

**Spill Prevention, Control and Countermeasure Stakeholder Meeting**  
**March 31, 2004**  
**9:30 a.m. to 3:30 p.m.**

*NOTE: This is a summary document only.  
EPA and audience discussion/comments have been edited.*

***Agenda***

- Introduction (*Dave Evans, Debbie Dietrich*)
- SPCC Implementation Strategy Overview & SPCC Settlement Overview (*Dave Evans*)
  - Integrity Testing (*Troy Swackhammer*)
  - Loading Racks (*Mark Howard*)
  - Security (*Patricia Fleming*)
  - Impracticability/Cost (*Troy Swackhammer*)
  - Produced Water (*Richard Franklin*)
  - Navigable Waters (*Hugo Fleischman*)
- Additional SPCC Issues
  - Loading Racks (*Mark Howard*)
  - Motive Power (*Mark Howard*)
  - Oil/Water Separators (*Patricia Fleming*)
  - Integrity Testing (*Troy Swackhammer*)
  - Mobile/Portable Containers (*Mark Howard*)
  - Process Vessels (*Patricia Fleming*)
  - Piping (*Troy Swackhammer*)
  - Secondary Containment Provisions (*Patricia Fleming*)
- Meeting Wrap-Up / Next Steps (*Dave Evans*)

***Introduction - See Slides Posted on Website (SPCCStakeholderMtgIntro.pdf)***

**Dave Evans:**

EPA looks forward to having the chance to provide the regulated community with the latest update and a sense of where things stand with the SPCC regulation.

**Debbie Dietrich:**

*History.* In July 2002, EPA revised the SPCC rule. The rule has existed, and has been implemented, for thirty years. EPA established a workgroup after a few significant incidents, because the rule needed to be strengthened. This culminated in the July 2002 rule. Some of the key items added to address specific issues include: brittle fracture, facility diagrams, integrity testing on tanks, and professional engineer certifications. EPA's policies were clarified in preamble language. However, the rule revision raised many concerns about long-standing requirements, and generated a great deal of attention.

*EPA Actions Since the 2002 Rule.* EPA extended the rule's original compliance date by eighteen months. The new or strengthened requirements remain, but regulatory relief was implemented. The carryover SPCC requirements are also maintained. EPA was sued over the rule through four lawsuits. EPA has spent a great deal of time trying to address the litigation issues and reach settlement. EPA has resolved four out of five key issues, and part of today's discussion is to share the outcome of this settlement. EPA is currently evaluating options to address several additional issues. EPA has spent a great deal of time with many audience members, and appreciates all the comments that have been sent. With the implementation date looming in August, EPA is currently looking at options regarding how to best implement this rule. EPA does not want to put anyone in an untenable situation.

As demonstrated by the number of people in the audience, and the variety of companies and industries represented, the SPCC-regulated community is comprised of a very large universe. EPA realizes that many people deal with oil in many ways, and that the threshold of 1,320 gallons of oil contributes to the size of the regulated universe. Ms. Dietrich also emphasizes that there is direct EPA implementation of

the SPCC rule. There is no state authorization or delegation. Given the limited resources that the Oil Program has to implement this rule, it is important to establish priorities.

***SPCC Implementation Strategy Overview & SPCC Settlement Overview - See Slides Posted on Website (SPCCImplementationDiscussion.pdf)***

**Dave Evans:**

EPA hopes to communicate the terms of the SPCC settlement. While there were a limited number of parties involved in the resolution of these issues, the settlement decisions can be pertinent and applicable to any regulated facility. One settlement agreement has been signed by all parties; the other settlement agreement is still pending because of the large number of parties that have to sign it. The settlements resolved several of the most significant issues related to the revised rule, and EPA believes that the regulated community will find the settlement resolutions to address issues of concern. Both settlement agreements will be printed in the Federal Register and posted on the Oil Program website.

EPA also wants to talk about a broader set of issues that many stakeholders have brought to their attention. EPA will identify their current options relative to how these issues could be handled.

In the course of today's meeting, EPA will address questions and concerns that have been raised since the final rule was promulgated. EPA is not, at this time, announcing exactly what their implementation strategy will be. Several options are being considered, and final decisions have not been made. EPA expects that within a few weeks they will be in a position to release a decision. Some of the revised rule's requirements are uncontested, i.e., no one has expressed concern about requirements for brittle fracture analysis on a one million gallon tank or about integrity testing on very large tanks. Many of the issues that have been brought to EPA's attention are not directly related to the revisions in the July 2002 rule. While these issues have received heightened attention because the spotlight has been on SPCC, the rule was not changed with regard to these issues.

To address an issue in a way that is beyond an elaboration of what the rule, preamble or earlier policy statements have said may ultimately require rulemaking. In fact, many of the issues that EPA discusses at this meeting will likely require additional rulemaking in order to address them to the regulated community's satisfaction. The reason for this is that there are clear limits to what EPA can do as a matter of policy interpretation. Where the regulatory language, clarifying preamble language, or any past policy pronouncements from EPA provide the framework to clarify an issue, EPA may have the discretion to address the issue through policy interpretation. However, if EPA wishes to move in a direction that may promote good spill prevention but where there is no framework in the rule, preamble or past policy pronouncements, EPA does not have this discretion. If EPA does not have the ability to address an issue through policy interpretation, the Agency must do rulemaking.

The Oil Program's resources are limited. Just as facility owners and operators deal with limited resources at their facilities, EPA deals with limited resources in the way they implement the program. Within the current framework, it is possible for the agency to prioritize its implementation activities. EPA emphasizes that the Oil Program regulates a very large universe of facilities and that they must prioritize their efforts in order to be effective.

*Specific Sectors.* For industries associated with animal fats and vegetable oils, the Edible Oil Regulatory Reform Act requires EPA to consider whether differentiated requirements are warranted. For animal fats and vegetable oils, EPA has issued an Advanced Notices of Proposed Rulemaking (ANPRM). EPA's past regulatory actions indicate that the Agency expects to issue differentiated regulations.

Aviation, agriculture, and construction are examples of three sectors which have unique concerns. EPA has held expansive discussions with many specific sectors. It is important for specific sectors to understand the impact of the settlement terms. Additionally, for the broader set of policy issues, EPA is considering a small facility flexibility option. Most of the revisions suggested in this initiative are

applicable, and will provide some form of either reduced concern or increased regulatory flexibility across all sectors. EPA intends to focus its attention on this broad national policy, communicate policy directions once finalized, and then use that as a starting point to narrow the focus to the unique concerns of specific sectors. EPA believes that regulatory changes targeted at a specific sector should be done through rulemaking.

*Guidance.* EPA is still a few weeks away from determining an implementation strategy, but once finalized, the Agency will communicate the strategy and issue guidance through the form of an OSWER directive to the regional offices. In addition, the Oil Program is developing checklists and sample plans that will be provided to the regions, in order to increase the level of national consistency.

*Policy Options.* Further rulemaking is likely, because of the constraints on EPA in their policy options. EPA does want to respond to the concerns that stakeholders have raised. The scope of EPA's envisioned rulemaking will become more clear during the discussions on specific policy matters. EPA emphasizes that they are still considering options and would appreciate feedback. EPA is considering three key options on how to proceed, as follows:

- *Full Extension.* Effective last April, EPA put in place an 18-month extension for implementation of the plan. A further full extension of all the revised rule's new or strengthened requirements would amount to issuing a "round two" of what was done a year ago. The basis for this option is that EPA may not want to require facilities to revise SPCC plans until EPA completes additional rulemaking. Minimally, EPA would need to issue a proposed rule, and that would take a period of time. Due to the lengthy process involved, the time it takes to promulgate a rule is not entirely under the Agency's control. If this is the course of action EPA chooses to pursue, facilities will be required to maintain their existing SPCC Plans. The revised rule's regulatory relief would also remain.
- *Selective Extension.* This option would provide some form of selective extension of the contested requirements of the July 2002 rule. The remaining changes would go into effect. EPA would provide a targeted extension for specific issues and provisions that are of concern. EPA has not fully explored this issue, but it is very complicated, as the old provisions would still be in effect. This option would also not satisfy all concerns, as there are many issues that were not addressed by the revised rule. For example, the sized secondary containment requirements for loading racks and for bulk storage containers are in the old rule.
- *National Priorities.* EPA could implement the revised rule according to some set of national priorities. EPA's inspection actions and follow-up enforcement actions would be based on this set of priorities. The ability to address policy concerns by prioritizing the agency's actions is not limited to the changes under the July 2002 rule; EPA can establish priorities for longstanding requirements (old rule). If EPA gives a very clear signal about what its priorities are in implementing the revised rule, the Agency is signaling the directions in which they would like to go in future regulatory changes.

*Small Facility Initiative.* One of the issues that has been brought most pointedly to EPA's attention is that there is an extremely broad and varied universe of facilities that are impacted. The small facility initiative that EPA is contemplating is to respond to this reality. Although the requirements of the 1974 rule did capture the vast majority of these facilities, parties outside EPA have stated that there is not full compliance by all facilities above the 1,320-gallon threshold. EPA is sympathetic to the request for assistance and flexibility from smaller facilities. EPA's goal is to increase spill prevention, and the Agency believes that some flexibility in the methods smaller facilities use to comply with the SPCC rule could advance toward this goal. EPA does not intend to eliminate spill prevention requirements for smaller facilities altogether. Small quantities of oil can have profound and long standing impacts on waters of United States and wetland environments, and small facilities often cannot afford the cost of responding to a spill. Possible options for small facilities include:

- A generic plan, developed by associations that represent classes of facilities.
- Streamlined requirements that smaller facilities could achieve, as opposed to full compliance with

the rule in its current form.

### **Questions**

#### **Audience Member:**

For many years, this provision for secondary containment at loading racks was optional, due to the use of the term “should.” The reality is that often facilities do not have this containment. There are not many spills reported at racks. Is EPA open to flexibility on this issue?

#### **Dave Evans:**

EPA cannot provide specific feedback at this time. That provision has been in place since the rule was first promulgated. While the 1974 rule used the term “should,” EPA proposed the use of the term “shall” in 1991. In every inspection and enforcement action EPA has taken over the years where a true loading rack exists, EPA has expected the sized secondary containment to be in place. At this point EPA does not want to signal that this is area where flexibility will be granted.

#### **Audience Member:**

Earlier, it was stated that EPA can use policy discretion, if it is consistent with past policy. But if EPA needs a further rulemaking, is the current policy rule?

#### **Dave Evans:**

This is an issue that has been affected by recent DC district court cases. The court has made clear that EPA (and other executive agencies) needs to operate within the parameters of existing policy framework. Policy interpretations need to be consistent with the properly promulgated notice and comment rules that are on the books. Where a given policy issue or question has not previously been interpreted, if an interpretation can be made within the construct of a rule that was finalized, agencies have discretion to do that. But having done that once, if EPA wanted to change the interpretation on a given provision, the agency must then embark upon additional rulemaking.

#### **Audience Member:**

EPA has suggested to trade associations to take a look at whether their member facilities have sufficiently similar operations, such that it might be possible to frame a generic SPCC Plan. In suggesting this, is EPA signaling flexibility on the requirement for PE certification? A PE cannot certify a generic plan.

#### **Dave Evans:**

EPA is considering this, and feels that it is most relevant to smaller facilities versus larger facilities. EPA is only considering options right now, so there is no specific decision yet.

#### **Audience Member:**

The compliance deadlines are August of this year to have plans revised, and February of 2005 to implement those plans. Will EPA be clarifying exactly what is meant by “implement your plan”? The context for the question is that, if significant construction and significant capital expenditures are required, it may be unrealistic to expect that this can be done by February 2005.

#### **Dave Evans:**

EPA cannot at this time say exactly what they believe should be done relative to this issue. Larger corporations often have a capital budgeting plan, which may not be prepared annually, so funding for a significant construction may not be quickly available. Facilities need to plan for such expenditures. Unfortunately, EPA is not in a position to respond except to echo Ms. Dietrich’s words at the beginning of this meeting, *EPA does not want to put facilities in an untenable position*. EPA realizes that they are not providing the clarity needed right now for facilities to revise Plans consistent with EPA’s expectations. EPA will be providing clarity on this in the months ahead. From Mr. Evans’ perspective, EPA is always going to have some discretion in enforcement actions, and will always consider in their decision the progress and efforts that have been made by a facility.

#### **Audience Member:**

How do you define a small facility? Keep in mind that some large businesses have small facilities.

**Dave Evans:**

EPA has considered options in a more general sense, such as using Small Business Association definitions for the designation of a small facility. However, in some cases small businesses are in the business of delivering oil and storing oil, and so will have high volumes - the very situations where a spill prevention plan is most important. There are certain large corporations that have very small facilities and believe that if there is going to be relief for small facilities they should not be excluded simply because they are a larger corporation. Consequently, EPA is more inclined toward using a gallon threshold as a basis for identifying a class of facilities that we would allow to have greater flexibility. However, there is no decision at this time.

*[[Morning Break]]*

***SPCC Settlement Overview***

**Dave Evans:**

Settlement discussions by their very nature are confidential proceedings. Because those discussions are confidential, EPA cannot provide detailed insight into the proceedings. The settlement documents themselves are public, and will be printed in the Federal Register. To the extent that the clarifications or relief reflected in the settlement terms are applicable to your facility, they are available to you. That is why it is important that EPA communicates as clearly as possible what these settlement terms mean.

**Mark Howard:**

This discussion on the litigation settlement should not be construed as any type of legal analysis. EPA will highlight those things that will help you better understand what the litigation means to you as a facility owner/operator. EPA is highlighting certain areas and helping the regulated community understand what is contained in the litigation document. **EPA is not interpreting the document.**

***SPCC Settlement Issues - See Slides Posted on Website (SPCCFinalSettlementPres.pdf)***

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- Loading Racks (*Mark Howard*)
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- Navigable Waters (*Hugo Fleischman*)

*[[Lunch Break]]*

***Additional SPCC Issues***

**Dave Evans:**

Today's discussion will cover the directions in which EPA hopes to head, in order to respond to the concerns that have been brought to EPA's attention, and still provide spill prevention protection.

***Additional SPCC Issues - See Slides Posted on Website (SPCCAdditionalIssues.pdf)***

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*Meeting Wrap-Up / Next Steps*

**Dave Evans:**

A meeting summary will be posted on the website when it is available.

**Debbie Dietrich:**

It is gratifying to see the level of interest in these rules. EPA is appreciative of questions and comments. The more information EPA can get, the better job the Agency can do. Given the broad scope of issues involved in this rule, it is very helpful to receive questions and comments.