



Facility Response Plans

Office of Emergency and Remedial Response
Emergency Response Division 5202G

Quick Reference Fact Sheet

In 1990, Congress passed the Oil Pollution Act (OPA) in part to expand the scope of public and private planning and response activities associated with discharges of oil. The OPA amends §311 of the Clean Water Act (CWA) to augment Federal response authority, increase penalties for unauthorized spills, expand the organizational structure of the Federal response framework, and provide a greater emphasis on preparedness and response activities. CWA §311 requires the preparation of plans to respond to a worst-case discharge of oil, and sets forth specific requirements for development of such plans. These response plan requirements apply to an owner/operator of any onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by a discharge of oil into navigable waters,¹ adjoining shorelines, or the exclusive economic zone (i.e., "substantial harm facilities"). Section 311 of the CWA requires that owner/operators of such "substantial harm facilities" must submit their response plans by February 18, 1993, or stop handling, storing, or transporting oil. CWA §311 also provides that a subset of "substantial harm facilities" (i.e., facilities that could reasonably be expected to cause significant and substantial harm to the environment by discharging oil, or "significant and substantial harm facilities") must have their plans approved by the Federal government.

The President has delegated the authority to regulate non-transportation-related onshore facilities to the Administrator of EPA. EPA is implementing the CWA §311 response plan requirements in a proposed revision to the Oil Pollution Prevention regulation (40 CFR Part 112). The purpose of this fact sheet is to provide general information on how EPA intends to implement the CWA §311 requirements. Specifically, the fact sheet addresses who must prepare plans, which plans must be approved, and what a facility response plan should contain.

WHO MUST PREPARE PLANS? ("SUBSTANTIAL HARM FACILITIES")

Under CWA §311, only certain facilities are required to prepare and submit response plans, i.e., those facilities that could cause substantial harm to the environment. EPA has proposed two ways in which a facility may be identified as posing substantial harm: (1) through a self-selection process; or (2) by determination of the Regional Administrator (RA).

For the self-selection process, §112.20(f)(i) of the proposed rule lists specific criteria to help owner/operators evaluate whether their facilities pose

substantial harm (see **Highlight 1**). The proposed rule also provides more detailed information to help owner/operators interpret these criteria to determine whether their facility should be regarded as a "substantial harm facility." For example, Appendix C of the proposed rule provides formulas to help evaluate whether a facility is located at a distance that could cause injury to an environmentally sensitive area or shut down operations at a public drinking-water intake. (NOTE: Facility owner/operators may also use an alternative formula provided that they document such use, as appropriate.) Appendix D of the proposed rule provides information on environmentally sensitive areas.

¹ Navigable waters are defined in CWA §502(7) and at 40 CFR 110.1 as waters of the United States, including the territorial seas. This definition includes, among other things, lakes, rivers, streams (including intermittent streams), mudflats, and wetlands.

Highlight 1
SELF-SELECTION CRITERIA

Under the proposed rule, a facility would fall under the "substantial harm" category if it meets at least one of the following criteria:

- The facility has a total storage capacity greater than or equal to 42,000 gallons and performs over-water oil transfers to or from vessels; OR
- The facility has a total storage capacity greater than or equal to one million gallons, and meets any one of the following conditions:
 - Does not have adequate secondary containment for each aboveground storage area;
 - Is located such that a discharge could cause "injury" to an environmentally sensitive area;
 - Is located such that a discharge would shut down a public drinking-water intake; or
 - Has had, in the past 5 years, a reportable spill greater than or equal to 10,000 gallons.

The owner/operator of any facility currently regulated by the existing Oil Pollution Prevention regulation may consult the proposed rule for details on the self-selection screening process. If the self-selection process does indicate that a facility poses a threat of "substantial harm" to the environment, the owner/operator would be required prepare and submit a facility response plan to the appropriate EPA RA. CWA §311 requires that owner/operators of "substantial harm facilities" must submit their response plans by February 18, 1993, or stop handling, storing, or transporting oil.

Under the proposal, the RA also would have the authority to determine that a facility may cause substantial harm, regardless of the results of the self-selection screening process. As set forth in §112.20(b) of the proposed rule, the RA's determination would be based on factors similar to the criteria used in the self-selection screening process, as well as other site-specific characteristics and environmental factors.

IN ADDITION TO THE SELF-SELECTION PROCESS, THE RA MAY DETERMINE THAT A FACILITY POSES SUBSTANTIAL HARM.

Under the proposal, if an owner/operator determines that the facility does not have the potential to cause substantial harm, the owner/operator would have to complete the certification form contained in Appendix C of the proposed response plan rulemaking. This form would be maintained at the facility. In addition, if the self-selection process is completed using an alternative formula, the owner/operator would be required to notify the RA in writing and provide information on the reliability and analytical soundness of the alternative formula.

WHICH PLANS MUST BE APPROVED?
("SIGNIFICANT AND SUBSTANTIAL HARM FACILITIES")

In addition to the requirement to prepare response plans, CWA §311 establishes further requirements for a subset of facilities that could cause significant and substantial harm. CWA §311 requires that EPA must review and approve the response plans submitted for these facilities.

Under §112.20(f)(3) of the proposed rule, the RA would identify these "significant and substantial harm facilities" using a series of risk-based screening considerations. These considerations include factors similar to the criteria to determine substantial harm, as well as the age of the tanks, proximity to navigable waters, and spill frequency. Facilities would be notified in writing of their status as posing significant and substantial harm.

Under CWA §311, if EPA does not review and approve a "significant and substantial harm facility" plan by August 18, 1993, the facility must stop handling, storing, or transporting oil. However, the number of plans needing review may prevent RAs from approving all response plans by the statutory deadline. CWA §311 allows a "significant and substantial harm facility" owner/operator to seek Federal authorization to operate for up to two years after the plan has been submitted where the owner/operator certifies that he or she has ensured by contract or other approved means the availability of private personnel and equipment necessary to respond to a worst-case discharge.

Under §112.20(b) of the proposed rule, owner/operators who seek such authorization may submit to the RA a certification statement and proof that a written contractual agreement or other approved means is in place. Examples of "other approved means" may include:

- Certification that the owner/operator has access to the necessary personnel and equipment;
- Active membership in spill organization that ensures adequate access to the necessary personnel and equipment; or
- Other specific arrangements approved by the RA upon the request of the owner/operator.

WHAT SHOULD A FACILITY RESPONSE PLAN CONTAIN?

As discussed above, CWA §311 requires that the response plan must address certain critical items. CWA §311 requires that the response plan:

- Be consistent with the National Contingency Plan and Area Contingency Plans;
- Identify a qualified individual having full authority to implement removal actions, and require immediate communication between that person and appropriate Federal authorities and responders;
- Identify and ensure availability of resources to remove, to the maximum extent practicable, a worst-case discharge;
- Describe training, testing, unannounced drills, and response actions of persons at the facility;
- Be updated periodically; and
- Be resubmitted for approval of each significant change.

To assist owners or operators in preparing response plans, Appendix G of the proposed rule includes a model facility response plan that addresses CWA §311 provisions in a comprehensive and well-organized manner. **Highlight 2** outlines elements of the model plan.

Under the proposal, the organization of the model plan and the information contained in it would be representative of the format and level of detail needed to address the required response plan elements in an acceptable manner. However, EPA recognizes that there may be many facilities with existing response plans. Therefore, owner/operators generally

Highlight 2 RESPONSE PLAN ELEMENTS

Under the proposed rule, elements of an effective response plan would include the following:

- Emergency Response Action Plan^a
- Facility name, type, location, owner, operator information
- Emergency notification, equipment, personnel, and evacuation information
- Identification and evaluation of potential spill hazards and previous spills
- Identification of small, medium, and worst-case discharge scenarios and response actions
- Description of discharge detection procedures and equipment
- Detailed implementation plan for containment and disposal
- Facility and response resource self-inspection, training, and meeting logs
- Diagrams of facility and surrounding layout, topography, and evacuation paths
- Security (fences, lighting, alarms, guards, emergency cut-off valves and locks, etc.)

^a A response plan would serve as both a planning and action document, and the action portion should be maintained as an easily-accessible, stand-alone section of the overall plan.

would not need to prepare a separate plan to comply with CWA §311 if they have already prepared a plan, provided that the original plan: (1) satisfies the appropriate requirements and is equally stringent; (2) includes all the elements described in the model plan; (3) is cross-referenced appropriately; and (4) contains an Action Plan for use during a discharge.

Although Spill Prevention, Control, and Countermeasure (SPCC) plans (i.e., prevention plans) and response plans are different, and should be maintained as separate documents, some sections of the plans may be the same. The proposed rule would allow the owner/operator to reproduce and use those sections of the SPCC Plan in the response plan.

SPILL PREVENTION (SPCC) PLANS AND FACILITY RESPONSE PLANS ARE DIFFERENT

The CWA §311 requirements to develop a response plan will affect many facilities that are already subject to the Oil Pollution Prevention regulation. This regulation, which has been in effect since 1973, applies to facilities that meet the characteristics set forth at 40 CFR §112.1 (see Highlight 3).

The owner/operator of any facility subject to the Oil Pollution Prevention regulation is required to prepare and implement an SPCC Plan. SPCC Plans focus on procedures to prevent and control oil spills. In contrast, the facility response plans required by CWA §311 are intended to focus on reactive measures, such as how facility personnel are to respond to a discharge. The response plan should be maintained as a separate document from the SPCC Plan and be easily accessible during an emergency.

Under CWA §311, certain facilities are required to submit only the response plan to EPA.

Highlight 3 FACILITIES SUBJECT TO THE OIL POLLUTION PREVENTION REGULATION

The Oil Pollution Prevention regulation applies to facilities with the following characteristics:

- **Facility Type:** Non-transportation-related on-shore facilities.
- **Oil Product Storage:** The total aboveground storage capacity at the facility is greater than 1,320 gallons (or greater than 660 gallons in a single container), or the total underground storage capacity is greater than 42,000 gallons.
- **Location:** Facilities that, because of their location, could reasonably be expected to discharge oil into the navigable waters of the U.S. or adjoining shorelines.

FOR MORE INFORMATION

For more information, please call the SPCC Information Line at (202) 260-2342, or the specific EPA Regional office. The mailing addresses for the offices and a map showing the geographic boundaries of the Regions are contained in the proposed regulation.

EPA Region 1
(617) 860-4361

EPA Region 2
(908) 321-6656

EPA Region 3
(215) 597-5998/1357

EPA Region 4
(404) 347-3931

EPA Region 5
(312) 886-6236

EPA Region 6
(214) 655-2270

EPA Region 7
(913) 551-5000

EPA Region 8
(303) 293-1788

EPA Region 9
(415) 744-1500

EPA Region 10
(206) 553-1090

This document is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the United States.



United States
Environmental Protection
Agency (5202-G)
Washington, DC 20460

Official Business
Penalty for Private Use
\$300

First-Class Mail
Postage and Fees Paid
EPA
Permit No. G-35