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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

Oil Pollution Prevention Regulation and the Oil Pollution Act of 1990

Updated February 1998

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OIL POLLUTION PREVENTION REGULATION AND THE OIL POLLUTION ACT OF 1990

CONTENTS

1. INTRODUCTION

Billions of gallons of oil currently stored in the United States and shipped across its waters pose a serious potential threat to the environment. Oil spills can damage plants and animals in the fresh water and marine environment. Birds, fish and other wildlife can lose necessary food sources and habitat. Economic effects can be drastic as well, if an oil spill decreases recreation and tourism revenues and harms commercial fisheries. Populations which depend on marine resources as part of their traditional, subsistence culture can see their way of life destroyed.

The Federal Water Pollution Control Act (a.k.a. the Clean Water Act) marked a milestone in addressing the problems of oil pollution by mandating regulations for the prevention of oil spills into the navigable waters of the United States. The federal oil spill regulations were promulgated on December 11, 1973, and came to be known as the Spill Prevention, Control, and Countermeasures (SPCC) regulations. They provided a basic framework for operational procedures, containment requirements and response needs of certain facilities that might release oil into navigable waters.

Despite the implementation of the SPCC and other federal prevention regulations, the United States experienced increasing problems with oil spills in the 1970s and 1980s, as dramatized by the oil release from the Exxon Valdez in Alaska's Prince William Sound in 1989. On March 24, 1989, the tank vessel Exxon Valdez struck Blight Reef in Prince William Sound, Alaska releasing nearly 11 million gallons of crude oil. The oil slick spread over 3,000 square miles and onto over 350 miles of beaches. In response to this and other major oil spills, Congress enacted the Oil Pollution Act (OPA) of 1990. The goals of OPA are to expand planning and spill prevention activities, to improve preparedness and response capabilities, to ensure that shippers and oil companies pay for cleanups, and to establish a research and development program.

Under OPA, tank vessels, offshore oil facilities, and certain onshore facilities are required to submit response plans designed to ensure that sufficient personnel and equipment are available to respond to and mitigate a worst-case discharge. The response plans focus on response activities and must be consistent with other statutes and regulations, including SARA Title III and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

Aside from facility-specific requirements to mitigate oil spills, the federal government has established a coordinated network of officials to respond, if necessary, to oil spills by providing technical support and response equipment as needed. Reportable releases of oil into navigable waters must be reported to the National Response Center so the appropriate response can be determined.

The goal of this module is to explain the purpose, scope, and reporting requirements under the Spill Prevention Control and Countermeasures (SPCC) and related

regulations and the Oil Pollution Act of 1990. After you have completed this module you will be able to:

- Identify the major objectives of the Oil Pollution Act of 1990
- Identify which facilities must prepare SPCC plans and which must prepare Facility Response Plans
- Explain what facilities must do to comply with the notification requirements for a discharge of a harmful quantity of oil
- Explain what the Oil Spill Liability Trust Fund is and how it is funded and used.

Use this list of objectives to check your knowledge of this topic after you complete the training session.

2. STATUTORY HISTORY

The goal of the Rivers and Harbors Act of 1899 was to protect the navigability of commercial waters. Under this Act, many programs have been developed to protect U.S. waters. In 1948, the Water Pollution Control Act provided the first funds for constructing publicly owned treatment works (POTWs) which treat municipal wastewater prior to its discharge into the environment. The Water Quality Act of 1965 later established interstate water quality standards. This Act specified water quality standards each water body was required to achieve or maintain. The Federal Water Pollution Control Act, or Clean Water Act (CWA) of 1972 established an effective technology-based approach to maintaining water quality. This technology-based approach prohibited discharges without a permit and allowed permitted discharges to release limited amounts of chemicals. Those limitations are based on best available technology, or other technology-driven standards. As a result of this approach, most point source discharges were successfully controlled, and the quality of the nation's waters generally remained stable, or improved slightly.

The Clean Water Act (CWA) sets the framework for a comprehensive program for water pollution control. The major objectives of the CWA include eliminating pollutant discharges to navigable waters, attaining water quality standards which provide for the protection and propagation of fish, shellfish and wildlife, and providing federal financial assistance for the construction of publicly owned waste treatment works.

Section 311 of the CWA prohibits discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone. Specifically, CWA §311(j)(1) requires the promulgation of the SPCC regulations which were promulgated on December 11, 1973 (38 FR 34164). The SPCC regulations established spill prevention procedures and equipment requirements for non-transportation-related facilities with aboveground oil storage capacity greater than 1,320 gallons (or 660 gallons in a single tank) or underground storage capacity greater than 42,000 gallons. Regulated facilities include only those facilities that, based on geographic location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines.

The authority to regulate non-transportation-related onshore and offshore facilities under CWA §311(j)(1)(C) was delegated by the President to the Environmental Protection Agency (EPA) in Executive Order 11735. In E.O. 11735 the authority to regulate transportation-related onshore and offshore facilities under CWA §311(j)(1)(C) was delegated to the United States Coast Guard (USCG), which currently operates under the authority of the U.S. Department of Transportation (DOT). Figure 1 below further illustrates for which types of facilities different federal agencies need to develop oil pollution prevention regulations.

Figure 1
FEDERAL AGENCY RESPONSIBILITIES

Federal Agency	Facility Type
Environmental Protection Agency (**EPA**)	On-shore and offshore, non-transportation related facilities
Department of Transportation (**DOT**)	Pipelines, deepwater ports and their associated pipelines
U.S. Coast Guard (**USCG**, under DOT)	Marine terminals
Department of the Interior (**DOI**)	Off-shore fixed facilities beyond the coastline

A Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator establishes the responsibilities of EPA and DOT for purposes of administering their respective SPCC programs. This MOU, dated November 24, 1971 (36 FR 24080), delineated the responsibilities so that EPA regulates non-transportation-related onshore and offshore facilities and DOT regulates transportation-related onshore and offshore facilities. The use of the word transportation refers specifically to the transportation of oil. A section of the MOU appears in 40 CFR Part 112, Appendix A and provides definitions of the two categories of facilities. Facilities must look at the definitions carefully to determine under which agency they are regulated.

The Oil Pollution Act (OPA) of 1990 amends CWA §311(j) by directing the President to issue regulations requiring owners or operators of tank vessels, offshore facilities, and certain onshore facilities to prepare and submit Facility Response Plans (FRPs). The President delegated the authority to EPA to regulate non-transportation-related onshore facilities through the issuance of E.O. 12777 (56 FR 54757; October 22, 1991). The FRP prepares a facility for responding, to the maximum extent practicable, to a worst case discharge of oil. EPA issued the final guidelines for developing the FRP in the July 1, 1994, Federal Register (59 FR 34070).

3. OIL SPILL PROGRAM

The severe economic and devastating environmental effects of oil spills are evident as illustrated by major incidents such as the spill from the Exxon Valdez in 1989. To prevent disasters like this in the future, EPA developed the Oil Spill Program as mandated by the Oil Pollution Act of 1990 which amends CWA §311(j). There are four main goals of the Oil Spill Program. They are: preparedness and prevention; response; compensation and liability; and research and training. Each are discussed in more detail below.

3.1 PREVENTION AND PREPAREDNESS

Preparedness and prevention is the best defense against mitigating the damage caused by oil spills. EPA requires high-risk facilities to prepare and implement SPCC plans to achieve the goal of preventing oil spills from reaching navigable waters.

The SPCC plan requirements have three goals. The first is to prevent oil spills. Operating procedures, such as inspections, recordkeeping, security, personnel training, and tank specifications, address this goal (40 CFR §112.7(e)). The second goal is to prevent spills from reaching navigable waters or adjoining shoreline. All SPCC facilities must install appropriate containment and/or diversionary structures to prevent spills from reaching waters, unless installation is impracticable (40 CFR §112.7(c)). In addition to the minimum requirement for appropriate containment and/or diversionary structures, other secondary containment requirements are specified in 40 CFR §112.7(e). For example, bulk storage tanks must have sufficient secondary containment to hold the contents of the largest single tank, allowing for precipitation. The third goal of the SPCC plan is to prepare for responding to an oil spill. Facilities who cannot install appropriate containment and/or diversionary structures must be able to clearly demonstrate the impracticability of installation, and must have a strong oil spill contingency plan and a written commitment of response manpower, equipment, and materials (40 CFR §112.7(d)).

APPLICABILITY OF SPCC PLANS

SPCC plan regulations apply to **non-transportation related** onshore and offshore facilities with an underground buried storage capacity greater than 42,000 gallons, or an aboveground storage capacity greater than 660 gallons in one tank, or over 1,320 gallons in total. These facilities are only subject to SPCC requirements if they could reasonably be expected to discharge **harmful quantities** of **oil** into the **navigable waters** of the United States. Each bolded term is crucial in determining a facilities' applicability and are defined as follows:

- **Non-transportation-related facilities** are fixed or mobile facilities involved in oil production, refining, storage, or well-drilling. Industrial commercial, agricultural, or public facilities which use and store oil, waste treatment facilities, loading equipment, and vehicles transporting oil within the facility are also non-transportation related facilities (40 CFR Part 112, Appendix A).

- A **harmful quantity** of discharged oil is one that violates water quality standards, causes a film or sheen on the surface of the water or adjoining shoreline, or causes a sludge or emulsion to be deposited beneath the surface of the water (40 CFR §110.3).

- **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 (40 CFR §112.2). EPA interprets this definition to include crude oil and refined petroleum products, as well as non-petroleum oils such as vegetable and animal (56 FR 54617; October 22, 1991). EPA clarifies the terms petroleum oil, non-petroleum oil, animal fat, vegetable oil, and other non-petroleum oil in the preamble to the facility response plan final rule (59 FR 34088; July 1, 1994).

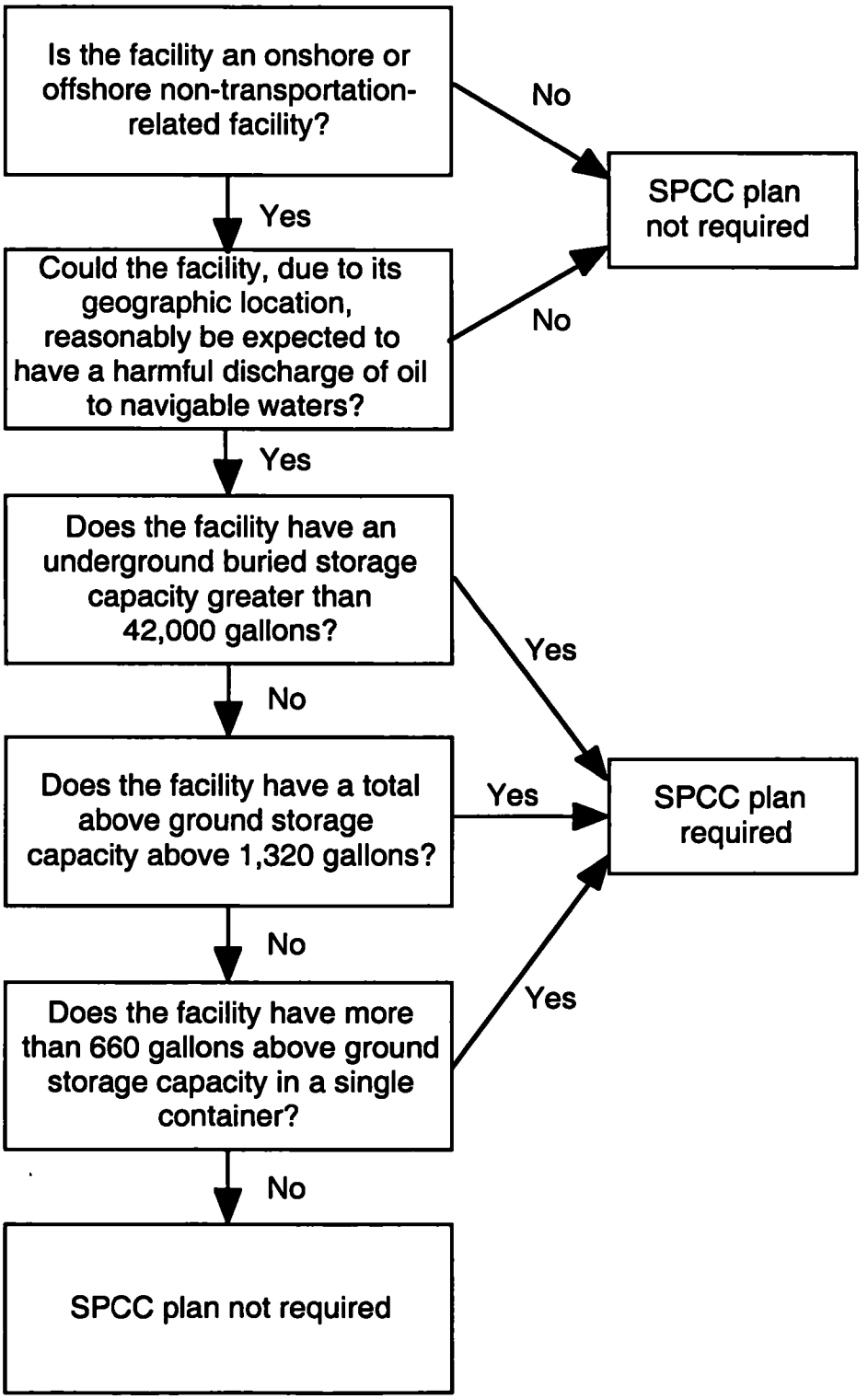
- **Navigable waters** includes interstate waters and intrastate waters such as lakes, rivers, streams, wetlands, mudflats, sandflats, and waters involved in interstate or foreign commerce. It also includes the territorial seas (40 CFR §110.1). Essentially, the term navigable waters refers to any natural surface water in the United States.

Figure 2 further illustrates how the SPCC plan applicability determination is made.

SPCC facilities are required to prepare and implement a comprehensive and feasible SPCC plan. It must be prepared within six months after operations begin, and implemented as soon as possible. The time limit for implementation of the plan is no later than one year after operations begin. A registered professional engineer (PE) must certify the SPCC plan, which shall be kept at the facility if it is normally staffed at least 8 hours a day. A facility staffed for less than 8 hours a day shall maintain the plan at the nearest field office (40 CFR §112.3).

Facilities are required to amend SPCC plans when changes to a facility's design, construction, operation, or maintenance materially affect the potential for a harmful discharge of oil to navigable waters or adjoining shorelines. Regardless of such changes, every three years the plan must be reviewed and evaluated. At this time, an amendment may be required to include more effective prevention and control technology (40 CFR §112.5). Also, if a facility has had more than a 1,000 gallon spill, or two spills within 12 months, the SPCC plan and information about the facility and the spill must be submitted to the state and to the Regional Administrator (RA)

Figure 2
SPCC PLAN APPLICABILITY



within 60 days. The RA may then require an amendment to the SPCC plan (40 CFR §112.4).

Under OPA §4113, EPA conducted a study to determine whether liners or other secondary means of containment should be used to prevent leaking or to aid in leak detection at onshore facilities used for the bulk storage of oil and located near navigable waters. EPA published its findings in a May 1996 Report to Congress called the "EPA Liner Study" (OSWER Directive 9380.0-24). EPA examined the environmental effectiveness and installation costs for various liner designs and facility types.

3.2 RESPONSE

Accidents may occur despite the existence of measures to prevent them. Due to the fact that approximately 19,000 oil spills are reported yearly, Congress recognized the necessity of devising a system for oil spill response. As it currently exists, OPA's response system is a collaboration among federal, state, and local authorities and the parties responsible for the spill.

FEDERAL RESPONSE AUTHORITY

The key to a successful response system is having many resources readily available. OPA, in amending §311(c) of the CWA, expanded the role of the federal government in responding to releases. If the discharge is of such size or character as to pose a substantial threat to the public health or welfare, the federal government, through an On-Scene Coordinator (OSC), is required to direct responses. The NCP is the blueprint for federal response in the case of the release of oil. Under the NCP, EPA is the lead federal response agency for oil spills occurring in inland waters, and the U.S. Coast Guard (USCG) is the lead response agency for spills in coastal waters and deepwater ports. Procedures, techniques, and standards for responding to oil releases have been developed. In particular, Subpart D of 40 CFR Part 300 provides operational direction for oil removal.

For an oil spill that requires a greater scope of federal support and resources, the OSC may activate the Regional Response Team (RRT), comprised of federal officials and state and local representatives (40 CFR §300.110). There are thirteen RRTs in the U.S., each representing a geographical region. The four major responsibilities of RRTs are: (1) responding to an OSC's request for assistance in the form of technical advice, equipment, or manpower; (2) development of a Regional Contingency Plan to delineate the roles of federal and state agencies during an actual incident; (3) develop simulation exercises; and (4) coordinate available resources from each federal agency and state within their regions.

The National Response Team (NRT) is an interagency group co-chaired by the EPA and USCG with representatives from 16 federal agencies. The NRT does not directly

respond to releases, but it is responsible for three major activities related to managing responses: (1) distributing technical and financial information about oil spills to all members of the team; (2) ensuring that the emergency response roles of federal agencies on the Team are clearly outlined in the NCP; and (3) developing training courses and programs for emergencies.

To provide even greater federal response coordination, OPA mandated the formation of a National Response System which is supervised by the USCG. A National Response Unit is established in Elizabeth City, North Carolina where the center provides a list of spill removal resources, personnel, and equipment. The center also provides technical assistance and coordinates private and public response personnel. Additionally, Coast Guard Districts have been set up to respond with Coast Guard personnel and equipment. Figure 3 outlines the federal response protocol.

In the act of removing the oil, defensive measures or countermeasures must be implemented immediately. For example, an oil spill often requires the assembly of equipment to mechanically remove the oil from water. Skimmers are one such device which remove oil from water. The NCP provides guidance for such measures. Subpart J of the NCP requires EPA to maintain the NCP Product Schedule, which is a list of approved dispersants, bioremediation agents, and other chemicals for the removal of oil.

FACILITY RESPONSE PLANS (FRPs)

Section 4202 of OPA amends CWA §311(j) requiring owners or operators of offshore facilities, tank vessels, and certain onshore facilities to prepare and submit to the federal government a plan for responding to a worst-case oil discharge or a substantial threat of such a discharge. EPA is responsible for regulating plans for non-transportation-related onshore facilities (Executive Order 12777). The Agency promulgated regulations on July 1, 1994 (59 FR 34070), which are codified in the SPCC regulations at 40 CFR Part 112. The Agency requires the owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause "substantial harm" to the environment by discharging oil into or on the navigable waters or adjoining shorelines to prepare and submit a facility response plan (FRP) to the Regional Administrator (RA) (40 CFR §112.20(a)).

In determining applicability, the first criterion to be met is that the facility meet the definition of a non-transportation-related facility, as defined in the MOU between the Secretary of Transportation and the Administrator (40 CFR Part 112, Appendix A). Next, the owner or operator must determine if the facility poses substantial harm to the environment. EPA provides two methods by which a facility may be so identified: (1) a self-selection process; or (2) by a determination of the RA. In the self-selection process, facilities should refer to the substantial harm criteria set forth in 40 CFR §112.20(f)(1). These criteria are outlined in Figure 4.

Figure 3
FEDERAL RESPONSE PROTOCOL

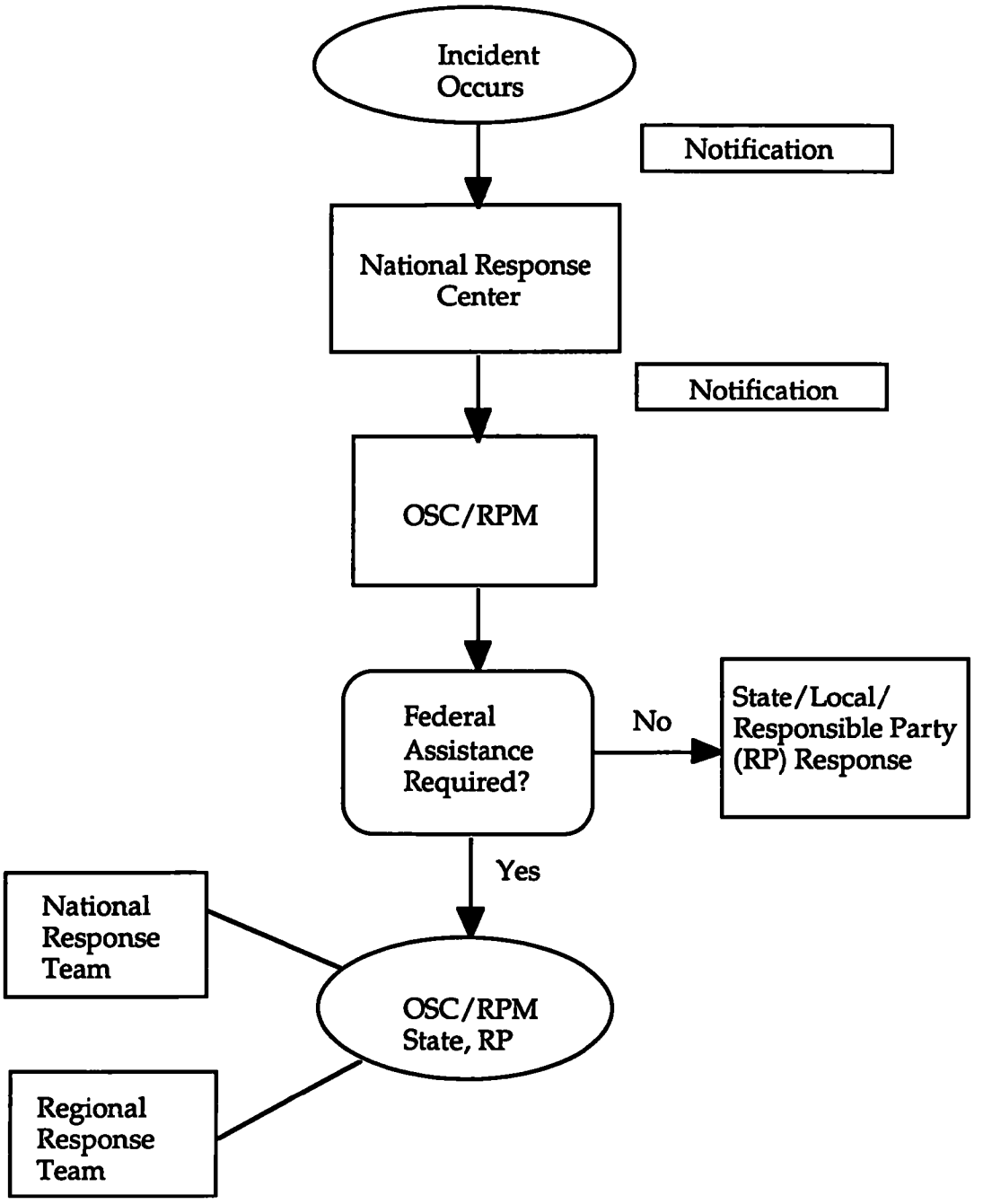
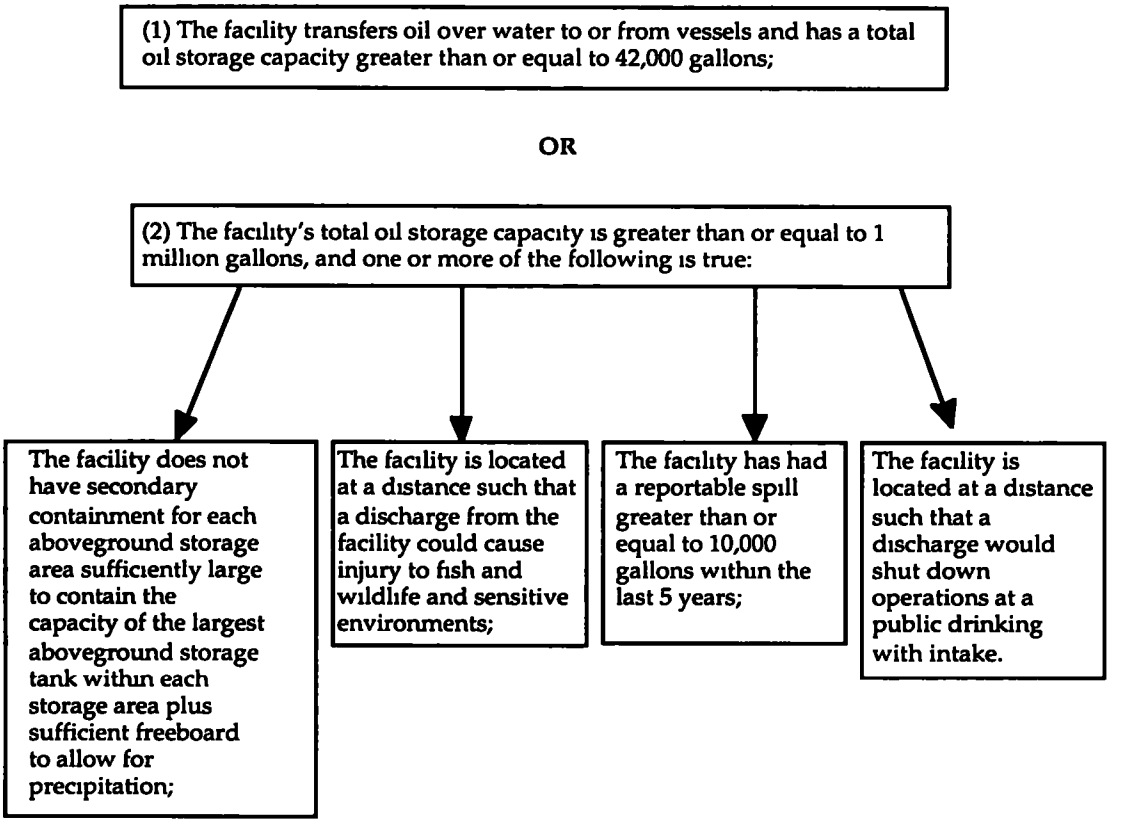


Figure 4
SUBSTANTIAL HARM CRITERIA (40 CFR §112.20(f)(1))



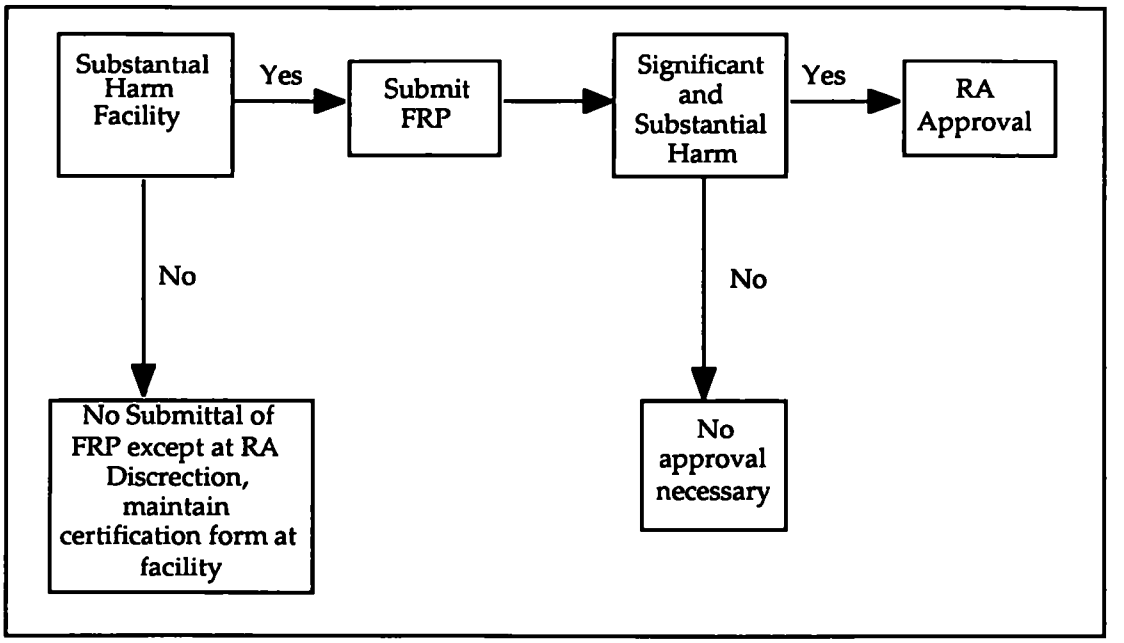
The RA may also refer to the same criteria, as well as additional factors including type of transfer operations at a facility, lack of secondary containment, and proximity to environmentally sensitive areas or drinking-water intakes.

At their inception, the response planning regulations required covered facilities to submit their FRP by February 18, 1993, in accordance with the statutory deadline. If a covered facility met this deadline, the owner or operator was required to revise the response plan to meet regulatory requirements and resubmit it by February 18, 1995. If a covered facility did not meet this deadline, the owner/operator had to submit a response plan to the RA by August 30, 1994. An existing facility that did not formerly meet the applicability requirements, but because of a change in operations now poses a substantial harm to the environment, must submit the plan before implementing the change. And for facilities that are newly constructed, a FRP must be prepared and submitted prior to the start of operations.

Once it has been determined that a facility is required to submit a FRP because it is a substantial harm facility, the RA must review the facility information to determine

if the facility poses "significant and substantial harm." In making this determination, the RA may refer to the substantial harm factors of 40 CFR §112.20(f)(1) (see Figure 4) as well as additional site-specific characteristics and environmental factors set forth in 40 CFR §112.20(f)(3). Additional site-specific characteristics and environmental factors to consider may include: frequency of past oil spills; proximity to navigable waters; and age of oil storage tanks. If a facility is designated as a significant and substantial harm facility, the RA must review and approve its response plan. Figure 5 shows requirements for different categories of facilities.

Figure 5
SIGNIFICANT AND SUBSTANTIAL HARM



Because of the high threshold volumes, many facilities do not meet the substantial harm criteria. In that instance, the owner or operator must complete and maintain at the facility a certification form indicating that the facility could not because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines (40 CFR §112.20(e) and Appendix C).

The FRP must follow the format specified in 40 CFR Part 112, Appendix F unless an equivalent format has been prepared to meet state or other federal requirements. The elements of the response plan include the following:

- Emergency response action plan
- Facility information

- Emergency response information
- Hazard evaluation
- Discharge scenarios
- Discharge detection methods
- Plan implementation strategies
- Facility self-inspection
- Training and meeting logs
- Site diagrams
- Description of security measures.

Furthermore, the response plan must be consistent with the requirements of the National Contingency Plan (NCP) and applicable Area Contingency Plans (ACP). The plans should also be coordinated with local emergency plans developed by local emergency planning committees under §303 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

RELEASE NOTIFICATION

Pursuant to the CWA §311(b)(3), notification requirements have been established for the release of oil into navigable waters or onto adjoining shorelines (40 CFR §§110.10, 300.125, 300.300, and 300.405(b)). A discharge must be reported to the National Response Center by the person in charge of the facility or vessel if the discharge: (1) causes a sheen to appear on the surface of the water; (2) violates applicable water quality standards, or causes sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

To emphasize the importance of proper notification, OPA provides the agency and the courts with the authority to charge the owner and operator criminally for the failure to notify the NRC of a discharge. Furthermore, an owner/operator is subject to civil penalties for the actual discharge of the oil. And further penalties may be assessed for failure to remove the oil and failure to comply with an administrative order. These provisions can be found in the CWA §311, which was amended by OPA §4301.

3.3 LIABILITY AND COMPENSATION

The third goal of OPA is to expand the liability and compensation regime. The purpose is to actively pursue and collect compensation from polluters who are responsible for oil spills into navigable waters. OPA provides the authority to make the party responsible for a discharge of oil from a facility or vessel pay for the

cleanup and compensate for lost natural resources (OPA §1002(a)). In order to be held liable for removal costs and damages, the people associated with the cause of an oil spill must meet the statutory definition of responsible party.

The responsible party (RP), defined at OPA §1001(32), is an owner or operator whose vessel or facility is the source of an oil discharge or which poses the substantial threat of a discharge. OPA's liability provisions apply to vessels, as well as onshore and offshore facilities. For example, in a deepwater port the RP could be the licensee of the port, or for an offshore facility the RP may be the lessee or the permittee of the area in which the facility is located. Public entities, however, do not meet the definition of responsible party in connection with onshore facilities.

OPA specifically outlines the costs for which the RP(s) will be held accountable. The first type of cost, removal costs, include all costs incurred in the removal of oil from the water and shorelines or from any other actions taken to mitigate damage to the public health and welfare (OPA §1001). The second type of cost, damages, include the reasonable costs of assessing natural resource 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.

In most cases, there are several parties who will meet the definition of a RP in the event of an oil spill. The liability scheme under OPA does not discriminate, each RP can be held responsible for all costs associated with cleanup, as well as damages. Judicially, OPA liability is interpreted as strict, joint and several which is similar to CERCLA liability. Strict liability is the assessment of legal responsibility without regard to fault or diligence. Joint and several liability essentially means that anyone meeting the definition of responsible party can be held liable for the entire cleanup, regardless whether his/her contribution to the discharge was large or small. Since dividing costs fairly between responsible parties is not addressed in OPA, RPs may try to recover their costs from any other person who is liable or potentially liable under OPA §1009.

OPA applies to any incident occurring after the date of enactment which was August 18, 1990 (OPA §1020). Assessment of penalties under OPA §4301(b) is clearly not retroactive, but violations occurring before the enactment of OPA remain subject to penalty provisions originally set forth in CWA §311 (59 FR 34071; July 1, 1994).

DEFENSES TO LIABILITY

There are three defenses available to a RP. If the RP can prove that one of these defenses applies to his or her situation, then the RP will not be held liable for response costs or damages (OPA §1003). These defenses are: (1) an act of God; (2) an act of war; or (3) an act or omission of a third party, other than an employee or agent of the RP or a third party whose act or omission occurs in connection with any

contractual relationship with the responsible party. There are some situations where the RP's actions void his or her ability to employ one of the defenses. These actions include failing or refusing to report the discharge of the oil; failing to provide all reasonable cooperation and assistance in removing the oil; or failing to comply with an administrative or judicial order (OPA §1003(c)).

LIMITS ON LIABILITY

OPA provides limits on the amount of money a RP must pay in removal costs and damages (OPA §1004). Different types of vessels and facilities have different limits on liability. For instance, if a release occurs from an onshore facility, the RP can only be held responsible up to 350 million dollars (See Figure 6). The limitations do not, however, apply if the incident was caused by gross negligence or willful misconduct on the part of the RP, or a person working under a contractual relationship for the RP. Furthermore, if the RP fails to report the incident as required by law, does not cooperate and assist in removal actions, or does not comply with an order issued under CWA §311, then the limits on liability do not apply (OPA § 1004(c)). Figure 6 shows the limits on liability provided by OPA.

Figure 6
LIMITS ON LIABILITY

Type of Vessel/Facility	Limits Specified in OPA §1004
Tank vessel	$1200/gross ton; or for a vessel > 3000 gross tons, $10 million; or for a vessel < 3000 gross tons, $2 million
Other Vessel	$600/gross ton or $500,000, whichever is greater
Offshore facility	Removal costs plus $75 million
Deepwater port	$350 million
Onshore facility	$350 million
Mobile offshore drilling unit	Same as tank vessel, unless costs and damages exceed limits. If costs and damages are exceeded, then treat as an offshore facility.

STATUTE OF LIMITATIONS

A statute of limitations establishes the maximum time periods during which certain actions may be commenced. Once the established time period expires, no legal action can be brought. OPA §1017(f) sets forth the statute of limitations for the recovery of damages, the recovery of removal costs, and actions for contribution. Figure 7 details the statute of limitations for each.

Figure 7
STATUTE OF LIMITATIONS (OPA §1017(f))

Type of Cost	Time Limitation
Damages	An action for damages must be commenced within 3 years after the date of the discovery of the loss, or in the case of natural resource damages, the date of completion of the natural resources damage assessment.
Removal Costs	An action for recovery of removal costs must be commenced within 3 years after the completion of the removal action.
Contribution	An action for contribution for any removal costs or damages must be commenced no more than 3 years after the date of judgment in an action brought under OPA or the date of a judicially approved settlement of an action.

THE OIL SPILL LIABILITY TRUST FUND

As previously discussed, the owner or operator of a facility from which oil is discharged is liable for the costs associated with the containment or cleanup of the spill, as well as any damages resulting from the spill. EPA's first priority is to have responsible parties finance the clean up of their own oil discharges. However, when the RP is unknown or refuses to pay, the Oil Spill Liability Trust Fund (hereinafter referred to as "the Fund") can cover removal costs and/or damages that are not recovered from RPs. The emergency response portion of the Fund is administered by the U.S. Coast Guard's National Pollution Funds Center (NPFC).

The Fund can provide up to $1 billion for any one oil pollution incident, including up to $500 million for the initiation of natural resource damage assessments and claims in connection with any single incident. The main uses of Fund expenditures are:

- State access for removal actions (consistent with the NCP)
- Payments to federal, state and Indian tribe trustees to carry out natural resource damage assessments and restorations (consistent with the NCP)
- Payment of claims for uncompensated removal costs and damages
- Research and development and other specific appropriations.

FUNDING THE FUND

The primary source of revenue for the Fund is a five-cents per barrel fee on imported and domestic oil, which ceased on December 31, 1994. Other revenue

sources for the Fund include interest on the fund, cost recovery from the parties responsible for the spills, and any fines or civil penalties collected.

3.4 RESEARCH AND TRAINING

The Oil Pollution Act mandates research and training in oil pollution prevention and response. OPA §7001 requires an interagency committee be established to coordinate the creation of a program for conducting oil pollution research, technology development, and demonstration. This program is specifically required by the statute to provide research and development, and demonstration in a number of areas, including: innovative oil pollution technologies; oil pollution technology evaluation; oil pollution effects research; marine simulation research, and; simulated environmental testing. Technologies that may be developed to address the problem of oil pollution include: booms, skimmers, and containers for temporary storage of oil during recovery activities; chemical treatment methods, such as dispersants; biological oil treatment methods, such as the introduction of microorganisms and/or nutrients; and the use of aircraft and remote sensing in oil spill cleanup and monitoring activities. EPA offers training courses for conducting proper response measures in cases of inland oil spills, as well as an exercise program for oil storage facilities.

4. REGULATORY DEVELOPMENTS

In addition to the existing October 22, 1991, proposed rule (56 FR 54612), a separate SPCC proposed rule was published on December 2, 1997 (62 FR 63812). The newest proposed rule aims to provide flexibility and reduce the paperwork burden of owners and operators of SPCC and FRP facilities. Although the proposed rule would not change any of the substantive technical standards an owner or operator must comply with, the proposed rule may reduce overall regulatory burden by allowing facilities to meet some SPCC and FRP requirements simply by referencing identical requirements owners or operators are already meeting under other environmental laws.

The proposed rule would revise the definition of SPCC Plan and allow an Integrated Contingency Plan (ICP) or a state plan that meets all the requirements of the SPCC regulations to be counted as an SPCC Plan if it is cross-referenced. EPA hopes this measure will simplify compliance with multiple applicable statutes and rules. Additionally, EPA would allow the use of certain records maintained pursuant to the National Pollutant Discharge Elimination System (NPDES) program as well as usual and customary business records to be used in lieu of records mandated by the SPCC requirements. These records may include inspection records for aboveground storage tanks and diked areas prior to drainage.

In addition to coordinating SPCC requirements with other regulatory requirements, EPA also proposes to reduce the amount of information an owner or operator must report pursuant to a spill described in §112.4. The proposed rule would extend the period in which SPCC Plans must be reviewed and evaluated from three to five years.

Amendments to the FRP regulations are also proposed in the December 2, 1997 *Federal Register* . The proposal clarifies the regulatory language in §112.20(h) to state that the ICP format may be acceptable as an FRP if appropriately cross-referenced. Also, EPA proposes to provide a new method to calculate facility storage capacity for facilities with tanks holding mixtures of process water/wastewater and oil. If a tank has such a mixture with 10% or less of oil, the owner or operator would only have to count the percentage of oil in the mixture towards the facility's storage capacity. EPA anticipates that as many as 250 facilities may no longer be subject to the FRP regulations as a result of this provision.

The two proposed rules, as well as some proposed SPCC changes from the February 17, 1993 FRP proposed rule, will be finalized at the same time.