as listed in Table 2 of this attachment.

1.6 Table 3 of this attachment contains specified time intervals for estimating the arrival of response resources at the scene of a discharge. Assuming no prior planning, response resources should be able to arrive at the discharge site within 12 hours of the discovery of any oil discharge in Higher Volume Port Areas and within 24 hours in Great Lakes and all other river, canal, inland, and nearshore areas. The specified time intervals in Table 3 of Appendix C are to be used only to aid in the identification of whether a facility could cause substantial harm to the environment. Once it is determined that a plan must be developed for the facility, the owner or operator shall reference Appendix E to this part to determine appropriate resource levels and response times. The specified time intervals of this appendix include a 3-hour time period for deployment of boom and other response equipment. The Regional Administrator may identify additional areas as appropriate.

2.0 Oil Transport on Moving Navigable Waters

2.1 The facility owner or operator must use the following formula or a comparable formula as described in § 112.20(a)(3) to calculate the planning distance for oil transport on moving navigable water:

$d = v \times t \times c$; where

d: the distance downstream from a facility within which fish and wildlife and sensitive environments could be injured or a public drinking water intake would be shut down in the event of an oil discharge (in miles);

v: the velocity of the river/navigable water of concern (in ft/sec) as determined by Chezy-Manning's equation (see below and Tables 1 and 2 of this attachment);

t: the time interval specified in Table 3 based upon the type of water body and location (in hours); and

c: constant conversion factor 0.68 sec/mile/hr-ft (3600 sec/hr + 5280 ft/mile).

2.2 Chezy-Manning's equation is used to determine velocity:

$v = 1.48 \times R^{2/3} \times S^{1/2}$; where

v: the velocity of the river of concern (in ft/sec);

n: Manning's Roughness Coefficient from Table 1 of this attachment;

R: the hydraulic radius; the hydraulic radius can be approximated for parabolic channels by multiplying the average mid-channel depth of the river (in feet) by 0.667 (sources for obtaining the mid-channel depth are listed in Table 2 of this attachment); and

S: the average slope of the river (unitless) obtained from U.S. Geological Survey topographic maps at the address listed in Table 2 of this attachment.

TABLE 1.—MANNING'S ROUGHNESS COEFFICIENT FOR NATURAL STREAMS

(NOTE: Coefficients are presented for high flow rates at or near flood stage.)

Stream description	Roughness coefficient (n)
Minor Streams (Top Width <100 ft.)	
Clean:	
Straight	0.03
Winding04
Sluggish (Weedy, deep pools):	
No trees or brush06
Trees and/or brush10
Major Streams (Top Width >100 ft.)	
Regular section:	
(No boulders/brush)035
Irregular section:	
(Brush)05

TABLE 2.—SOURCES OF R AND S FOR THE CHEZY-MANNING EQUATION

All of the charts and related publications for navigational waters may be ordered from: Distribution Branch (N/CG33) National Ocean Service Riverdale, Maryland 20737-1199

TABLE 2.—SOURCES OF R AND S FOR THE CHEZY-MANNING EQUATION—Continued

Phone: (301) 436-6990

There will be a charge for materials ordered and a VISA or Mastercard will be accepted.

The mid-channel depth to be used in the calculation of the hydraulic radius (r) can be obtained directly from the following sources:

Charts of Canadian Coastal and Great Lakes Waters:

Canadian Hydrographic Service

Department of Fisheries and Oceans Institute

P.O. Box 8080

1675 Russell Road

Ottawa, Ontario K1G 3H6

Canada

Phone: (613) 998-4931

Charts and Maps of Lower Mississippi River

(Gulf of Mexico to Ohio River and St. Francis, White, Big Sunflower, Atchafalaya, and other rivers):

U.S. Army Corps of Engineers

Vicksburg District

P.O. Box 60

Vicksburg, Mississippi 39180

Phone: (601) 634-5000

Charts of Upper Mississippi River and Illinois Waterway to Lake Michigan:

U.S. Army Corps of Engineers

Rock Island District

P.O. Box 2004

Rock Island, Illinois 61204

Phone: (309) 794-5552

Charts of Missouri River:

U.S. Army Corps of Engineers

Omaha District

6014 U.S. Post Office and Courthouse

Omaha, Nebraska 68102

Phone: (402) 221-3900

Charts of Ohio River:

U.S. Army Corps of Engineers

Ohio River Division

P.O. Box 1159

Cincinnati, Ohio 45201

Phone: (513) 684-3002

Charts of Tennessee Valley Authority Reservoirs, Tennessee River and Tributaries:

Tennessee Valley Authority

Maps and Engineering Section

416 Union Avenue

Knoxville, Tennessee 37902

Phone: (615) 632-2921

Charts of Black Warrior River, Alabama River, Tombigbee River, Apalachicola River and Pearl River:

U.S. Army Corps of Engineers

Mobile District

P.O. Box 2288

Mobile, Alabama 36628-0001

Phone: (205) 690-2511

The average slope of the river (s) may be obtained from topographic maps:

U.S. Geological Survey

Map Distribution

Federal Center

Bldg. 41

Box 25286

TABLE 2.—SOURCES OF R AND S FOR THE CHEZY-MANNING EQUATION—Continued

Denver, Colorado 80225

Additional information can be obtained from the following sources:

1. The State's Department of Natural Resources (DNR) or the State's Aids to Navigation office;
2. A knowledgeable local marina operator; or
3. A knowledgeable local water authority (e.g., State water commission)

2.3. The average slope of the river (s) can be determined from the topographic maps using the following steps:

(1) Locate the facility on the map.

(2) Find the Normal Pool Elevation at the point of discharge from the facility into the water (A).

(3) Find the Normal Pool Elevation of the public drinking water intake or fish and wildlife and sensitive environment located downstream (B) (Note: The owner or operator should use a minimum of 20 miles downstream as a cutoff to obtain the average slope if the location of a specific public drinking water intake or fish and wildlife and sensitive environment is unknown).

(4) If the Normal Pool Elevation is not available, the elevation contours can be used to find the slope. Determine elevation of the water at the point of discharge from the facility (A). Determine the elevation of the water at the appropriate distance downstream (B). The formula presented below can be used to calculate the slope.

(5) Determine the distance (in miles) between the facility and the public drinking water intake or fish and wildlife and sensitive environments (C).

(6) Use the following formula to find the slope, which will be a unitless value:
Average Slope = [(A—B) (ft)/C (miles)] × [1 mile/5280 feet]

2.4 If it is not feasible to determine the slope and mid-channel depth by the Chezy-Manning equation, then the river velocity can be approximated on-site. A specific length, such as 100 feet, can be marked off along the shoreline. A float can be dropped into the stream above the mark, and the time required for the float to travel the distance can be used to determine the velocity in feet per second. However, this method will not yield an average velocity for the length of the stream, but a velocity only for the specific location of measurement. In addition, the flow rate will vary depending on weather conditions such as wind and rainfall. It is recommended that facility owners or operators repeat the measurement under a variety of conditions to obtain the most accurate estimate of the surface water velocity under adverse weather conditions.

2.5 The planning distance calculations for moving and still navigable waters are based on worst case discharges of persistent oils. Persistent oils are of concern because they can remain in the water for significant periods of time and can potentially exist in large quantities downstream. Owners or operators of facilities that store persistent as well as non-persistent oils may use a

comparable formula. The volume of oil discharged is not included as part of the planning distance calculation for moving navigable waters. Facilities that will meet this substantial harm criterion are those with facility capacities greater than or equal to 1 million gallons. It is assumed that these facilities are capable of having an oil discharge of sufficient quantity to cause injury to fish and wildlife and sensitive environments or shut down a public drinking water intake. While owners or operators of transfer facilities that store greater than or equal to 42,000 gallons are not required to use a planning distance formula for purposes of the substantial harm criteria, they should use a planning distance calculation in the development of facility-specific response plans.

TABLE 3.—SPECIFIED TIME INTERVALS

Operating areas	Substantial harm planning time (hrs)		
Higher volume port area.	12 hour arrival+3 deployment=15 hours.	hour	
Great Lakes.	24 hour arrival+3 deployment=27 hours.	hour	
All other rivers and canals, inland, and near-shore areas.	24 hour arrival+3 deployment=27 hours.	hour	

2.6 Example of the Planning Distance Calculation for Oil Transport on Moving Navigable Waters. The following example provides a sample calculation using the planning distance formula for a facility discharging oil into the Monongahela River:

(1) Solve for v by evaluating n , r , and s for the Chezy-Manning equation:

Find the roughness coefficient, n , on Table 1 of this attachment for a regular section of a major stream with a top width greater than 100 feet. The top width of the river can be found from the topographic map.

$n=0.035$.

Find slope, s , where $A=727$ feet, $B=710$ feet, and $C=25$ miles.

Solving:

$$s = [(727 \text{ ft} - 710 \text{ ft}) / 25 \text{ miles}] \times [1 \text{ mile} / 5280 \text{ feet}] = 1.3 \times 10^{-4}$$

The average mid-channel depth is found by averaging the mid-channel depth for each mile along the length of the river between the facility and the public drinking water intake or the fish or wildlife or sensitive environment (or 20 miles downstream if applicable). This value is multiplied by 0.667 to obtain the hydraulic radius. The mid-channel depth is found by obtaining values for r and s from the sources shown in Table 2 for the Monongahela River.

Solving:

$$r = 0.667 \times 20 \text{ feet} = 13.33 \text{ feet}$$

Solve for v using:

$$v = 1.49 / n \times r^{2/3} \times s^{1/2}$$

$$v = [1.5 / 0.035] \times (13.33)^{2/3} \times (1.3 \times 10^{-4})^{1/2}$$

$$v = 2.73 \text{ feet/second}$$

(2) Find t from Table 3 of this attachment. The Monongahela River's resource response time is 27 hours.

(3) Solve for planning distance, d :

$$d = v \times t \times c$$

$$d = (2.73 \text{ ft/sec}) \times (27 \text{ hours}) \times (0.68 \text{ sec} \cdot \text{mile} / \text{hr} \cdot \text{ft})$$

$$d = 50 \text{ miles}$$

Therefore, 50 miles downstream is the appropriate planning distance for this facility.

3.0 Oil Transport on Still Water

3.1 For bodies of water including lakes or ponds that do not have a measurable velocity, the spreading of the oil over the surface must be considered. Owners or operators of facilities located next to still water bodies may use a comparable means of calculating the planning distance. If a comparable formula is used, documentation of the reliability and analytical soundness of the comparable calculation must be attached to the response plan cover sheet.

3.2 **Example of the Planning Distance Calculation for Oil Transport on Still Water.** To assist those facilities which could potentially discharge into a still body of water, the following analysis was performed to provide an example of the type of formula that may be used to calculate the planning distance. For this example, a worst case discharge of 2,000,000 gallons is used.

(1) The surface area in square feet covered by an oil spill on still water, A_1 , can be determined by the following formula,² where V is the volume of the spill in gallons and C is a constant conversion factor:

$$A_1 = 10^5 \times V / C$$

$$C = 0.1643$$

$$A_1 = 10^5 \times (2,000,000 \text{ gallons}) / 0.1643$$

$$A_1 = 8.74 \times 10^8 \text{ ft}^2$$

(2) The spreading formula is based on the theoretical condition that the oil will spread uniformly in all directions forming a circle. In reality, the outfall of the discharge will direct the oil to the surface of the water where it intersects the shoreline. Although the oil will not spread uniformly in all directions, it is assumed that the discharge will spread from the shoreline into a semi-circle (this assumption does not account for winds or wave action).

(3) The area of a circle is πr^2

(4) To account for the assumption that oil will spread in a semi-circular shape, the area of a circle is divided by 2 and is designated as A_2 .

$$A_2 = (\pi r^2) / 2$$

Solving for the radius, r , using the

$$\text{relationship } A_1 = A_2: 8.74 \times 10^8 \text{ ft}^2 = (\pi r^2) / 2$$

$$\text{Therefore, } r = 23,586 \text{ ft}$$

$$r = 23,586 \text{ ft} \times 5,280 \text{ ft/mile} = 4.5 \text{ miles}$$

Assuming a 20 knot wind under storm conditions:

$$1 \text{ knot} = 1.15 \text{ miles/hour}$$

$$20 \text{ knots} \times 1.15 \text{ miles/hour/knot} = 23 \text{ miles/hr}$$

² Huang, J.C. and Monastero, F.C., 1982. *Review of the State-of-the-Art of Oil Pollution Models*. Final report submitted to the American Petroleum Institute by Raytheon Ocean Systems, Co., East Providence, Rhode Island.

Assuming that the oil slick moves at 3 percent of the wind's speed:³
23 miles/hour \times 0.03 = 0.69 miles/hour

(5) To estimate the distance that the oil will travel, use the times required for response resources to arrive at different geographic locations as shown in Table 3 of this attachment.

For example:

For Higher Volume Port Areas: 15 hrs \times 0.69 miles/hr = 10.4 miles

For Great Lakes and all other areas: 27 hrs \times 0.69 miles/hr = 18.6 miles

(6) The total distance that the oil will travel from the point of discharge, including the distance due to spreading, is calculated as follows:

Higher Volume Port Areas: $d = 10.4 + 4.5$ miles or approximately 15 miles

Great Lakes and all other areas: $d = 18.6 + 4.5$ miles or approximately 23 miles

4.0 Oil Transport on Tidal-Influence Areas

4.1 The planning distance method for tidal influence navigable water is based on worst case discharges of persistent and non-persistent oils. Persistent oils are of primary concern because they can potentially cause harm over a greater distance. For persistent oils discharged into tidal waters, the planning distance is 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

4.2 For non-persistent oils discharged into tidal waters, the planning distance is 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

4.3 **Example of Determining the Planning Distance for Two Types of Navigable Water Conditions.** Below is an example of how to determine the proper planning distance when a facility could impact two types of navigable water conditions: moving water and tidal water.

(1) Facility X stores persistent oil and is located downstream from locks along a slow moving river which is affected by tides. The river velocity, v , is determined to be 0.5 feet/second from the Chezy-Manning equation used to calculate oil transport on moving navigable waters. The specified time interval, t , obtained from Table 3 of this attachment for river areas is 27 hours. Therefore, solving for the planning distance, d :

$$d = v \times t \times c$$

$$d = (0.5 \text{ ft/sec}) \times (27 \text{ hours}) \times (0.68 \text{ sec} \cdot \text{mile} / \text{hr} \cdot \text{ft})$$

$$d = 9.18 \text{ miles.}$$

(2) However, the planning distance for maximum tidal influence down current during ebb tide is 15 miles, which is greater than the calculated 9.18 miles. Therefore, 15 miles downstream is the appropriate planning distance for this facility.

5.0 Oil Transport Over Land

5.1 Facility owners or operators must evaluate the potential for oil to be

³ *Oil Spill Prevention & Control*. National Spill Control School, Corpus Christi State University, Thirteenth Edition, May 1990.

transported over land to navigable waters of the United States. The owner or operator must evaluate the likelihood that portions of a worst case discharge would reach navigable waters via open channel flow or from sheet flow across the land, or be prevented from reaching navigable waters when trapped in natural or man-made depressions excluding secondary containment structures.

5.2 As discharged oil travels over land, it may enter a storm drain or open concrete channel intended for drainage. It is assumed that once oil reaches such an inlet, it will flow into the receiving navigable water. During a storm event, it is highly probable that the oil will either flow into the drainage structures or follow the natural contours of the land and flow into the navigable water. Expected minimum and maximum velocities are provided as examples of open concrete channel and pipe flow. The ranges listed below reflect minimum and maximum velocities used as design criteria.⁴ The calculation below demonstrates that the time required for oil to travel through a storm drain or open concrete channel to navigable water is negligible and can be considered instantaneous. The velocities are:
For open concrete channels:
maximum velocity=25 feet per second
minimum velocity=3 feet per second
For storm drains:
maximum velocity=25 feet per second
minimum velocity=2 feet per second

5.3 Assuming a length of 0.5 mile from the point of discharge through an open concrete channel or concrete storm drain to

a navigable water, the travel times (distance/velocity) are:

1.8 minutes at a velocity of 25 feet per second
14.7 minutes at a velocity of 3 feet per second
22.0 minutes for at a velocity of 2 feet per second

5.4 The distances that shall be considered to determine the planning distance are illustrated in Figure C-1 of this attachment. The relevant distances can be described as follows:

D1=Distance from the nearest opportunity for discharge, X_1 , to a storm drain or an open concrete channel leading to navigable water.

D2=Distance through the storm drain or open concrete channel to navigable water.

D3=Distance downstream from the outfall within which fish and wildlife and sensitive environments could be injured or a public drinking water intake would be shut down as determined by the planning distance formula.

D4=Distance from the nearest opportunity for discharge, X_2 , to fish and wildlife and sensitive environments not bordering navigable water.

5.5 A facility owner or operator whose nearest opportunity for discharge is located within 0.5 mile of a navigable water must complete the planning distance calculation (D3) for the type of navigable water near the facility or use a comparable formula.

5.6 A facility that is located at a distance greater than 0.5 mile from a navigable water must also calculate a planning distance (D3) if it is in close proximity (i.e., D1 is less than 0.5 mile and other factors are conducive to oil travel over land) to storm drains that flow

to navigable waters. Factors to be considered in assessing oil transport over land to storm drains shall include the topography of the surrounding area, drainage patterns, man-made barriers (excluding secondary containment structures), and soil distribution and porosity. Storm drains or concrete drainage channels that are located in close proximity to the facility can provide a direct pathway to navigable waters, regardless of the length of the drainage pipe. If D1 is less than or equal to 0.5 mile, a discharge from the facility could pose substantial harm because the time to travel the distance from the storm drain to the navigable water (D2) is virtually instantaneous.

5.7 A facility's proximity to fish and wildlife and sensitive environments not bordering a navigable water, as depicted as D4 in Figure C-1 of this attachment, must also be considered, regardless of the distance from the facility to navigable waters. Factors to be considered in assessing oil transport over land to fish and wildlife and sensitive environments should include the topography of the surrounding area, drainage patterns, man-made barriers (excluding secondary containment structures), and soil distribution and porosity.

5.8 If a facility is not found to pose substantial harm to fish and wildlife and sensitive environments not bordering navigable waters via oil transport on land, then supporting documentation should be maintained at the facility. However, such documentation should be submitted with the response plan if a facility is found to pose substantial harm.

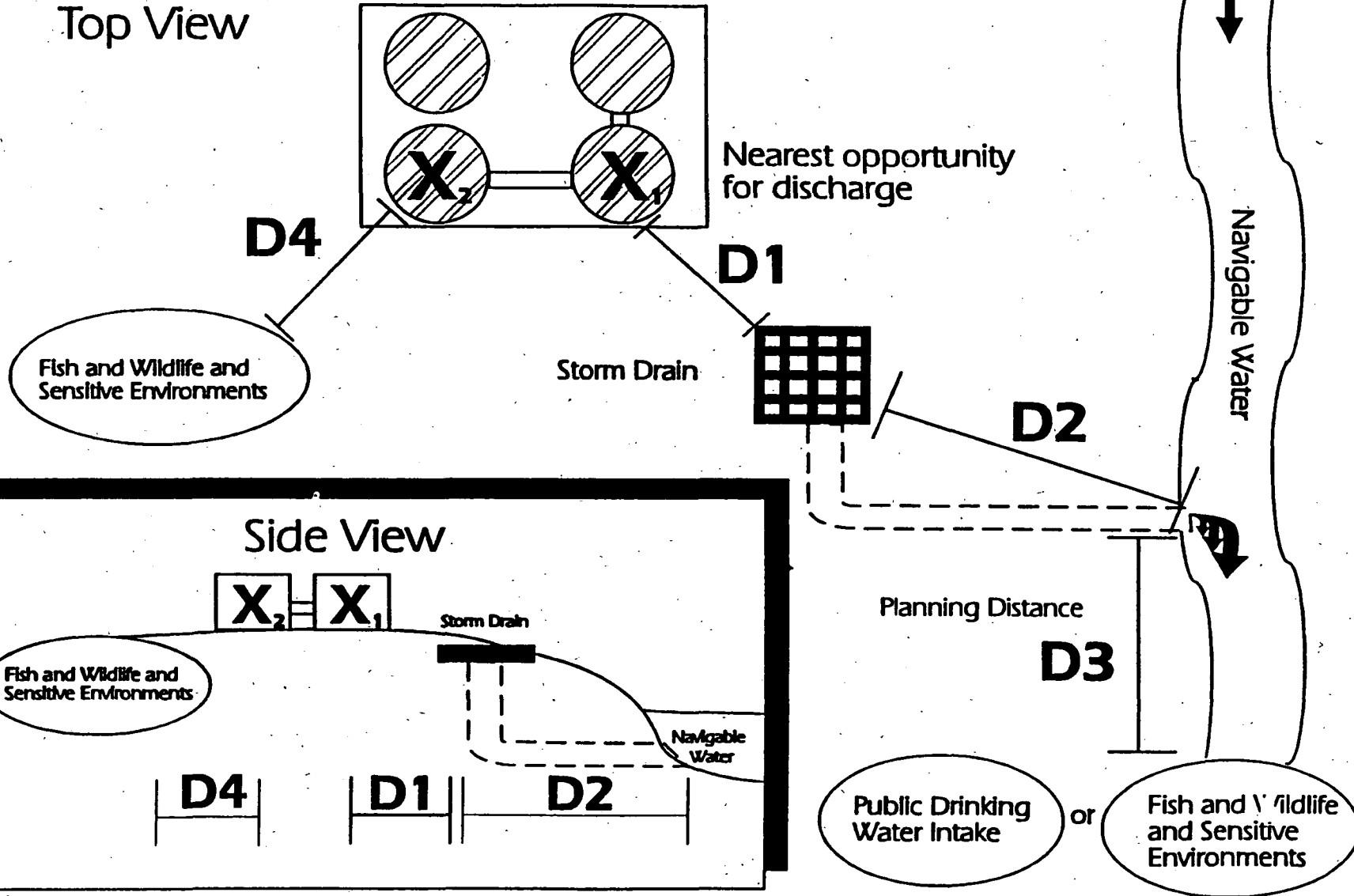
BILLING CODE 6560-60-P

⁴ The design velocities were obtained from Howard County, Maryland Department of Public Works' Storm Drainage Design Manual.

Figure C - I

Distances that Shall Be Considered to Determine the Planning Distance

Top View



** Not to scale **

Appendix D to Part 112—Determination of a Worst Case Discharge Planning Volume

1.0 Instructions

1.1 An owner or operator is required to complete this worksheet if the facility meets the criteria, as presented in Appendix C to this part, or it is determined by the RA that the facility could cause substantial harm to the environment. The calculation of a worst case discharge planning volume is used for emergency planning purposes, and is required in 40 CFR 112.20 for facility owners or operators who must prepare a response plan. When planning for the amount of resources and equipment necessary to respond to the worst case discharge planning volume, adverse weather conditions must be taken into consideration. An owner or operator is required to determine the facility's worst case discharge planning volume from either Part A of this appendix for an onshore storage facility, or Part B of this appendix for an onshore production facility. The worksheet considers the provision of adequate secondary containment at a facility.

1.2 For onshore storage facilities and production facilities, permanently manifolded oil storage tanks are defined as tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit (i.e., multiple tank volumes are equalized). In a worst case discharge scenario, a single failure could cause the discharge of the contents of more than one tank. The owner or operator must provide evidence in the response plan that tanks with common piping or piping systems are not operated as one unit. If such evidence is provided and is acceptable to the RA, the worst case discharge planning volume would be based on the capacity of the largest oil storage tank within a common secondary containment area or the largest oil storage tank within a single secondary containment area, whichever is greater. For permanently manifolded tanks that function as one oil storage unit, the worst case discharge planning volume would be based on the combined oil storage capacity of all manifolded tanks or the capacity of the largest single oil storage tank within a secondary containment area, whichever is greater. For purposes of this rule, permanently manifolded tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.3 For production facilities, the presence of exploratory wells, production wells, and oil storage tanks must be considered in the calculation. Part B of this appendix takes these additional factors into consideration and provides steps for their inclusion in the total worst case discharge planning volume. Onshore oil production facilities may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator. Although a potential worst case discharge planning volume is calculated

within each section of the worksheet, the final worst case amount depends on the risk parameter that results in the greatest volume.

1.4 Marine transportation-related transfer facilities that contain fixed aboveground onshore structures used for bulk oil storage are jointly regulated by EPA and the U.S. Coast Guard (USCG), and are termed "complexes." Because the USCG also requires response plans from transportation-related facilities to address a worst case discharge of oil, a separate calculation for the worst case discharge planning volume for USCG-related facilities is included in the USCG IFR (see Appendix E to this part, section 10, for availability). All complexes that are jointly regulated by EPA and the USCG must compare both calculations for worst case discharge planning volume derived by using the EPA and USCG methodologies and plan for whichever volume is greater.

PART A: WORST CASE DISCHARGE PLANNING VOLUME CALCULATION FOR ONSHORE STORAGE FACILITIES¹

Part A of this worksheet is to be completed by the owner or operator of an SPCC-regulated facility (excluding oil production facilities) if the facility meets the criteria as presented in Appendix C to this part, or if it is determined by the RA that the facility could cause substantial harm to the environment. If you are the owner or operator of a production facility, please proceed to Part B of this worksheet.

A.1 SINGLE-TANK FACILITIES

For facilities containing only one aboveground oil storage tank, the worst case discharge planning volume equals the capacity of the oil storage tank. If adequate secondary containment (sufficiently large to contain the capacity of the aboveground oil storage tank plus sufficient freeboard to allow for precipitation) exists for the oil storage tank, multiply the capacity of the tank by 0.8.

(1) FINAL WORST CASE VOLUME:

_____ GAL

(2) Do not proceed further.

A.2 SECONDARY CONTAINMENT—MULTIPLE-TANK FACILITIES

Are all aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility without adequate secondary containment?²

_____ (Y/N)

A.2.1 If the answer is yes, the final worst case discharge planning volume equals the total aboveground oil storage capacity at the facility.

(1) FINAL WORST CASE VOLUME:

_____ GAL

(2) Do not proceed further.

A.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If all aboveground oil storage

¹ "Storage facilities" represent all facilities subject to this part, excluding oil production facilities.

² Secondary containment is defined in 40 CFR 112.7(e)(2). Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).

tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER "0" (zero).

_____ GAL

A.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, PLUS THE VOLUME FROM QUESTION A2(b).

FINAL WORST CASE VOLUME:³ _____ GAL

PART B: WORST CASE DISCHARGE PLANNING VOLUME CALCULATION FOR ONSHORE PRODUCTION FACILITIES

Part B of this worksheet is to be completed by the owner or operator of an SPCC-regulated oil production facility if the facility meets the criteria presented in Appendix C to this part, or if it is determined by the RA that the facility could cause substantial harm. A production facility consists of all wells (producing and exploratory) and related equipment in a single geographical oil or gas field operated by a single operator.

B.1 SINGLE-TANK FACILITIES

B.1.1 For facilities containing only one aboveground oil storage tank, the worst case discharge planning volume equals the capacity of the aboveground oil storage tank plus the production volume of the well with the highest output at the facility. If adequate secondary containment (sufficiently large to contain the capacity of the aboveground oil storage tank plus sufficient freeboard to allow for precipitation) exists for the storage tank, multiply the capacity of the tank by 0.8.

B.1.2 For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

B.1.3 If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

B.1.4 Attachment D-1 to this appendix provides methods for calculating the production volume for exploratory wells and production wells producing under pressure.

(1) FINAL WORST CASE VOLUME:

_____ GAL

(2) Do not proceed further.

B.2 SECONDARY CONTAINMENT—MULTIPLE-TANK FACILITIES

Are all aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility without adequate secondary containment?

³ All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater.

(Y/N)

B.2.1 If the answer is yes, the final worst case volume equals the total aboveground oil storage capacity without adequate secondary containment plus the production volume of the well with the highest output at the facility.

(1) For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

(2) If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

(3) Attachment D-1 to this appendix provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure.

(A) FINAL WORST CASE VOLUME:

GAL

(B) Do not proceed further.

B.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If all aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER "0" (zero).

GAL

B.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, plus the production volume of the well with the highest output, PLUS THE VOLUME FROM QUESTION B2(b). Attachment D-1 provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure.

(1) FINAL WORST CASE VOLUME:

GAL

(2) Do not proceed further.

Attachments to Appendix D

Attachment D-I—Methods to Calculate Production Volumes for Production Facilities With Exploratory Wells or Production Wells Producing Under Pressure

1.0 Introduction

The owner or operator of a production facility with exploratory wells or production wells producing under pressure shall compare the well rate of the highest output well (rate of well), in barrels per day, to the ability of response equipment and personnel to recover the volume of oil that could be discharged (rate of recovery), in barrels per

day. The result of this comparison will determine the method used to calculate the production volume for the production facility. This production volume is to be used to calculate the worst case discharge planning volume in Part B of this appendix.

2.0 Description of Methods

2.1 Method A

If the well rate would overwhelm the response efforts (i.e., rate of well/rate of recovery ≥ 1), then the production volume would be the 30-day forecasted well rate for a well 10,000 feet deep or less, or the 45-day forecasted well rate for a well deeper than 10,000 feet.

(1) For wells 10,000 feet deep or less: Production volume = 30 days \times rate of well.

(2) For wells deeper than 10,000 feet: Production volume = 45 days \times rate of well.

2.2 Method B

2.2.1 If the rate of recovery would be greater than the well rate (i.e., rate of well/rate of recovery < 1), then the production volume would equal the sum of two terms: Production volume = discharge volume₁ + discharge volume₂

2.2.2 The first term represents the volume of the oil discharged from the well between the time of the blowout and the time the response resources are on scene and recovering oil (discharge volume₁).

Discharge volume₁ = (days unattended + days to respond) \times (rate of well)

2.2.3 The second term represents the volume of oil discharged from the well after the response resources begin operating until the spill is stopped, adjusted for the recovery rate of the response resources (discharge volume₂).

(1) For wells 10,000 feet deep or less: Discharge volume₂ = [30 days - (days unattended + days to respond)] \times (rate of well) \times (rate of well/rate of recovery)

(2) For wells deeper than 10,000 feet: Discharge volume₂ = [45 days - (days unattended + days to respond)] \times (rate of well) \times (rate of well/rate of recovery)

3.0 Example

3.1 A facility consists of two production wells producing under pressure, which are both less than 10,000 feet deep. The well rate of well A is 5 barrels per day, and the well rate of well B is 10 barrels per day. The facility is unattended for a maximum of 7 days. The facility operator estimates that it will take 2 days to have response equipment and personnel on scene and responding to a blowout, and that the projected rate of recovery will be 20 barrels per day.

(1) First, the facility operator determines that the highest output well is well B. The

facility operator calculates the ratio of the rate of well to the rate of recovery:

10 barrels per day/20 barrels per day = 0.5

Because the ratio is less than one, the facility operator will use Method B to calculate the production volume.

(2) The first term of the equation is:

Discharge volume₁ = (7 days + 2 days) \times (10 barrels per day) = 90 barrels

(3) The second term of the equation is:

Discharge volume₂ = [30 days - (7 days + 2 days)] \times (10 barrels per day) \times (0.5) = 105 barrels

(4) Therefore, the production volume is:

Production volume = 90 barrels + 105 barrels = 195 barrels

3.2 If the recovery rate was 5 barrels per day, the ratio of rate of well to rate of recovery would be 2, so the facility operator would use Method A. The production volume would have been:

30 days \times 10 barrels per day = 300 barrels

Appendix E to Part 112—Determination and Evaluation of Required Response Resources for Facility Response Plans

1.0 Purpose and Definitions

1.1 The purpose of this appendix is to describe the procedures to identify response resources to meet the requirements of § 112.20. To identify response resources to meet the facility response plan requirements of 40 CFR 112.20(h), owners or operators shall follow this appendix or, where not appropriate, shall clearly demonstrate in the response plan why use of this appendix is not appropriate at the facility and make comparable arrangements for response resources.

1.2 Definitions.

1.2.1 *Nearshore* is an operating area defined as extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending 12 miles from the line of demarcation (COLREG lines) defined in 49 CFR 80.740 and 80.850.

1.2.2 *Non-persistent oils or Group 1 oils* include:

(1) A petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:

(A) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(B) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F); and

(2) A non-petroleum oil with a specific gravity less than 0.8.

1.2.3 *Non-petroleum oil* is oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

1.2.4 *Ocean* means the nearshore area.

1.2.5 *Operating area* means Rivers and Canals, Inland, Nearshore, and Great Lakes geographic location(s) in which a facility is handling, storing, or transporting oil.

1.2.6 *Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

1.2.7 *Persistent oils* include:

* All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater.

(1) A petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. Persistent oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

(2) A non-petroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity equal to or greater than 0.8 and less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

1.2.8 Other definitions are included in § 112.2, section 1.2 of Appendices C and E, and section 3.0 of Appendix F.

2.0 Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area (i.e., operating environment). These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location (i.e., operating area).

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for the response plan (based on the use of this appendix), a facility owner or operator must consider the inherent limitations of the operability of equipment components and response systems. The criteria in Table 1 of this appendix shall be used to evaluate the operability in a given environment. These criteria reflect the general conditions in certain operating environments.

2.3.1 The Regional Administrator may require documentation that the boom identified in a facility response plan meets the criteria in Table 1 of this appendix. Absent acceptable documentation, the Regional Administrator may require that the boom be tested to demonstrate that it meets the criteria in Table 1 of this appendix. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by EPA as deemed appropriate (see Appendix E to this part, section 10, for general availability of documents).

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in an operating environment must be designed to function in the same conditions. For example, boats that deploy or support skimmers or boom must be

capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator shall refer to the applicable Area Contingency Plan (ACP), where available, to determine if ice, debris, and weather-related visibility are significant factors to evaluate the operability of equipment. The ACP may also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 This appendix provides information on response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on-scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel of resources identified to meet the medium and Tier 1 worst case discharge requirements identified in section 4.3 of this appendix (for medium discharges) and section 5.3 of this appendix (for worst case discharges). The facility owner or operator must plan for notification and mobilization of Tier 2 and 3 response resources as necessary to meet the requirements for arrival on-scene in accordance with section 5.3 of this appendix. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the facility owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft and freeboard) shall be included. A facility owner or operator is responsible for ensuring that the identified boom has compatible connectors.

3.0 Determining Response Resources Required for Small Discharges

3.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a small discharge. A small discharge is defined as any discharge volume less than or equal to 2,100 gallons, but not to exceed the calculated worst case discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's "small discharge" is termed "the average most probable discharge." The USCG revisions to 33 CFR part 154 define "the average most probable discharge" as a discharge of 50 barrels (2,100 gallons). Owners or operators of complexes must compare oil spill volumes for a small discharge and an average most probable discharge and plan for whichever quantity is greater.

3.3 The response resources shall, as appropriate, include:

3.3.1 One thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a spill;

3.3.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in a small discharge or greater which is available at the facility within 2 hours of the detection of an oil discharge; and

3.3.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

4.0 Determining Response Resources Required for Medium Discharges

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of oil for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's "medium discharge" is termed "the maximum most probable discharge." The USCG revisions to 33 CFR part 154 define "the maximum most probable discharge" as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes must compare spill volumes for a medium discharge and a maximum most probable discharge and plan for whichever quantity is greater.

4.3 Oil recovery devices identified to meet the applicable medium discharge volume planning criteria must be located such that they are capable of arriving on-scene within 6 hours in higher volume port areas and the Great Lakes and within 12 hours in all other areas. Higher volume port areas and Great Lakes areas are defined in section 1.2 of Appendix C to this part.

4.4 Because rapid control, containment, and removal of oil are critical to reduce spill impact, the owner or operator must determine response resources using an effective daily recovery capacity for oil recovery devices equal to 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.5 In addition to oil recovery capacity, the plan shall, as appropriate, identify sufficient quantity of containment boom available, by contract or other approved means as described in § 112.2, to arrive

within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable ACP. While the regulation does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

4.6 The plan must indicate the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

4.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area: The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 9.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

5.0 Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure the availability of, by contract or other approved means as described in § 112.2, sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the necessary response resources. A worksheet is provided as Attachment E-1 at the end of this appendix to simplify the procedures involved in calculating the planning volume for response resources for the worst case discharge.

5.2 Complexes that are regulated by EPA and the USCG must also consider planning for the worst case discharge at the transportation-related portion of the facility. The USCG requires that transportation-related facility owners or operators use a different calculation for the worst case discharge in the revisions to 33 CFR part 154.

Owners or operators of complex facilities that are regulated by EPA and the USCG must compare both calculations of worst case discharge derived by EPA and the USCG and plan for whichever volume is greater.

5.3 Oil spill response resources identified in the response plan and available, by contract or other approved means as described in § 112.2, to meet the applicable worst case discharge planning volume must be located such that they are capable of arriving at the scene of a discharge within the times specified for the applicable response tier listed below:

	Tier 1	Tier 2	Tier 3
Higher volume port areas.	6 hrs	30 hrs	54 hrs
Great Lakes.	12 hrs	36 hrs	60 hrs
All other river and canal, inland, and near-shore areas.	12 hrs	36 hrs	60 hrs

The three levels of response tiers apply to the amount of time in which facility owners or operators must plan for response resources to arrive at the scene of a spill to respond to the worst case discharge planning volume. For example, at a worst case discharge in an inland area, the first tier of response resources (i.e., that amount of on-water and shoreline cleanup capacity necessary to respond to the fraction of the worst case discharge as indicated through the series of steps described in sections 7.2 and 7.3 of this appendix) would arrive at the scene of the discharge within 12 hours; the second tier of response resources would arrive within 36 hours; and the third tier of response resources would arrive within 60 hours.

5.4 The effective daily recovery capacity for oil recovery devices identified in the response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources used for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable contracting caps in Table 5 of this appendix shall, as appropriate, identify sources of additional equipment equal to twice the cap listed in Tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap shall be capable of arriving on-scene not later than the Tier 3 response times in section 5.3

of this appendix. No contract is required. While general listings of available response equipment may be used to identify additional sources (i.e., "public" resources vs. "private" resources), the response plan shall identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing USCG-classified oil spill removal organization(s) that have sufficient removal capacity to recover the volume above the response capacity cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.5 A facility owner or operator shall identify the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

5.6 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator shall, as appropriate, ensure that a portion of those resources is capable of being used in close-to-shore response activities in shallow water. For any EPA-regulated facility that is required to plan for response in shallow water, at least 20 percent of the on-water response equipment identified for the applicable operating area shall, as appropriate, be capable of operating in water of 6 feet or less depth.

5.7 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 112.2, to arrive on-scene within the specified response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the facility-specific information and response strategies employed. A facility owner or operator shall, as appropriate, also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability), and the applicable ACP. Refer to this guidance document for the number of days and geographic areas (i.e., operating environments) specified in Table 2 of this appendix.

5.8 A facility owner or operator shall also identify, by contract or other approved means as described in § 112.2, the availability of an oil spill removal organization(s) (as described in § 112.2) capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that shall, as appropriate, be planned for is calculated through the application of factors contained in Tables 2 and 3 of this appendix. The volume calculated from these tables is intended to assist the facility owner or operator to identify an oil spill removal organization with sufficient resources and expertise.

6.0 Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a facility owner or operator must be identified by the manufacturer, model, and effective daily recovery capacity. These capacities must be used to determine whether there is sufficient capacity to meet the applicable planning criteria for a small discharge, a medium discharge, and a worst case discharge to the maximum extent practicable.

6.2 To determine the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix shall be used. This formula considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The RA may assign a lower efficiency factor to equipment listed in a response plan if it is determined that such a reduction is warranted.

6.2.1 The following formula shall be used to calculate the effective daily recovery capacity:

$$R = T \times 24 \text{ hours} \times E$$

where:

R—Effective daily recovery capacity;

T—Throughput rate in barrels per hour (nameplate capacity); and

E—20 percent efficiency factor (or lower, factor as determined by the Regional Administrator).

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate shall be calculated using the pump capacity.

6.2.3 For belt or mop type devices, the throughput rate shall be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be 1/4 inch.

6.2.4 Facility owners or operators that include oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in section 6.3.2 of this appendix.

6.3 As an alternative to section 6.2 of this appendix, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using American Society of Testing and Materials (ASTM) Standard F 631-80, F 808-83 (1988), or an equivalent test approved by EPA as deemed appropriate (see Appendix E to this part, section 10, for general availability of documents).

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$$R = D \times U$$

where:

R—Effective daily recovery capacity;

D—Average Oil Recovery Rate in barrels per hour (Item 26 in F 808-83; Item 13.1.15 in F 631-80; or actual performance data); and

U—Hours per day that equipment can operate under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator submitting a response plan shall provide data that supports the effective daily recovery capacities for the oil recovery devices listed. The following is an example of these calculations:

(1) A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

$$267 \text{ gpm} = 381 \text{ barrels per hour (bph)}$$

$$R = 381 \text{ bph} \times 24 \text{ hr/day} \times 0.2 = 1,829 \text{ barrels per day}$$

(2) After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner or operator identifies sufficient resources available to support operations for 12 hours per day.

$$220 \text{ gpm} = 314 \text{ bph}$$

$$R = 314 \text{ bph} \times 12 \text{ hr/day} = 3,768 \text{ barrels per day}$$

(3) The facility owner or operator will be able to use the higher capacity if sufficient temporary oil storage capacity is available. Determination of alternative efficiency factors under section 6.2 of this appendix or the acceptability of an alternative effective daily recovery capacity under section 6.3 of this appendix will be made by the Regional Administrator as deemed appropriate.

7.0 Calculating Planning Volumes for a Worst Case Discharge

7.1 A facility owner or operator shall plan for a response to the facility's worst case discharge. The planning for on-water oil recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposition of oil on the shoreline. The procedures for non-petroleum oils are discussed in section 7.7 of this appendix.

7.2 The following procedures must be used by a facility owner or operator in determining the required on-water oil recovery capacity:

7.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, 4, 5) or non-persistent (Group 1)]; and the facility's specific operating area. See sections 1.2.2 and 1.2.7 of this appendix for the definitions of non-persistent and persistent oils, respectively. Facilities that handle, store, or transport oil from different oil groups must calculate each group separately, unless the oil group constitutes 10 percent or less by volume of the facility's total oil storage capacity. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. Table 2 of this appendix divides the volume into three

categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume shall, as appropriate, be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities that handle, store, or transport oil from different petroleum groups must compare the on-water recovery volume for each oil group (unless the oil group constitutes 10 percent or less by volume of the facility's total storage capacity) and use the calculation that results in the largest on-water oil recovery volume to plan for the amount of response resources for a worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they are capable of arriving on-scene within 6 hours for Tier 1, 30 hours for Tier 2, and 54 hours for Tier 3 of the discovery of an oil discharge. For all other rivers and canals, inland, nearshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water oil recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable operating area. The equipment shall be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator shall identify and ensure the availability, by contract or other approved means as described in § 112.2, of sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in section 5.4 of this appendix. The owner or operator of a facility whose planning volume exceeded the cap in 1993 must make arrangements to identify and ensure the availability, by contract or other approved means as described in § 112.2, for additional capacity to be under contract by 1998 or 2003, as appropriate. For a facility that handles multiple groups of oil, the required effective daily recovery capacity for each oil group is calculated before applying the cap. The oil group calculation resulting in the largest on-water recovery volume must be used to plan for the amount of response resources for a worst case discharge, unless the oil group comprises 10 percent or less by volume of the facility's total oil storage capacity.

7.3 The procedures discussed in sections 7.3.1-7.3.3 of this appendix must be used to calculate the planning volume for identifying shoreline cleanup capacity (for Groups 1 through Group 4 oils).

7.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility (persistent (Groups 2, 3, or 4) or non-persistent (Group 1)); and the geographic area(s) in which the facility operates (i.e., operating areas). For a facility handling, storing, or transporting oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2 of this appendix.

7.3.3 The resulting volume shall be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.4 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility for a facility that handles, stores, or transports Group 1 through Group 4 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the facility owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for Group 1 through Group 4 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.5 The following is an example of the procedure described above in sections 7.2 and 7.3 of this appendix: A facility with a 270,000 barrel (11.3 million gallons) capacity for #6 oil (specific gravity 0.96) is located in a higher volume port area. The facility is on a peninsula and has docks on both the ocean and bay sides. The facility has four aboveground oil storage tanks with a combined total capacity of 80,000 barrels (3.36 million gallons) and no secondary containment. The remaining facility tanks are inside secondary containment structures. The largest aboveground oil storage tank (90,000 barrels or 3.78 million gallons) has its own secondary containment. Two 50,000 barrel (2.1 million gallon) tanks (that are not connected by a manifold) are within a common secondary containment tank area, which is capable of holding 100,000 barrels (4.2 million gallons) plus sufficient freeboard.

7.5.1 The worst case discharge for the facility is calculated by adding the capacity of all aboveground oil storage tanks without secondary containment (80,000 barrels) plus the capacity of the largest aboveground oil storage tank inside secondary containment. The resulting worst case discharge volume is 170,000 barrels or 7.14 million gallons.

7.5.2 Because the requirements for Tiers 1, 2, and 3 for inland and nearshore exceed the caps identified in Table 5 of this appendix, the facility owner will contract for a response to 10,000 barrels per day (bpd) for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Resources for the remaining 7,850 bpd for Tier 1, 9,750 bpd for Tier 2, and 7,600 bpd for Tier 3 shall be identified but need not be contracted for in advance. The facility owner or operator shall, as appropriate, also identify or contract for quantities of boom identified in their response plan for the protection of fish and wildlife and sensitive environments within the area potentially impacted by a worst case discharge from the facility. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments," (see Appendix E to this part, section 10, for availability) and the applicable ACP. Attachment C-III to Appendix C provides a method for calculating a planning distance to fish and wildlife and sensitive environments and public drinking water intakes that may be impacted in the event of a worst case discharge.

7.6 The procedures discussed in sections 7.6.1—7.6.3 of this appendix must be used to determine appropriate response resources for facilities with Group 5 oils.

7.6.1 The owner or operator of a facility that handles, stores, or transports Group 5 oils shall, as appropriate, identify the response resources available by contract or other approved means, as described in § 112.2. The equipment identified in a response plan shall, as appropriate, include:

- (1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;
- (2) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;
- (3) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;
- (4) Equipment necessary to assess the impact of such discharges; and
- (5) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

7.6.2 Response resources identified in a response plan for a facility that handles, stores, or transports Group 5 oils under section 7.6.1 of this appendix shall be capable of being deployed (on site) within 24 hours of discovery of a discharge to the area where the facility is operating.

7.6.3 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group 5 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located

at the facility to work with the fire department for Group 5 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.7 The procedures described in sections 7.7.1—7.7.5 of this appendix must be used to determine appropriate response plan development and evaluation criteria for facilities that handle, store, or transport non-petroleum oils. Refer to section 8 of this appendix for information on the limitations on the use of dispersants for inland and nearshore areas.

7.7.1 An owner or operator of a facility that handles, stores, or transports non-petroleum oil must provide information in his or her plan that identifies:

(1) Procedures and strategies for responding to a worst case discharge of non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

7.7.2 An owner or operator of a facility that handles, stores, or transports non-petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) (i.e., operating environments) in which the facility operates using the criteria in Table 1 of this appendix. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the appropriate ACPs, including:

- (1) Ice conditions;
- (2) Debris;
- (3) Temperature ranges; and
- (4) Weather-related visibility.

7.7.3 The owner or operator of a facility that handles, stores, or transports non-petroleum oil must identify the response resources that are available by contract or other approved means, as described in § 112.2. The equipment described in the response plan shall, as appropriate, include:

- (1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;
- (2) Oil recovery devices appropriate for the type of non-petroleum oil carried; and
- (3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

7.7.4 Response resources identified in a response plan according to section 7.7.3 of this appendix must be capable of commencing an effective on-scene response within the applicable tier response times in section 5.3 of this appendix.

7.7.5 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports non-petroleum oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that

the owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for non-petroleum fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

8.0 Determining the Availability of Alternative Response Methods

8.1 For dispersants to be identified in a response plan, they must be on the NCP Product Schedule that is maintained by EPA. (Some States have a list of approved dispersants for use within State waters. These State-approved dispersants are listed on the NCP Product Schedule.)

8.2 Identification of dispersant application in the plan does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP. To date, dispersant application has not been approved by ACPs for inland areas or shallow nearshore areas.

9.0 Additional Equipment Necessary to Sustain Response Operations

9.1 A facility owner or operator shall, as appropriate, ensure that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. All such

equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery capacity required on-scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

10.0 References and Availability

10.1 All materials listed in this section are part of EPA's rulemaking docket, and are located in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number SPCC-2P). The docket is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202-260-3046. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of

pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a \$25.00 administrative fee. Charges for copies and docket hours are subject to change.

10.2 The docket will mail copies of materials to requestors who are outside the Washington D.C. metro area. Materials may be available from other sources, as noted in this section. The ERNS/SPCC Information line at 202-260-2342 or the RCRA/Superfund Hotline at 800-424-9346 may also provide additional information on where to obtain documents. To contact the RCRA/Superfund Hotline in the Washington, DC metropolitan area, dial 703-412-9810. The Telecommunications Device for the Deaf (TDD) Hotline number is 800-553-7672, or, in the Washington, DC metropolitan area, 703-412-3323.

10.3 Documents Referenced

(1) National Preparedness for Response Exercise Program (PREP). The PREP draft guidelines are available from United States Coast Guard Headquarters (G-MEP-4), 2100 Second Street, SW., Washington, DC 20593. (See 58 FR 53990, October 19, 1993, Notice of Availability of PREP Guidelines).

(2) "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (published in the Federal Register by DOC/NOAA at 59 FR 14713, March 29, 1994). The guidance is available in the Superfund Docket (see sections 10.1 and 10.2 of this appendix).

(3) ASTM Standards. ASTM F 715, ASTM F 989, ASTM F 831-80, ASTM F 808-83 (1988). The ASTM standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103-1187.

TABLE 1 TO APPENDIX E—RESPONSE RESOURCE OPERATING CRITERIA

Oil Recovery Devices				
Operating environment		Significant wave height ¹	Sea state	
Rivers and Canals		≤ 1 foot	1	
Inland		≤ 3 feet	2	
Great Lakes		≤ 4 feet	2-3	
Ocean		≤ 6 feet	3-4	
Boom				
Boom property	Use			
	Rivers and canals	Inland	Great Lakes	Ocean
Significant Wave Height ¹	≤ 1	≤ 3	≤ 4	≤ 6
Sea State	1	2	2-3	3-4
Boom height—feet (draft plus freeboard)	6-18	18-42	18-42	≥ 42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—pounds	4,500	15,000-20,000	15,000-20,000	≥ 20,000
Skirt Fabric Tensile Strength—pounds	200	300	300	500
Skirt Fabric Tear Strength—pounds	100	100	100	125

¹ Oil recovery devices and boom shall be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2 TO APPENDIX E—REMOVAL CAPACITY PLANNING TABLE

Spill location	Rivers and canals			Nearshore/inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Oil group ¹	Percent natural dissipation	Percent recovered floating oil	Percent oil onshore	Percent natural dissipation	Percent recovered floating oil	Percent oil Onshore
1. Non-persistent oils	80	10	10	80	20	10
2. Light crudes	40	15	45	50	50	30
3. Medium crudes and fuels	20	15	65	30	50	50
4. Heavy crudes and fuels	5	20	75	10	50	70

Group 5 oils are defined in section 1.2.7 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.

¹ Non-petroleum oils are defined in section 1.2.3 of this appendix; the response resource considerations are outlined in section 7.7 of this appendix.

TABLE 3 TO APPENDIX E—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS¹

Non-Persistent Oil:	
Group 1	1.0
Persistent Oil:	
Group 2	1.8
Group 3	2.0
Group 4	1.4

TABLE 3 TO APPENDIX E—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS¹—Continued

Group 5 oils are defined in section 1.2.7 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.
¹ See sections 1.2.2 and 1.2.7 of this appendix for group designations for non-persistent and persistent oils, respectively.

TABLE 4 TO APPENDIX E—ON-WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Operating area	Tier 1	Tier 2	Tier 3
Rivers and Canals	0.30	0.40	0.60
Inland/Nearshore Great Lakes ...	0.15	0.25	0.40

Note: These mobilization factors are for total resources mobilized, not incremental response resources.

TABLE 5 TO APPENDIX E—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
February 18, 1993:			
All except Rivers & Canals, Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day.
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day.
Rivers & Canals	1.5K bbls/day	3.0K bbls/day	6.0K bbls/day.
February 18, 1998:			
All except Rivers & Canals, Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.35K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & Canals	1.875K bbls/day	3.75K bbls/day	7.5K bbls/day.
February 18, 2003:			
All except Rivers & Canals, Great Lakes	TBD	TBD	TBD.
Great Lakes	TBD	TBD	TBD.
Rivers & Canals	TBD	TBD	TBD.

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.
TBD—To Be Determined.

Attachments to Appendix E

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ATTACHMENT E-1 --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D)

(A)

Step (B) Oil Group¹ (Table 3 and section 1.2 of this appendix)

Step (C) Operating Area (choose one)

☐

Nearshore/Inland
Great Lakes

☐

or Rivers
and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to
Natural Dissipation

(D1)

Percent Recovered
Floating Oil

(D2)

Percent
Oil Onshore

(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2)} \times \text{Step (A)}}{100}$

(E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3)} \times \text{Step (A)}}{100}$. .

(E2)

Step (F) Emulsification Factor
(Table 3 of this appendix)

(F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1

(G1)

Tier 2

(G2)

Tier 3

(G3)

¹ A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

**ATTACHMENT E-1 (CONTINUED) --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE**

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
<input type="text"/>	<input type="text"/>	<input type="text"/>
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels)

<input type="text"/>
Step (E2) x Step (F)

**Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)**

Tier 1	Tier 2	Tier 3
<input type="text"/>	<input type="text"/>	<input type="text"/>
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
<input type="text"/>	<input type="text"/>	<input type="text"/>
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

**ATTACHMENT E-1 EXAMPLE --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE**

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) 170,000
(A)

Step (B) Oil Group¹ (Table 3 and section 1.2 of this appendix) 4

Step (C) Operating Area (choose one) X Nearshore/Inland or Rivers
Great Lakes and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
10	50	70
(D1)	(D2)	(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2)} \times \text{Step (A)}}{100}$ 85,000
(E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3)} \times \text{Step (A)}}{100}$. . . 119,000
(E2)

Step (F) Emulsification Factor
(Table 3 of this appendix) 1.4
(F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor
(Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
0.15	0.25	0.40
(G1)	(G2)	(G3)

¹ A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

**ATTACHMENT E-1 EXAMPLE (CONTINUED) --
WORKSHEET TO PLAN VOLUME OF RESPONSE RESOURCES
FOR WORST CASE DISCHARGE**

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
17,850	29,750	47,600
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels)**166,600**

Step (E2) x Step (F)

**Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)**

Tier 1	Tier 2	Tier 3
10,000	20,000	40,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
7,850	9,750	7,600
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Appendix F To Part 112—Facility-Specific Response Plan**Table of Contents**

- 1.0 Model Facility-Specific Response Plan
 - 1.1 Emergency Response Action Plan
 - 1.2 Facility Information
 - 1.3 Emergency Response Information
 - 1.3.1 Notification
 - 1.3.2 Response Equipment List
 - 1.3.3 Response Equipment Testing/Deployment
 - 1.3.4 Personnel
 - 1.3.5 Evacuation Plans
 - 1.3.6 Qualified Individual's Duties
 - 1.4 Hazard Evaluation
 - 1.4.1 Hazard Identification
 - 1.4.2 Vulnerability Analysis
 - 1.4.3 Analysis of the Potential for an Oil Spill
 - 1.4.4 Facility Reportable Oil Spill History
 - 1.5 Discharge Scenarios
 - 1.5.1 Small and Medium Discharges
 - 1.5.2 Worst Case Discharge
 - 1.6 Discharge Detection Systems
 - 1.6.1 Discharge Detection By Personnel
 - 1.6.2 Automated Discharge Detection
 - 1.7 Plan Implementation
 - 1.7.1 Response Resources for Small, Medium, and Worst Case Spills
 - 1.7.2 Disposal Plans
 - 1.7.3 Containment and Drainage Planning
 - 1.8 Self-Inspection, Drills/Exercises, and Response Training
 - 1.8.1 Facility Self-Inspection
 - 1.8.1.1 Tank Inspection
 - 1.8.1.2 Response Equipment Inspection
 - 1.8.1.3 Secondary Containment Inspection
 - 1.8.2 Facility Drills/Exercises
 - 1.8.2.1 Qualified Individual Notification Drill Logs
 - 1.8.2.2 Spill Management Team Tabletop Exercise Logs
 - 1.8.3 Response Training
 - 1.8.3.1 Personnel Response Training Logs
 - 1.8.3.2 Discharge Prevention Meeting Logs
 - 1.9 Diagrams
 - 1.10 Security
 - 2.0 Response Plan Cover Sheet
 - 3.0 Acronyms
 - 4.0 References
- 1.0 Model Facility-Specific Response Plan
 - (A) Owners or operators of facilities regulated under this part which pose a threat of substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines are required to prepare and submit facility-specific response plans to EPA in accordance with the provisions in this appendix. This appendix further describes the required elements in § 112.20(h).

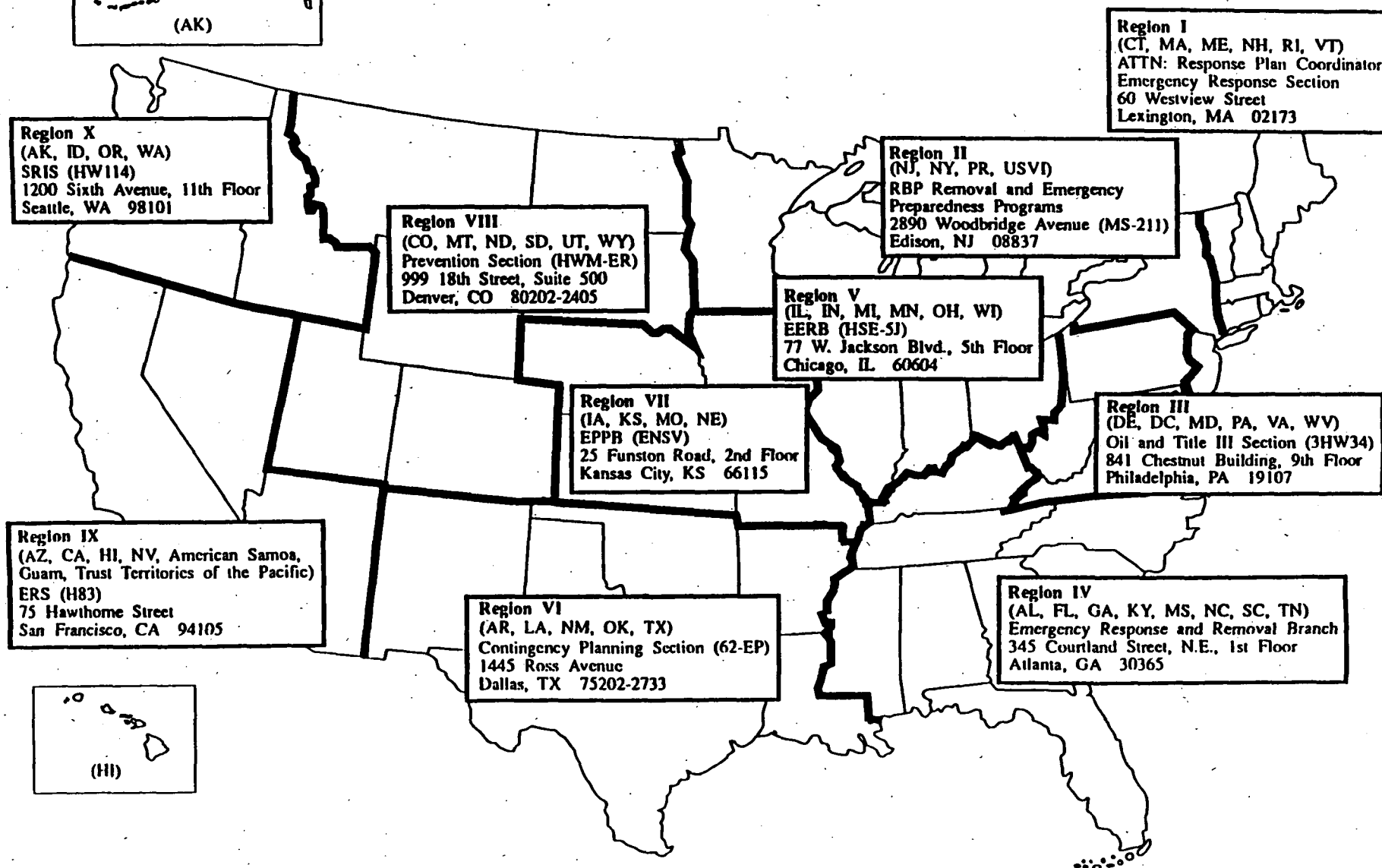
(B) Response plans must be sent to the appropriate EPA Regional office. Figure F-1 of this Appendix lists each EPA Regional office and the address where owners or operators must submit their response plans. Those facilities deemed by the Regional Administrator (RA) to pose a threat of significant and substantial harm to the environment will have their plans reviewed and approved by EPA. In certain cases, information required in the model response plan is similar to information currently maintained in the facility's Spill Prevention, Control, and Countermeasures (SPCC) Plan as required by 40 CFR 112.3. In these cases, owners or operators may reproduce the information and include a photocopy in the response plan.

(C) A complex may develop a single response plan with a set of core elements for all regulating agencies and separate sections for the non-transportation-related and transportation-related components, as described in § 112.20(h). Owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location (e.g., oil storage areas at opposite ends of a single, continuous parcel of property) shall, as appropriate, develop separate sections of the response plan for each storage area.

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Figure F - 1

EPA REGIONAL OFFICES FOR RESPONSE PLAN SUBMITTAL



1.1 Emergency Response Action Plan

Several sections of the response plan shall be co-located for easy access by response personnel during an actual emergency or oil spill. This collection of sections shall be called the Emergency Response Action Plan. The Agency intends that the Action Plan contain only as much information as is necessary to combat the spill and be arranged so response actions are not delayed. The Action Plan may be arranged in a number of ways. For example, the sections of the Emergency Response Action Plan may be photocopies or condensed versions of the forms included in the associated sections of the response plan. Each Emergency Response Action Plan section may be tabbed for quick reference. The Action Plan shall be maintained in the front of the same binder that contains the complete response plan or it shall be contained in a separate binder. In the latter case, both binders shall be kept together so that the entire plan can be accessed by the qualified individual and appropriate spill response personnel. The Emergency Response Action Plan shall be made up of the following sections:

1. Qualified Individual Information (Section 1.2) partial
2. Emergency Notification Phone List (Section 1.3.1) complete
3. Spill Response Notification Form (Section 1.3.1) complete
4. Response Equipment List and Location (Section 1.3.2) complete
5. Response Equipment Testing and Deployment (Section 1.3.3) complete
6. Facility Response Team (Section 1.3.4) partial
7. Evacuation Plan (Section 1.3.5) condensed
8. Immediate Actions (Section 1.7.1) complete
9. Facility Diagram (Section 1.9) complete

1.2 Facility Information

The facility information form is designed to provide an overview of the site and a description of past activities at the facility. Much of the information required by this section may be obtained from the facility's existing SPOC Plan.

1.2.1 Facility name and location: Enter facility name and street address. Enter the address of corporate headquarters only if corporate headquarters are physically located at the facility. Include city, county, state, zip code, and phone number.

1.2.2 Latitude and Longitude: Enter the latitude and longitude of the facility. Include degrees, minutes, and seconds of the main entrance of the facility.

1.2.3 Wellhead Protection Area: Indicate if the facility is located in or drains into a wellhead protection area as defined by the Safe Drinking Water Act of 1986 (SDWA).¹ The response plan requirements in the Wellhead Protection Program are outlined by

¹ A wellhead protection area is defined as the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. For further information regarding State and territory protection programs, facility owners or operators may contact the SDWA Hotline at 1-800-426-4791.

the State or Territory in which the facility resides.

1.2.4 Owner/operator: Write the name of the company or person operating the facility and the name of the person or company that owns the facility, if the two are different. List the address of the owner, if the two are different.

1.2.5 Qualified Individual: Write the name of the qualified individual for the entire facility. If more than one person is listed, each individual indicated in this section shall have full authority to implement the facility response plan. For each individual, list: name, position, home and work addresses (street addresses, not P.O. boxes), emergency phone number, and specific response training experience.

1.2.6 Date of Oil Storage Start-up: Enter the year which the present facility first started storing oil.

1.2.7 Current Operation: Briefly describe the facility's operations and include the Standard Industry Classification (SIC) code.

1.2.8 Dates and Type of Substantial Expansion: Include information on expansions that have occurred at the facility. Examples of such expansions include, but are not limited to: Throughput expansion, addition of a product line, change of a product line, and installation of additional oil storage capacity. The data provided shall include all facility historical information and detail the expansion of the facility. An example of substantial expansion is any material alteration of the facility which causes the owner or operator of the facility to re-evaluate and increase the response equipment necessary to adequately respond to a worst case discharge from the facility. Date of Last Update: _____

Facility Information Form

Facility Name: _____
 Location (Street Address): _____
 City: _____ State: _____ Zip: _____
 County: _____ Phone Number: () _____

Latitude: _____ Degrees _____ Minutes _____ Seconds

Longitude: _____ Degrees _____ Minutes _____ Seconds

Wellhead Protection Area: _____
 Owner: _____
 Owner Location (Street Address): _____
 (if different from Facility Address)
 City: _____ State: _____ Zip: _____
 County: _____ Phone Number: () _____

Operator (if not Owner): _____
 Qualified Individual(s): (attach additional sheets if more than one)

Name: _____
 Position: _____
 Work Address: _____
 Home Address: _____
 Emergency Phone Number: () _____
 Date of Oil Storage Start-up: _____
 Current Operations: _____

Date(s) and Type(s) of Substantial Expansion(s): _____

(Attach additional sheets if necessary)

1.3 Emergency Response Information

(A) The information provided in this section shall describe what will be

needed in an actual emergency involving the discharge of oil or a combination of hazardous substances and oil discharge. The Emergency Response Information section of the plan must include the following components:

(1) The information provided in the Emergency Notification Phone List in section 1.3.1 identifies and prioritizes the names and phone numbers of the organizations and personnel that need to be notified immediately in the event of an emergency. This section shall include all the appropriate phone numbers for the facility. These numbers must be verified each time the plan is updated. The contact list must be accessible to all facility employees to ensure that, in case of a discharge, any employee on site could immediately notify the appropriate parties.

(2) The Spill Response Notification Form in section 1.3.1 creates a checklist of information that shall be provided to the National Response Center (NRC) and other response personnel. All information on this checklist must be known at the time of notification, or be in the process of being collected. This notification form is based on a similar form used by the NRC. Note: Do not delay spill notification to collect the information on the list.

(3) Section 1.3.2 provides a description of the facility's list of emergency response equipment and location of the response equipment. When appropriate, the amount of oil that emergency response equipment can handle and any limitations (e.g., launching sites) must be described.

(4) Section 1.3.3 provides information regarding response equipment tests and deployment drills. Response equipment deployment exercises shall be conducted to ensure that response equipment is operational and the personnel who would operate the equipment in a spill response are capable of deploying and operating it. Only a representative sample of each type of response equipment needs to be deployed and operated, as long as the remainder is properly maintained. If appropriate, testing of response equipment may be conducted while it is being deployed. Facilities without facility-owned response equipment must ensure that the oil spill removal organization that is identified in the response plan to provide this response equipment certifies that the deployment exercises have been met. Refer to the National Preparedness for Response Exercise Program (PREP) Guidelines (see Appendix E to this part, section 10, for availability), which satisfy Oil Pollution Act (OPA) response exercise requirements.

(5) Section 1.3.4 lists the facility response personnel, including those employed by the facility and those under contract to the facility for response activities, the amount of time needed for personnel to respond, their responsibility in the case of an emergency, and their level of response training. Three different forms are included in this section. The Emergency Response Personnel List shall be composed of all personnel employed by the facility whose duties involve

responding to emergencies, including oil spills, even when they are not physically present at the site. An example of this type of person would be the Building Engineer-in-Charge or Plant Fire Chief. The second form is a list of the Emergency Response Contractors (both primary and secondary) retained by the facility. Any changes in contractor status must be reflected in updates to the response plan. Evidence of contracts with response contractors shall be included in this section so that the availability of resources can be verified. The last form is the Facility Response Team List, which shall be composed of both emergency response personnel (referenced by job title/position) and emergency response contractors, included in one of the two lists described above, that will respond immediately upon discovery of an oil spill or other emergency (i.e., the first people to respond). These are to be persons normally on the facility premises or primary response contractors. Examples of these personnel would be the Facility Hazardous Materials (HAZMAT) Spill Team 1, Facility Fire Engine Company 1, Production Supervisor, or Transfer Supervisor. Company personnel must be able to respond immediately and adequately if contractor support is not available.

(6) Section 1.3.5 lists factors that must, as appropriate, be considered when preparing an evacuation plan.

(7) Section 1.3.6 references the responsibilities of the qualified individual for the facility in the event of an emergency.

(B) The information provided in the emergency response section will aid in the assessment of the facility's ability to respond to a worst case discharge and will identify additional assistance that may be needed. In addition, the facility owner or operator may want to produce a wallet-size card containing a checklist of the immediate response and notification steps to be taken in the event of an oil discharge.

1.3.1 Notification

Date of Last Update: _____

Emergency Notification Phone List Whom To Notify

Reporter's Name: _____

Date: _____

Facility Name: _____

Owner Name: _____

Facility Identification Number: _____

Date and Time of Each NRC Notification: _____

Organization	Phone No.
1. National Response Center (NRC):	1-800-424-8802
2. Qualified Individual:	
Evening Phone:	
3. Company Response Team:	
Evening Phone:	
4. Federal On-Scene Coordinator (OSC) and/or Regional Response Center (RRC):	
Evening Phone(s):	
Pager Number(s):	
5. Local Response Team (Fire Dept./Cooperatives):	
6. Fire Marshall:	
Evening Phone:	
7. State Emergency Response Commission (SERC):	
Evening Phone:	
8. State Police:	
9. Local Emergency Planning Committee (LEPC):	
10. Local Water Supply System:	
Evening Phone:	
11. Weather Report:	
12. Local Television/Radio Station for Evacuation Notification:	

Organization	Phone No.
13. Hospitals:	
Spill Response Notification Form	
Reporter's Last Name: _____	
First: _____	
M.I.: _____	
Position: _____	
Phone Numbers:	
Day () - -	
Evening () - -	
Company: _____	
Organization Type: _____	
Address: _____	
City: _____	
State: _____	
Zip: _____	
Were Materials Discharged? _____ (Y/N)	
Confidential? _____ (Y/N)	
Meeting Federal Obligations to Report? _____ (Y/N) Date Called: _____	
Calling for Responsible Party? _____ (Y/N)	
Time Called: _____	
Incident Description	
Source and/or Cause of Incident: _____	

Date of Incident: _____	
Time of Incident: _____ AM/PM	
Incident Address/Location: _____	

Nearest City: _____ State: _____	
County: _____ Zip: _____	
Distance from City: _____ Units of Measure: _____	
Direction from City: _____	
Section: _____ Township: _____ Range: _____	
Borough: _____	
Container Type: _____ Tank Oil Storage	
Capacity: _____ Units of Measure: _____	
Facility Oil Storage Capacity: _____ Units of Measure: _____	
Facility Latitude: _____ Degrees _____	
Minutes _____ Seconds	
Facility Longitude: _____ Degrees _____	
Minutes _____ Seconds	
Material	

CHRIS Code	Discharged quantity	Unit of measure	Material Discharged in water	Quantity	Unit of measure

Response Action

Actions Taken to Correct, Control or Mitigate Incident: _____

Impact

Number of Injuries: _____ Number of Deaths: _____

Were there Evacuations? ____ (Y/N)

Number Evacuated: ____

Was there any Damage? ____ (Y/N)

Damage in Dollars (approximate): ____

Medium Affected: ____

Description: ____

More Information about Medium: ____

Additional Information

Any information about the incident not recorded elsewhere in the report: ____

Caller Notifications

EPA? ____ (Y/N) USCG? ____ (Y/N)

State? ____ (Y/N)

Other? ____ (Y/N) Describe: ____

1.3.2 Response Equipment List

Date of Last Update: ____

Facility Response Equipment List

1. Skimmers/Pumps—Operational Status: ____

Type, Model, and Year: ____

Type Model Year

Number: ____

Capacity: ____ gal./min.

Daily Effective Recovery Rate: ____

Storage Location(s): ____

Date Fuel Last Changed: ____

2. Boom—Operational Status: ____

Type, Model, and Year: ____

Type Model Year

Number: ____

Size (length): ____ ft.

Containment Area: ____ sq. ft.

Storage Location: ____

3. Chemicals Stored (Dispersants listed on EPA's NCP Product Schedule)

Type	Amount	Date purchased	Treatment capacity	Storage location

Were appropriate procedures used to receive approval for use of dispersants in accordance with the NCP (40 CFR 300.910)

and the Area Contingency Plan (ACP), where applicable? ____ (Y/N).

Name and State of On-Scene Coordinator (OSC) authorizing use: ____

Date Authorized: ____

4. Dispersant Dispensing Equipment—Operational Status: ____

Type and year	Capacity	Storage location	Response time (minutes)

5. Sorbents—Operational Status: ____

Type and Year Purchased: ____

Amount: ____

Absorption Capacity (gal.): ____

Storage Location(s): ____

6. Hand Tools—Operational Status: ____

Type and year	Quantity	Storage location

7. Communication Equipment (include operating frequency and channel and/or cellular phone numbers)—Operational Status: ____

Type and year	Quantity	Storage location/number

8. Fire Fighting and Personnel Protective Equipment—Operational Status: ____

Type and year	Quantity	Storage location

9. Other (e.g., Heavy Equipment, Boats and Motors)—Operational Status: ____

Type and year	Quantity	Storage location

1.3.3 Response Equipment Testing/Deployment

Date of Last Update: ____

Response Equipment Testing and Deployment Drill Log

Last Inspection or Response Equipment Test Date: ____

Inspection Frequency: ____

Last Deployment Drill Date: ____

Deployment Frequency: ____

Oil Spill Removal Organization Certification (if applicable): ____

1.3.4 Personnel

Date of Last Update: ____

EMERGENCY RESPONSE PERSONNEL

Company Personnel

Name	Phone ¹	Response time	Responsibility during response action	Response training type/date
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

¹ Phone number to be used when person is not on-site.

EMERGENCY RESPONSE CONTRACTORS

Date of Last Update: _____

Contractor	Phone	Response time	Contract responsibility ¹
1.			
2.			
3.			
4.			

¹ Include evidence of contracts/agreements with response contractors to ensure the availability of personnel and response equipment.

FACILITY RESPONSE TEAM

Date of Last Update: _____

Team member	Response time (minutes)	Phone or pager number (day/evening)
Qualified Individual:		/
		/
		/
		/
		/
		/

FACILITY RESPONSE TEAM—Continued

Date of Last Update: _____

[illegible]

Note: If the facility uses contracted help in an emergency response situation, the owner or operator must provide the contractors' names and review the contractors' capacities to provide adequate personnel and response equipment.

1.3.5 Evacuation Plans

1.3.5.1 Based on the analysis of the facility, as discussed elsewhere in the plan, a facility-wide evacuation plan shall be developed. In addition, plans to evacuate parts of the facility that are at a high risk of exposure in the event of a spill or other release must be developed. Evacuation routes must be shown on a diagram of the facility (see section 1.9 of this appendix). When developing evacuation plans, consideration must be given to the following factors, as appropriate:

- (1) Location of stored materials;
- (2) Hazard imposed by spilled material;
- (3) Spill flow direction;
- (4) Prevailing wind direction and speed;
- (5) Water currents, tides, or wave conditions (if applicable);
- (6) Arrival route of emergency response personnel and response equipment;
- (7) Evacuation routes;
- (8) Alternative routes of evacuation;
- (9) Transportation of injured personnel to nearest emergency medical facility;
- (10) Location of alarm/notification systems;
- (11) The need for a centralized check-in area for evacuation validation (roll call);
- (12) Selection of a mitigation command center; and
- (13) Location of shelter at the facility as an alternative to evacuation.

1.3.5.2 One resource that may be helpful to owners or operators in preparing this section of the response plan is *The Handbook of Chemical Hazard Analysis Procedures* by the Federal Emergency Management Agency (FEMA), Department of Transportation (DOT), and EPA. *The Handbook of Chemical Hazard Analysis Procedures* is available from: FEMA, Publication Office, 500 C. Street, S.W., Washington, DC 20472, (202) 646-3484.

1.3.5.3 As specified in § 112.20(h)(1)(vi), the facility owner or operator must reference

existing community evacuation plans, as appropriate.

1.3.6 Qualified Individual's Duties

The duties of the designated qualified individual are specified in § 112.20(h)(3)(ix). The qualified individual's duties must be described and be consistent with the minimum requirements in § 112.20(h)(3)(ix). In addition, the qualified individual must be identified with the Facility Information in section 1.2 of the response plan.

1.4 Hazard Evaluation

This section requires the facility owner or operator to examine the facility's operations closely and to predict where discharges could occur. Hazard evaluation is a widely used industry practice that allows facility owners or operators to develop a complete understanding of potential hazards and the response actions necessary to address these hazards. *The Handbook of Chemical Hazard Analysis Procedures*, prepared by the EPA, DOT, and the FEMA and the *Hazardous Materials Emergency Planning Guide* (NRT-1), prepared by the National Response Team are good references for conducting a hazard analysis. Hazard identification and evaluation will assist facility owners or operators in planning for potential discharges, thereby reducing the severity of discharge impacts that may occur in the future. The evaluation also may help the operator identify and correct potential sources of discharges. In addition, special hazards to workers and emergency response personnel's health and safety shall be evaluated, as well as the facility's oil spill history.

1.4.1 Hazard Identification

The Tank and Surface Impoundment (SI) forms, or their equivalent, that are part of this section must be completed according to the directions below. ("Surface Impoundment"

means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a seepage facility.) Similar worksheets, or their equivalent, must be developed for any other type of storage containers.

(1) List each tank at the facility with a separate and distinct identifier. Begin aboveground tank identifiers with an "A" and belowground tank identifiers with a "B", or submit multiple sheets with the aboveground tanks and belowground tanks on separate sheets.

(2) Use gallons for the maximum capacity of a tank; and use square feet for the area.

(3) Using the appropriate identifiers and the following instructions, fill in the appropriate forms:

(a) **Tank or SI number**—Using the aforementioned identifiers (A or B) or multiple reporting sheets, identify each tank or SI at the facility that stores oil or hazardous materials.

(b) **Substance Stored**—For each tank or SI identified, record the material that is stored therein. If the tank or SI is used to store more than one material, list all of the stored materials.

(c) **Quantity Stored**—For each material stored in each tank or SI, report the average volume of material stored on any given day.

(d) Tank Type or Surface Area/Year—For each tank, report the type of tank (e.g., floating top), and the year the tank was originally installed. If the tank has been refabricated, the year that the latest refabrication was completed must be recorded in parentheses next to the year installed. For each SI, record the surface area

of the impoundment and the year it went into service.

(e) Maximum Capacity—Record the operational maximum capacity for each tank and SI. If the maximum capacity varies with the season, record the upper and lower limits.

(f) Failure/Cause—Record the cause and date of any tank or SI failure which has resulted in a loss of tank or SI contents.

(4) Using the numbers from the tank and SI forms, label a schematic drawing of the facility. This drawing shall be identical to any schematic drawings included in the SPCC Plan.

(5) Using knowledge of the facility and its operations, describe the following in writing:

(a) The loading and unloading of transportation vehicles that risk the discharge of oil or release of hazardous substances during transport processes. These operations may include loading and unloading of trucks, railroad cars, or vessels. Estimate the volume of material involved in transfer operations, if the exact volume cannot be determined.

(b) Day-to-day operations that may present a risk of discharging oil or releasing a hazardous substance. These activities include scheduled venting, piping repair or replacement, valve maintenance, transfer of tank contents from one tank to another, etc. (not including transportation-related activities). Estimate the volume of material

involved in these operations, if the exact volume cannot be determined.

(c) The secondary containment volume associated with each tank and/or transfer point at the facility. The numbering scheme developed on the tables, or an equivalent system, must be used to identify each containment area. Capacities must be listed for each individual unit (tanks, slumps, drainage traps, and ponds), as well as the facility total.

(d) Normal daily throughput for the facility and any effect on potential discharge volumes that a negative or positive change in that throughput may cause.

HAZARD IDENTIFICATION TANKS¹

Date of Last Update: _____

Tank No.	Substance Stored (Oil and Hazardous Substance)	Quantity Stored (gal- lons)	Tank Type/Year	Maximum Capacity (gallons)	Failure/Cause

¹ Tank = any container that stores oil.
Attach as many sheets as necessary.

HAZARD IDENTIFICATION SURFACE IMPOUNDMENTS (SIs)

Date of Last Update: _____

SI No.	Substance Stored	Quantity Stored (gal- lons)	Surface Area/Year	Maximum Capacity (gallons)	Failure/Cause

Attach as many sheets as necessary.

1.4.2 Vulnerability Analysis

The vulnerability analysis shall address the potential effects (i.e., to human health, property, or the environment) of an oil spill. Attachment C-III to Appendix C to this part provides a method that owners or operators shall use to determine appropriate distances from the facility to fish and wildlife and sensitive environments. Owners or operators can use a comparable formula that is considered acceptable by the RA. If a comparable formula is used, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet. This analysis must be prepared for each facility and, as appropriate, must discuss the vulnerability of:

- (1) Water intakes (drinking, cooling, or other);
- (2) Schools;
- (3) Medical facilities;
- (4) Residential areas;
- (5) Businesses;
- (6) Wetlands or other sensitive environments;²
- (7) Fish and wildlife;
- (8) Lakes and streams;
- (9) Endangered flora and fauna;
- (10) Recreational areas;
- (11) Transportation routes (air, land, and water);
- (12) Utilities; and
- (13) Other areas of economic importance (e.g., beaches, marinas) including terrestrially sensitive environments, aquatic environments, and unique habitats.

1.4.3 Analysis of the Potential for an Oil Spill

Each owner or operator shall analyze the probability of a spill occurring at the facility. This analysis shall incorporate factors such as oil spill history, horizontal range of a potential spill, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. This analysis will provide information for developing discharge scenarios for a worst case discharge and small and medium discharges and aid in the development of techniques to reduce the size and frequency of spills. The owner or operator may need to research the age of the tanks and the oil spill history at the facility.

² Refer to the DOC/NOAA "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (See appendix E to this part, section 10, for availability).

1.4.4 Facility Reportable Oil Spill History

Briefly describe the facility's reportable oil spill³ history for the entire life of the facility to the extent that such information is reasonably identifiable, including:

- (1) Date of discharge(s);
- (2) List of discharge causes;
- (3) Material(s) discharged;
- (4) Amount discharged in gallons;
- (5) Amount of discharge that reached navigable waters, if applicable;
- (6) Effectiveness and capacity of secondary containment;
- (7) Clean-up actions taken;
- (8) Steps taken to reduce possibility of recurrence;
- (9) Total oil storage capacity of the tank(s) or impoundment(s) from which the material discharged;
- (10) Enforcement actions;
- (11) Effectiveness of monitoring equipment; and
- (12) Description(s) of how each oil spill was detected.

The information solicited in this section may be similar to requirements in 40 CFR 112.4(a). Any duplicate information required by § 112.4(a) may be photocopied and inserted.

1.5 Discharge Scenarios

In this section, the owner or operator is required to provide a description of the facility's worst case discharge, as well as a small and medium spill, as appropriate. A multi-level planning approach has been chosen because the response actions to a spill (i.e., necessary response equipment, products, and personnel) are dependent on the magnitude of the spill. Planning for lesser discharges is necessary because the nature of the response may be qualitatively different depending on the quantity of the discharge. The facility owner or operator shall discuss the potential direction of the spill pathway.

1.5.1 Small and Medium Discharges

1.5.1.1 To address multi-level planning requirements, the owner or operator must consider types of facility-specific spill scenarios that may contribute to a small or medium spill. The scenarios shall account for all the operations that take place at the facility, including but not limited to:

- (1) Loading and unloading of surface transportation;

³ As described in 40 CFR part 110, reportable oil spills are those that: (a) violate applicable water quality standards, or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

- (2) Facility maintenance;
- (3) Facility piping;
- (4) Pumping stations and sumps;
- (5) Oil storage tanks;
- (6) Vehicle refueling; and
- (7) Age and condition of facility and components.

1.5.1.2 The scenarios shall also consider factors that affect the response efforts required by the facility. These include but are not limited to:

- (1) Size of the spill;
- (2) Proximity to downgradient wells, waterways, and drinking water intakes;
- (3) Proximity to fish and wildlife and sensitive environments;
- (4) Likelihood that the discharge will travel offsite (i.e., topography, drainage);
- (5) Location of the material spilled (i.e., on a concrete pad or directly on the soil);
- (6) Material discharged;
- (7) Weather or aquatic conditions (i.e., river flow);
- (8) Available remediation equipment;
- (9) Probability of a chain reaction of failures; and
- (10) Direction of spill pathway.

1.5.2 Worst Case Discharge

1.5.2.1 In this section, the owner or operator must identify the worst case discharge volume at the facility.

Worksheets for production and non-production facility owners or operators to use when calculating worst case discharge are presented in Appendix D to this part. When planning for the worst case discharge response, all of the aforementioned factors listed in the small and medium discharge section of the response plan shall be addressed.

1.5.2.2 For onshore storage facilities and production facilities, permanently manifolded oil storage tanks are defined as tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit (i.e., multiple tank volumes are equalized). In this section of the response plan, owners or operators must provide evidence that oil storage tanks with common piping or piping systems are not operated as one unit. If such evidence is provided and is acceptable to the RA, the worst case discharge volume shall be based on the combined oil storage capacity of all manifold tanks or the oil storage capacity of the largest single oil storage tank within the secondary containment area, whichever is greater. For permanently manifolded oil storage tanks that function as one storage unit, the worst case discharge shall be based on the combined oil storage capacity of all manifolded tanks or the oil storage capacity of the largest single tank within a secondary

containment area, whichever is greater. For purposes of the worst case discharge calculation, permanently manifolded oil storage tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.6 Discharge Detection Systems

In this section, the facility owner or operator shall provide a detailed description of the procedures and equipment used to detect discharges. A section on spill detection by personnel and a discussion of automated spill detection, if applicable, shall be included for both regular operations and after hours operations. In addition, the facility owner or operator shall discuss how the reliability of any automated system will be checked and how frequently the system will be inspected.

1.6.1 Discharge Detection by Personnel

In this section, facility owners or operators shall describe the procedures and personnel that will detect any spill or uncontrolled discharge of oil or release of a hazardous substance. A thorough discussion of facility inspections must be included. In addition, a description of initial response actions shall be addressed. This section shall reference section 1.3.1 of the response plan for emergency response information.

1.6.2 Automated Discharge Detection

In this section, facility owners or operators must describe any automated spill detection equipment that the facility has in place. This section shall include a discussion of overflow alarms, secondary containment sensors, etc. A discussion of the plans to verify an automated alarm and the actions to be taken once verified must also be included.

1.7 Plan Implementation

In this section, facility owners or operators must explain in detail how to implement the facility's emergency response plan by describing response actions to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent discharges described in section 1.5 of the response plan. This section shall include the identification of response resources for small, medium, and worst case spills; disposal plans; and containment and drainage planning. A list of those personnel who would be involved in the cleanup shall be identified. Procedures that the facility will use, where appropriate or necessary, to update their plan after an oil spill event and the time frame to update the plan must be described.

1.7.1 Response Resources for Small, Medium, and Worst Case Spills

1.7.1.1 Once the spill scenarios have been identified in section 1.5 of the response plan, the facility owner or operator shall identify and describe implementation of the response actions. The facility owner or operator shall demonstrate accessibility to the proper response personnel and equipment to effectively respond to all of the identified spill scenarios. The determination and demonstration of adequate response capability are presented in Appendix E to this part. In addition, steps to expedite the cleanup of oil spills must be discussed. At a minimum, the following items must be addressed:

- (1) Emergency plans for spill response;
- (2) Additional response training;
- (3) Additional contracted help;
- (4) Access to additional response equipment/experts; and
- (5) Ability to implement the plan including response training and practice drills.

1.7.1.2A recommended form detailing immediate actions follows.

Oil Spill Response—Immediate Actions

1. Stop the product flow.	Act quickly to secure pumps, close valves, etc.
2. Warn personnel	Enforce safety and security measures.
3. Shut off ignition sources.	Motors, electrical circuits, open flames, etc.
4. Initiate containment	Around the tank and/or in the water with oil boom.
5. Notify NRC	1-800-424-8802
6. Notify OSC	
7. Notify, as appropriate	

Source: FOSS, Oil Spill Response—Emergency Procedures, Revised December 3, 1992.

1.7.2 Disposal Plans

1.7.2.1 Facility owners or operators must describe how and where the facility intends to recover, reuse, decontaminate, or dispose of materials after a discharge has taken place. The appropriate permits required to transport or dispose of recovered materials according to local, State, and Federal requirements must be addressed. Materials that must be accounted for in the disposal plan, as appropriate, include:

- (1) Recovered product;
- (2) Contaminated soil;
- (3) Contaminated equipment and materials, including drums, tank parts, valves, and shovels;
- (4) Personnel protective equipment;
- (5) Decontamination solutions;
- (6) Adsorbents; and
- (7) Spent chemicals.

1.7.2.2 These plans must be prepared in accordance with Federal (e.g., the Resource Conservation and Recovery Act (RCRA)), State, and local regulations, where applicable. A copy of the disposal plans from the facility's SPCC Plan may be inserted with this section, including any diagrams in those plans.

	Material	Disposal facility	Location	RCRA permit/manifest
1.				
2.				
3.				
4.				

1.7.3 Containment and Drainage Planning

A proper plan to contain and control a spill through drainage may limit the threat of harm to human health and the environment. This section shall describe how to contain and control a spill through drainage, including:

- (1) The available volume of containment (use the information presented in section 1.4.1 of the response plan);
- (2) The route of drainage from oil storage and transfer areas;
- (3) The construction materials used in drainage troughs;

- (4) The type and number of valves and separators used in the drainage system;
- (5) Sump pump capacities;
- (6) The containment capacity of weirs and booms that might be used and their location (see section 1.3.2 of this appendix); and
- (7) Other cleanup materials.

NOTE: The general permit for stormwater drainage may contain additional requirements.

The owner or operator must develop programs for facility response training and for drills/exercises according to the requirements of 40 CFR 112.21. Logs must be kept for facility drills/exercises, personnel response training, and spill prevention meetings. Much of the recordkeeping information required by this section is also contained in the SPCC Plan required by 40 CFR 112.3. These logs may be included in the facility response plan or kept as an annex to the facility response plan.

Pursuant to 40 CFR 112.7(e)(8), each facility shall include the written procedures and records of inspections in the SPCC Plan. The inspection shall include the tanks, secondary containment, and response equipment at the facility. Records of the inspections of tanks and secondary containment required by 40 CFR 112.7(e) shall be cross-referenced in the response plan. The inspection of response equipment is a new requirement in this plan. Facility self-inspection requires two steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. The date of each inspection shall be noted. These records are required to be maintained for 5 years.

The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section. The inspection checklist consists of the following items:

1. Check tanks for leaks, specifically looking for:
 - A. drip marks;
 - B. discoloration of tanks;
 - C. puddles containing spilled or leaked material;
 - D. corrosion;
 - E. cracks; and
 - F. localized dead vegetation.
2. Check foundation for:
 - A. cracks;
 - B. discoloration;
 - C. puddles containing spilled or leaked material;
 - D. settling;
 - E. gaps between tank and foundation; and
 - F. damage caused by vegetation roots.
3. Check piping for:
 - A. droplets of stored material;
 - B. discoloration;
 - C. corrosion;
 - D. bowing of pipe between supports;
 - E. evidence of stored material seepage from valves or seals; and
 - F. localized dead vegetation.

[illegible]

5. Actual use/testing (last test date and

Please note any discrepancies between this list and the available response equipment.

[Use section 1.3.2 of the response plan as a checklist]

[illegible]

guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this part. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the Regional Administrator based on the description of the program provided in the response plan.

(B) The PREP Guidelines specify that the facility conduct internal and external drills/exercises. The internal exercises include: qualified individual notification drills, spill management team tabletop exercises, equipment deployment exercises, and unannounced exercises. External exercises include Area Exercises. Credit for an Area or Facility-specific Exercise will be given to the facility for an actual response to a spill in the area if the plan was utilized for response to the spill and the objectives of the Exercise were met and were properly evaluated, documented and self-certified.

During inspection, make note of discrepancies in any of the above mentioned items, and report them immediately to the proper facility personnel. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section.

(A) CWA section 311(j)(5), as amended by OPA, requires the response plan to contain a description of facility drills/exercises. According to 40 CFR 112.21(c), the facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. Following the PREP

- A. Level of precipitation in dike/available capacity;
 - B. Operational status of drainage valves;
 - C. Dike or berm permeability;
 - D. Debris;
 - E. Erosion;
 - F. Permeability of the earthen floor of diked area; and
 - G. Location/status of pipes, inlets, drainage beneath tanks, etc.
2. Secondary containment
- A. Cracks;
 - B. Discoloration;
 - C. Presence of spilled or leaked material (standing liquid);
 - D. Corrosion; and

Evaluation: _____

Time Table for Implementation: _____

1.8.3.1 Personnel Response Training Logs

[illegible]

Date: _____
Attendees: _____

[illegible]

1.9 Diagrams

The facility-specific response plan shall include the following diagrams. Additional diagrams that would aid in the development of response plan sections may also be included.

- (1) The Site Plan Diagram shall, as appropriate, include and identify:
 - (A) the entire facility to scale;
 - (B) above and below ground bulk oil storage tanks;
 - (C) the contents and capacities of bulk oil storage tanks;
 - (D) the contents and capacity of drum oil storage areas;
 - (E) the contents and capacities of surface impoundments;
 - (F) process buildings;
 - (G) transfer areas;
 - (H) secondary containment systems (location and capacity);
 - (I) structures where hazardous materials are stored or handled, including materials stored and capacity of storage;
 - (J) location of communication and emergency response equipment;
 - (K) location of electrical equipment which contains oil; and
 - (L) for complexes only, the interface(s) (i.e., valve or component) between the portion of the facility regulated by EPA and the portion(s) regulated by other Agencies. In most cases, this interface is defined as the last valve inside secondary containment before piping leaves the secondary containment area to connect to the transportation-related portion of the facility (i.e., the structure used or intended to be used to transfer oil to or from a vessel or pipeline). In the absence of secondary containment, this interface is the valve manifold adjacent to the tank nearest the transfer structure as described above. The interface may be defined differently at a specific facility if agreed to by the RA and the appropriate Federal official.
- (2) The Site Drainage Plan Diagram shall, as appropriate, include:
 - (A) major sanitary and storm sewers, manholes, and drains;
 - (B) weirs and shut-off valves;
 - (C) surface water receiving streams;
 - (D) fire fighting water sources;
 - (E) other utilities;
 - (F) response personnel ingress and egress;
 - (G) response equipment transportation routes; and
 - (H) direction of spill flow from discharge points.
- (3) The Site Evacuation Plan Diagram shall, as appropriate, include:
 - (A) site plan diagram with evacuation route(s); and
 - (B) location of evacuation regrouping areas.

1.10 Security

According to 40 CFR 112.7(e)(9), facilities are required to maintain a certain level of security, as appropriate. In this section, a description of the facility security shall be provided and include, as appropriate:

- (1) emergency cut-off locations (automatic or manual valves);
- (2) enclosures (e.g., fencing, etc.);
- (3) guards and their duties, day and night;

- (4) lighting;
- (5) valve and pump locks; and
- (6) pipeline connection caps.

The SPCC Plan contains similar information. Duplicate information may be photocopied and inserted in this section.

2.0 Response Plan Cover Sheet

A three-page form has been developed to be completed and submitted to the RA by owners or operators who are required to prepare and submit a facility-specific response plan. The cover sheet (Attachment F-1) must accompany the response plan to provide the Agency with basic information concerning the facility. This section will describe the Response Plan Cover Sheet and provide instructions for its completion.

2.1 Page One—General Information

Owner/Operator of Facility: Enter the name of the owner of the facility (if the owner is the operator). Enter the operator of the facility if otherwise. If the owner/operator of the facility is a corporation, enter the name of the facility's principal corporate executive. Enter as much of the name as will fit in each section.

- (1) **Facility Name:** Enter the proper name of the facility.
- (2) **Facility Address:** Enter the street address, city, State, and zip code.
- (3) **Facility Phone Number:** Enter the phone number of the facility.
- (4) **Latitude and Longitude:** Enter the facility latitude and longitude in degrees, minutes, and seconds.
- (5) **Dun and Bradstreet Number:** Enter the facility's Dun and Bradstreet number if available (this information may be obtained from public library resources).
- (6) **Standard Industrial Classification (SIC) Code:** Enter the facility's SIC code as determined by the Office of Management and Budget (this information may be obtained from public library resources).
- (7) **Largest Oil Storage Tank Capacity:** Enter the capacity in GALLONS of the largest aboveground oil storage tank at the facility.
- (8) **Maximum Oil Storage Capacity:** Enter the total maximum capacity in GALLONS of all aboveground oil storage tanks at the facility.
- (9) **Number of Oil Storage Tanks:** Enter the number of all aboveground oil storage tanks at the facility.
- (10) **Worst Case Discharge Amount:** Using information from the worksheets in Appendix D, enter the amount of the worst case discharge in GALLONS.
- (11) **Facility Distance to Navigable Waters:** Mark the appropriate line for the nearest distance between an opportunity for discharge (i.e., oil storage tank, piping, or flowline) and a navigable water.

2.2 Page Two—Applicability of Substantial Harm Criteria

Using the flowchart provided in Attachment C-I to Appendix C to this part, mark the appropriate answer to each question. Explanations of referenced terms can be found in Appendix C to this part. If a comparable formula to the ones described in Attachment C-III to Appendix C to this part is used to calculate the planning

distance, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet.

2.3 Page Three—Certification

Complete this block after all other questions have been answered.

3.0 Acronyms

ACP: Area Contingency Plan
 ASTM: American Society of Testing Materials
 bbls: Barrels
 bpd: Barrels per Day
 bph: Barrels per Hour
 CHRIS: Chemical Hazards Response Information System
 CWA: Clean Water Act
 DOI: Department of Interior
 DOC: Department of Commerce
 DOT: Department of Transportation
 EPA: Environmental Protection Agency
 FEMA: Federal Emergency Management Agency
 FR: Federal Register
 gal: Gallons
 gpm: Gallons per Minute
 HAZMAT: Hazardous Materials
 LEPC: Local Emergency Planning Committee
 MMS: Minerals Management Service (part of DOI)
 NCP: National Oil and Hazardous Substances Pollution Contingency Plan
 NOAA: National Oceanic and Atmospheric Administration (part of DOC)
 NRC: National Response Center
 NRT: National Response Team
 OPA: Oil Pollution Act of 1990
 OSC: On-Scene Coordinator
 PREP: National Preparedness for Response Exercise Program
 RA: Regional Administrator
 RCRA: Resource Conservation and Recovery Act
 RRC: Regional Response Centers
 RRT: Regional Response Team
 RSPA: Research and Special Programs Administration
 SARA: Superfund Amendments and Reauthorization Act
 SERC: State Emergency Response Commission
 SDWA: Safe Drinking Water Act of 1986
 SI: Surface Impoundment
 SIC: Standard Industrial Classification
 SPCC: Spill Prevention, Control, and Countermeasures
 USCG: United States Coast Guard

4.0 References

CONCAWE. 1982. Methodologies for Hazard Analysis and Risk Assessment in the Petroleum Refining and Storage Industry. Prepared by CONCAWE's Risk Assessment Ad-hoc Group.

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U.S. DOT, FEMA and U.S. EPA. Handbook of Chemical Hazard Analysis Procedures.

U.S. DOT, FEMA and U.S. EPA. Technical Guidance for Hazards Analysis: Emergency Planning for Extremely Hazardous Substances.

The National Response Team. 1987. Hazardous Materials Emergency Planning Guide. Washington, DC.

The National Response Team. 1990. Oil Spill Contingency Planning, National Status: A Report to the President. Washington, DC. U.S. Government Printing Office.

Offshore Inspection and Enforcement Division. 1988. Minerals Management Service, Offshore Inspection Program: National Potential Incident of Noncompliance (PINC) List. Reston, VA.

Attachments to Appendix F

Attachment F-1—Response Plan Cover Sheet

This cover sheet will provide EPA with basic information concerning the facility. It must accompany a submitted facility response plan. Explanations and detailed instructions can be found in Appendix F. Please type or write legibly in blue or black ink. Public reporting burden for the collection of this information is estimated to vary from 1 hour to 270 hours per response in the first year, with an average of 5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate of this information, including suggestions for reducing this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503.

General Information

Owner/Operator of Facility: _____

Facility Name: _____

Facility Address (street address or route): _____

City, State, and U.S. Zip Code: _____

Facility Phone No.: _____

Latitude (Degrees: North): _____

degrees, minutes, seconds _____

Dun & Bradstreet Number: ¹ _____

Largest Aboveground Oil Storage Tank Capacity (Gallons): _____

Number of Aboveground Oil Storage Tanks: _____

Longitude (Degrees: West): _____

degrees, minutes, seconds _____

Standard Industrial Classification (SIC) Code: ¹ _____

Maximum Oil Storage Capacity (Gallons): _____

Worst Case Oil Discharge Amount (Gallons): _____

Facility Distance to Navigable Water. Mark the appropriate line. _____

0—1/4 mile _____ 1/4—1/2 mile _____ 1/2—1 mile _____

_____ >1 mile _____

Applicability of Substantial Harm Criteria

Does the facility transfer oil over-water ² to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and, within any storage area, does the facility lack secondary containment ² that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation?

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a

¹ These numbers may be obtained from public library resources.

² Explanations of the above-referenced terms can be found in Appendix C to this part. If a comparable formula to the ones contained in Attachment C-III is used to establish the appropriate distance to fish and wildlife and sensitive environments or public drinking water intakes, documentation of the reliability and analytical soundness of the formula must be attached to this form.

distance ² (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? ²

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance ² (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake? ²

Yes _____

No _____

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill ² in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes _____

No _____

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining information, I believe that the submitted information is true, accurate, and complete.

Signature: _____

Name (Please type or print): _____

Title: _____

Date: _____

[FR Doc. 94-15404 Filed 6-30-94; 8:45 am]

BILLING CODE 6560-50-P

² For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, for availability) and the applicable ACP.

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**CORRECTIONS TO THE JULY 1, 1994 FEDERAL REGISTER PUBLICATION OF THE FACILITY
RESPONSE PLAN FINAL RULE FOR ONSHORE, NON-TRANSPORTATION-RELATED FACILITIES**

The following are corrections to minor technical errors in the final rule that may prove to be misleading and are in need of clarification. Please ensure that this errata sheet accompanies all copies of the July 1, 1994 Federal Register Notice that are distributed.

Federal Register Page	Column	Appendix	Section	Description of Change
34097	3	na	§ 112.2	Add "means" after the term "Contract or other approved means."
34102	3	C	1.1	1.1.2 Italicize "Port Areas." 1.1.3 Italicize "Inland Area." 1.1.4 Italicize "Rivers and Canals."
34105	1	C	Attachment C-II	"Facility Addresses" should be "Facility Address."
34105	1	C	Attachment C-II	In footnote 1, add a comma after the word "used."
34106	1	C	Table 1	Add leading zeros to all entries; add line before "Major Streams."
34106	3	C	2.3	In slope formula, term should be "A - B" (minus sign rather than a long dash).
34107	1	C	2.6	Term should be "727 ft - 710 ft" (minus sign rather than a long dash).
34110	3	D	A.2.3	Change "A2(b)" to "A.2.2"
34111	1	D	B.2.3	Change "B2(b)" to "B.2.2"
34111	2	D	2.2.3	Change long dashes after "30 days" and "45 days" to minus signs.
34111	3	D	3.1	Change long dash after "30 days" to a minus sign.
34112	1	D	1.2.8	Replace text with "Other definitions are included in § 112.2 and section 1.1 of Appendix C."
34112	3	D	3.3.2	Change "is available" to "are available."
34112	3	D	4.3	Change "section 1.2" to "section 1.1."
34114	3	D	7.3	Change "Groups 1" to "Group 1."
34115	1	D	7.3.1	Do not italicize "i.e."
34115	1	D	7.4	Delete "for a facility" in fourth line of section.
34124	1	F	1.1	Change "complete" in item 2 to "partial". Change "complete" in item 3 to "partial".
34135	2,3	F	2.1, 2.2, 2.3	Remove the terms "Page One", "Page Two", and "Page 3" from section headings.
34136	1	F	Attachment F-1	Remove "Q" from beginning of line under "Facility Address."

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SECTION K

*** FRP COURSE SLIDES**

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Facility Response Plans

- Authority comes from Section 4202 of OPA.
- Requires facilities that have the POTENTIAL to cause SUBSTANTIAL HARM to the environment to prepare and implement a plan for responding to a WORST CASE discharge.

FIG-1

Facilities Fall Into 3 Categories

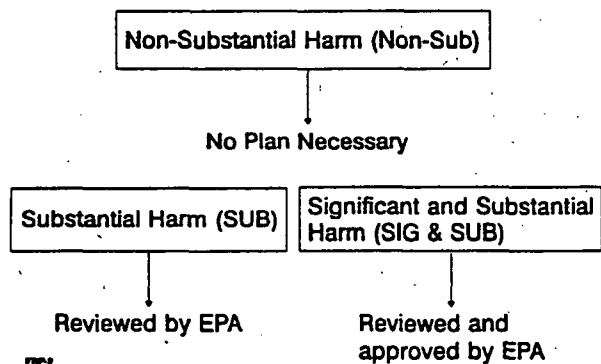


FIG-2

Facility Response Plans

Non Sub Harm Facilities

Non sub harm facilities (i.e. SPCC Regulated only) **MUST** fill out Attachment C-II (p. 34105 of the Final Rule) and maintain with the SPCC Plan (see hard copy in SECTION L).

FIG-3

Notes

Facility Response Plans SUB Harm Determination

- Substantial Harm facilities are determined by:
 - Self-selection process
 - RA determination

Facility Response Plans

- The RA has the authority to designate a facility as SUB Harm regardless of the results of the self-selection process.
- If a facility is not considered to be SUB Harm, the certification form in Appendix C-II of the Final rule must be completed, signed and maintained at the facility as an attachment to the facility SPCC Plan.

Facility Response Plans

Flowchart of Criteria for Substantial Harm
(Attachment C-I on p. 34104 of Final Rule)

See hard copy in SECTION L

Facility Response Plan

3 Tiered Approach to SIG and SUB Classification

- Screen 1:
 - The facility transfers oil over water and has a total storage capacity of greater than or equal to 42,000 gallons.
- Screen 2:
 - The facility meets any 2 of the 4 substantial harm criteria for facilities with a total oil storage capacity greater than or equal to 1,000,000 gallons.

FIG-7

Facility Response Plans

Screen 3

- An evaluation of the following:
 - Lack of secondary containment
 - Proximity to navigable waters
 - Proximity to ESA's
 - Type of transfer operation
 - Total oil capacity
 - Proximity to drinking water intakes
 - Proximity to other EAC
 - Spill history
 - Tank age
 - Other site-specific characteristics as determined by the RA

FIG-8

Facility Response Plans

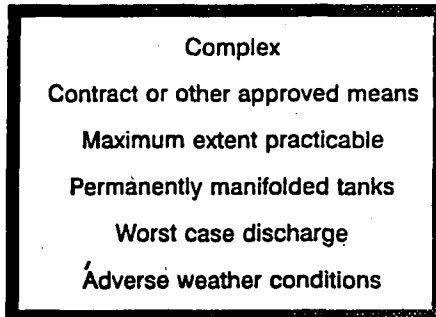
Operation Extensions

- SIG & SUB Harm facilities may operate up to 2 years after their plan has been submitted, provided the owner or operator has ensured, by contract or other approved means, the availability of:
 - A written contractual agreement with a response contractor; or
 - A written certification by the owner/operator that the necessary personnel and equipment, owned by the owner/operator, are available.
 - Active membership in a local or regional oil spill removal organization; or
 - Other specific arrangements approved by RA.

FIG-9

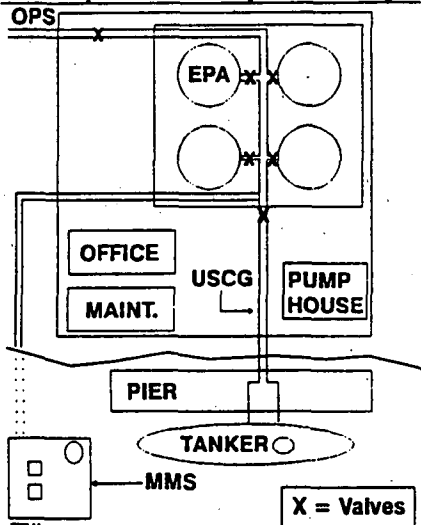
Facility Response Plans

Important Definitions



FRP-10

Example of a Complex Facility



FRP-11

Facility Response Plans

Other FRP Facts

- Facilities with existing response plans, generally do not need to prepare a separate plan provided that the existing plan:
 - Satisfies the appropriate requirements and is equally as stringent;
 - Includes all elements in the model plan;
 - Is cross referenced appropriately; and
 - Contains an action plan for use during a discharge.

FRP-12

Notes

Facility Response Plans

Appendix F to Part 112
Facility-Specific Response Plan
(p. 34122 of Final Rule)

See hard copy in SECTION L

PRP-13

Facility Response Plans Elements of a Model Plan

- Emergency response action plan
- Facility-specific information
- Emergency response information
- Hazard evaluation
- Discharge scenarios
- Worst case discharge scenario
- Discharge detection systems

PRP-14

Facility Response Plans Elements of a Model Plan (cont.)

- Plan Implementation
- Self-inspection, training, & meeting logs
- Facility diagrams
- Security systems

PRP-15

Notes

Facility Response Plans

Critical Elements of a Plan

- Is consistent with the NCP, RCP, and ACP.
- Lists qualified individual with necessary authority.
- Identifies available resources.
- Provides for training, testing, drills and response actions.
- Updated when necessary.
- Resubmitted for approval when significant changes are made.

POP-16

Facility Response Plans

Deadlines

- 2/18/93 - Facility Response Plans due.
- 8/18/93 - 2 year operating extensions required for facilities with proper certifications.
- 2/18/95 - Final approval required for all SIG & SUB facilities.

POP-17

SECTION L

40 C.F.R. PART 112.20

- * CERTIFICATION OF SUB HARM FORM**
- * SUB HARM FLOW CHART**
- * APPENDIX "F"**

ATTACHMENT C-II -- CERTIFICATION OF SUBSTANTIAL HARM DETERMINATION FORM

FACILITY NAME: _____

FACILITY ADDRESS: _____

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

YES _____

NO _____

2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground storage tank area?

YES _____

NO _____

3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula¹) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments" (see Appendix E to this part, section 10, or availability) and the applicable Area Contingency Plan.

YES _____

NO _____

4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula¹) such that a discharge from the facility would shut down a public drinking water intake².

YES _____

NO _____

5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?

YES _____

NO _____

CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

Signature

Title

Name (please type or print)

Date

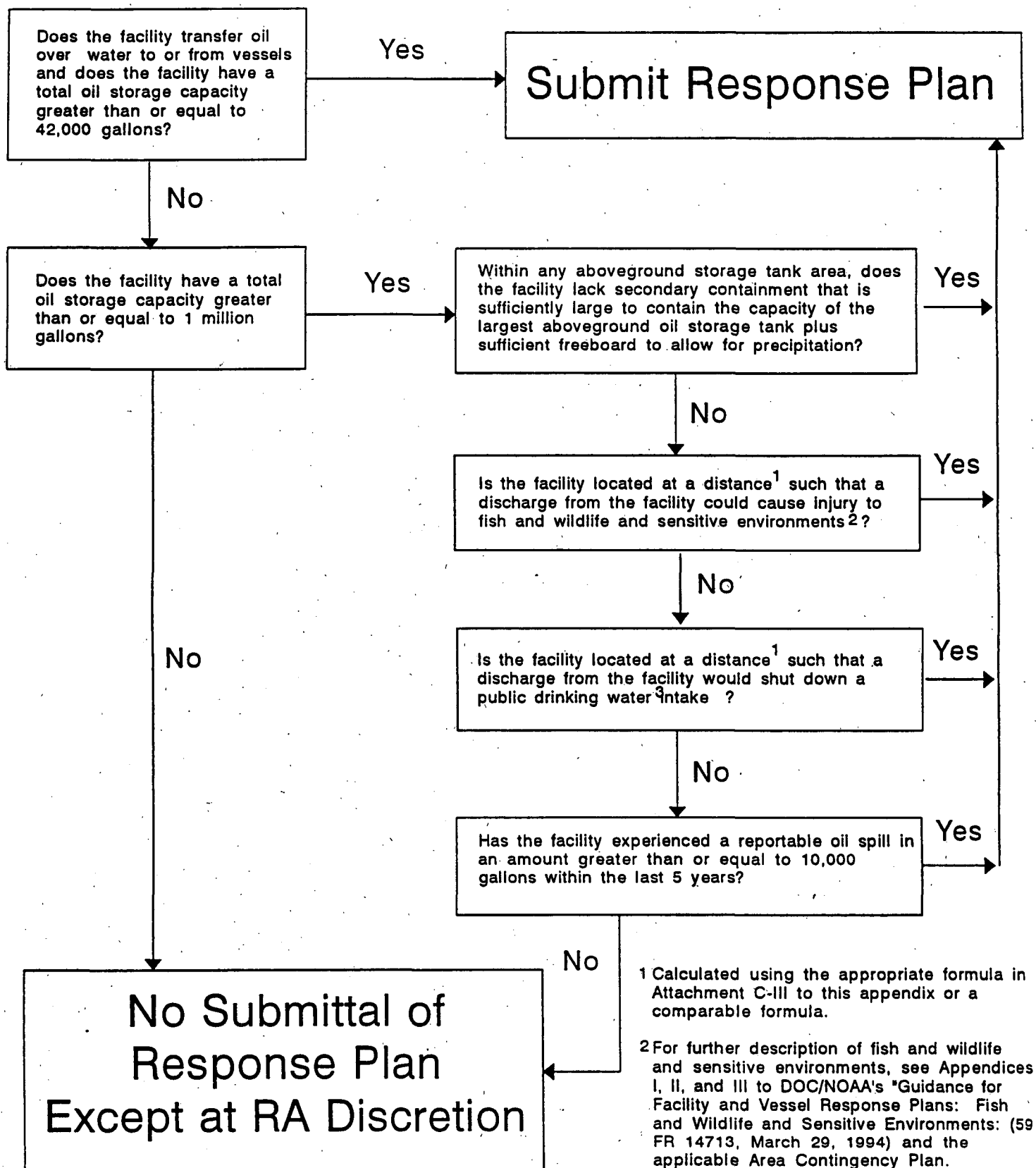
¹ If a comparable formula is used documentation of the reliability and analytical soundness of the comparable formula must be attached to this form.

² For the purposes of 40 CFR part 112, public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c).

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Attachment C-I

Flowchart of Criteria for Substantial Harm



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APPENDIX F

Appendix F to Part 112 -- Facility-Specific Response Plan

Table of Contents

- 1.0 Model Facility-Specific Response Plan**
 - 1.1 Emergency Response Action Plan**
 - 1.2 Facility Information**
 - 1.3 Emergency Response Information**
 - 1.3.1 Notification**
 - 1.3.2 Response Equipment List**
 - 1.3.3 Response Equipment Testing/Deployment**
 - 1.3.4 Personnel**
 - 1.3.5 Evacuation Plans**
 - 1.3.6 Qualified Individual's Duties**
 - 1.4 Hazard Evaluation**
 - 1.4.1 Hazard Identification**
 - 1.4.2 Vulnerability Analysis**
 - 1.4.3 Analysis of the Potential for an Oil Spill**
 - 1.4.4 Facility Reportable Oil Spill History**
 - 1.5 Discharge Scenarios**
 - 1.5.1 Small and Medium Discharges**
 - 1.5.2 Worst Case Discharge**
 - 1.6 Discharge Detection Systems**
 - 1.6.1 Discharge Detection By Personnel**
 - 1.6.2 Automated Discharge Detection**
 - 1.7 Plan Implementation**
 - 1.7.1 Response Resources for Small, Medium, and Worst Case Spills**
 - 1.7.2 Disposal Plans**
 - 1.7.3 Containment and Drainage Planning**
 - 1.8 Self-Inspection, Drills/Exercises, and Response Training**
 - 1.8.1 Facility Self-Inspection**
 - 1.8.1.1 Tank Inspection**
 - 1.8.1.2 Response Equipment Inspection**
 - 1.8.1.3 Secondary Containment Inspection**
 - 1.8.2 Facility Drills/Exercises**
 - 1.8.2.1 Qualified Individual Notification Drill Logs**
 - 1.8.2.2 Spill Management Team Tabletop Exercise Logs**
 - 1.8.3 Response Training**
 - 1.8.3.1 Personnel Response Training Logs**
 - 1.8.3.2 Discharge Prevention Meeting Logs**
 - 1.9 Diagrams**
 - 1.10 Security**
- 2.0 Response Plan Cover Sheet**
- 3.0 Acronyms**
- 4.0 References**

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SECTION M

- * SPCC/FRP EVALUATION SHEET for COURSE PRESENTATION**
- * SPCC/FRP SEMINAR REQUEST SHEET**

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SPCC/FRP WORKSHOP EVALUATION

Your reactions to this seminar are very important in planning and improving future programs. Please feel free to offer any additional comments that you think will be helpful in enhancing the program.

CONTENT:

1. Which topics in this program were most valuable to you? Please explain.

2. Which topics were least valuable to you? Please explain.

3. To what extent did the program live up to your expectations?

_____very much _____to some extent _____not at all

4. Indicate the degree to which you feel the topics covered in this program helped meet your needs for information on SPCC Program.

_____very much _____to some extent _____not at all

Would you recommend this program to others?

_____very much _____to some extent _____not at all

5. Indicate the degree to which you feel the topics covered in this program helped meet your needs for information on FRP Program.

_____very much _____to some extent _____not at all

Would you recommend this program to others?

_____very much _____to some extent _____not at all

PRESENTATION:

1. Indicate the degree to which you feel the seminar was organized (circle the appropriate number).

Very well 5 4 3 2 1 Not at all

Comments:

2. Did the seminar provide ideas you can apply to your company to help attain SPCC compliance?

_____ usually _____ sometimes _____ never

and pollution prevention?

_____ usually _____ sometimes _____ never

Comments:

3. Did the seminar provide ideas you can apply to your company to help attain FRP compliance?

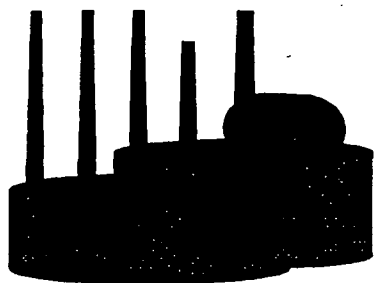
_____ usually _____ sometimes _____ never

and pollution prevention?

_____ usually _____ sometimes _____ never

Comments:

ADDITIONAL COMMENTS:



U.S. EPA Region III SPCC/FRP Outreach Seminars

**Would you like EPA to hold a Spill Prevention, Control
and Countermeasures/Facility Response Plan Outreach
Seminar in you area?**

EPA Region III is conducting SPCC/FRP Outreach Seminars throughout the Region to better inform industry of its regulatory responsibilities and explain the new oil regulations. If you have a specific area that you would like EPA to hold an SPCC/FRP Outreach Seminar, let us know by completing this form and faxing it to:

**Regina A. Starkey, Region III
Oil Enforcement Coordinator**

**Fax#: (215) 597-8138
Phone#: (215) 597-1395**

Name:	_____
Affiliation:	_____
Address:	_____
Telephone:	_____
Fax:	_____
Desired Location:	_____