



**US Army Corps  
of Engineers** ®

## HTRW Center of Expertise Information - Fact Sheets

US Army Corps of Engineers

### HTRW CX Regulatory Fact Sheet FY05-03

**Title:** Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities – SPCC Update

**Date:** Original: July 17, 2002  
Clarifications: 5/25/04  
Extension: August 11, 2004

**SARS RIN#:**

**Action Type:** Final Rule/notice/Final Rule

**Cite:** 67 FR 47042/69  
FR 29729/69 FR  
48794

**Executive Summary:** Spill Prevention Control and Countermeasure (SPCC) Plans are required by EPA to reduce the likelihood and impact of oil releases to navigable waters. The Clean Water Act requires SPCC Plans to specify procedures and equipment requirements for facilities. EPA has finalized multiple proposed rules dated 10/22/91 (56 FR 54757), 2/17/93 (58 FR 8824) and 12/2/97 (62 FR 63812). Important aspects of the original rule include the following:

- It clarifies the role of the Professional Engineer (PE) in the SPCC Plan certification process, clarifies “good engineering practice” and the use of “industry standards” in the SPCC Plan development and implementation process.
- It clarifies EPA’s position on facility loading/unloading racks.
- The extension establishes 2/17/06 as the date for SPCC Plan revision and associated PE certification and 8/18/06 as the date for implementation.
- It reorganizes the existing regulation to better reflect different facility requirements.
- It adds/modifies a substantial number of definitions to clarify several issues.
- It allows flexibility in SPCC format requirements provided a cross reference is made.
- It provides relief from some discharge reporting.
- It adds a method for deviating from some plan requirements provided appropriate justification is documented.
- It exempts certain containers from SPCC requirements if they are associated with a wastewater treatment process and are not used to meet a 40 CFR 112 requirement.
- It excludes underground storage tanks from most of the SPCC rules provided they are in compliance with 40 CFR 280/281.
- It defines a 55-gallon container as the lower limit for making storage capacity determinations and has dropped the 660-gallon single tank trigger provision.
- It clarifies that oil filled equipment is excluded from the bulk container provisions.

It clarifies general inspection, testing, and record keeping requirements and specifically addresses integrity testing issues associated with “field constructed” vs. “shop fabricated” containers.

**USACE Impact:** The rule will likely have both potential positive and negative impacts to the USACE. *Positive* aspects include likely reduced administrative burdens associated with record keeping. Also, with changes to container size and quantity thresholds, some small facilities may no longer be regulated by the SPCC rule. *Negative* impacts include the requirement of staff to review and revise existing SPCC Plans and coordinate PE re-certifications of *all* existing Plans by 2/17/06. Further, the actual *implementation* of amended plans by 8/18/06, may require unanticipated/unbudgeted capital improvements driven by EPA “clarified” requirements associated with secondary containment, loading/unloading racks, oil water separators and oil filled equipment

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**Comments Due To RSPA:** 23 Nov 2004

**Full Text Document Location:** <http://www.epa.gov/fedrgstr/2002-jul.htm> and <http://www.epa.gov/fedrgstr/2004-aug.htm>

**Key Elements of the Proposed Rule:**

EPA has consolidated and finalized three SPCC proposed rules dating from 10/22/91 (56 FR 54757), 2/17/93 (58 FR 8824) and 12/2/97 (62 FR 63812). The rule reorganizes the regulation, reduces administrative burdens, provides exemptions to the SPCC requirements, and clarifies EPA's position on matters of secondary containment, PE certification and oil filled equipment. Additional, less applicable, but notable provisions include incorporating the Edible Oil Regulatory Reform Act (EORRA) and expanding the scope of the rule to include Outer Continental Shelf and Deepwater Port activities. Several extensions have been granted. The final extension was published on 8/11/2004 resulting in compliance dates of 2/17/06 and 8/18/06.

**Role and Scope of the PE, "Good Engineering Practice" and "Industry Standards"**

EPA clarified the responsibility of the PE by requiring the PE to specifically consider applicable industry standards and certify that the plan is prepared in compliance with Part 112. All SPCC plans must be reviewed, amended as necessary to comply with the new rule, and certified by a PE by the revised date of 2/17/06. The rule further states that the PE must certify any later technical amendments. PE certification is not required for non-technical amendments such as names and phone numbers etc.

EPA has clarified what they consider is the fundamental premise of the SPCC program, "good engineering practice" and associated "industry standards." EPA decided not to incorporate any specific industry standards, as they were concerned codified standards would become quickly obsolete. EPA instead listed what they consider appropriate industry standards (ANSI, API, NFPA etc.) at 67 FR 47058 and indicated these are the types of standards a PE should be evaluating in their SPCC Plan certification process. EPA is relying in large part on the PE to implement good engineering practice and to evaluate the *appropriateness* of current industrial standards for plan implementation. It is then the responsibility of the O/O to implement the plan. EPA specifically states that the owner/operator (O/O) "must specifically document any industry standard used to comply with this section [112.3(d)]. This documentation should include the name of the industry standard, and the year or edition of that standard [See 67 FR 47085]." EPA further stated that it is the responsibility of the PE to develop inspection and testing procedures. For any SPCC plan certified under this rulemaking, the PE must now attest familiarity with 40 CFR 112; that he or his agent has visited the site; that plan preparation is in accordance with good engineering practice, including *consideration* of industry standards; that inspections and testing procedures have been established; and that the Plan is adequate for the facility (40 CFR 112.3(d)(1)). The actual implementation of the SPCC Plan is solely an O/O responsibility.

**Implementation Dates:**

Under the extension, EPA has indicated that existing facilities, with previously prepared SPCC Plans, have until 2/17/06 to amend their plans to incorporate changes induced by the rule's new provisions and EPA "clarifications." The facility then has until 8/18/06 to fully implement those changes. This compliance revision

and amendment process is a separate and distinct requirement to that of the periodic (previously three year, now 5 year) SPCC Plan review. Under the original rule, EPA has stated that the Regional Administrator, on a case-by-case basis, may grant extensions provided appropriate justification is given. The request for extension process is outlined at 40 CFR 112.3(f).

#### Facility tank car and tank truck loading/unloading rack

EPA has clarified in the preamble (67 FR 47110) that 40 CFR 112.7(h)(1) requires secondary containment (in compliance with 112.7(c)). Further, EPA states that the secondary containment for these locations “must be capable of containing any single compartment of a tank car or tank truck loaded or unloaded in the facility.”

Since that rulemaking, litigation has resulted and EPA has since issued an additional clarification (5/25/2004, 69 FR 29728 <http://www.epa.gov/fedrgstr/2004-may.htm>) regarding tank truck loading/unloading “racks.” EPA clarified the scope of this section is applicable to a facility with a traditional facility tank car and/or tank truck loading/unloading rack and did not intend to expand the scope of this section beyond those facilities where loading/unloading racks were not present.

#### Rule Reorganization

The rule has been reorganized into subparts. Subpart A consists of applicability, definitions, and general requirements for *all* facilities. Subparts B and C outline requirements for different types of oils. Subpart B addresses petroleum and non-petroleum oils excluding animal and vegetable oils. Subpart C addresses animal and vegetable oils. Subparts B and C are divided into sections to reflect differing types of facilities (non-production vs. production) for each type of oil. EPA has provided a tabular summary of major changes at 67 FR 47044.

#### Important New Definitions

EPA has added or modified over 20 definitions. Of particular importance is:

- **Facility:** The revised rule clarifies that a facility may be as small as a piece of equipment, such as a tank, or as large as a military base (67 FR 47074).
- **Bulk Storage Container:** EPA added a clarification that oil filled electrical, operating, or manufacturing equipment is not a bulk storage container.
- **Impracticability:** The 5/25/04 clarification notice stated that the agency believes it may be appropriate for the O/O to “consider costs or economic impacts in determining whether he can meet a specific requirement that falls within the general deviation provision of 40 CFR 112.7(a)(2)” but they can not make a secondary containment determination based solely on economic considerations. EPA clarified that there will be situations at certain facilities where secondary containment may not be practicable because of geographic limitations, local zoning ordinances, fire prevention standards or other good engineering practice reasons.

### SPCC Format Flexibility

EPA has stated that owners and operators (O/O's) are not specifically obligated to follow the sequential format of the revised SPCC Plan. However, from a compliance perspective, the plan *must* include a cross reference of the revised sequence as finalized in this rule. EPA's argument is that without a quick way to check the contents of a plan against those outlined in 40 CFR 112, compliance would be difficult to evaluate. EPA has provided a cross-reference matrix consisting of the current and revised regulatory citations, which identify the requirements and content of SPCC Plans. The cross-reference can be found beginning at 67 FR 47050. As indicated above, O/O's have 6 months from the effective date of the rule to revise SPCC Plans, plus an additional 6 months to implement changes.

### Discharge Reporting Relief

40 CFR 112.4(a) historically required that when two or more discharges in "quantities that may be harmful" in any consecutive twelve month period occurs, that occurrence triggers the submission of information and a copy of the SPCC Plan to the Regional Administrator (RA). EPA has revised these triggering thresholds now stating that two releases of 42 or more gallons (one barrel) within a twelve-month period, or an individual release of 1000 gallons or more will trigger additional reporting. EPA has done this to better focus their resources. There has been no change or revision to the "sheen rule."

### The "Deviation Rule" (40 CFR 112.7(a)(2))

EPA has added a provision that specifically allows deviations from most of the rules substantive requirements. With the exception of secondary containment, deviations are allowed provided that you can explain your reasons and provide "equivalent environmental protection" with an alternative. An example of a deviation may address EPA required security measures. In some instances fencing, lighting and other security measures may not be elements of good engineering practice. In that instance a variation is authorized provided the deviation is appropriately documented. EPA specifically stated the deviation provision was *not* sensitive to cost issues. Deviations of technical aspects of the plan require engineering judgment and are subject to PE certification.

Section 112.7(d) contains provisions for the O/O when secondary containment required by 112.7(c) [general containment/diversion], 112.7(h)(1) [loading/unloading], 112.8(c)(2) [bulk storage containers], or 112.8(c)(11) [mobile/portable storage tanks] is not practicable. In those cases, the O/O must develop a 40 CFR 109 Contingency Plan and develop a written commitment of manpower and resources unless a Facility Response Plan (FRP) exists.

### The "Waste Water Treatment" Exemption

EPA has clarified that certain facilities or parts of a facility that are involved in the treatment of wastewater, vs. the handling and management of oil, may be excluded from the SPCC requirements. In order to meet the exemption criteria, the facility or

portion of the facility must not be used to meet any of the substantive requirements of 40 CFR 112 and that particular part of the facility may not be involved in the production, storage, or use of oil. Depending on the specific situation, some oil water separators may or may not meet this exemption. Since several issues come into play in these types of scenarios, this will likely be an area where additional guidance may be sought from Office of Counsel.

#### Underground Storage Tank (UST) Exemptions

EPA has defined “completely buried tank” and clarified that if these tanks are in compliance with 40 CFR 280/281 they will no longer be regulated under the SPCC provisions. The only requirement will be that these tanks will need to be located and identified on the SPCC Plan facility diagram. EPA further clarified that the SPCC provisions *do apply* to UST’s exempt from the 40 CFR 280/281 regulations for underground storage tanks. The logic here is that if the tanks are exempt from UST regulations and SPCC requirements then they would be completely unregulated.

#### Container Thresholds and Bulk Container Definition

EPA has defined bulk storage container and has specifically excluded oil filled equipment from that definition. Further, EPA has clarified that containers with a storage capacity of *less than* 55 gallon are exempt from *all* SPCC requirements. EPA has further clarified the bulk container provisions by breaking them out under a separate section, 40 CFR 112.8. These provisions are in addition to those presented under the general requirements of 112.7.

#### Switchyards, Substations, and Oil Filled Equipment

EPA has clarified, by definition, that oil filled equipment does not meet the definition of a bulk storage container, thereby excluding this equipment for the *40 CFR 112.8* provisions. EPA was clear that these facilities, as well as others with oil filled equipment, are subject to the SPCC plan and general provisions of 112.7. Depending on how broadly an installation has interpreted the scope of SPCC Plan applicability, oil filled equipment such as transformers and oil circuit breakers, may or may not have been included in facility SPCC Plans. At a minimum, these areas will need to be identified in the SPCC Plan and containment or diversion structures will need to be evaluated. If these features or structures are not present or are not practical for implementation, a deviation under 112.7(a)(2) would need to be documented.

#### Integrity Testing of “Shop Fabricated” vs. “Field Constructed Tanks”

EPA has clarified that based on good engineering practice, inspection and testing provisions for smaller shop fabricated tanks may be subjected to visual inspections only, provided all sides can be seen and no sides are in contact with the ground. The deviation would need to be documented as required by 112.7(a)(2). While EPA did not specifically discuss this issue relative to 55 gallon drums and similar sized containers, it would seem logical that visual inspections of drums would suffice if the appropriate language was incorporated into the SPCC plan under justification.

For larger storage tanks, the requirement that the certifying PE now attest that industry standards and their associated testing have been evaluated and incorporated as appropriate will likely have an impact on operating budgets. EPA had indicated in the 1991 proposed rule that they thought an integrity testing frequency of once per ten years might be appropriate. While EPA *dropped* any reference to a specific time frame for integrity testing, and deferred to industry standards in the final rule, the 10-year frequency proposal was likely a good indication of what a typical industry standard may require or recommend as an appropriate frequency. In terms of testing techniques, EPA indicated that there are several non-destruction methods including hydrostatic, radiographic, ultrasonic, and acoustic emissions testing that may be employed depending on the application and referenced standard. It is hard to determine what level of familiarity Army PE's or private industry PE's, that have historically certified SPCC Plans, have with the EPA referenced industry standards and their associated integrity testing methods, but it is reasonable to assume some degree familiarization will be necessary for both private and government PE's before a comfort level is reached to certify SPCC Plans prior to the effective date of this rule (2/17/06).

#### Inspections, Testing, and Record Keeping

The rule allows "usual and customary business records" to minimize duplication of the record keeping process. (i.e. integrity testing records conducted under contract need not be a part of the plan). Another example might be that some NPDES best management practices (BMPs) and storm water permit related record keeping might also be used to meet wastewater management requirements associated with storm water in diked areas.

EPA also stated that electronic versions of the plan are fine, but hard copies must be available on-site for facilities occupied at least 4 hours per day. If the facility does not meet those criteria, a copy of the plan must be available at the nearest field office. Plan review must now be conducted every 5 years vs. every 3 years. A signed statement attesting to the review must be documented by the O/O.

#### Conclusion

In some respects the final SPCC rule will benefit USACE facilities. Specifically the elimination of containers under 55 gallons and 40 CFR 280 compliant USTs from the SPCC regulations will reduce the compliance burden at many facilities. Integration of the NPDES permit program and associated BMPs addressing storm water will help to further reduce record keeping duplication. Clarifications on visual inspections for shop fabricated tanks and the distinction oil filled equipment and bulk containers will further help the regulated community comply with the new provisions.

The most important aspect of the final rule and associated clarifications may be that the preamble language gives the regulated community a current and up-to-date perspective of what EPA considers the scope of the SPCC program and their interpretation of it. Whether EPA and the regulated community have been and will be making the same regulatory interpretations of existing and new regulations

remains to be seen. Additional clarifying language by EPA is likely.