- Black and Veatch Waste Science and Technology Corporation/Tetra Tech, Inc.—

Contract #68–S7–3002
Subcontractor:
Enviro Consultants Group

- Tech Law, Inc.—

Contract #68–W–00–108

- WRS Infrastructure & Environment, Inc.—

Contract #68–S3–03–02

- Kemron Environmental Services—

Contract #68–S3–03–05

- ASRC Aerospace Corp.—

Contract #68–W–01–02

- Industrial Marine Services, Inc.

Contract #68–S3–03–03

- Guardian Environmental Services, Inc.

68–S3–03–04

List of Inter-Agency Agreements

- General Services Administration
CERCLA File Room
Contractor: Booz-Allen & Hamilton
- General Services Administration
Spectron Superfund Site
Contractor: Booz-Allen & Hamilton
- General Services Administration
Breslube Penn Superfund Site
Contractor: Booz-Allen & Hamilton

List of Cooperative Agreements

- National Association of Hispanic Elderly (Senior Environmental Employment)–#CQ–822511
- AARP Foundation (Senior Environmental Employment)—#823952

Dated: May 14, 2004.

Peter W. Schaul,

Acting Division Director, Hazardous Site Cleanup Division.

[FR Doc. 04–11774 Filed 5–24–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7666–7]

Notice Concerning Certain Issues Pertaining to the July 2002 Spill Prevention, Control, and Countermeasure (SPCC) Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has partially settled litigation over the Spill Prevention, Control, and Countermeasure (SPCC) rule. This notice provides clarifications developed by the Agency during the course of settlement proceedings. It also announces the availability of a letter issued by EPA's Office of Solid Waste and Emergency Response (OSWER) to the Petroleum Marketers Association of America (PMAA) on our website, *i.e., epa.gov/oilspill,* or by contacting the docket as described below under **ADDRESSES.**

ADDRESSES: EPA has established a docket for this action under Docket: OPA–2004–0002. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Staff, U.S. EPA, at 703–603–8769 (*fleischman.hugo@epa.gov*); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810) (*epahotline@bah.com*). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323). You may wish to visit the Oil Program's Internet site at *http://www.epa.gov/oilspill.*

SUPPLEMENTARY INFORMATION:

I. General

How Can I Get Copies of the Background Materials Supporting Today's Notice or Other Related Information?

EPA will publish this document, as well as the letter from OSWER to PMAA described more fully below, on its Web site, *http://epa.gov/oilspill,* and has already posted the settlement agreement on that Web site. Alternatively, contact the docket as described above under **ADDRESSES.** You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Litigation

On July 17, 2002, EPA published a final rule (67 FR 47042), amending the SPCC regulation. Several members of the regulated community filed legal challenges to certain aspects of the rule. *See American Petroleum Institute* v. *Leavitt* et al., No. 1;102CV02247 PLF and consolidated cases (D.D.C. filed November 14, 2002).[1]

Settlement discussions between EPA and the plaintiffs have led to an agreement on all issues except one. In this notice, we are publishing clarifications developed by the Agency during the course of settlement proceedings (and which provided the basis for the settlement agreement) regarding the SPCC regulation to the regulated community and other interested parties. We are also notifying the public of the availability of OSWER's letter to PMAA referenced above, on our Web site, *http://epa.gov/oilspill,* and through the docket, as described above.

III. Clarifications

''Loading Racks''

Plaintiffs challenged certain statements made in the preamble to the July 2002 SPCC amendments (and the response-to-comment document) concerning the ''loading/unloading rack'' requirements under 40 CFR 112.7(h). That provision addresses specific SPCC requirements for tank car and tank truck loading and unloading racks, including requirements for secondary containment. The preamble language at issue, which appears at 67 FR 47110 (July 17, 2002), stated the following:

> *This section is applicable to any non-transportation-related or terminal facility where oil is loaded or unloaded from or to a tank car or tank truck.* It applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule), and to all facilities, large or small. All of these facilities have a risk of discharge from transfers. (Emphasis added.)

The Agency did not intend with the emphasized language to interpret the term ''loading/unloading rack.'' Instead, the Agency was responding generally to a variety of comments each asking that their specific situation not be subject to the 40 CFR 112.7(h) requirements. The reasoning of these commenters did not focus specifically on the contours of what might be considered a loading/unloading rack, but instead focused on

[1] Lead plaintiffs in the cases were the American Petroleum Institute, Marathon Oil Co., and the Petroleum Marketers Association of America.

a variety of other factors relevant to their facilities. See, *e.g.*, 67 FR 47110 (July 17, 2002) (''Another commenter asked that we clarify that only facilities routinely used for loading or unloading of tanker trucks from or into aboveground bulk storage tanks are subject to this provision.'') Thus, the emphasized language above was meant to be a rejection of pleas for exclusions of specific facilities, not an interpretation of the term ''loading/unloading rack.''

In the response-to-comments document for the rule, EPA stated that ''[w]e intend § 112.7(h) to apply to all facilities, including production facilities.'' As discussed more fully below, we interpret § 112.7(h) only to apply to loading and unloading ''racks.'' Under this interpretation, if a facility does not have a loading or unloading ''rack,'' § 112.7(h) does not apply. Thus, in stating that section 112.7(h) applies to ''all facilities, including production facilities,'' the Agency only meant that the provision applies if a ''facility'' happens to have a loading or unloading rack present. The Agency did not mean to imply that any particular category of facilities, such as production facilities, are likely to have loading or unloading racks present.

Plaintiffs also challenged a change in the language of § 112.7(h) (formerly codified as § 112.7(e)(4)). Specifically, EPA substituted the phrase ''loading/unloading area drainage'' for the phrase ''rack area drainage'' in paragraph § 112.7(h)(1). The Agency does not interpret this change as expanding the requirements of that section beyond activities associated with tank car and tank truck loading/unloading racks. After all, the title of § 112.7(h) remains ''facility tank car and tank truck loading/unloading rack.'' In addition, the record for the rulemaking reflects that the Agency specifically rejected the idea of enlarging the scope of that section to apply beyond ''racks.'' (See response-to-comment document, p. 212, rejecting a comment on the proposed rule suggesting that we change the title of § 112.7(h) from ''loading/unloading rack'' to ''loading/unloading area'' because the Agency had not proposed such a change.)

Like other editorial changes to the rule, many of which were not accompanied by specific explanations, the Agency believes the change simply serves to make the rule easier to understand. *See,* 67 FR 47051 (describing the Agency's use of a ''plain language'' approach in the rule). In this case, the change in language made the terminology used in the sentence uniform (a basic principle of plain language approaches to rule writing). Previously, the rule stated that a facility must compensate for lack of specified drainage systems at the ''rack area'' with ''a quick drainage system for tank car or tank truck loading and unloading areas.'' Obviously, the scope of these two emphasized terms was always meant to be identical, and the challenged language change only makes that clearer.

''Impracticability''

Plaintiffs challenged statements made in the preamble to the SPCC amendments concerning the meaning of ''impracticability'' under 40 CFR 112.7(d). As you know, that section provides that where secondary containment is ''not practicable,'' a facility may use a contingency plan instead. The preamble language at issue, which appears at 67 FR 47104 (July 17, 2002), stated the following:

> We believe that it may be appropriate for an owner or operator to consider costs or economic impacts in determining whether he can meet a specific requirement that falls within the general deviation provision of § 112.7(a)(2). We believe so because under this section, the owner or operator will still have to utilize good engineering practices and come up with an alternative that provides ''equivalent environmental protection.'' However, we believe that the secondary containment requirement in § 112.7(d) is an important component in preventing discharges as described in § 112.1(b) and is environmentally preferable to a contingency plan prepared under 40 CFR part 109. *Thus, we do not believe it is appropriate to allow an owner or operator to consider costs or economic impacts in any determination as to whether he can satisfy the secondary containment requirement. Instead, the owner or operator may only provide a contingency Plan in his SPCC Plan and otherwise comply with § 112.7(d). Therefore, the purpose of a determination of impracticability is to examine whether space or other geographic limitations of the facility would accommodate secondary containment; or, if local zoning ordinances or fire prevention standards or safety considerations would not allow secondary containment; or, if installing secondary containment would defeat the overall goal of the regulation to prevent discharges as described in § 112.1(b).* (Emphasis added.)

The Agency did not intend with the language emphasized above to opine broadly on the role of costs in determinations of impracticability. Instead, the Agency intended to make the narrower point that secondary containment may not be considered impracticable solely because a contingency plan is cheaper. (This was the concern that was presented by the commenter to whom the Agency was responding.) As discussed above, this conclusion is different than that reached with respect to purely economic considerations in determining whether to meet other rule requirements subject to deviation under § 112.7(a)(2). Under that section, as stated above, facilities may choose environmentally equivalent approaches (selected in accordance with good engineering practices) for any reason, including because they are cheaper.

In addition, with respect to the emphasized language enumerating considerations for determinations of impracticability, the Agency did not intend to foreclose the consideration of other pertinent factors. In fact, in the response-to-comment document for the SPCC amendments rulemaking, the ''Agency stated that ''* * * for certain facilities, secondary containment may not be practicable because of geographic limitations, local zoning ordinances, fire prevention standards, *or other good engineering practice reasons*.'' For more examples of situations that may rise to the level of impracticability, *see*, *e.g.* 67 FR 47102 (July 17, 2002) and 67 FR 47078 (July 17, 2002) (pertaining to flow and gathering lines).

Produced Water

The Agency has been asked whether produced water tanks at dry gas facilities are eligible for the SPCC rule's wastewater treatment exemption at 40 CFR 112.7(d)(6). A dry gas production facility is a facility that produces natural gas from a well (or wells) from which it does not also produce condensate or crude oil that can be drawn off the tanks, containers or other production equipment at the facility.

The SPCC rule's wastewater treatment exemption excludes from 40 CFR part 112 ''any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part.'' However, for the purposes of the exemption, the ''production, recovery, or recycling of oil is not wastewater treatment.'' In interpreting this provision, the preamble to the final rule states that the Agency does ''not consider wastewater treatment facilities or parts thereof at an oil production, oil recovery, or oil recycling facility to be wastewater treatment for purposes of this paragraph.''

It is our view that a dry gas production facility (as described above) would not be excluded from the wastewater treatment exemption based on the view that it constitutes an ''oil production, oil recovery, or oil recycling facility.'' As discussed in the preamble to the July 2002 rulemaking, ''the goal of an oil production, oil recovery, or oil recycling facility is to maximize the

production or recovery of oil. * * *'' 67 FR 47068. A dry gas facility does not meet this description.

In verifying that a particular gas facility is not an ''oil production, oil recovery, or oil recycling facility,'' the Agency plans to consider, as appropriate, evidence at the facility pertaining to the presence or absence of condensate or crude oil that can be drawn off the tanks, containers or other production equipment at the facility, as well as pertinent facility test data and reports (*e.g.*, flow tests, daily gauge reports, royalty reports or other production reports required by state or federal regulatory bodies).

''Facility''

In the July 2002 SPCC amendments, the Agency promulgated definitions of ''facility'' and ''production facility.'' These definitions, which appear in 40 CFR 112.2, apply ''for the purposes of'' part 112. The Agency has been asked which of these definitions governs the term ''facility'' as it is used in 40 CFR 112.20(f)(1) when applied to oil production facilities. 40 CFR 112.20(f)(1) sets criteria for determining whether a ''*facility* could, because of its location, reasonably be expected to cause substantial harm to the environment'' (emphasis added). It is the Agency's view that, because, among other things, that section consistently uses the term ''facility,'' not ''production facility,'' it is the definition of ''facility'' in 40 CFR 112.2 that governs the meaning of ''facility'' as it is used in 40 CFR 112.20(f)(1), regardless of the specific type of facility at issue.

Notice of Availability

With this notice, EPA is announcing the availability of a letter issued by the Assistant Administrator for OSWER to PMAA addressing certain matters pertaining to the SPCC rule's requirements for integrity testing, security, and loading racks. This letter is available on EPA's website at *epa.gov/oilspill* or by contacting the docket as described above.

Dated: May 17, 2004.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–11775 Filed 5–24–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04130]

National Organizations for Nutrition and Physical Activity Programs; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to enhance nutrition, 5 a day, and physical activity efforts by:

- Providing annual training opportunities and professional development.
- Coordinating training activities and programs between health departments that have nutrition and physical activity components and the State Nutrition and Physical Activity Programs to Prevent Obesity and Chronic Diseases.
- Establishing a National 5 A Day Council to provide leadership on policies and programs to increase fruit and vegetable consumption.
- Conducting State or community-based special projects. The Catalog of Federal Domestic Assistance number for this program is 93.945.

B. Eligible Applicant

Assistance will be provided only to the Association of State and Territorial Public Health Nutrition Directors (ASTPHND). No other applications are solicited.

ASTPHND is the only organization with State nutrition directors or designees and nutrition-related staff uniquely positioned in State health departments to provide statewide leadership for nutrition, 5 A Day, physical activity, and obesity and chronic disease prevention efforts. ASTPHND's members direct the nutrition and 5 A Day programs in the State health departments or public health agencies of fifty States, the District of Columbia, and five Territories. ASTPHND has established a unique network of public health nutritionists working to improve the health of the American population through statewide and local community efforts. The group is committed to addressing nutrition and physical activity related to the prevention of obesity. ASTPHND has experience conducting training and professional development related to nutrition, 5 A Day, and physical activity.

ASTPHND the only national organization representing 5 A Day Coordinators from each State, district, and territory. ASTPHND is the only organization positioned to provide training and promote the translation of public health nutrition research to practice that is critical to CDC efforts to build State capacity to implement effective nutrition programs. All State nutrition directors and 5 A Day coordinators are members of ASTPHND, therefore it is the only national organization with a membership representing State nutrition directors and 5 A Day coordinators from all 50 States, the District of Columbia, and five territories.

C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For technical questions about this program, contact: Diane Thompson, M.P.H., RD, Project Officer, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., MS K–25, Atlanta, GA 30341.

Dated: May 19, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11754 Filed 5–24–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04145]

Enhancing State Capacity To Address Child and Adolescent Health Through Violence Prevention; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement entitled,