

SPCC & FRP: Progressive Compliance Tools



Region II

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40 CFR Part 112

- December 11, 1973, EPA published the regulation for Spill Prevention Control and Countermeasure Plan Program (SPCC)
- Due to the facility's location could reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines

Facility meets one of the following criteria regarding oil storage:

- Capacity of any aboveground storage tank exceeds 660gallons
- Total of aboveground storage capacity exceeds 1,320 gallons
- Underground storage capacity exceeds 42,00 gallons

SPCC Plans

- 40 CFR Part 112 contains the format and content requirements for an SPCC Plan
- The plan is to be maintained at the facility and provided during an inspection to the EPA inspector
- The plan is not subject to submittal to EPA for EPA approval

EPA Responsibilities

- Identify these facilities
- Extremely time consuming without adequate manpower to successfully implement this program

Oil Pollution Act 1990

- Amended Section 311(j) of the Clean Water Act to require facilities that because of their location could reasonably be expected to cause “substantial harm” to the environment by a discharge of oil to develop and implement an Facility Response Plan (FRP)

FRP Intent

- Provide for planned responses to the maximum extent practicable
- To a worst case discharge
- To a substantial threat of such a discharge of oil

Substantial Harm Criteria

- Total oil storage capacity greater than or equal 42,000 gallons and transfers over water to or from vessels
- Total oil storage capacity greater than or equal to one million gallons and one of the following conditions:

Substantial Harm Criteria

- Does not have adequate secondary containment
- A discharge could cause injury to fish and wildlife and sensitive environment
- Shut down drinking-water intakes
- Has had a reportable oil spill greater than or equal to 10,000 gallons in the past five years

EPA's Mission

- Identify each facility with a unique identification number
- “Substantial Harm” FRPs do not undergo the EPA approval process
- Review submitted “Substantial Harm” FRPs and classify these FRPs as “substantial harm” or “Significant and Substantial Harm”

Significant and Substantial Harm Criteria

- Further evaluation of the facility's location
- Type of transfer operation
- Oil storage capacity
- Lack of secondary containment
- Proximity to fish, wildlife, and sensitive environment areas

Significant and Substantial Harm Criteria

- Other areas Regional Administrator determines to possess ecological value
- Proximity to drinking-water intake
- Spill history
- Any other site specific characteristics and environmental factors determined to be relevant to protecting the environment

Written Documentation by EPA

- The determination of the FRP's status as a significant and substantial harm classification is to be provided in writing to the operator or owner

EPA Review Process

- Prompt review of the plan by EPA
- EPA may require amendments to the plan before EPA will approve
- Provide a periodic review cycles, which should not exceed five years

EPA Review Process

- EPA has the authority to inspect removal equipment and test facility's removal capabilities by conducting drills

National Preparedness For Response Exercise Program (PREP)

- Unified all federal agencies enforcing the federal oil pollution response exercise requirements and the regulated community
- Insures a minimum standard of response preparedness nationally

EPA Government-Initiated Unannounced Exercises

- Since August 1999, 16 drills were performed in New York, New Jersey, and Puerto Rico
- All in EPA response jurisdiction
- All in accordance with the PREP guidelines and EPA FRP regulations
- All received a notification letter and exercise objectives fact sheet

Region II Drill Observation and Results:

- 15 out of 16 were contractor dependent to provide required inventory of containment boom, while the remaining facility was dependent on a contractor to deploy facility-owned booms **(94%)**
- 13 out of 16 facilities depended on contractors to provide recovery equipment **(81%)**

Region II Drill Observation and Results :

- 7 out of 16 facilities -successful in meeting the boom and recovery equipment requirements (**44%**)
- 9 out 16 facilities and/or contractor - unable to deploy the containment boom within 1 hour (**56%**)

Region II Drill Observation and Results :

- 5 out of 16 facilities- unable to deploy booms within one hour and recovery equipment within 2 hours **(31%)**
- 4 out of 16 facilities - able to deploy recovery equipment within 2 hours, but failed to to deploy boom within 1 hour **(25%)**

As a Result of These Drills:

- 8 out of 16 Facilities -decided to partially or totally rely on facility-owned equipment and facility personnel for initial response **(50%)**
- 5 out 16 -terminated or renegotiated or purchased new response contracts **(31%)**
- 3 out of 16 facilities -establishing cleanup cooperatives with local authorities, and neighbors **(19%)**

As a Result of These Drills:

- EPA initiated, organized, and hosted jointly with the USCG several FRP seminars
- Participants were the regulated community and state agencies
- Topics were OPA, CWA, and local regulations

As a Result of These Drills:

- EPA established an outreach program to assist the regulated community
- To improve the quality of FRP
- To improve the review process and the approval rate
- Improve the identification of flow paths; accurate WCD volumes, pre-deployment location for containment booms

As a Result of These Drills:

- EPA and USCG established improved communications; reduced duplication of efforts, and establish a protocol for sharing information regarding complex facilities
- Overall, EPA's approval process has improved by 30% with the implementation of progressive compliance tools

Factors Contributing to Exercise Failures:

- Contractor's location hindered their responding to the facility within the required time frame for boom deployment/recovery equipment
- Contractors arrived without the required equipment, citing standard practice is to evaluate the situation before deploying equipment

Factors Contributing to Exercise Failures:

- Contractors did not have the required 1,000 feet of containment boom
- Contractors did not have a vessel to deploy the containment boom or recovery devices
- Boom deployment location identified in the FRP were unsuitable or not accessible during the exercise

Factors contributing to Exercise Failures:

- The type of containment booms used by contractors and/or facility was not suitable for deployment area or type of navigable waters
- Contractor's equipment was not compatible with hose and fitting gear
- Lack of PREP exercises being performed by the facility's staff

Factors contributing to Exercise Failures:

- Lack of training facility staff on the FRP and ERAP procedures
- Confusion or lack of understanding the OPA and CWA regulations and requirements by the majority of owner/operators, contractors, and consultants

Oil Enforcement Goals:

- Over last 4 years Region 2 has developed SPCC and FRP enforcement program
- Increase historical Low compliance rate in both SPCC and FRP Programs
- Follow-up on compliance assistance provided by the region for years
- Little enforcement prior to 1997

Oil Enforcement Targeting:

- Facilities not regulated by a state program:

New York and New Jersey have similar regulations to SPCC, but different triggers

Threshold capacity triggers are higher than federal regulations- state don't regulate smaller facilities

Oil Enforcement Targeting:

States don't regulate heavy and non-petroleum oils (asphalt, coal tar, and vegetable oil)

- Territories in the Caribbean don't have SPCC regulations

Oil Enforcement Targeting:

- **Facilities with significant SPCC and FRP violations:**

Refuse to comply after numerous notifications

Experience significant oil spills

Located near sensitive environments areas

Oil Enforcement- FRP Status:

- **A total of (6) FRP administrative complaints:**

(2) Issued for adequate FRPs (settled)

(2) Issued for failure to properly respond to EPA-initiated unannounced exercise (settled)

Oil Enforcement- FRP Status:

- (2) More issued for failure to properly respond to EPA-initiated unannounced exercise and outcome pending

- (4) Complaints penalties collected- a total \$192,000**

Oil Enforcement SPCC Status:

- **(11)** Administrative complaints were issued for SPCC violations:

(2) Issued against facilities storing heavy oils

(2) Issued against facilities storing vegetable/animal oils

Oil Enforcement SPCC Status:

(6) Issued against facilities unregulated by States

- **A total of \$343,000 collected in penalties for SPCC violations**

Oil Enforcement SPCC Status:

- **(1)** Case went to hearing and the judgement was in favor of EPA for liability and penalty

On appeal by Respondent, and EAB ruled in favor of EPA for liability and penalty (penalty slightly reduced)

- **(2)** Complaints issued and have not been settled at this time

Oil Enforcement Spill Status:

- A total of (2) spill enforcement complaints
- (1) in Caribbean and (1) in New Jersey
- Generally few Region II oil spills are enforceable due to the USCG response jurisdiction in coastal waterways, and strong spill enforcement by States in inland waterways

Oil Enforcement Results:

- As a result of enforcement actions for exercise failures, facilities have spent considerable time and resources correcting problems
- The regulated community has taken notice of the serious need for well thought-out SPCC and FRP and the ability to implement them

Conclusion- Compliance Assistance

- The SPCC/FRP seminars and outreach program
- Thorough field inspections and review procedures
- EPA initiated unannounced exercises

Conclusion- Compliance Assistance

- Improved coordination between USCG and EPA for complex facilities
- Increase cognizance, unity, and fairness among regulated community, local agencies, and other federal agencies implementing or enforcing pollution regulations

Conclusion- Enforcement

- Enforcement is a necessary supplement to compliance assistance
- Creates a well-balanced formula and provides a mechanism for compliance when outreach does not work