

ENVIRONMENTAL LAW UPDATE – IMPORTANT NOTICE

Revisions to 40 CFR Section 112 – SPCC Rule

[Atlanta Environmental Management, Inc.](#)

As many of you are aware, the Spill Prevention Control and Countermeasures Rule (SPCC) was revised by the U.S. Environmental Protection Agency (EPA) on July 17, 2002. The amendment includes new subparts defining classes and operational uses of oil, revises the applicability of the regulation, provides for integrity testing of storage tanks and piping, changes the time period for review of SPCC plans, and amends the threshold for reporting discharges to the EPA. (A detailed listing of these changes is attached.)

Please note that Atlanta Environmental Management, Inc. (AEM) has received numerous inquiries regarding the spill reporting requirements mentioned in the revision. Specifically, the threshold for reporting discharges is frequently being misinterpreted, and this could impact your facility.

The revision to 40 CFR 112 **does not affect spill reporting requirements** and does not amend the definition of a “reportable spill” as outlined in the Clean Water Act (the Act). The Act specifically states that any discharge “that causes a film or sheen upon or discoloration of water surfaces or violates any applicable water quality standards is a spill that must be reported to the National Response Center as soon as the person in charge of a facility has knowledge of the discharge.” (Note that the EPA interprets the statement “as soon as the person in charge of a facility has knowledge” to mean **within 15 minutes of becoming knowledgeable of the spill**. Not doing so may subject the facility to a fine.)

AEM’s clear interpretation of the rule, as confirmed by the EPA’s Oil Program Hotline, is that the portion of the July 17, 2002, revision dealing with the threshold for reporting discharges to the EPA **simply changes the trigger that requires SPCC regulated facilities to submit their SPCC Plans to the EPA for review and does not change the definition of “reportable spill.”** According to the amended rule, a facility’s SPCC Plan must be submitted to the EPA for review whenever a facility (1) discharges more than 1,000 gallons of oil in a single discharge, as described in Section 112.1(b), or (2) discharges more than 42 gallons of oil, as described in Section 112.1(b), in each of two discharges within any 12-month period.

Please feel free to contact Terry O’Heron, P.E., or Jeff Cook, P.E., at AEM (at 404-329-9006) if you have any questions.

New Spill Prevention Control and Countermeasure Rule

Introduction

On July 17th, 2002, EPA issued a final rule amending the Oil Pollution Prevention regulation promulgated under the authority of the Federal Water Pollution Control Act ([Clean Water Act](#)). This rule addresses requirements for Spill Prevention Control and Countermeasure Plans (SPCC Plans) and some provisions may also affect Facility Response Plans (FRPs). The new SPCC rule became effective August 16, 2002. The Spill Prevention, Control, and Countermeasure (SPCC) rule can be found in [Title 40 of the Code of Federal Regulations \(CFR\), Part 112 \(Oil Pollution Prevention\)](#)

Background of the Oil Pollution Prevention Regulation

The goal of the oil pollution prevention regulation in 40 CFR Part 112 is to prevent oil discharges from reaching navigable waters of the United States or adjoining shorelines. The rule was also written to ensure effective responses to oil discharges. The rule further specifies that proactive, and not passive, measures be used to respond to oil discharges. The oil pollution regulation contains two major types of requirements: prevention requirements (SPCC rule) and facility response plan (FRP) requirements. The prevention requirements in Sections 112.1 through 112.7 were first promulgated in the 1973 SPCC regulation. Required under the rule is an SPCC Plan that contains measures to prevent and control oil spills, including those resulting from human operational error or equipment failures.

Reasons for Final Changes

The impetus behind the final changes is manifold. First, the final changes stem from the need to clarify the language and organization of the rule. The changes comply with the Presidential order requiring that all new rules or rule amendments be drafted in plain language. The changes reduce the information collection burden on the regulated community. The SPCC changes will reduce the regulatory burden by approximately 40 percent. The changes will eliminate duplicate regulation, exempt certain small facilities, exempt most wastewater treatment facilities, and require consideration of industry standards in prevention plans. The final rule also allows an owner or operator to substitute a required measure for another providing equivalent environmental protection, with the exception of secondary containment requirements.

General Applicability

The SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, use, process, refine, transfer, distribute, or consume oil and oil products. The changes to the rule clarify applicability to owners or operators that use oil. The changes also allow for tracking the scope of the rule to conform with the expanded jurisdiction of the amended CWA. The broadened range includes waters of the contiguous zone and waters connected with activity under the Outer Continental Shelf Lands Act or Deepwater Port Act, as well as waters affecting certain natural resources of the United States.

Summary of the New SPCC Rule

The effect of the final SPCC rule is expected to be positive. The revised rule reduces the number of facilities regulated and the overall regulatory burden.

Highlights of Final Rule

- Exempts completely buried storage tanks subject to all of the technical requirements of the UST regulations (40 CFR Parts 280 or 281);
- Exempts portions of certain facilities or any facility used exclusively for wastewater treatment. This exemption does not apply to production, recycling, or recovery of oil;
- Establishes a de minimis container size of 55 gallons;
- Establishes an aboveground storage capacity threshold of greater than 1,320 gallons and removes the 660 gallon threshold;
- Revises the trigger for submitting SPCC Plans to the EPA for review. Facilities are now required to submit information after having 2 discharges (over 42 gallons) in any 12-month period or a single discharge of more than 1,000 gallons;
- Allows deviations from most rule provisions (with the exception of secondary containment requirements) when equivalent environmental protection is provided;
- Provides for a flexible plan format, but requires a [cross-reference](#) showing that all regulatory requirements are met; and
- Clarifies rule applicability to the storage and operational use of oil.

Facility Response Plan Considerations

The revisions to the SPCC rule may affect whether you need to prepare and maintain a Facility Response Plan (FRP) or how you calculate worst case discharge planning levels. In some cases, your facility may not meet the storage capacity thresholds for the substantial harm criteria. In other cases, you must have an FRP, but you may be able to revise the calculations for worst case discharge planning levels. The definitions used in part 112.2 also clarify terms used in the FRP rule. According to the new rule, the regulation no longer applies to the following:

- Completely buried tanks that are subject to all Underground Storage Tank technical requirements in 40 CFR parts 280 and 281;
- Containers with a storage capacity of less than 55 gallons; and
- Portions of certain facilities or any facility used exclusively for wastewater treatment.