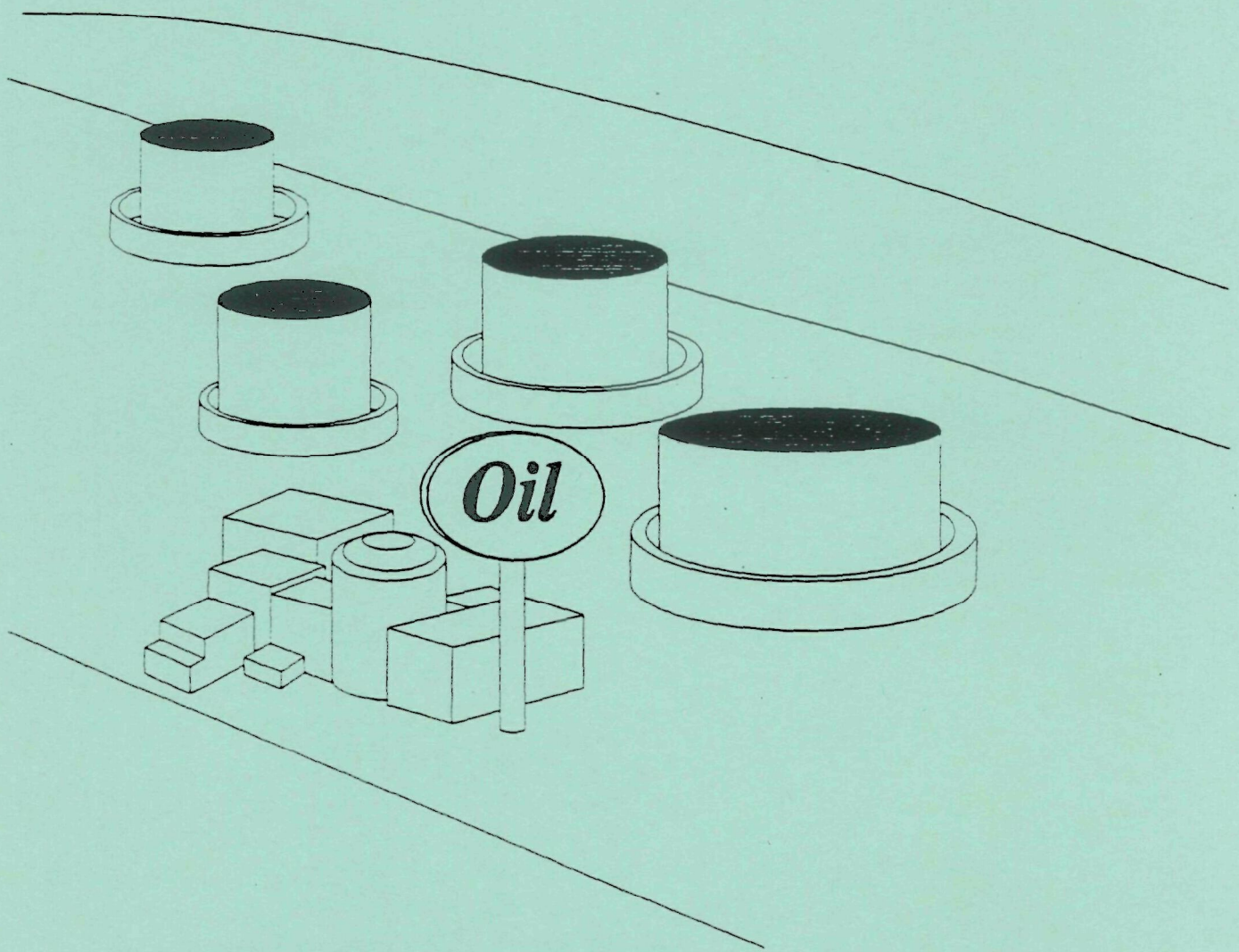
Spill Prevention, Control & Countermeasures

Information Guide

August 1996



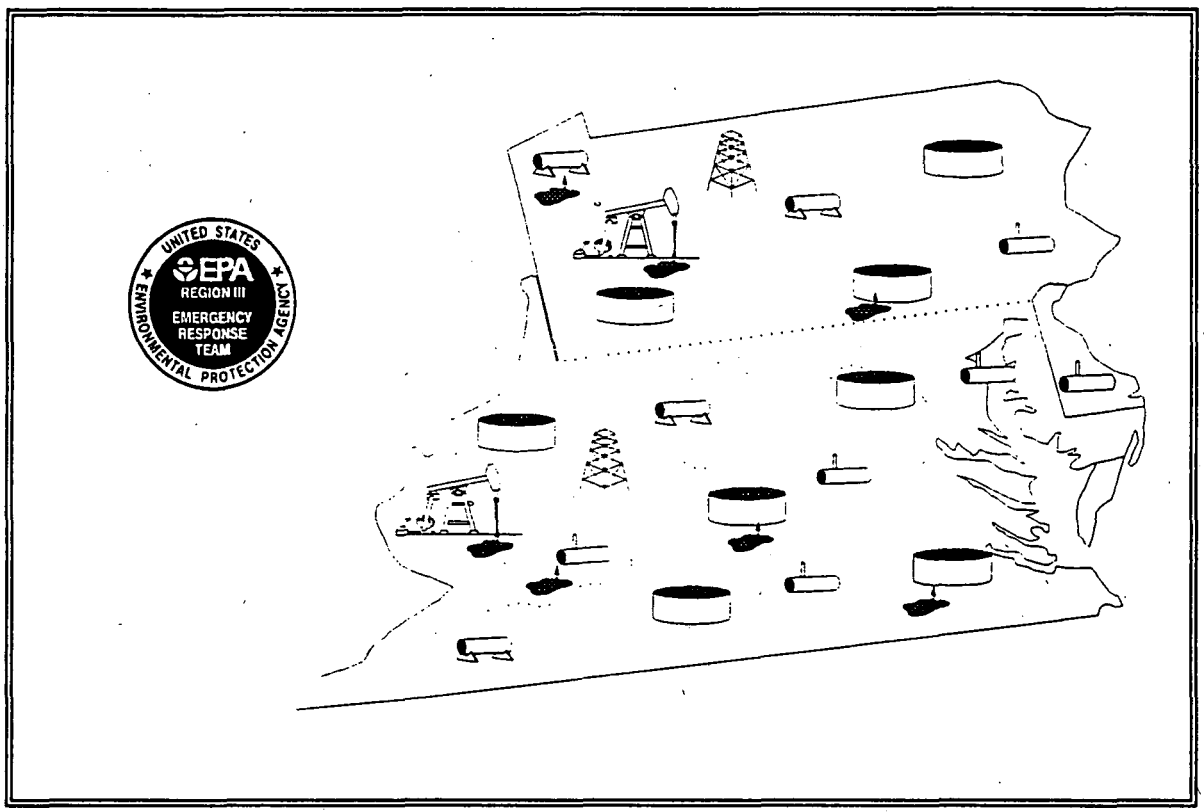
United States Environmental Protection Agency
Region III, Removal Branch
Removal Enforcement and Oil Section (3HW32)
841 Chestnut Building
Philadelphia, PA 19107

MANUAL ORGANIZATION

SECTION 1:	SPILL PREVENTION, CONTROL AND COUNTERMEASURE (SPCC) Information Guide
SECTION 2:	SPCC/FRP OUTREACH CONTACT NUMBERS
	MOST COMMONLY USED CWA-OPA-SPCC ACRONYMS
	SPCC IMPORTANT DEFINITIONS
SECTION 3:	SPCC COURSE SLIDES
SECTION 4:	WHAT TO EXPECT DURING AN SPCC INSPECTION ACKNOWLEDGEMENT AND RECORD OF SPCC/FRP INSPECTION/PLAN REVIEW
SECTION 5:	FACT SHEET: OPA Q's & A's

THIS PAGE INTENTIONALLY LEFT BLANK

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



SECTION 1

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

THIS PAGE INTENTIONALLY LEFT BLANK

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:

Regina A. Starkey, SPCC Coordinator
U.S. Environmental Protection Agency
Region III, Removal Branch
Removal Enforcement and Oil Section (3HW32)
841 Chestnut Building
Philadelphia, PA 19107

(215) 566 3292

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

THIS PAGE INTENTIONALLY LEFT BLANK

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.

THIS PAGE INTENTIONALLY LEFT BLANK

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.

THIS PAGE INTENTIONALLY LEFT BLANK

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:

Regina A. Starkey, SPCC Coordinator - 3HW32
U.S. Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

(215) 566 3292

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

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX A

EXAMPLE SPCC PLAN

THIS PAGE INTENTIONALLY LEFT BLANK

SAMPLE

SPILL PREVENTION, CONTROL, AND COUNTERMEASURE PLAN

TEX'S BULK STORAGE TERMINAL

100 Everspill Road
Post Office Box 311 (K)
Oily City, VA 12345

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

CONTACT
Steve Doe, Facility 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: Eric Simmons

Signature: *Eric Simmons*

Registration Number: 98765

State: Commonwealth of Virginia

Date: June 11, 1974

INTRODUCTION

Spill Prevention, Control, and Countermeasure (SPCC) plans for facilities are prepared and implemented as required by U.S. Environmental Protection Agency (U.S. EPA) regulations contained in Title 40, Code of Federal Regulations, Part 112 (40 CFR 112). A non-transportation related facility is subject to SPCC regulations if: the capacity of any aboveground storage tank exceeds 660 gallons; or the total aboveground storage capacity exceeds 1,320 gallons; or the underground storage capacity exceeds 42,000 gallons; and if, due to its location, the facility could reasonably be expected to discharge oil into or upon the navigable waters of the United States.

The SPCC plan is not required to be filed with U.S. EPA, but a copy must be available for on-site review by the regional administrator during normal working hours. The SPCC plan must be submitted to the U.S. EPA Region III regional administrator and the state agency along with the other information specified in §112.4 if either of the following occurs:

1 The facility discharges 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 event;
2 The facility discharges oil in harmful quantities in two spill events within any twelve month period.

Spill information must be reported to U.S. EPA Region III and the state agency within 60 days if either of the above thresholds are reached. The report is to contain the following information:

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 map;
7 A complete copy of the SPCC Plan with any amendments;
8 The cause(s) of such spill(s), including a failure analysis of system or subsystem in which 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 that is pertinent to the plan or spill event.

The SPCC plan shall be amended within six months whenever there is a change in facility design, construction, operation, or maintenance that materially affects the facility's spill potential. The plan must be reviewed at least once every three years and amended to include more effective prevention and control technology, if such technology will significantly reduce the likelihood of a spill event and has been proven in the field. All changes must be certified by a registered professional engineer.

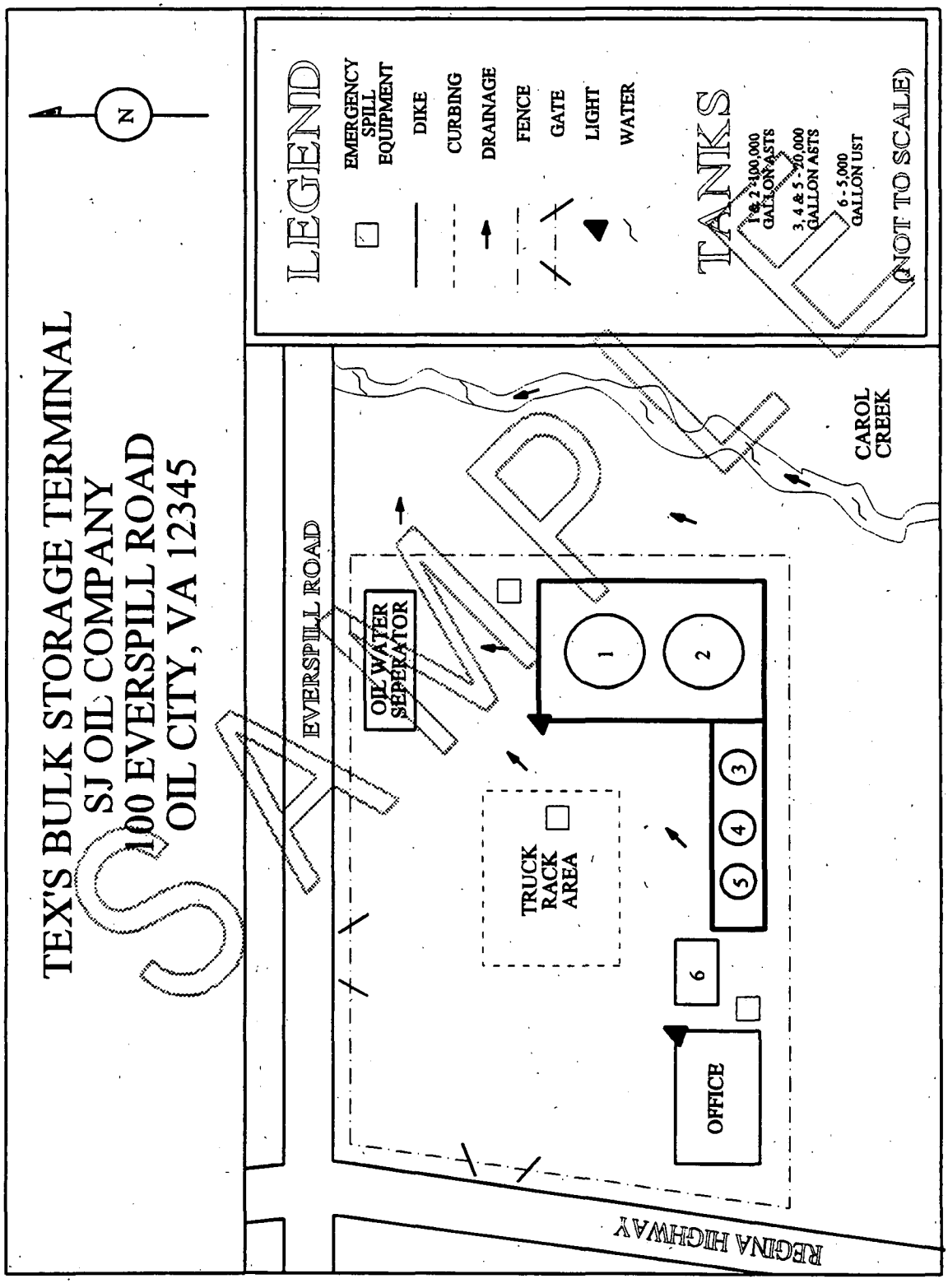
Owners and operators failing or refusing to comply with these federal regulations are liable to a civil penalty of not more than $5,000 for each day that such violation continues. The regional administrator may assess and compromise such civil penalty.

If the owners and operators of a facility required to prepare an SPCC plan are not required to submit a facility response plan, the SPCC plan should include a signed certification form, Attachment A, contained in Appendix C to Part 112.

FACILITY INFORMATION

Facility Name:	Tex's Bulk Storage Terminal
Mailing Address:	P.O. Box 311 (K) Oily City, VA 12345
Street Address:	100 Everspill Road Oily City, VA 12345 Telephone: (123) 222-2222
Owner:	SJ Oil Company P.O. Box 00002 Crude City, VA 77000 Telephone: (123) 222-3333
Contact Name:	Steve Doe, Facility Manager 505 Oil Road Oily City, VA 12345 Telephone: (123) 222-4444
Other Personnel:	Secretary-Bookkeeper Transport Driver Dispatcher Delivery Personnel (3)
Location:	The facility is located in North-West County, Virginia approximately 250 yards west of Carol Creek. The facility is bordered to the north by Everspill Road and to the west by the Regina Expressway. Approximate facility coordinates are latitude 40°-00'-00" north and longitude 77°-00'-00" west.
Facility Description:	Tex's Bulk Storage Terminal handles, stores, and distributes petroleum products in the form of motor gasoline, kerosene, and No. 2 fuel oil. Figure 1 shows the site boundaries, nearby waterways, adjacent highways, oil handling facilities, and the office.
Fixed Storage:	(2) 100,000-gallon aboveground vertical tanks (one premium gasoline and one regular gasoline) (2) 20,000-gallon aboveground vertical tanks (No. 2 fuel) (1) 20,000-gallon aboveground vertical tank (kerosene) (1) 5,000-gallon underground horizontal tank (No. 2 fuel)
Portable Storage:	(1) 1,000-gallon aboveground horizontal tank (regular gasoline)
Total Oil Storage:	266,000 gallons
In-Plant Treatment:	A 3,000-gallon oil/water separator used to treat drainage is located in the north-east corner of the facility. Separator effluent is discharged into Carol Creek under state and federal permits.
Vehicles:	(1) Transport Truck (4) Tankwagon Delivery Trucks

FIGURE 1
Layout of Tex's Bulk Storage Terminal



SPCC PLAN REVIEW - 40 CFR 112.5(b)

The owner or operators must complete a review and evaluation of the SPCC plan at least once every three years. Evidence of these reviews shall be recorded in the plan.

Signature	Date
Steve Doe	6/10/77
Steve Doe	6/03/80
Steve Doe	6/01/83
Steve Doe	5/21/86
Steve Doe	5/15/89
Steve Doe	5/13/92
Steve Doe	5/11/95

MANAGEMENT APPROVAL - 40 CFR 112.7

This SPCC plan is fully approved by the management of Tex's Bulk Storage Terminal and has been implemented as described.

Steve Doe	6/11/74
Steve Doe - Facility Manager	Date

PAST SPILL EXPERIENCE - 40 CFR 112.7(a)

Written Description of Spill	Corrective Actions Taken	Plan for Preventing Recurrence
On 5/17/83, the oil/water separator malfunctioned, allowing 3 to 5 gallons of oil to enter Carol Creek.	A boom was placed on Carol Creek immediately after the malfunction was discovered.	The oil/water separator was repaired. Inspection and maintenance of the separator was improved to minimize the chances of future recurrence.
On 11/7/91, tank 3 was overfilled during refilling after the visual level gauge failed. Approximately 300 gallons were spilled.	No. 2 fuel spilled within secondary containment and was cleaned-up using absorbent. Contaminated soil was removed.	High level alarms were installed on all aboveground tanks in addition to the 100,000-gallon tanks. The level indicators and alarms are regularly tested to ensure proper operation.

POTENTIAL EQUIPMENT FAILURES - 40 CFR 112.7(b)

Potential Event	Spill Direction	Volume Released	Spill Rate
Complete failure of a full tank	East to Carol Creek	100,000 gallons	Instantaneous
Partial failure of a full tank	East or north to Carol Creek or the oil/water separator	1 to 99,000 gallons	Gradual to instantaneous
Tank overfill	North to the oil/ water separator	1 to many gallons	Up to 1 gallon per minute
Pipe failure	North or east to the oil/water separator or Carol Creek	Up to 20,000 gallons	4 gallons per second
Leaking pipe or valve packing	North or east to the oil/water separator	Several ounces to several gallons	Up to 1 gallon per minute
Tank truck leak or failure	Northeast to the oil/ water separator	1 to 8,000 gallons	Gradual to instantaneous
Hose leak during truck loading	Northeast to the oil/ water separator	1 to several gallons	Up to 1 gallon per minute
Pump rupture or failure	North or east to the oil/water separator	1 to several gallons	Up to 1 gallon per minute
Oil/water separator malfunction	East to Carol Creek	1 to several gallons	Up to 1 gallon per minute

CONTAINMENT AND DIVERSIONARY STRUCTURES - 40 CFR 112.7(c)(1)

i Dikes are provided around tanks 1, 2, 3, 4 and 5, which store oil products.

ii The loading and unloading area for tank trucks is curbed to provide secondary containment.

iii Surface drainage at the facility is engineered so that oil spilled outside of diked or curbed areas at the facility will drain into the oil water separator.

iv Weirs, booms, or other barriers are available from the local clean-up contractor.

vii Sorbent materials are provided in emergency spill equipment lockers located strategically through out the facility.

DEMONSTRATION OF PRACTICABILITY - 40 CFR 112.7(d)

Facility management has determined that use of the containment and diversionary structures or readily available equipment to prevent discharged oil from reaching navigable waters is practical and effective at this facility.

FACILITY DRAINAGE - 40 CFR 112.7(e)(1)

i Drainage from diked storage areas is restrained by valves to prevent a spill or other excessive leakage of oil into the facility's drainage system.

ii Gate valves are used to drain diked areas.

iii In the event of a spill from a tank, the oil should be contained within a dike. If a spill occurs during transfer or in a manner that cannot be contained in a dike, the material is in a drainage area, as indicated in Figure 1. Facility drainage from undiked areas with the potential of receiving spilled oil terminates at the oil water separator.

v Facility drainage systems are adequately engineered to prevent oil from reaching navigable water in the event of equipment failure or human error.

BULK STORAGE TANKS - 40 CFR 112.7(e)(2)

i Each aboveground tank is of UL-142 construction and is compatible with the oils they contain and conditions of storage.

ii All aboveground tanks have concrete dikes for secondary containment with a volume greater than 110 percent of the largest single tank.

iii Drainage of rainwater from diked areas, bypassing treatment, is accomplished if:

A The bypass valve is normally sealed closed.

B Run-off rainwater is inspected to ensure compliance with applicable water quality standards and will not cause a harmful discharge.

C The bypass valve is opened and resealed under supervision.

D Records are kept of drainage events on the form shown in Attachment C.

iv The underground storage tank is coated and cathodically protected to prevent an undetected spill. The buried tank is also subject to regular pressure testing.

v There are no partially buried tanks at the facility and should be avoided in the future.

vi Aboveground tanks are periodically tested using a system of non-destructive shell thickness testing. Comparison records are maintained. Visual inspections are performed according to the procedure located in Section XIII and include inspection of tank supports and foundations.

vii There are no internal heating coils at this facility.

viii Each tank is equipped with a direct-reading level gauge. The 100,000-gallon tanks are equipped with high-level alarms. Venting capacity is suitable for the fill and withdrawal rates.

ix Plant effluent discharged into Carol Creek is observed frequently to detect possible upsets in the oil water separator.

x Oil leaks which result in a loss of oil from tank seams, gaskets, rivets, and bolts are promptly corrected.

xi The portable oil tank and other mobile oil storage, such as 55-gallon drums, will be located to prevent spilled oil from reaching navigable water, provided with secondary containment, and located where they will not be subject to periodic flooding.

TRANSFER OPERATIONS, PUMPING, AND IN-PLANT PROCESSES - 40 CFR 112.7(e)(3)

i Buried piping is coated and cathodically protected as warranted to protect against corrosion. If a section of buried line is exposed, it is carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action will be taken as indicated by the magnitude of the damage.

ii Pipelines not in service or on standby for an extended period are capped or blank flanged and marked as to their origin.

iii All pipe supports are properly designed to minimize abrasion and corrosion and to allow for expansion and contraction.

iv All aboveground pipelines and valves are examined monthly to assess their condition. Pressure testing for piping is conducted as warranted.

v Warning signs are posted as needed to prevent vehicles from damaging aboveground pipelines.

TANK CAR AND TANK TRUCK LOADING/UNLOADING RACK - 40 CFR 112.7(e)(4)

i The tank truck loading and unloading procedures meet the minimum requirements of the U.S. Department of Transportation.

ii Curbing is installed at the vehicle loading/unloading rack and holds the single largest compartment of any truck used at the facility.

iii Warning signs and chock blocks are provided at the loading/unloading rack to prevent premature vehicular departure.

iv The lower most drain and all outlets on tank trucks are inspected prior to filling and departure.

INSPECTIONS AND RECORDS - 40 CFR 112.7(e)(8)

Daily visual inspections consist of a complete walk through of the facility property to check for tank damage or leakage, stained or discolored soils, excessive accumulation of water in diked areas, plant effluent discharged from the oil water separator, and to ensure the dike drain valves are securely closed.

The checklist provided in Attachment B is used during monthly inspections. These inspections are performed in accordance with written procedures such as API standards and engineering specifications. Written inspection procedures and monthly inspections are signed by the inspector and are maintained in the office for three years.

SECURITY - 40 CFR 112.7(e)(9)

i The facility is surrounded by steel security fencing and the entrance gates are locked when the facility is unattended.

ii The master flow and drain valves are locked in the closed position when in non-operating or non-standby status.

iii The electrical starter controls for the oil pumps are located in the office, which is locked when the pumps are not in use.

iv The loading and unloading connections of oil pipelines are capped when not in service or when in standby service for and extended time.

v Two area lights are located in such a position so as to illuminate the office and storage areas. Consideration was given to discovering spills at night and preventing spills occurring through vandalism.

PERSONNEL, TRAINING, AND SPILL PREVENTION PROCEDURES - 40 CFR 112.7(e)(10)

i Facility personnel have been instructed by management in the operation and maintenance of oil pollution prevention equipment and pollution control laws and regulations.

ii The facility manager, Steve Doe, is accountable for oil spill prevention at Tex's Bulk Storage Terminal.

iii Yearly spill prevention briefings are provided by management for operating personnel to ensure adequate understanding of the SPCC plan. These briefings highlight any past spill events or failures and recently developed precautionary measures. Training has been held on oil spill prevention, containment, and retrieval methods. A simulation of an on-site vehicular spill has been conducted and future exercises shall be periodically held to prepare for possible spill response. Records of these briefings and spill prevention training are kept on the form shown in Attachment D. Instructions and phone numbers regarding the reporting of a spill to the National Response Center and the state are listed below and have been publicized and posted in the office.

EMERGENCY TELEPHONE NUMBERS

A. Notification Procedures

1. Facility Manager, Steve Doe	(123) 222-3333
2. National Response Center	(800) 424-8802
3. State Emergency Response Commission	(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. Oil City Equipment Co. (123) 222-8372
2. Northwestern Sorbent Co. (123) 222-9217

CERTIFICATION OF SUBSTANTIAL HARM DETERMINATION FORM

Facility Name: Tex's Bulk Storage Terminal

Facility Address: 100 Everspill Road

Oil City, VA 12345

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 ___X___

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 ___X___

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 formula[1]) 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 ___X___

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 formula[1]) such that a discharge from the facility would shut down a public drinking water intake[2]?

YES _____ NO ___X___

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 ___X___

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.

Steve Doe — Signature

Facility Manager — Title

Steve Doe — Name (please type or print)

July 1, 1994 — 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).

FACILITY INSPECTION CHECKLIST

Instructions: This inspection record will be completed every month. Place an X in the appropriate box for each item. If any response requires elaboration, do so in the Descriptions and Comments space provided. Further descriptions or comments should be attached on a separate sheet of paper if necessary.

	Yes	No	Descriptions and Comments
Tank surfaces show signs of leakage	☐	☐	
Tanks are damaged, rusted, or deteriorated	☐	☐	
Bolts, rivets, or seams are damaged	☐	☐	
Tank supports are deteriorated or buckled	☐	☐	
Tank foundations have eroded or settled	☐	☐	
Level gauges or alarms are inoperative	☐	☐	
Vents are obstructed	☐	☐	
Valve seals or gaskets are leaking	☐	☐	
Pipelines or supports are damaged or deteriorated	☐	☐	
Buried pipelines are exposed	☐	☐	
Loading/unloading area is damaged or deteriorated	☐	☐	
Connections are not capped or blank-flanged	☐	☐	
Secondary containment is damaged or stained	☐	☐	
Dike drainage valves are open	☐	☐	
Oil/water separator is functioning properly	☐	☐	
Oil/water separator effluent has a sheen	☐	☐	
Fencing, gates or lighting is non-functional	☐	☐	

Remarks: _____

_____

Signature: _____ Date: _____

RECORD OF DIKE DRAINAGE

Instructions: This record will be completed when rainwater from diked areas is drained into a storm drain or into an open water course, lake, or pond, and bypasses the in-plant treatment. The bypass valve normally should be sealed closed and only opened and resealed following drainage under responsible supervision.

Diked Area	Date	Presence of Oil	Time Started	Time Finished	Signature

RECORD OF SPILL PREVENTION BRIEFINGS

Instruction: Briefings will be scheduled and conducted by the owner or operators for operating personnel at intervals frequent enough to assure adequate understanding of the SPCC plan for this facility. These briefings should also highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures. Personnel will also be instructed in operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations. During these briefings there will be an opportunity for facility operators and other personnel to share recommendations concerning health, safety, and environmental issues encountered during operation of the facility.

Date: _____

Attendees: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Subjects and Issues: _____

_____

_____

Recommendations and Suggestions: _____

_____

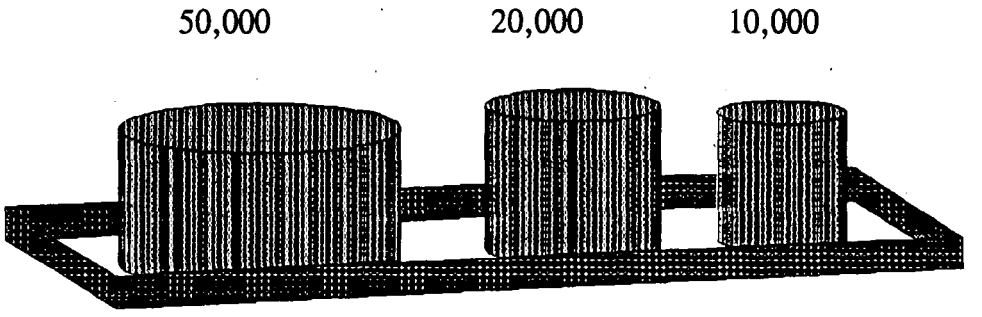
_____

APPENDIX B

DIKE DESIGNS

THIS PAGE INTENTIONALLY LEFT BLANK

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 x 0.1337 cu. ft/gal. = 6,685 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.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX C

40 CFR PART 109

THIS PAGE INTENTIONALLY LEFT BLANK

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

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

THIS PAGE INTENTIONALLY LEFT BLANK

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 limted 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-

eign 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.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX E

40 CFR PART 112

THIS PAGE INTENTIONALLY LEFT BLANK

PART 112—OIL POLLUTION PREVENTION

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 facili-

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 exained 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 operation 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 highway 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

THIS PAGE INTENTIONALLY LEFT BLANK

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 predesignated 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 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.	804-398-6638
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 44199.	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 Kalanianaole Federal Bldg., 300 Ala Moana Blvd., 9th Floor, Honolulu, HI 96850.	808-541-2114
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

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]

APPENDIX G

40 CFR PART 114

THIS PAGE INTENTIONALLY LEFT BLANK

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

NON-TRANSPORTATION RELATED ONSHORE AND OFFSHORE FACILITIES

Sec.

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 Administrator 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-

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.

§ 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 decision 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.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX H

Notice of Proposed Rule Making SPCC Revision for 40 C.F.R. Part 112 dated October 22, 1991

THIS PAGE INTENTIONALLY LEFT BLANK

federal register

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

S-310999 0001(00)(21-OCT-91-13:48:47)
F4717.FMT...[16,32]...1-07-88

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

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] 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

[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 Avoid Future Incidents," February 1989 (GAO/RCED-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 piping [3] 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 (36 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-89-65), 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 phase "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.

I. 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 that 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-reguiated 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.

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 their 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 overfill 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.

BILLING CODE 6560-50-M

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX I

Interim Final Rule for
40 C.F.R. part 112 dated November 4, 1992

THIS PAGE INTENTIONALLY LEFT BLANK

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).

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-510), 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, 5502G, 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 or 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(j) regulations, CWA section 311(b)(8) 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 29990, 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. Reilly,

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. 868 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, 2 CFR 1966-1970 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. 868, 889 (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 116 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. 92-26861 Filed 11-3-92; 8:45 am]
BILLING CODE 6560-50-M

SECTION 2

* SPCC/FRP OUTREACH CONTACT NUMBERS
* MOST COMMONLY USED CWA-OPA-SPCC ACRONYMS
* SPCC IMPORTANT DEFINITIONS

THIS PAGE INTENTIONALLY LEFT BLANK

SPCC/FRP OUTREACH
for
SPILL PREVENTION CONTROL AND COUNTERMEASURE PLANS
AND FACILITY RESPONSE PLANS

Oil Program Phone Numbers (Area Code 215)			
Who Can You Call?		Present	After 5/20/96
FRP Infoline		597-9562	566-3452
SPCC/OPA Hotline		(202) 260-2342	SAME
EPA Region III FAX		597-8138	566-3254
Name	Title		
Karen Melvin	Chief, Removal Enforcement Branch	597-8751	566-3275
Linda Ziegler	Oil Program/FRP Coordinator	597-1395	566-3277
Regina Starkey	Oil/SPCC Enforcement Coordinator	597-1395	566-3292
Robert Sanchez	SPCC/FRP Inspector	597-1357	566-3451
Michael Welsh, P.E.	SPCC/FRP Inspector	597-3251	566-3285
Paula Curtin (Wheeling Office)	Oil Enforcement Specialist	(304) 234-0256	SAME
Frank Cosgrove	SPCC Inspector	597-1399	566-3284
Bernie Stepanski	Investigator	597-3184	566-3288

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

THIS PAGE INTENTIONALLY LEFT BLANK

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 Stated 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.

Source: 40 CFR Part 112 (7-1-90)

SECTION 3

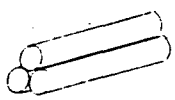
* SPCC COURSE SLIDES

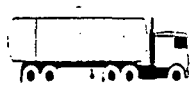
THIS PAGE INTENTIONALLY LEFT BLANK

History/Background Information

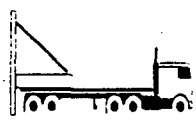
Sources of Oil Spills

Transportation

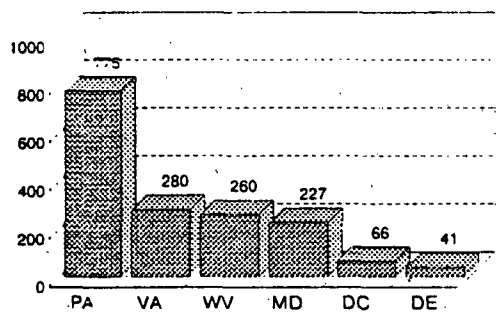




Non-Transportation



Breakdown of Oil Spill Reports
Region III - Fiscal Year 1992



Source: Regional Response Center (Six Year Trends)

Notes

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 Counter-measures (SPCC), became effective January 10, 1974.
  - Derives authority from Section 311 of the Clean Water Act (CWA).

HIST.:

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".

HIST-0

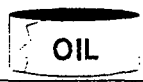
SPCC History

Notes

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.

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.

SPCC HISTORY
SPCC Task Force Report

- Focused on prevention of large catastrophic spills.
- Made recommendations regarding the Federal SPCC program.

Notes

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.

SPCC HISTORY
OPA-1990

- Signed into law on August 18, 1990.
- Made significant modifications to Section 311 of CWA.

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 Liabilty For Spills

Notes

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.

112.1

General Applicability

Section 112.1

SPCC applies to:

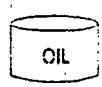
- Non-transportation-related facilities that:
  - Due to their location, could reasonably be expected to discharge oil into or upon the navigable waters of the U.S. or adjoining shorelines.
  - Have a total underground storage capacity > 42,000 gallons, or
  - Have a total aboveground storage capacity > 1,320 gallons, or
  - Have a single, aboveground storage tank with a capacity > 660 gallons.

Notes

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, polices and procedures.

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)

112.2

Definitions

Notes

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

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.

Notes

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.

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.

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.

Notes

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.

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.

Notes

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.

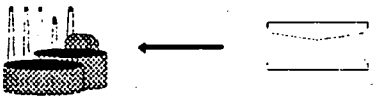
SEC4-1

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, and
  - implement the amendment(s) within 6 months.



SEC4-2

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.

SEC4-3

112.4 RA Plan Amendments

Notes

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.

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.

Notes

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.

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.

Notes

Section 112.7

General Information (cont.)

- An SPCC plan includes:
  - Predictions of equipment failure.
  - Appropriate containment or diversionary structures.

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

Containment or Diversionary Structures

- For offshore facilities:
  - Curbing, drip pans.
  - Sumps and collection systems.

Notes

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.

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

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

Notes

`ection 112.7

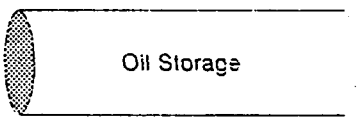
* Facility Drainage - Onshore

- 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 a diversionary system.
- Treatment systems
  - Should be engineered to prevent overflow.

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

* 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.

Notes

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.

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.

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.

Notes

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.

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.

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.

Notes

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.

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.

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.

Notes

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

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.

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.

Notes

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.

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?

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.***

Notes

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

Notes

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

Notes

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.

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.

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

Notes

Company X	
NUMBER OF VIOLATIONS	1 VIOLATION
TYPE	FAILURE TO PREPARE PLAN (112.3)
STORAGE CAPACITY	1. OVER 1 MILLION (M)(4M 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 60,000 GALLONS AST 2. LESS THAN 42,000 GALLONS UST
SPILL HISTORY	NONE
DISTANCE TO WATERWAY	25 TO 50 YARDS
POTENTIAL THREAT	SURFACE WATERS/SHORELINE
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

Notes

THIS PAGE INTENTIONALLY LEFT BLANK

SECTION 4

* WHAT TO EXPECT DURING AN SPCC INSPECTION

* ACKNOWLEDGEMENT AND RECORD OF SPCC INSPECTION/PLAN REVIEW

THIS PAGE INTENTIONALLY LEFT BLANK

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.

THIS PAGE INTENTIONALLY LEFT BLANK

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: Regina A. Starkey, SPCC Coordinator (3HW32)
CC: Linda J. Ziegler, FRP Coordinator (3HW32) (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 3HW32) at the address on this letterhead (Y/N).

[original of this page to SPCC coordinator, copy to facility representative]

THIS PAGE INTENTIONALLY LEFT BLANK

SECTION 5

*** FACT SHEET: OPA Q's & A's**

THIS PAGE INTENTIONALLY LEFT BLANK

United States Environmental Protection Agency | Office of Solid Waste and Emergency Response | Publication 9360.8-01FS | December 1991

EPA

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 section 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 detail, and guidance that may be useful for preparing response plans.

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.

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.