

## APPLICABILITY OF THE SPCC RULE

### 2.1 Introduction

The SPCC rule regulates non-transportation-related onshore and offshore facilities that could reasonably be expected to discharge oil into navigable waters of the United States or adjoining shorelines. This chapter clarifies the facilities, activities, and equipment that are subject to the SPCC rule. It is the responsibility of the facility owner/operator to make the determination whether the facility is subject to the requirements of the SPCC rule. This determination is subject to review by the Regional Administrator or his delegated representative.

#### 2.1.1 Summary of General Applicability

Section 112.1 establishes the general applicability of the SPCC rule by describing both the facilities, activities, and equipment that are subject to the rule and those that are excluded. In general, SPCC-regulated facilities are non-transportation-related, have aboveground oil storage capacity of more than 1,320 gallons on site, and could reasonably be expected to discharge oil to navigable waters or adjoining shorelines in quantities that may be harmful. Facilities owned and operated by federal government agencies are subject to the regulation to the same extent as any other facility (although the federal government is not subject to civil penalties). Likewise, facilities owned and operated by state and local governments are subject to the regulation. Section 112.1(d) describes the facilities, activities, and equipment excluded from the rule based on jurisdiction or through exemptions or exclusions from storage capacity calculations. Exemptions pertain to whether a facility or part thereof is included in the SPCC-regulated universe, and exclusions from storage capacity determine which containers count when determining a facility's total oil storage capacity. In addition to facilities that are excluded from the SPCC rule because they are not subject to EPA's jurisdiction, §112.1(d) exempts:

- Any facility where the storage capacity of completely buried storage tanks and associated piping and equipment does not exceed 42,000 gallons *and* the aggregate aboveground storage capacity does not exceed 1,320 gallons;
- Any container with a storage capacity less than 55 gallons at a facility, whether or not subject to the requirements of the SPCC rule; and
- Any facility or part thereof used exclusively for wastewater treatment.

#### §112.1(b)

...this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming **oil and oil products**, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines...

Note: The above text is an excerpt of the SPCC rule. Emphasis added. Refer to 40 CFR part 112 for the full text of the rule.

Exclusions from storage capacity calculations include:

- Containers with a storage capacity of less than 55 gallons;
- Storage containers used exclusively in wastewater treatment;
- Completely buried tanks and associated piping and equipment that are subject to all of the technical requirements under 40 CFR part 280 or 281; and
- The capacity of any “permanently closed” aboveground storage container.

Notwithstanding the exemptions and exclusions provided in §112.1(d), under §112.1(f) the Regional Administrator has discretion to require the owner or operator of any facility, subject to EPA’s jurisdiction under §311(j) Clean Water Act (CWA), to submit an SPCC Plan, or part of an SPCC Plan, in order to carry out the purposes of the CWA.

This chapter further explains each of the applicability criteria listed in §112.1 and provides examples of how these criteria are applied. The remainder of this chapter is organized as follows:

- **Section 2.2** discusses the definition of “oil” and the regulated activities.
- **Section 2.3** discusses the difference between “transportation-related” and “non-transportation-related” facilities in determining jurisdiction of regulatory agencies.
- **Section 2.4** discusses the term “reasonable expectation of discharge to navigable waters in quantities that may be harmful.”
- **Section 2.5** addresses the storage capacity thresholds and the methods of calculating storage capacity.
- **Section 2.6** addresses the exemptions to the SPCC rule.
- **Section 2.7** discusses the process for a Regional Administrator to determine applicability, outside of §112.1(d) requirements.
- **Section 2.8** addresses the applicability of the rule requirements to oil-filled equipment (including manufacturing or process equipment), in contrast to bulk storage containers.
- **Section 2.9** discusses the applicability of Facility Response Plans (FRPs).
- **Section 2.10** describes the role of the EPA inspector.

## 2.2 Definition of Oil and Activities Involving Oil

The SPCC rule applies to facilities with the potential to discharge “oil” in quantities that may be harmful to navigable waters and adjoining shorelines. The SPCC rule’s definition of oil originated from the Clean Water Act (CWA). Section 311(a)(1) of the CWA defines oil as “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.” Petroleum oils include crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil (67 FR 47075).

### §112.2

*Oil* means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

The U.S. Coast Guard (USCG) compiled a list of substances it considers oil, based on the CWA definition. The list is available on the USCG Web site.<sup>1</sup> Note, however, that the USCG list is not comprehensive and does not define “oil” for purposes of 40 CFR part 112. EPA may determine that a substance, chemical, material, or mixture is an oil even if it is not on the USCG list.

### 2.2.1 Animal Fats and Vegetable Oils

Oil covered under the SPCC regulation is further described in 40 CFR 112.2 as including “fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.” Oil includes animal fats and vegetable oils.

### 2.2.2 Synthetic Oils

The SPCC rule applies to synthetic oils. Synthetic oils are used in a wide range of applications, including as heat transfer fluids, engine fluids, hydraulic and transmission fluids, metalworking fluids, dielectric fluids, compressor lubricants, and turbine lubricants. Synthetic oils are created by chemical synthesis rather than by refining petroleum crude or extracting from plant seeds. The base materials from which synthetic oils are synthesized include glycols, esters, polyalphaolefins, aromatics, silicone fluids, Group III base oils, and others. Because of their origin, synthetic oils are generally covered under subpart B of 40 CFR 112, which covers “petroleum oils and *non-petroleum oils...*” Certain oils are synthesized from plant material, and thus may be considered with animal fats and vegetable oils under subpart C of 40 CFR part 112, which, as

<sup>1</sup> See the “List of Petroleum and Non-Petroleum Oils” on the USCG Web site at <http://www.uscg.mil/vrp/faq/oil.shtml>.

discussed below, applies to “animal fats and oils and greases, and fish and marine mammal oils; and...vegetable oils, including oils from seeds, nuts, fruits, and kernels.”

### 2.2.3 Determination of “Oil” for Natural Gas and Hazardous Substances

#### Natural Gas

Natural gas (including liquid natural gas and liquid petroleum gas) is not considered an oil. EPA does not consider highly volatile liquids that volatilize on contact with air or water, such as liquid natural gas or liquid petroleum gas, to be oil (67 FR 47076). Petroleum distillate or oil that is produced by natural gas wells and stored at atmospheric pressure and temperature (commonly referred to as condensate or drip gas), however, is considered an oil.

Dry gas production facilities are not subject to the SPCC rule. A dry gas production facility produces natural gas from a well (or wells) but does not also produce condensate or crude oil that can be drawn off the tanks, containers, or other production equipment at the facility. EPA has clarified that a dry gas production facility does not meet the description of an “oil production, oil recovery, or oil recycling facility” for which the wastewater treatment exemption would apply under §112.1(d)(6).<sup>2</sup> See excerpt below:

#### **Notice Concerning Certain Issues Pertaining to the July 2002 Spill Prevention, Control, and Countermeasure (SPCC) Rule, (May 25, 2004)**

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.

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See 69 FR 29729, 29730.

Wet gas production facilities are subject to the SPCC rule. In addition to natural gas, wet gas production facilities produce condensate or crude oil that can be drawn off the tanks,

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<sup>2</sup> “Notice Concerning Certain Issues Pertaining to the July 2002 Spill Prevention, Control, and Countermeasure (SPCC) Rule,” 69 FR 29728, May 25, 2004.

containers, or other production equipment at the facility. Since wet gas production facilities produce and store condensate, which is considered an oil, they are regulated under the SPCC rule.

### Hazardous Substances and Hazardous Waste

The definition of “oil” in §112.2 includes “oil mixed with wastes other than dredged spoil.” Oils covered under the SPCC rule therefore include certain hazardous substances or hazardous wastes that are mixed with oil, as well as certain hazardous substances or hazardous wastes that are themselves oils. Containers storing these substances may also be covered by other regulations, such as the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. Inspectors should evaluate whether containers storing hazardous substances or mixtures of wastes contain oil. Although the rule contains an exemption for completely buried tanks that are subject to all underground storage tank (UST) technical requirements of 40 CFR part 280 and/or a state program approved under part 281, tanks containing RCRA hazardous wastes are not subject to the UST rules, and therefore are not exempt under §112.1(d)(2)(i) or (4) if they contain oil.

Hazardous substances that are neither oils nor mixed with oils are not subject to SPCC rule requirements.

#### 2.2.4 Activities Involving Oil

Section 112.1(b) specifies that the owners or operators of facilities involved in one or more of the following oil-related activities are regulated under the SPCC rule, provided they meet the other applicability criteria in §112.1: “drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products.” Table 2-1 provides examples of these activities.

##### **§112.1(b)**

...this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in **drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming** oil and oil products....

Note: The above text is an excerpt of the SPCC rule. Emphasis added. Refer to 40 CFR part 112 for the full text of the rule.

**Table 2-1.** Examples of oil-related activities that may be regulated under 40 CFR part 112.

Activity	Examples of Oil-related Regulated Activities
<i>Drilling</i>	Drilling a well to extract crude oil or natural gas and associated products (such as wet natural gas) from a subsurface field.
<i>Producing</i>	Extracting product from a well and separating the crude oil and/or gas from other associated products (e.g., water, sediment).
<i>Gathering</i>	Collecting oil from numerous wells, tank batteries, or platforms and transporting it to a main storage facility, processing plant, or shipping point.
<i>Storing</i>	Storing oil in containers prior to use, while being used, or prior to further distribution in commerce.
<i>Processing</i>	Treating oil using a series of processes to prepare the oil for commercial use, consumption, further refining, manufacturing, or distribution.
<i>Refining</i>	Separating crude oil into different types of hydrocarbons through distillation, cracking, reforming, and other processes; separating animal fats and vegetable oils from free fatty acids and other impurities.
<i>Transferring</i>	Transferring oil between containers, such as between a railcar or tank truck and a bulk storage container, or between stock tanks and manufacturing equipment.
<i>Distributing</i>	Selling or marketing oil for further commerce or moving oil using equipment such as highway vehicles, railroad cars, or pipeline systems. Note that businesses commonly referred to as oil distributors and retailers commonly are also “storing” oil, as described above.
<i>Using</i>	Using oil for mechanical or operational purposes in a manner that does not significantly reduce the quantity of oil, such as using oil to lubricate moving parts, provide insulation, or for other purposes in electrical equipment, electrical transformers, and hydraulic equipment.
<i>Consuming</i>	Consuming oil in a manner that reduces the amount of oil, such as burning as fuel in a generator.

## 2.3 “Non-transportation-related” Facilities – EPA/DOT Jurisdiction

### 2.3.1 Definition of Facility

The extent of a “facility” under SPCC depends on site-specific circumstances. Factors that may be considered relevant in delineating the boundaries of a facility for SPCC purposes may include, but are not limited to:

- Ownership, management, and operation of the buildings, structures, equipment, installations, pipes, or pipelines on the site;
- Similarity in functions, operational characteristics, and types of activities occurring at the site;
- Adjacency; or

- Shared drainage pathways (e.g., same receiving waterbodies).

The facility owner or operator, or a Professional Engineer (PE) on behalf of the facility owner/operator, determines what constitutes the “facility.” Note that the facility determination for purposes of the SPCC rule should be the same as that used to determine FRP applicability.

While the facility owner/operator has some discretion in defining the parameters of the facility, the boundaries of a facility should not be drawn to purposely avoid regulation under 40 CFR part 112. For example, two contiguous operational areas, each with 700 gallons in aboveground storage capacity, that have the same owner, perform similar functions, are attended by the same personnel, and are in other ways indistinguishable from each other, would reasonably be expected to represent a single facility under the SPCC rule, and would therefore be required to have an SPCC Plan, since the capacity of this facility is above the 1,320-gallon aboveground threshold. These two operational areas would not be defined as two separate facilities under the definition of “facility” in §112.2.

Alternatively, a single facility may be composed of various oil-containing areas spread over a relatively large campus. For instance, different operational areas within a military base may be considered a single facility. The military base may not necessarily include single-family homes occupied by military personnel as part of the facility if these are considered personal space similar to civilian single-family residences. However, the facility may include larger military barracks for which a branch of the military controls, operates, and maintains the space.

If a facility is regulated under the SPCC rule, it is the responsibility of the facility owner and operator to ensure that an SPCC Plan is prepared. A site may have multiple owners and/or operators, and therefore can have several facilities. Factors to consider in determining which owner or operator should prepare the Plan include who has control over day-to-day operations of the facility or particular containers and equipment, who trains the employee(s) involved in oil handling activities, who will conduct the required inspections and tests, and who will be responsible for responding to and cleaning up any discharge of oil. EPA expects that the owners and operators will cooperate to prepare one or more Plans, as appropriate.

SPCC facilities include not only permanent facilities with fixed storage and equipment, but also those that have only standby, temporary, and seasonal storage as described under §112.1(b)(3), as well as construction facilities. Mobile facilities are addressed in §112.3(c), which allows such facilities to create a general Plan, instead of developing a new Plan each time the facility is moved to a new location.

#### §112.2

*Facility* means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

### 2.3.2 Determination of Transportation-related and Non-transportation-related Facilities

Facilities are divided into three categories: transportation-related facilities, non-transportation-related facilities, and complexes. The determination of transportation-related and non-transportation-related facilities has been established through a series of Executive Orders (EOs) and Memoranda of Understanding (MOUs) as described below.

Onshore and certain offshore non-transportation-related facilities (and portions of a complex) are subject to the SPCC regulation, provided they meet the other applicability criteria set forth in §112.1. A facility with both transportation-related and non-transportation-related activities is a “complex” and is subject to the dual jurisdiction of EPA and DOT. The jurisdiction over a component of a complex is determined by the activity occurring at that component. An activity might at one time subject a facility to one agency’s jurisdiction, and a different activity at the same facility using the same structure or equipment might subject the facility to the jurisdiction of another agency. Which activity would be subject to EPA jurisdiction and which activity would be subject to DOT jurisdiction is defined by the 1971 DOT-EPA MOU.

A 1971 MOU between EPA and DOT clarifies the types of facilities, activities, equipment, and vessels that are meant by the terms “transportation-related onshore and offshore facilities” and “non-transportation-related onshore and offshore facilities.” DOT delegated authority over vessels and transportation-related onshore and offshore facilities to the Commandant of the U.S. Coast Guard.<sup>3</sup> Sections of the MOU between EPA and DOT are included in Appendix A of 40 CFR part 112. Section 112.1(d)(1)(ii) specifically exempts from SPCC applicability any equipment, vessels, or facilities subject to the authority and control of the DOT as defined in this MOU.

A 1994 MOU among the Secretary of the Interior, the Secretary of Transportation, and the Administrator of EPA establishes the jurisdictional responsibilities for offshore facilities, including pipelines. This MOU can be found in Appendix B of 40 CFR part 112. Section 112.1(d)(1)(iii) specifically exempts from SPCC applicability any equipment, vessels, or facilities subject to the authority of the DOT or DOI as defined in this MOU.

Table 2-2 provides examples of transportation-related and non-transportation-related facilities as the concepts apply to the SPCC rule applicability. Some equipment, such as loading arms and transfer hoses, may be considered either transportation-related or non-transportation-related depending on their use.

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<sup>3</sup> The USCG was reorganized under the Department of Homeland Security in March 2003.



**Table 2-2.** Examples of transportation-related and non-transportation-related facilities from the 1971 DOT-EPA Memorandum of Understanding.

<b>Transportation-related Facilities</b> (DOT Jurisdiction)	<b>Non-Transportation-related Facilities</b> (EPA Jurisdiction)
<ul style="list-style-type: none"> <li>• Onshore and offshore terminal facilities, including transfer hoses, loading arms, and other equipment used to transfer oil in bulk to or from a vessel, including storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels</li> <li>• Transfer hoses, loading arms, and other equipment appurtenant to a non-transportation-related facility used to transfer oil in bulk <i>to or from a vessel</i></li> <li>• Interstate and intrastate onshore and offshore pipeline systems</li> <li>• Highway vehicles and railroad cars that are used for the transport of oil</li> </ul>	<ul style="list-style-type: none"> <li>• Fixed or mobile onshore and offshore oil drilling and production facilities</li> <li>• Oil refining and storage facilities</li> <li>• Industrial, commercial, agricultural, and public facilities that use and store oil</li> <li>• Waste treatment facilities</li> <li>• Loading racks, transfer hoses, loading arms, and other equipment used to transfer oil in bulk <i>to or from highway vehicles or railroad cars</i></li> <li>• Highway vehicles, railroad cars, and pipelines used to transport oil within confines of non-transportation-related facility</li> </ul>

### 2.3.3 EPA/DOT Jurisdiction Scenarios

This section describes common scenarios that have raised jurisdictional questions regarding the distinction between transportation-related and non-transportation-related facilities for applicability of SPCC requirements. Inspectors should evaluate the intended activity carefully because the determination of jurisdiction is not always straightforward.

#### Tank Trucks

EPA regulates tank trucks as “mobile/portable containers” under the SPCC rule if they operate exclusively within the confines of a non-transportation-related facility. For example, a tank truck that moves around within the facility and only leaves the facility to obtain more fuel (oil) would be considered to distribute fuel exclusively at one facility. This tank truck would be subject to the SPCC rule if it, or the facility, contained above the regulatory threshold amount (see Section 2.5 of this document) and there was a reasonable expectation of discharge to navigable waters or adjoining shorelines. Similarly, an airport refueler or construction refueler that fuels exclusively at one site would be subject to the SPCC rule. However, if the tank truck distributed fuel to multiple off-site facilities, the tank truck would be transportation-related, and regulated by DOT.

Tank trucks that are used in interstate or intrastate commerce can also be regulated if they are operating in a fixed, non-transportation mode. For example, if a home heating oil truck makes its deliveries, returns to the facility, and parks overnight with a partly filled fuel tank, it is subject to the SPCC rule if it, or the facility has a capacity above the threshold amount (see Section 2.5 of this

document), and there is a reasonable expectation of discharge to navigable waters or shorelines.<sup>4</sup> However, if the home heating oil truck's fuel tank contains no oil when it is parked at the facility, other than any residual oil present in an emptied vehicle, it would be regulated only by DOT.<sup>5</sup> For more information, refer to Chapter 4 of this document (Secondary Containment and Impracticability Determinations), which discusses secondary containment requirements.

### **Railroad Cars**

DOT regulates railroad cars from the time the oil is offered for transportation to a carrier until the time that it reaches its destination and is accepted by the consignee. DOT jurisdiction includes railroad cars that are passing through a facility or are temporarily stopped on a normal route. EPA regulates railroad cars after the transportation process ends; that is, when the railroad cars are serving as non-transportation-related storage at an SPCC-regulated facility. EPA jurisdiction includes railroad cars that are at their final destination, and/or if loading or unloading has begun. If loading/unloading has begun, the railroad car itself may become the non-transportation-related facility even if no other containers at the property would qualify the property. To be considered a non-transportation-related facility, the railroad car must store oil in an amount above the regulatory threshold, and there must be a reasonable expectation of discharge to navigable waters (§112.1(d)).<sup>6</sup>

EPA regulates railroad cars under the SPCC rule if they are operating exclusively within the confines of a non-transportation facility. A railroad car would be subject to the SPCC rule if it, or the facility, had a capacity above the regulatory threshold amount of oil, and there was a reasonable expectation of discharge to navigable waters or adjoining shorelines.

### **Any Loading/Unloading Activities**

EPA regulates the activity of loading or unloading oil in bulk into storage containers (such as those on tank trucks or railroad cars), as well as all equipment involved in this activity (e.g., a hose or loading arm attached to a storage tank system). A "loading/unloading area" is any area of a facility where oil is transferred between bulk storage containers and tank trucks or railroad cars. These areas are subject to the general secondary containment requirements in §112.7(c). If a "loading/unloading rack" is present, the requirements of §112.7(h) apply to the loading/unloading rack area. For more information, refer to Chapter 4 of this document (Secondary Containment and Impracticability Determinations), which includes a discussion of secondary containment requirements for loading/unloading areas.

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<sup>4</sup> In this case, the facility would include the truck storage capacity in its aggregate capacity determination in order to determine whether it is above the 1,320 gallon aboveground threshold for SPCC applicability.

<sup>5</sup> EPA addressed this scenario in a letter from Stephen Heare, Office of Emergency and Remedial Response, to Melissa Young of Petroleum Marketers Association of America (2001). See Appendix H.

<sup>6</sup> EPA addressed the applicability of the SPCC rule to railroad cars by addressing specific scenarios in a letter to the Safety-Kleen Corporation in July 2000. See Appendix H.

## **Marine Terminals**

A marine terminal is an example of a “complex” that is subject to U.S. Coast Guard (USCG) and EPA jurisdiction. The USCG regulates the pier structures, transfer hoses, hose-piping connection, containment, controls, and transfer piping associated with the transfer of oil between a vessel and an onshore facility. EPA regulates the tanks, internal piping, loading racks, and vehicle/rail operations that are completely within the non-transportation portion of the facility (33 CFR part 154, Facilities Transferring Oil or Hazardous Material in Bulk). EPA jurisdiction begins at the first valve inside secondary containment. If there is no secondary containment, EPA jurisdiction begins at the valve or manifold adjacent to the storage tank (33 CFR 154.1020).

## **Vessels (Ships/Barges)**

The U.S. Coast Guard regulates the loading or unloading of oil from a vessel to an onshore facility, as well as the oil-carrying ship and the connecting piping (33 CFR part 155, Oil or Hazardous Material Pollution Prevention Regulations for Vessels). In this scenario, a vessel is a ship or a barge. The oil passes from the USCG’s jurisdiction to that of the EPA when it passes the first valve of the secondary containment for the storage container. If there is no secondary containment, EPA’s jurisdiction begins at the first valve or manifold closest to the storage container. Storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels are under USCG jurisdiction.

## **Motive Power**

Motive power containers are located in or on a motor vehicle, such as on-board bulk oil storage containers used solely to power the movement of a motor vehicle, or ancillary on-board, oil-filled operational equipment used solely to facilitate its operation. A motive power container can be considered non-transportation-related and subject to the SPCC rule. However, EPA does not believe that the intent of the SPCC rule was to regulate motive power containers, including oil-filled tanks used to fuel the propulsion of vehicles, such as buses, sport utility vehicles, construction vehicles, and farm equipment.

## **Breakout Tanks**

Breakout tanks are usually used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline. They are also sometimes used for bulk storage. A breakout tank may be regulated by EPA, DOT, or both depending on how the tank is used. For example, breakout tanks that are used solely to relieve surges in a pipeline and are not used for any non-transportation-related activity (i.e., pipeline-in and pipeline-out configuration, with no transfer to other equipment/mode of transportation such as a tank truck), would be subject to DOT jurisdiction. A bulk storage container used to store oil while also serving as a breakout tank for a pipeline or other transportation-related purpose would be

subject to both DOT and EPA jurisdiction.<sup>7</sup> For more information, see the EPA and DOT joint memorandum dated February 4, 2000, which clarifies regulatory jurisdiction over breakout tanks.<sup>8</sup>

## 2.4 Reasonable Expectation of Discharge to Navigable Waters in Quantities That May Be Harmful

### 2.4.1 Definition of “Discharge” and “Discharge as Described in §112.1(b)”

According to §112.1(b), the SPCC rule applies to facilities that could reasonably be expected to discharge oil in “quantities that may be harmful, as described in part 110 of this chapter...” The Discharge of Oil regulation at 40 CFR part 110 (also referred to as the “sheen rule”) defines a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in quantities that may be harmful under the CWA as that which:

- Causes a sheen or discoloration on the surface of the water or adjoining shorelines;
- Causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or
- Violates an applicable water quality standard.

A discharge meeting any of the above criteria triggers requirements to report to the National Response Center (NRC). The failure to report such a discharge may result in criminal sanctions under the CWA. The appearance of a “sheen” on the surface of the water is often used as a simple way to identify harmful discharges of oil that should be reported. The appearance of a sheen, however, is not a necessary factor; the presence of a sludge or emulsion, or of another deposit of oil beneath the water surface, or the violation of an applicable water quality standard also indicates a harmful discharge.

Section 311 of the CWA defines and prohibits certain discharges of oil. These requirements are also codified in 40 CFR part 112. As defined in §112.2, a “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any amount of oil no matter where it occurs. It excludes certain discharges associated with §402 of the CWA and §13 of the River and Harbor Act of 1899. The primary distinction between the §112.2 and §112.1(b) definitions of discharge is that a discharge as described in §112.1(b) is a violation of §311 of the Clean Water Act, whereas a §112.2 discharge (i.e., one that does not impact a navigable water or adjoining shoreline) is not a violation. For example, if a tank leaks a puddle of oil into a facility’s basement, this would be considered a discharge of oil, but is not necessarily a violation of the CWA because the oil did not reach a navigable water or adjoining shoreline (and would not be a discharge as described in §112.1(b)).

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<sup>7</sup> See also the 1971 MOU between DOT and EPA (Appendix A of 40 CFR part 112), and EPA/DOT memo “Jurisdiction over Breakout Tanks/Bulk Oil Storage Tanks (Containers) at Transportation-Related and Non-Transportation-Related Facilities” for specific examples of dual jurisdiction. See Appendices A and H.

<sup>8</sup> See Appendix H.

The SPCC regulation includes requirements for corrective action as well as additional reporting requirements. For example, in §112.8(c)(10), a facility is required to promptly correct visible discharges that result in a loss of oil from a container. A discharge of any amount would need to be cleaned up, but would not be considered a violation of the spill prohibition (a discharge as described in §112.1(b)), unless it impacts a navigable water or adjoining shoreline. Additionally, if a facility discharged more than 42 gallons of oil in each of two discharges as described in §112.1(b) over a 12-month period, the facility would be required to report each spill to the NRC, clean up the spill, and submit a report to the Regional Administrator, and may be required to amend its Plan. The same is true if the facility has a single discharge as described in §112.1(b) of more than 1,000 gallons. For more information on these reporting requirements, see §112.4 of the rule.

#### 2.4.2 Reasonable Expectation of Discharge

The SPCC rule applies only to facilities that, due to their location, can reasonably be expected to discharge oil as described in §112.1(b). The rule does not define the term “reasonably be expected.” The owner or operator of each facility must determine the potential for a discharge from his/her facility. According to §112.1(d)(1)(i), this determination must be based solely upon consideration of the geographical and locational aspects of the facility. An owner or operator should consider the location of the facility in relation to a stream, ditch, gully, or storm sewer; the volume of material likely to be spilled; drainage patterns; and soil conditions. An owner or operator may not consider constructed features, such as dikes, equipment, or other manmade structures that prevent, contain, hinder, or restrain a discharge as described in §112.1(b), when making this decision.

##### **§112.1(b)**

...this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, **could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter....**

Note: The above text is an excerpt of the SPCC rule. Emphasis added. Refer to 40 CFR part 112 for the full text of the rule.

A facility owner or operator, however, should consider the presence of manmade structures that may serve to convey discharged oil to navigable waters, such as sanitary or storm water drainage systems, even if they lead to a publicly owned treatment work (POTW) prior to ultimate discharge into navigable waters. The presence of a treatment system such as a POTW cannot be used to determine that the facility is not reasonably expected to discharge to navigable waters or adjoining shorelines. POTWs can fail to contain oil. They are not designed to handle oil discharges and are on occasion forced to bypass to receiving waterbodies during extreme weather events or when upsets occur in the treatment system.

The following factors may prove useful to consider in determining whether there is a reasonable expectation of discharge:

- Whether a past discharge of oil reached a navigable water or adjoining shoreline, which indicates that another could be reasonably expected;
- Whether the facility is adjacent to navigable waters and a discharge to the navigable waters could be reasonably expected;
- Whether on-site conduits, such as sewer lines, storm sewers, and certain underground features (e.g., power or cable lines, or groundwater), could facilitate the transport of discharged oil off-site to navigable waters;
- Whether a unique geological or geographic feature would facilitate the transport of discharged oil off-site to navigable waters;
- Whether the facility is near a watercourse and intervening natural drainage;
- Whether precipitation runoff could transport oil into navigable waters; and
- The quantity and nature of oil stored.

### **2.4.3 Geographic Scope**

EPA revised the geographic scope of the SPCC regulation in 2002 to be more consistent with the CWA. Formerly, the geographic scope of the rule extended to navigable waters of the United States and adjoining shorelines. The rule reflects the full geographic scope of EPA's authority to include a discharge:

- Into or upon the waters of the contiguous zone;
- In connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974; or
- That may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

The rule's scope includes discharges harmful not only to the public health and welfare, but also to the environment through the protection of natural resources. Such protection would apply to resources under the Magnuson Fishery Conservation and Management Act, a statute that establishes exclusive U.S. management authority over all fishing within the exclusive economic zone (inner boundary coterminous with the seaward boundary of each coastal state), and all anadromous fish throughout their migratory range except when in a foreign nation's waters, and all fish on the continental shelf.

#### 2.4.4 Definition of “Navigable Waters”

Section 112.2 provides the SPCC rule’s definition of “navigable waters.” See the text box below.

##### §112.2

*Navigable waters* means the waters of the United States, including the territorial seas.

(1) The term includes:

- (i) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide;
- (ii) All interstate waters, including interstate wetlands;
- (iii) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:
  - (A) That are or could be used by interstate or foreign travelers for recreational or other purposes; or
  - (B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (C) That are or could be used for industrial purposes by industries in interstate commerce;
  - (iv) All impoundments of waters otherwise defined as waters of the United States under this section;
  - (v) Tributaries of waters identified in paragraphs (1)(i) through (iv) of this definition;
  - (vi) The territorial sea; and
  - (vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (1) of this definition.

(2) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds which also meet the criteria of this definition) are not waters of the United States. Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area’s status as prior converted cropland by any other Federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with EPA.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

See “Joint Memorandum of U.S. Army Corps of Engineers and EPA providing clarifying guidance regarding the Supreme Court’s decision in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC),”<sup>9</sup> 68 FR 1995, January 15, 2003.

<sup>9</sup> There is currently pending a petition for review challenging the definition of “navigable waters” in 40 CFR 112.2., *American Petroleum Institute v. Leavitt*, No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed Nov. 14, 2002).

## 2.5 Storage Capacity

### 2.5.1 Capacity Thresholds

The SPCC rule applies to a facility that has more than 42,000 gallons of completely buried oil storage capacity or more than 1,320 gallons of aggregate aboveground oil storage capacity, provided it meets the other applicable criteria set forth in §112.1.

According to §112.1(b)(1) through (4), the rule is applicable to eligible facilities that have oil in aboveground containers; completely buried tanks;

containers that are used for standby storage, for seasonal storage, or for temporary storage, or are not otherwise “permanently closed”; and “bunkered tanks” or “partially buried tanks” or containers in a vault. Containers include not only oil storage tanks, but also mobile or portable containers such as drums and totes, and oil-filled equipment such as electrical equipment (e.g., transformers, circuit breakers), manufacturing flow-through process equipment, and operational equipment. However, §112.1(d)(2) limits the applicability to facilities with oil capacity above specific threshold amounts.

Once a facility is subject to the rule, *all* aboveground containers and completely buried tanks are subject to the rule requirements (unless these containers are otherwise exempt from the regulation, as is the case for containers smaller than 55 gallons). For example, a facility could have 10,000 gallons of aggregate aboveground storage capacity in tanks and oil-filled equipment of 55 gallons or more, and a completely buried tank of 10,000 gallons that is not subject to all of the technical requirements of 40 CFR part 280 or a state program approved under part 281 (and therefore not exempt). Since the aboveground storage capacity exceeds 1,320 gallons, all of the tanks and oil-filled equipment, including the buried tank, are subject to the SPCC rule.

### 2.5.2 Storage Capacity Calculation

Sections 112.1(d)(2)(i) and (ii) clarify which containers are included and excluded when calculating total storage capacity at a facility in determining whether it exceeds the volume limits in the rule. These containers are discussed below and summarized in Table 2-3.

#### §112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(2) Any facility which, although otherwise subject to the jurisdiction of EPA, meets both of the following requirements:

(i) The completely buried storage capacity of the facility is 42,000 gallons or less of oil. ...

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. ...

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

#### §112.2

*Completely buried tank* means any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.



### What to Count

- All containers of oil with a capacity of 55 gallons or greater are to be counted (unless listed below) when calculating total oil storage capacity at a facility.

### What Not to Count

- Permanently closed containers are not counted when calculating total oil storage capacity. “Permanently closed,” as defined in §112.2, refers to containers “for which (1) All liquid and sludge has been removed from each container and connecting line; and (2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.”
- Completely buried tanks, as defined in §112.2, and connected underground piping, underground ancillary equipment, and containment systems that are currently subject to all of the technical requirements of 40 CFR part 280 or all of the technical requirements of a state program approved under 40 CFR part 281 are not counted. Such tanks must still be marked on the facility diagram as provided in §112.7(a)(3). “Completely buried tank” as defined in §112.2 refers to “any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.”

**Table 2-3.** Summary of storage capacity calculation as described in §112.1(d)(2)(i) and (ii).

Included	Excluded
Capacity of containers (e.g., bulk storage containers, oil-filled equipment, mobile/portable containers) with a capacity of 55 gallons or greater	Capacity of completely buried tank and associated underground piping, ancillary equipment, and containment systems subject to all technical requirements of 40 CFR part 280 or a state-approved program under 40 CFR part 281
	Capacity of containers that are permanently closed

### 2.5.3 Definition of Storage Capacity

Under the SPCC rule, if a container has the requisite capacity, it does not matter whether the container is actually filled to that capacity. The storage capacity of a container is defined as the shell capacity of the container. If a certain portion of a container is incapable of storing oil because of its

#### §112.2

*Storage capacity* of a container means the shell capacity of the container.

Note: The above text is an excerpt of the SPCC rule. See 40 CFR part 112 for the full text of the rule.

integral design (e.g., mechanical equipment or other interior components take up space), then the shell capacity of the container is reduced to the volume the container might hold (67 FR 47081). Generally, the shell capacity is the rated design capacity rather than the working/operational capacity.

#### 2.5.4 Tank Re-rating

Shell capacity should be used as the measure of storage capacity, unless changes are made to the design shell capacity in a permanent, non-reversible manner. For example, when the integral design of a container has been altered by actions such as drilling a hole in the side of the container so that it cannot hold oil above that point, shell capacity remains the measure of storage capacity because such alteration can be altered again at will to restore the former storage capacity. When the alteration is an action such as the installation of a double bottom or new floor to the container, the integral design of the container has changed, and may result in a reduction in shell capacity.

An addition or modification to a field-erected storage tank should be performed in accordance with industry standards and the original design specifications. Relevant industry standards include American Petroleum Institute (API) Standard 653 “Tank Inspection, Repairs, Alteration, and Reconstruction” (API-653). This standard includes additions or modifications to shell penetrations such as overfill diverters. However, even where such modifications are done in accordance with standards, the tank may not be considered re-rated to a lower capacity; the capacity remains equal to the original rated shell capacity. An owner or operator may reduce the capacity of a tank only by changing the shell dimensions (i.e., by removing shell plate sections). Since SPCC requirements are based on shell capacity, modifying a vent, overflow, or other tank appurtenances that reduce the working fill capacity does not affect SPCC requirements, including facility capacity determination and secondary containment requirements.

## 2.6 Exemptions to the Requirements of the SPCC Rule

In addition to the criteria described above, §112.1(d) describes certain types of additional equipment and facilities that are exempted from SPCC rule requirements.

### 2.6.1 Facilities Subject to Minerals Management Service Regulations

Section 112.1(d)(3) excludes offshore oil drilling, production, or workover facilities that are subject to notices and regulations of the Minerals Management Service (MMS). MMS regulations require adequate spill prevention,

#### **§112.1(d)**

Except as provided in paragraph (f) of this section, this part does not apply to: ...  
(3) Any offshore oil drilling, production, or workover facility that is subject to the notices and regulations of the Minerals Management Service, as specified in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

control, and countermeasures that are directed more specifically to the facilities subject to the regulations. The facilities are regulated by the Department of Interior as specified in the DOI-DOT-EPA MOU (40 CFR part 112, Appendix B).

## 2.6.2 Underground Storage Tanks

Under §112.1(d)(4), the SPCC rule exempts completely buried storage tanks, as well as connected underground piping, underground ancillary equipment, and containment systems, when such tanks are subject to all of the technical requirements of 40 CFR part 280 or a state program approved under 40 CFR part 281 (also known as the Underground Storage Tank regulations). Although these tanks are exempt from the SPCC requirements, they must still be marked on the facility diagram if the facility is otherwise subject to the SPCC rule (§112.7(a)(3)).

The regulations at 40 CFR parts 280 and 281 comprise the Underground Storage Tank (UST) Program, which requires owners and operators of new tanks and tanks already in the ground to prevent, detect, and clean up releases. The UST program defines USTs differently than the SPCC rule does. The UST Program considers an underground storage tank to be a tank and any underground piping that has at least 10 percent of its combined volume underground. However, under the SPCC rule, only *completely* buried tanks subject to all of the technical UST Program requirements are exempt from the rule. Any tanks that are not completely buried are considered aboveground storage tanks and subject to the SPCC rule.

### §112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...  
 (4) Any completely buried storage tank, as defined in §112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, except that such a tank must be marked on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

The following are either excluded from the definition of UST or are exempt from the UST regulations at 40 CFR part 280 (and therefore may be subject to the SPCC rule, if the completely buried tanks contain oil):

- Tanks with a capacity of 110 gallons or less;
- Farm or residential tanks with a capacity of 1,100 gallons or less used for storing motor fuel for non-commercial purposes;
- Tanks used for storing heating oil for consumptive use on the premises where stored;
- Tanks storing non-petroleum oils, such as animal fat or vegetable oil;
- Tanks on or above the floor of underground areas (e.g., basements or tunnels);
- Septic tanks and systems for collecting storm water and wastewater;
- Flow-through process tanks;
- Emergency spill and overflow tanks that are expeditiously emptied after use;
- Surface impoundments, pits, ponds, or lagoons;

- Any UST system holding RCRA hazardous waste;
- Any equipment or machinery that contains regulated substances for operational purposes;
- Liquid trap or associated gathering lines directly related to oil or gas production or gathering operations;
- Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or intrastate pipelines regulated under state laws comparable to the provisions of above laws;<sup>10</sup> and
- Any UST system that contains de minimis concentration of regulated substances.

The following are examples of deferrals from the UST regulations (and therefore may be subject to the SPCC rule):

- Wastewater treatment tank systems;
- Any UST systems containing radioactive materials that are regulated under the Atomic Energy Act of 1954;
- UST systems that are part of emergency generator systems at nuclear power generation facilities;
- Airport hydrant fuel distribution systems; and
- UST systems with field-constructed tanks.

Note that additional and/or more stringent requirements may exist in a state-approved program under 40 CFR part 281 and that they may also impact SPCC applicability. For example, a state may choose to regulate a UST used for storing heating oil for consumptive use on the premises where stored. Thus, under the state program the UST is subject to all the technical requirements of a 40 CFR part 281 program and not regulated by the SPCC rule. Inspectors should consider any state UST program approved under 40 CFR part 281 when addressing applicability issues associated with completely buried tanks.

### 2.6.3 Wastewater Treatment Facilities

The wastewater treatment exemption, outlined in §112.1(d)(6), excludes from the SPCC requirements facilities or parts of facilities that are used exclusively for wastewater treatment, and are not used to meet 40 CFR part 112 requirements.

#### **§112.1(d)**

Except as provided in paragraph (f) of this section, this part does not apply to: ..  
(6) Any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

Many of the wastewater treatment facilities or parts thereof are subject to the National Pollutant Discharge Elimination System (NPDES) or state-

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<sup>10</sup> Although exempt from UST regulations, pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or intrastate pipelines regulated under state laws comparable to the provisions of above laws do not generally come within EPA's jurisdiction and are not generally regulated under the SPCC rule. See Section 2.3.2 of this document.

equivalent permitting requirements that involve operating and maintaining the facility to prevent discharges. The NPDES or state-equivalent process ensures review and approval of the facility's plans and specifications; operation/maintenance manuals and procedures; and Storm Water Pollution Prevention Plans, which may include Best Management Practice (BMP) Plans (67 FR 47068).

For the purposes of the exemption, the production, recovery, or recycling of oil is not considered wastewater treatment. These activities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. Additionally, the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil, while eliminating impurities in the oil, including water, whereas the goal of a wastewater treatment facility is to purify water (67 FR 47068-69).

The exemption does not apply to a wastewater treatment facility or part thereof that is used to store oil; in that instance, the oil storage capacity must be counted as part of the total facility storage capacity (see 67 FR 47068). For example, if there is a 600-gallon storage container that contains oil removed from an exempt oil/water separator and a 1,000-gallon storage container on site, the total aboveground storage capacity for the facility would be 1,600 gallons, and the facility may potentially be regulated by the SPCC rule.

In addition, the exemption does not apply to a wastewater treatment facility or parts thereof used to meet a 40 CFR part 112 requirement, including an oil/water separator used to meet any SPCC requirement. Examples of oil/water separators that are used to meet SPCC requirements include oil/water separators used to satisfy the secondary containment requirements of §112.7(c), §112.7(h)(1), and/or §112.8(c)(2). Oil/water separators used to satisfy secondary containment requirements of the rule do not count toward storage capacity. For more information, refer to Chapter 5 of this document (Oil/Water Separators), which clarifies how the SPCC rule applies to oil/water separators.

## 2.7 Determination of Applicability by the Regional Administrator

Section 112.1(f) allows the Regional Administrator (RA) to require preparation of an SPCC Plan or applicable part by the owner or operator of an otherwise exempted facility that is subject to EPA jurisdiction under CWA §311(j) of the CWA. This provision is designed to address gaps in other regulatory regimes that might best be remedied by requiring a facility to have an SPCC Plan. For example, a facility may be exempted from the SPCC rule because its storage capacity is below the regulatory threshold, but the facility may have been the cause of repeated discharges as described in §112.1(b).

### **§112.1(f)**

Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject jurisdiction of EPA under section 311(j) of the CWA prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

Factors the RA may consider in making a determination to require that a facility prepare an SPCC Plan include, but are not limited to, the physical characteristics of the facility; the presence of secondary containment; the discharge history of the facility; and the proximity of the facility to sensitive environmental areas such as wetlands, parks, or wildlife refuges. The RA might require an entire Plan, or might require only a partial Plan addressing secondary containment, for example, to prevent future discharges.

Sections 112.1(f)(1) through (5) describe the process for an RA to determine applicability. The process includes specific time deadlines for both the RA and the facility owner or operator, as well as requirements for the type of information and delivery method. Table 2-4 lists the deadlines and responsibilities of the RA and the facility owner or operator to appeal the RA determination that he/she must prepare an SPCC Plan.

**Table 2-4.** Process for an RA determination of SPCC applicability and appeals.

Deadline	Responsibility
<b>Determination</b>	
N/A	<i>Regional Administrator (RA)</i> makes a preliminary determination. RA must provide a written notice to the owner/operator stating the reasons why an SPCC Plan or applicable part of a Plan is needed. (§112.1(f)(1))
Within 30 days of receipt of notice of a potential need to prepare an SPCC Plan (following preliminary determination)	<i>Owner/operator</i> must provide information and data and may consult with EPA about the need to prepare an SPCC Plan, or applicable part. (§112.1(f)(2))
Within 30 days of receipt of data	<i>Regional Administrator (RA)</i> must make a final determination regarding whether the owner/operator is required to prepare and implement an SPCC Plan, or applicable part. (§112.1(f)(3))
Within 6 months of final determination that facility needs a Plan	<i>Owner/operator</i> must prepare the Plan, or applicable part. (§112.1(f)(4))
Within 1 year of final determination that facility needs a Plan	<i>Owner/operator</i> must implement the Plan, or applicable part. (§112.1(f)(4))
<b>Appeals</b>	
Within 30 days of receipt of final determination that facility needs a Plan	<i>Owner/operator</i> may appeal final determination to the Administrator of EPA (and send a copy to the RA). (§112.1(f)(5))
Within 60 days of receiving the appeal or additional information submitted by owner/operator	<i>The Administrator</i> must render a decision on the appeal. (§112.1(f)(5))

The EPA inspector plays an important role in assisting the RA in determining applicability. For example, an inspector may initially alert the RA of the need for an otherwise exempt facility to have an SPCC Plan. This may result from an inspection prompted by a citizen complaint or state referral, an oil spill, or awareness of other conditions that warrant closer examination. Following an

RA determination of the need for an SPCC Plan, the EPA inspector may perform a targeted inspection of the subject facility to verify compliance with SPCC requirements.

## 2.8 SPCC Applicability for Different Types of Containers

### 2.8.1 Bulk Storage Container

A bulk storage container, as defined in §112.2, must follow specific requirements, as described under §§112.8(c), 112.9(c), and 112.12(c) for onshore facilities. Examples of these requirements include, but are not limited to, secondary containment and fail-safe engineering, such as high level alarms, inspections, and testing.

#### §112.2

*Bulk storage container* means any container used to store oil. These containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce.

**Oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.**

Note: The above text is an excerpt of the SPCC rule. Emphasis added. Refer to 40 CFR part 112 for the full text of the rule.

### 2.8.2 Oil-filled Equipment

The definition of bulk storage container in §112.2 specifically excludes oil-filled electrical, operating, and manufacturing equipment (“oil-filled equipment”). Therefore, oil-filled equipment is not subject to the bulk storage container requirements in §§112.8(c), 112.9(c), and 112.12(c). However, oil-filled equipment must meet the general requirements of §112.7. See generally 67 FR 47054-47055.

EPA believes it is good engineering practice to have some form of visual inspection or monitoring for this oil-filled equipment to prevent discharges as described in §112.1(b). For example, it is a challenge to comply with security requirements under §112.7(g) and countermeasures for discharge discovery under §112.7(a)(3)(iv)) without some form of inspection or monitoring program. Additionally, inspection and/or monitoring should be part of an effective contingency plan when a PE determines that secondary containment for this equipment is impracticable.

#### Oil-filled Operational Equipment

Oil-filled operational equipment includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device. Oil-filled operational equipment does not include manufacturing equipment.

Examples of oil-filled operational equipment include hydraulic systems, lubricating systems (including lubricating systems for pumps, compressors, and other rotating equipment), gear boxes, machining coolant systems, heat transfer systems, transformers, other electrical equipment, and other systems containing oil to enable operation.

## Oil-filled Manufacturing Equipment

Oil-filled manufacturing equipment is distinct from bulk storage containers in its purpose. Oil-filled manufacturing equipment stores oil only as an ancillary element of performing a mechanical or chemical operation to create or modify an intermediate or finished product. Examples of oil-filled manufacturing equipment may include reaction vessels, fermentors, high pressure vessels, mixing tanks, dryers, heat exchangers, and distillation columns. Under the SPCC rule, flow-through process vessels are generally considered oil-filled manufacturing equipment since they are not intended to store oil.<sup>11</sup> Additionally, there may be oil-filled operational equipment (e.g., a hydraulic unit) at this type of facility to support the manufacturing equipment (see generally 67 FR 47080). The PE reviewing and certifying the SPCC Plan should be familiar with processes taking place at the facility and should therefore determine whether a given process vessel is considered a bulk storage container or oil-filled manufacturing equipment.

In cases where a container is used for the static storage of oil within a manufacturing or processing area, the PE may determine that the container is in fact a bulk storage container. Examples of oil storage within manufacturing areas include:

- Storing an intermediate product for an extended period of time in a continuous or batch process;
- Storing a raw product prior to use in a continuous or batch process; and
- Storing a final product after a continuous or batch process.

Storage tanks and containers located at the beginning or end of a process and used to store feedstock or finished products generally are considered bulk storage containers. In cases where oil storage is incidental to the manufacturing activity or process (e.g., where it is being transformed in a flow-through process vessel) the PE may determine that the container is part of the manufacturing equipment.

## 2.9 Determination of Applicability of Facility Response Plans

A portion of the SPCC-regulated community may also be required to prepare a Facility Response Plan (FRP). According to §112.20, a facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit an FRP. *SPCC facilities must document whether they meet the FRP applicability criteria (40 CFR 112 Appendix C Section 3.0)*. Facilities may refer to the “Flowchart of Criteria for Substantial Harm,” Attachment C-I to Appendix C of 40 CFR part 112, to determine whether they need to prepare an FRP. The owner or operator must document his/her determination of whether the facility has the potential to cause

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<sup>11</sup> The U.S. Occupational Safety and Health Administration's Process Safety Management (PSM) regulation (29 CFR 1910.119) considers a single process “any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release.” The PSM definition of process includes storage tanks, while the SPCC rule considers storage tanks as bulk storage containers and not manufacturing equipment.

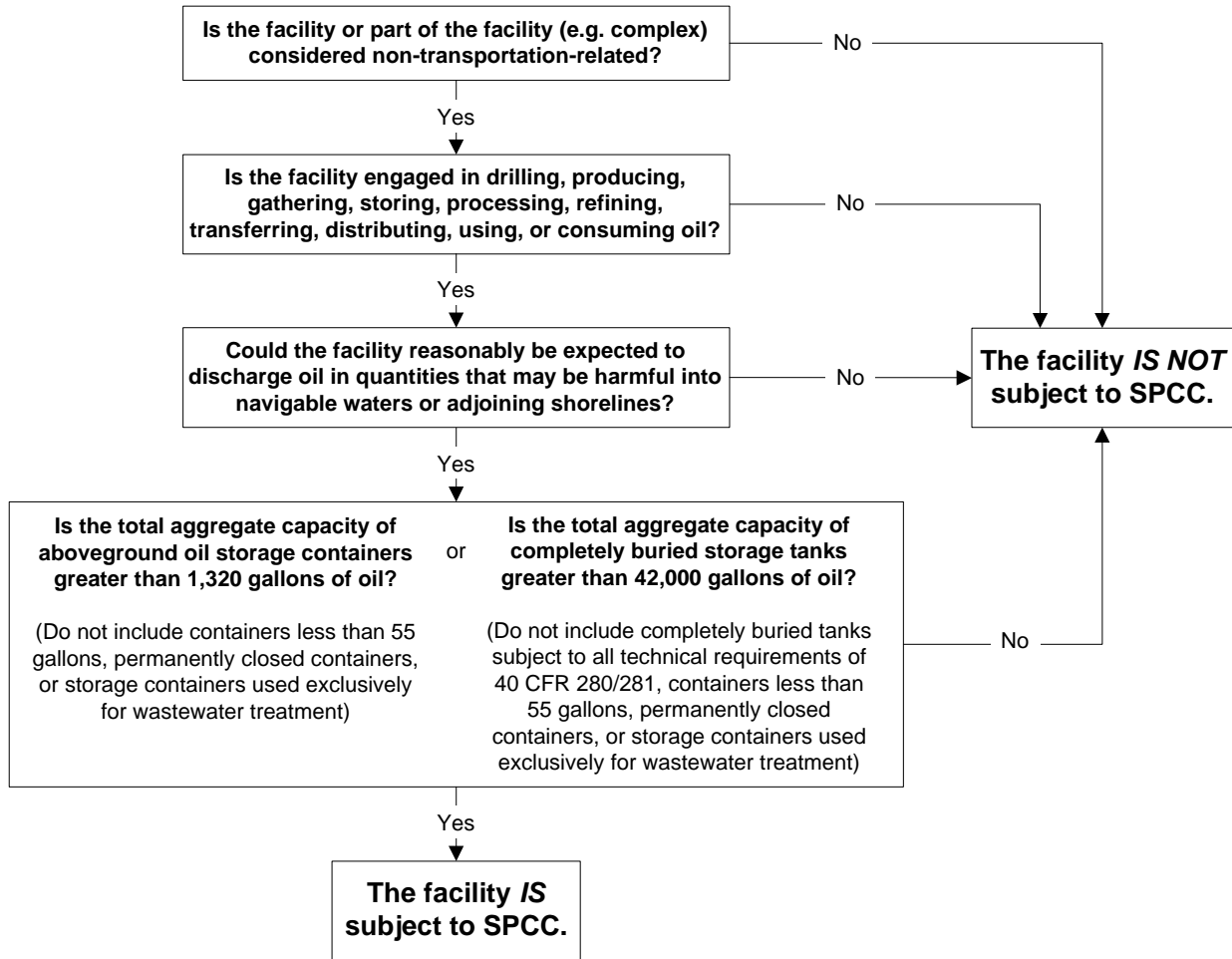


substantial harm by completing the Attachment C-II form, "Certification of the Applicability of the Substantial Harm Criteria," and maintaining the certification at the facility. Attachments C-I and C-II are provided in Appendix H of this document.

## **2.10 Role of the EPA Inspector**

The EPA inspector is responsible for gathering information and data to determine compliance with SPCC requirements for those facilities that are regulated by the SPCC rule. During an SPCC inspection, EPA inspectors will check that the measures described in the SPCC Plan are implemented at the facility and will fully document all observations and other pertinent information. The Summary of Applicability Flowchart and Applicability Assessment Worksheet, provided as Figures 2-1 and 2-2, are two quick references provided for convenience to aid inspectors in assessing whether a facility is subject to the SPCC rule.

Figure 2-1. Summary of applicability flowchart.



The intent of this flowchart is to show the general principles of applicability. Inspectors should always consult the *Code of Federal Regulations* and applicable MOUs.

**Definitions (40 CFR 112.2)**

**Completely buried tank:** Any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.

**Complex:** A facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the CWA.

**Facility:** Any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment, or in which oil is used, as described in Appendix A to the SPCC rule. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

**Permanently closed:** Any container or facility for which: (1) All liquid and sludge has been removed from each container and connecting line; and (2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.

**Storage capacity:** Shell capacity of the container.

**Figure 2-2.** Applicability assessment worksheet.

**1** Is the facility or part of the facility considered non-transportation-related and engaged in one of the following activities? (Refer to Sections 2.2.4 and 2.3 of this chapter.)  
 Drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil.

Yes. Go to question 2.

No. The facility is not subject to the SPCC rule.

**2** Could the facility reasonably be expected to discharge oil in quantities that may be harmful into navigable waters or adjoining shorelines? (Refer to Section 2.4 of this chapter.)

Note: This determination must be based solely upon consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge.

Yes. Go to question 3.

No. The facility is not subject to the SPCC rule.

**3a** Is the total aggregate capacity of aboveground oil storage containers greater than 1,320 gallons? (Refer to Sections 2.5 and 2.6 of this chapter.)

Note: Exclude containers less than 55 gallons, permanently closed containers, and storage containers used exclusively in wastewater treatment.

Yes. The facility is subject to the SPCC rule.

No. Go to question 3b.

**3b** Is the total aggregate capacity of completely buried storage tanks greater than 42,000 gallons? (Refer to Sections 2.5 and 2.6 of this chapter.)

Note: Do not include completely buried tanks subject to all technical requirements of 40 CFR part 280 or 281, containers less than 55 gallons, permanently closed containers, or storage containers used exclusively in wastewater treatment.

Yes. The facility is subject to the SPCC rule.

No. The facility is not subject to the SPCC rule.

