



Enforcement Alert

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U.S. EPA Focusing Enforcement Efforts on Oil Spill Violations

Companies Required to Take Corrective Measures to Reduce Oil Spills, Especially From Pipeline and Tank Corrosion Problems

Oil spills can pose a serious threat to human health and often have a long-lasting impact on the environment. It may take years for an

ecosystem to recover from damage caused by an oil or hazardous substance spill. Even one pint of oil released into the water can spread and cover one acre of water surface area and can seriously damage an aquatic habitat.

Federal law and regulations requires companies that handle oil products to establish and maintain spill prevention and cleanup programs. Complying with these requirements, as explained further in this issue, will reduce the likelihood of a spill and minimize damage when accidents occur.

About Enforcement Alert

Enforcement Alert is published periodically by the Office of Regulatory Enforcement to inform and educate the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the regulated community anticipate and prevent violations of federal environmental law that could otherwise lead to enforcement action. Reproduction and wide dissemination of this publication are encouraged.

For information on obtaining additional copies of this publication, contact the editor listed below.

Eric V. Schaeffer
Director, Office of
Regulatory Enforcement

Editor: Virginia Bueno
(202) 564-8684
bueno.virginia@epa.gov
(Please email address and
name changes or subscription
requests for this newsletter)

Recent EPA investigations are revealing large scale compliance problems, such as pipeline breaks, leaking tanks, faulty valves, overturned trucks, leaking ships, and illegal dumping.

Earlier this year, a major company resolved claims related to several hundred oil spills from its pipelines and oil facilities in a number of states (*see page 3 for more on this settlement*).

Environmental Hazards of Oil Spills

Oil spills can significantly reduce the amount of oxygen available for fish and aquatic life. Oil that is spilled in inland waters, such as small rivers and

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Federal law requires companies that handle oil products to establish and maintain spill prevention and cleanup programs (U.S. EPA photograph).

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streams, may be especially harmful if there are limited oxygen resources in the water body and little dispersal of the oil. Oil emulsions can injure or kill fish and aquatic life by suffocating them, and can kill birds as a result of potential hypothermia and drowning. The long-term effects of spills may continue for years even if the oil spill is cleaned up in a relatively short period of time. These long term effects include the contamination of food sources and nesting habitats; the reduction of breeding animals and plants that provide future food; and the reduction of reproductive success through contamination and reduced hatchability of eggs.

Law Prohibits Discharging, Requires Prevention Plans

Clean Water Act: Section 311 of the Clean Water Act addresses pollution from oil and hazardous substance releases and authorizes EPA to establish



Corrosive pipes can severe environmental damage to the environment that may take years to clean up. (U.S. EPA photograph).

a program for preventing, preparing for, and responding to oil spills that occur in navigable waters of the United States. Section 311 prohibits discharges of oil in such quantities that may be

harmful to the public health or the environment, including discharges of oil that:

- Violate applicable water quality standards; or
- Cause a film or sheen upon, or discoloration of, the surface of the water or adjoining shorelines; or
- Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Owners or operators of facilities from which oil is discharged are strictly liable for violations. Absent gross negligence, Section 311(b)(7) of the CWA and the regulations at 40 CFR Part 19 impose a maximum penalty of \$1,100 per barrel of oil discharged for events occurring after Jan. 30, 1997. Events before that date can result in the assessment, under the statute alone, of civil penalties of up to \$1,000 per barrel of oil discharged.

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Train Derailments in Utah, Colorado Lead to Fuel Spills

On June 6, 2000, in a settlement with EPA and the Justice Dept., Union Pacific Railroad agreed to pay an \$800,000 fine to resolve environmental claims associated with seven train derailments that spilled oil and other hazardous pollutants into Colorado and Utah waterways. The settlement requires the Omaha, Neb.-based railroad to take specific measures to avert environmental damage in the future.

The United States in 1997 sued the Southern Pacific Transportation Co. and the Denver & Rio Grande Western Railroad Co. for Clean Wa-

ter Act violations related to fuel and hazardous substance spills. These railroads subsequently merged with Union Pacific.

The government alleged that the derailments, occurring from 1992 to 1998, caused the discharge of diesel fuel from ruptured or leaking locomotive fuel tanks. The derailments released more than 14,000 gallons of fuel, 5,000 tons of taconite, and 800,000 pounds of sulfuric acid. (*see story, June 6, 2000, located at <http://www.epa.gov/> under "EPA Headquarters Press Releases"*).

Koch Industries Inc. Settlement

In a settlement entered on March 7, Koch Industries will pay the largest civil fine ever imposed on a company under a federal environmental law to resolve claims related to more than 300 oil spills from its pipelines and oil facilities in six states. The settlement requires Koch, the second-largest privately held company in the United States, to pay a \$30 million civil penalty, improve its leak-prevention programs, and spend \$5 million on environmental projects.

Koch Industries, headquartered in Wichita, Kan., owns and operates extensive underground and above ground pipelines that transport crude oil and related products in the Midwest. Most of the spills at issue in the settlement

occurred in Oklahoma, Texas and Kansas. In one instance, almost 100,000 gallons of oil was spilled in Texas and caused a 12-mile oil slick on Nueces Bay and Corpus Christi Bay.

Complaints filed in 1995 and 1997 allege that Koch unlawfully allowed some three million gallons of crude oil and related products to leak from its pipelines into ponds, lakes, rivers and streams, or onto adjacent shorelines, from 1990 to 1997. Most of the spills were caused by corrosion of pipelines in rural areas. The government alleges that Koch could have prevented the corrosion by proper operation and maintenance (*see Office of Regulatory Enforcement's Koch Industries Civil Settlement website at <http://www.epa.gov/oeca/ore/water/koch/>*).

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Additionally Section 301(a) of the CWA prohibits the discharge of pollutants from a point source into waters of the U.S., except as authorized by an NPDES permit. 33 U.S.C. §1311(a). A violation of Section 301 occurs when a person discharges from a point source, a pollutant into a water of the United States without authorization.

In such cases, Section 309(b) of the CWA authorizes EPA to "commence a civil action for appropriate relief, including a permanent or temporary injunction . . ." and Section 309(d) of the Act and 40 CFR Part 19 authorize the district courts to assess a civil penalty of up to \$27,500 per day for each violation for events occurring after Jan. 30, 1997, and Section 309(d) alone authorizes a penalty of up to \$25,000 per day for each violation for events occurring before that date.

If a harmful discharge occurs, Section 311 requires immediate reporting of the discharge to avoid criminal prosecution. **To report an oil spill or hazardous substance release, facilities should call National Response Center at 1-800-424-8802.**

Oil Pollution Act: In August 1990, Congress amended the Clean Water Act by the Oil Pollution Act (OPA), largely enacted in response to rising public concern following the Exxon Valdez incident. The OPA improved the nation's ability to prevent and respond to oil spills by establishing provisions that expand the federal government's ability, and provides the money and resources necessary to respond to oil spills.

What is an Oil?

Under Section 311 of the Clean Water Act (CWA), "oil" is oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." EPA interprets oil to include crude oil, petroleum and petroleum-refined products, and non-petroleum oils like vegetable and animal oils. Under the CWA, a substance that industry may not recognize as an oil (e.g., mineral oil) may be an oil for statutory purposes.

Finally, the OPA increased penalties for regulatory noncompliance, broadened the response and enforcement authorities of the federal government, and preserved State authority to establish additional liability or requirements pertaining to discharge of oil or its removal.

Spill Prevention Plans: As a cornerstone of EPA's strategy to prevent oil spills from reaching our nation's waters, EPA requires that certain facilities develop and implement oil spill prevention, control, and countermeasures, or SPCC Plans.

Unlike oil spill contingency plans that typically address spill cleanup measures after a spill has occurred, SPCC plans ensure that facilities put in place containment and other countermeasures that would prevent oil spills that could reach navigable waters. Facilities may be subject to this rule if the facility drills for, produces, gathers, stores, processes, refines, transfers, distributes or consumes oil. Under EPA's Oil Pollution Prevention regulation, facilities must detail and implement spill prevention and control measures in

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United States
Environmental Protection Agency
Office of Regulatory Enforcement
(2248A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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One pint of oil released into the water can cover an acre of water surface area and seriously damage an aquatic habitat (U.S. EPA photograph).

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their SPCC Plans. A spill contingency plan is required as part of the SPCC Plan if a facility is unable to provide secondary containment (e.g., berms surrounding the oil storage tank). Each SPCC plan, while unique to the facility it covers, must include certain elements.

To ensure that facilities comply with the spill prevention regulations, EPA periodically conducts on-site facility inspections. EPA also requires

owners and operators of facilities that experience two or more oil spills within a 12-month period to submit their SPCC plans and other information to EPA for review.

A copy of the entire SPCC plan must be maintained at the facility if the facility is normally attended for at least eight hours per day. Otherwise, it must be kept at the nearest field office. The SPCC plan must be available to EPA for on-site review and inspection during normal working hours.

For more information, contact

Suzanne Childress, Office of Regulatory Enforcement, Water Enforcement Division, at (202) 564-7018; Email: childress.suzanne@epa.gov.

Useful Compliance Assistance Resources

Office of Enforcement and Compliance Assurance:
<http://www.epa.gov/oeca>

Office of Regulatory Enforcement:
<http://www.epa.gov/oeca/ore>

Office of Water:
<http://www.epa.gov/ow/>

Oil Spill Program:
<http://www.epa.gov/oilspill/index.htm>

National Response Center:
<http://www.nrc.uscg.mil/>

EPA Emergency Response Notification System (ERNS):
<http://www.epa.gov/ernsacct/>

Audit Policy Information:
<http://www.epa.gov/oeca/ore/apolguid.html>

Compliance Assistance Centers:
<http://www.epa.gov/oeca/mfcac.html>

Small Business Gateway:
http://www.epa.gov/smallbusiness/major_environmental_laws.htm

