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OFFICE OF THE ASSISTANT SECRETARY
(INSTALLATIONS AND ENVIRONMENT)
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FEB 8 2006

Mr. Mark Howard
Oil Program Office
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code 5104A
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OPA-2005-0001

SUBJECT: OIL POLLUTION PREVENTION; SPILL PREVENTION, CONTROL, AND COUNTERMEASURE PLAN REQUIREMENTS – AMENDMENTS; PROPOSED RULE; 70 FR 73524; 12 DECEMBER 2005

Dear Mr. Howard:

The Department of Defense (DoD) Clean Water Act Services Steering Committee (CWASSC), which represents the Departments of the Navy, Air Force, and Army, as well as several other Defense components and agencies, has reviewed the proposed amendments to the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements and submits the enclosed comments for consideration.

DoD supports EPA's efforts to reduce the regulatory burden of the SPCC requirements. Our comments, however, recommend that EPA provide further clarification on 1) the applicability of the rule to mobile refueling tanks and portable fuel tanks, and 2) the definition of motive power containers as applied to military unique situations.

Thank you for the opportunity to comment on these proposed amendments. If you have any questions, our point of contact for this issue is Mr. Abe Nachabe at (202) 685-9315, or e-mail at abe.nachabe@navy.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald R. Schregardus".

Donald R. Schregardus
Deputy Assistant Secretary of the Navy
(Environment)

Enclosure (1): Department of Defense (DoD) Clean Water Act Services Steering Committee (CWASSC) Comments on the Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Plan Requirements – Amendments; Proposed Rule

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Department of Defense (DoD) Clean Water Act Services Steering Committee (CWASSC)

**Comments on the
Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Plan
Requirements – Amendments; Proposed Rule
(70 FR 73524; 12 December 2005)**

1. Address Mobile and Portable Refueling Tanks in a Separate Subsection

Comment: The Environmental Protection Agency (EPA) proposes to amend 40 CFR 112.8(c)(2) and 112.8 (c) (11) to indicate that airport mobile refuelers are exempt from the requirement to furnish specifically sized secondary containment for bulk storage tanks. By implication, the requirement to furnish specifically sized secondary containment for bulk storage tanks applies to all other mobile refuelers. The regulatory language of 40 CFR 112.8 addressing bulk storage tanks, including mobile refuelers, is unclear with respect to the requirements for mobile refuelers. Regulations addressing mobile refuelers could be best clarified by addressing mobile refuelers and portable fuel tanks in a separate sub-section of 40 CFR 112.

Discussion: Mobile refuelers are unique, and should not be addressed in the same paragraphs as other bulk fuel tanks. The language of proposed 40 CRF 112.8(c)(2) (“construct all bulk storage tank installations ...”) is confusing in the context of a mobile refueler, because a mobile refueler does not have an integral secondary containment that is also mobile. The language raises the question of when a mobile refueler becomes a “bulk storage tank installation” and thus needs secondary containment.

DoD interprets 40 CFR 112.7 and 112.8 taken together to mean that mobile refuelers that drive from location to location, delivering fuel to storage tanks, vehicles, or ships, are not covered by the specifically sized secondary containment requirements of 40 CFR 112.8 when stopping to make these deliveries. Instead they would be covered by the requirement in 40 CFR 112.7(c) for general containment, or if delivering to a loading rack, would be covered by 40 CFR 112.7(h), which requires specifically sized containment for loading and unloading racks.

In addition, the language of the proposed 40 CFR 112.8(c)(11) (“Position or locate mobile or portable oil storage containers to prevent a discharge...”) raises the question of what it means to “position” a mobile refueler. When mobile refuelers are “positioned” by being parked overnight, for example, secondary containment sufficient to contain the volume of the largest container would be required. EPA should clarify the circumstances in which it considers a mobile refueler to have been “positioned.” One approach would be to require specifically sized secondary containment in the following circumstances:

1. Any mobile refueler that has been parked for storage and contains fuel; and
2. Any mobile refueler that has been positioned for the purpose of supplying fuel, as a temporary fueling station, and that is not continuously attended by a dedicated operator.

EPA should distinguish between mobile refueling tanks and portable fuel tanks (including fuel bladders) that contain fuel, and those that are “out of service” and have been emptied. The military

stores lots of equipment that is not in service, including mobile refuelers. EPA should clarify that secondary containment is not required for empty mobile refuelers or portable fuel tanks.

Recommendations:

1. Address mobile refuelers and portable fuel tanks in a separate subsection.
2. Avoid confusing language such as “construct all bulk storage tank installations” when referring to mobile refuelers and portable tanks.
3. Clarify that mobile refuelers that are driving from location to location, delivering fuel to storage tanks, or vehicles, or ships, etc., are covered by the general containment requirements of 40 CFR 112.7(c) when stopping to make these deliveries, and by 40 CFR 112.7(h) when delivering to a loading/unloading rack.
4. Clarify the circumstances when EPA considers a mobile refueler to have been “positioned” and therefore to require specifically sized secondary containment.
5. Clarify that EPA will not require specifically sized secondary containment for empty mobile refuelers and portable fuel tanks.

References:

- a. 40 CFR 112.7, as proposed.
- b. 40 CFR 112.8, as proposed.

2. Determine if Mobile Refueling Tanks are a Significant Environmental Threat Requiring Secondary Containment

Comment: EPA has not made a convincing case that mobile refuelers under normal use need to be provided secondary containment like stationary bulk storage containers.

Discussion: EPA indicates that there is significant non-compliance in providing specifically sized secondary containment for mobile refuelers. It is not clear, however, that this non-compliance has caused any significant environmental problem.

Mobile refuelers are unlike other bulk storage tanks in several aspects. They are elevated off the ground and completely accessible for inspection and therefore unlikely to develop leaks that would go unnoticed. Any leaks or spills that do occur will most likely be through valves or fittings, and will not likely be through corrosion of the tank walls.

EPA should review the history of spills that have occurred involving mobile refuelers. As an alternative to requiring specifically sized secondary containment, EPA should consider requiring a set of standard operating procedures for mobile refuelers to address the most common failure modes.

These standard procedures might generalize the applicability of, and add some additional requirements to, those already required at loading/unloading racks by 40 CFR 112.7(h)(2) and (3):

“Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break (brake) interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.”

“Prior to filling and departure of any tank car or tank truck, closely inspect the lowermost drain and all outlets of such vehicles for discharges, and if necessary, ensure that the drain and outlets are tightened, adjusted, or replaced to prevent liquid discharge while in transit.”

Recommendations:

1. Review the history of spills that have occurred involving mobile refuelers.
2. Consider requiring a set of standard operating requirements for mobile refuelers intended to address the most common failure modes instead of requiring specifically sized secondary containment.

Reference:

- a. 40 CFR 112.7, as proposed.

3. Expand the Proposed Definition of Motive Power Containers, and Exempt Onboard Bulk Storage Containers of Aviation Ground Support Equipment Units from SPCC Rule General Applicability

Comment: EPA proposes to amend 40 CFR 112.2 by defining “motive power containers” as: “any onboard bulk storage containers used solely to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment used solely to facilitate its operation.”

Discussion: EPA’s proposed rule amendment would also exempt motive power containers, as defined above, from SPCC rule applicability through a proposed additional paragraph under the general applicability section, 40 CFR 112.1(d). In addition, clarify that these storage containers would also not be counted toward facility capacity under 40 CFR 112.1(d)(2).

EPA states that its proposed definition for motive power containers is intended to describe containers such as the fuel tanks that are used solely to provide fuel for a motor vehicle’s movement or the hydraulic and lubrication operational oil-filled containers used solely for other ancillary functions of a motor vehicle. EPA noted that it never intended to regulate motive power containers on various types of vehicles and equipment that may be subject to the SPCC requirements solely because of the presence of motive power containers. However, EPA’s proposed definition did not include the fuel tanks (or hydraulic and lubrication operational oil-filled containers used solely for other ancillary functions) of any equipment that does not move under its own power. The military uses some types of aviation Ground Support Equipment (also known as Aerospace Ground Equipment), which have integral fuel tanks that can hold more than 55 gallons of fuel. These portable units do not move under their own power, but are designed to be towed to various operating locations on a frequent basis. Despite not moving on their own power, the integral fuel tanks on these units are used solely to power the units, and are not used to “store or transfer oil for further distribution.”

DoD believes an expansion of the “motive power container” definition and applicability exemption addressing aviation ground support equipments is necessary, relying upon the same logical basis EPA used to exempt the fuel tanks and ancillary onboard oil-filled operational equipment of motor vehicles.

Recommendations:

1. Expand the definition of “motive power container” to include any onboard bulk storage containers used solely to power or facilitate the operation of aviation ground support equipment.
2. Exempt onboard bulk storage containers of aviation ground support equipment units from the SPCC rule general applicability section, 40 CFR 112.1(d).
3. Exempt onboard bulk storage containers of aviation ground support equipment units from being counted toward facility capacity under 40 CFR 112.1(d)(2).

Reference:

- a. 40 CFR 112.1, as proposed.