

Daniel Gilligan, President  
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Dear Mr. Gilligan:

This letter is in response to your request for the Agency's view regarding whether several approaches under consideration by your members would satisfy 40 CFR §112.7(a)(2)'s "equivalent environmental protection" provision and for clarification of the scope of the requirements in 40 CFR §112.7(h)(entitled "Facility tank car and tank truck loading/unloading rack (excluding offshore facilities)"). We discuss each of your proposals and questions below. Please note that the guidance provided in this letter is based on generalized assumptions and may not be applicable in a particular case based on site-specific circumstances.

### **"Equivalent Environmental Protection"**

#### **Integrity Testing**

The newly amended SPCC provisions regarding bulk storage container integrity require, among other things, that each aboveground container be tested for integrity "on a regular schedule." 40 CFR §112.8(c)(6). These regulations further provide that "you must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing." As you know, however, the regulations also allow deviations from this requirement where "you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure." 40 CFR §112.7(a)(2). You have asked whether, for shop-built containers, visual inspection plus certain actions to ensure that the containers are not in contact with the soil would likely be considered to provide "equivalent environmental protection" to visual inspection plus another form of testing.

It is our view that for well-designed shop-built containers with a shell capacity of 30,000 gallons or under, combining appropriate visual inspection with the measures described below would generally provide environmental protection equivalent to that provided by visual inspection plus another form of testing. Specifically, the Agency generally believes that visual inspection plus elevation of a shop-built container in a manner that decreases corrosion potential

(as compared to a container in contact with soil)<sup>1</sup> and makes all sides of the container, including the bottom, visible during inspection (e.g., where the containers are mounted on structural supports, saddles, or some forms of grillage) would be considered “equivalent.” In a similar vein, we’d also generally believe an approach that combines visual inspection with placement of a barrier between the container and the ground, designed and operated in a way that ensures that any leaks are immediately detected, to be considered “equivalent.” For example, we believe it would generally provide equivalent environmental protection to place a shop-built container on an adequately designed, maintained, and inspected synthetic liner.<sup>2</sup> We believe these approaches would generally provide equivalent environmental protection when used for shop-built containers (which generally have a lower failure potential than field-erected containers), because these approaches generally reduce corrosion potential and ensure detection of any container failure before it becomes significant.

In determining the appropriate SPCC plan requirements for visual inspection of containers managed as described above, we suggest that the professional engineer (PE) begin by consulting appropriate industry standards, such as those listed in Steel Tank Institute Standard SP001 and American Petroleum Institute Standard 653.<sup>3</sup> Similarly, in assessing whether a shop-built container is well designed, the PE may wish to consult industry standards such as Underwriters Laboratory 142 or American Petroleum Institute Standard 650, Appendix J. Where a facility is considering the use of the above approaches for containers that are currently resting on the ground, or have otherwise been managed in a way that presents risks for corrosion or are showing signs of corrosion, we recommend the facility first evaluate the condition of the

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<sup>1</sup>Additionally, we recommend that special attention be paid to the characteristics of the material used for the support structure to ensure that they do not actually accelerate corrosion.

<sup>2</sup>Note, however, that a facility may not rely solely on measures that are required by other sections of the rule (e.g., secondary containment) to provide “equivalent environmental protection.” Otherwise, the deviation provision would allow for approaches that provide a lesser degree of protection overall.

<sup>3</sup>Note that the Agency intends in the near future to develop guidance on appropriate visual inspection of shop-built containers. In that guidance, we intend to address issues such as inspection frequency, scope (e.g., internal and /or external), training and/or qualifications of persons conducting the inspections, and other measures that may be appropriate at a given site (e.g., measures to detect the presence of water in a container). We expect to use the referenced industry standards in developing such guidance.

It is also important to note, however, that depending on site circumstances, the appropriate requirements for visual inspection may exceed those normally conducted in accordance with recognized industry standards.

container in accordance with good engineering practices, including seeking expert advice, where appropriate.

### Security

The SPCC regulations state that you must “fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended.” 40 CFR §112.7(g)(1). You have asked whether two specific sets of circumstances would likely be determined to provide “equivalent environmental protection” to this requirement. The first is where the area of the facility directly involved in the handling, processing and storage of oil is adequately fenced. The second is where the facility is equipped with a “pump house” or “pump shack,” which contains, among other appropriate things, a master disconnect switch from which all power to pumps and containers is cut off when the facility is unattended.

With respect to your first scenario, it is our view that, as a general matter, adequately fencing all discrete areas directly involved in the handling, processing and storage of oil would provide equivalent environmental protection to fencing the entire footprint of the facility, since it is potential for harm to this equipment that poses the risk addressed by the fencing requirement.

With respect to the second scenario, the approach you suggest would appear to generally provide environmental protection equivalent to fencing for risks associated with the potential for unauthorized access to pumping equipment. In other words, cutting off power in the manner you suggest would likely provide the added layer of protection offered by a fence should the other security measures offered by the rule, in this case 40 CFR §112.7(g)(3)’s requirements for securing pumps, fail. However, because cutting off power as suggested does not address risks to containers, piping and appurtenances not associated with the pumps at the facility, it does not appear to provide protection equivalent to fencing as it relates to risks to such equipment.

### Conclusion

Please note that determinations of “equivalent environmental protection” must be implemented and documented in accordance with 40 CFR §112.7(a)(2). In addition, please be aware that the conclusions drawn in this letter are only for the purposes of meeting the “environmental equivalence” standard in the SPCC regulation. PE’s might nevertheless decide to recommend non-destructive shell testing and fencing of the entire footprint of the facility for reasons other than compliance with the SPCC rule (e.g., to protect an owner’s investment in equipment or to meet other local, state or federal requirements).

Finally, this letter is meant to provide guidance on the “equivalent environmental protection” standard. It does not, however, substitute for EPA's statutes or regulations, nor does it itself constitute a regulation. Thus, it cannot impose legally-binding requirements on EPA, States, or the regulated community, and its recommendations may not be appropriate at an individual site based on site-specific circumstances.

Sincerely,

Marianne Larmont Horinko  
Assistant Administrator