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EPA'S SPILL PREVENTION CONTROL AND COUNTERMEASURE (SPCC) PLAN PROGRAM REGULATORY RELIEF UPDATE

In 1973, the United States Environmental Protection Agency ("EPA") promulgated its SPCC Plan rule under 40 CFR Part 112 to govern the preparation of oil storage plans. These plans guard against the discharge of oil "in quantities that may be harmful" and provide for the implementation of countermeasures in the event a release occurs. Despite a number of ambiguities and difficulties associated with the original rule, EPA did not promulgate any amendments until July 17, 2002.

The 2002 amendments provided significant regulatory relief and an extension of time for existing facilities to amend their SPCC Plans to reflect new requirements. This is to report that EPA is continuing to tweak the SPCC Plan rule and has issued guidance to its Regional inspectors that should provide the regulatory community with a much greater sense of what is required.

Background. The SPCC Plan rule applies to any non-transportation related facility storing "oil" that, "due to its location, could reasonably be expected to discharge oil in quantities that may be harmful ... into or upon navigable waters of the United States or adjoining shorelines...." Size does matter – for aboveground storage, the capacity must be more than 1,320 gallons and for underground storage, more than 42,000 gallons.

December 2005 Proposals. In the December 12, 2005 Federal Register, EPA proposed SPCC Plan amendments, the most significant of which will:

(1) Allow owners/operators of facilities that store 10,000 gallons or less of oil and meet other qualifying criteria to self-certify their SPCC Plans in lieu of review and certification by a Professional Engineer (referred to as a "qualified facility"). Currently, a PE certification is required for a SPCC Plan.

A facility that seeks to self-certify must not only be under the 10,000 gallon threshold, but must have had no reportable oil discharge (as described in 40 CFR § 112.1(b)) during the ten years prior to self-certification (or since becoming subject to the SPCC Plan requirement if the facility has been in operation for less than ten years) (referred to herein as "No Discharge Prior History").

The following restrictions apply to such facilities in preparing their SPCC Plans:

- (a) the Plan may not deviate from any requirement of the SPCC Plan rule under § 112.7(a)(2) except with respect to the security requirement and container integrity testing; and
- (b) the Plan cannot include any impracticability determination as described under § 112.7(d).

As the oil storage threshold limits this relaxed requirement to small facilities, EPA believes the tradeoff is greater environmental protection by improving compliance. However, given the restrictions, EPA has pointed out that facilities with complicated operations and lower capacities may find that the current rule offers a more cost-effective method of achieving compliance than the proposed option. Therefore, a qualified facility could choose to follow the current SPCC Plan requirements (including the PE certification) to take advantage of the flexibility offered by PE-certified impracticability determinations and environmentally equivalent measures.

(NB. Although EPA may not require the involvement of a PE, New York may consider the design of an SPCC Plan to be engineering services that require the PE stamp. The outcome may depend upon the complexity of the petroleum storage system involved.)



(2) Provide an alternative to the secondary containment requirement for “qualified oil-filled operational equipment” (for example, electrical equipment like transformers where according to the definition, “oil is present solely to support the function of the apparatus or device”) without requiring a determination of “impracticability.” The owner/operator of the facility with “qualified oil-filled operational equipment” who (a) establishes and documents an inspection or monitoring program to detect equipment failure and/or a discharge, (b) prepares an oil spill contingency plan, and (c) provides a written commitment of manpower, equipment and materials to address oil discharges in lieu of secondary containment for qualified oil-filled operational equipment would not be required to make an individual impracticability determination. EPA decided that oil-filled operational equipment will qualify for the relief not by the size of the particular equipment, but by whether the entire facility has a “No Discharge Prior History.”

This proposal reflects the reality of the regulated community, given the relatively limited risk of a significant discharge with equipment like this, the cost and difficulty associated with installing passive secondary containment and the angst of establishing “impracticability” as significant cost alone is insufficient.

(NB. EPA commented in the Federal Register Preamble that facilities that adopt this proposed alternative to secondary containment and that subsequently experience an oil discharge will not necessarily lose their eligibility for this regulatory relief.)

Finally, it should be noted that in this recent round of proposed amendments, EPA has also recommended deleting certain SPCC Plan requirements for storage of animal fats and/or vegetable oils (AFVO). The 2002 SPCC Plan amendments had inserted into the rule an entirely new section on AFVO management to reflect the fact that AFVO materials fall within the broad definition of “oil” at 40 CFR § 112.2.

These proposed revisions were prompted by comments from the regulated community that underscored the differences in the management of AFVO as opposed to petroleum-based oils. What is also noteworthy is EPA’s request in the Federal Register Preamble for additional suggestions on tweaking the SPCC Plan rule to reflect these differences.

Effective Date. In a separate December 12, 2005 notice, EPA proposed to extend the compliance dates for implementing the 2002 amendments to **October 31, 2007**. That extension was confirmed by EPA in a February 17, 2006 final rule.

SPCC Guidance for Regional Inspectors. On December 2, 2005, EPA issued a guidance document to assist its Regional inspectors in reviewing a facility’s implementation of the SPCC Plan rule. The document is designed to facilitate an understanding of the rule’s applicability and provide consistency among the Regions. Among the insights provided are those in the discussion of active and passive forms of secondary containment and the review of what will satisfy a finding of “impracticability.”

The document provides welcome transparency to the enforcement process. EPA advises that the guidance is to operate as a “living” document and it is inviting comments even beyond the initial 60-day comment period.

Conclusion. Although the SPCC Plan requirements have been around for over 30 years, the recent round of amendments makes them seem almost new. The EPA’s efforts to fine tune the balance between environmental protection and regulatory burden are to be applauded. A number of issues remain, but the regulated community should take this opportunity to review these recent proposals and see how they might take advantage of them.

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