



Spill Prevention, Control, and Countermeasure (SPCC) Rule Amendment

Revisions to the Regulatory Definition of “Navigable Waters”

On November 26, 2008, EPA promulgated a final rule to amend a Clean Water Act (CWA) section 311 regulation that defines the term “navigable waters” (73 FR 71941). In this action, EPA announced the vacatur of the July 17, 2002, revisions to the definition of “navigable waters” in accordance with an order, issued by the United States District Court for the District of Columbia (D.D.C.) in *American Petroleum Institute v. Johnson*, 571 F.Supp.2d 165 (D.D.C. 2008), invalidating those revisions. The court decision also restored the regulatory definition of “navigable waters” promulgated by EPA in 1973; consequently, EPA is amending the definition of “navigable waters” in part 112 to comply with that decision. This final rule does not amend the definition of “navigable waters” in any other regulation that has been promulgated by EPA.

In the order, the Court vacated and remanded the 2002 amendments to the Spill Prevention Control and Countermeasure (SPCC) regulatory definition of the term "navigable waters" on procedural grounds under the Administrative Procedure Act. The court restored the previous definition of “navigable waters” included in the 1973 SPCC Rule pending further rulemaking or other appropriate agency action. The Agency is studying the opinion and may provide additional guidance on the definition of "navigable waters." The 1973 regulatory definition of “navigable waters” for the SPCC rule was published in the Federal Register on December 11, 1973 (see 38 FR 34165) and reads as follows:

The term “navigable waters” of the United States means “navigable waters” as defined in section 502(7) of the FWPCA, and includes:

- (1) all navigable waters of the United States, as defined in judicial decisions prior to the passage of the 1972 Amendments of the Federal Water Pollution Control Act, (FWPCA) (Pub. L. 92-500) also known as the Clean Water Act (CWA), and tributaries of such waters as;
- (2) interstate waters;
- (3) intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and
- (4) intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

For More Information

Visit the EPA Office of Emergency Management Web site:

<http://www.epa.gov/emergencies>

Review the Oil Pollution Prevention regulation (40 CFR part 112):

<http://www.gpoaccess.gov/cfr/>

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