

US EPA ARCHIVE DOCUMENT



V. Oil Spill Prevention Requirements for Construction Activities

If you are using, consuming, storing, transferring, or otherwise handling oils at your construction site, you will need to take the appropriate actions to prevent spills, and be prepared to take action in case of a spill. You will need to follow EPA's Spill Prevention Control and Countermeasures Plan (SPCC Plan) requirements, which were developed under authority of Section 311 of the Clean Water Act (CWA). The regulatory text discussing this program (40 CFR Part 112) can be found at <http://ecfr.gpoaccess.gov> under "Title 40 - Protection of the Environment." On July 16, 2002, EPA promulgated a revised final SPCC Regulation that became effective August 17, 2002. EPA subsequently extended the regulatory compliance schedule included in the new SPCC rule.

Definitions and Acronyms

Bulk Storage Container—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. Bulk storage containers include items such as tanks, containers, drums, and mobile or portable totes.

Oil—Oil of any kind or in any form, including, but not limited to: petroleum; fuel oil; sludge; oil refuse; oil mixed with wastes other than dredged spoil; fats, oils or greases of animal, fish, or marine mammal origin; vegetable oils, including

oil from seeds, nuts, fruits, or kernels; and other oils and greases, including synthetic oils and mineral oils.

Storage Capacity - The shell capacity of the container (i.e., the maximum volume of the storage container used to store oil, not the actual amount of product stored in the container).

CFR—Code of Federal Regulations

CWA—Clean Water Act

SPCC—Spill Prevention Control and Countermeasures

The current compliance dates for the new rule are as follows:

- February 17, 2006: Facilities must prepare and certify (using a Professional Engineer, or P.E.) an SPCC Plan in accordance with the new SPCC rule.
- August 18, 2006: The revised SPCC Plan must be implemented.

Affected facilities that start operations between August 16, 2002 and August 18, 2006 must prepare and implement an SPCC Plan by August 18, 2006. Affected facilities that become operational after August 18, 2006 must prepare and implement an SPCC Plan before starting operations.

The SPCC rule includes spill prevention and countermeasure plans for spills from aboveground and certain underground storage tanks. Completely buried storage tanks that are subject to all the technical requirements of the underground storage tank regulation (40 CFR Part 280/281) and any permanently closed underground storage tanks are not required to comply with SPCC provisions. For more information on underground storage tanks, go to <http://www.epa.gov/swrust1/>.

A. Do Oil Spill Requirements Apply to Your Construction Project?

Your construction project must meet SPCC regulatory requirements if it meets the following three criteria:

- It stores, uses, transfers, or otherwise handles oil;
- It has a maximum aboveground storage capacity greater than 1,320 gallons of oil (which includes both bulk and operational storage volumes) OR total underground storage capacity greater than 42,000 gallons of oil; AND
- There is a reasonable expectation (based on the location of your site) that an oil spill would reach navigable waters or adjoining shorelines of the United States.

The following items at your construction site are exempt from SPCC requirements and are not included in the storage capacity calculations:

- Completely buried tanks that are subject to all the technical requirements of the underground storage regulations;
- Storage containers with less than 55-gallon storage capacity (both aboveground and belowground tanks); and
- Permanently closed tanks.

Calculate your total aboveground storage capacity by adding together the storage capacity of all of your storage tanks as well as the fuel and fluid (e.g., hydraulic fluid) tanks on your mobile and operational equipment. In this calculation, include only those tanks that have more than 55 gallons of storage capacity.

When calculating your storage capacity, you must include the capacity of the fuel and fluid tanks on your mobile and operational equipment (e.g., fuel tanks on bulldozers, cranes, backhoes of greater than 55 gallons). Also, note that individual aboveground storage tanks with storage capacities of greater than 660 gallons, which had been regulated under the 1974 rule, are no longer regulated unless the total site capacity is greater than 1,320 gallons.

In addition to SPCC requirements, the CWA also includes requirements for Facility Response Plans for “substantial harm” sites (see 40 CFR 112.20 and 112.21.) Construction sites are not expected to meet the definition of “substantial harm;” therefore, these requirements are not discussed in this guide. If you transfer oil over water and use vessels that have a total oil storage capacity of 42,000 gallons or more OR your site has a total oil storage capacity greater than one million gallons, you should review the Facility Response Plan requirements (see <http://www.epa.gov/oilspill/frps/index.htm>).

B. Are You Responsible for Meeting Oil Spill Prevention Requirements?

All parties associated with construction projects that store (or spill) oil can be held liable if the SPCC requirements are not met. Therefore, the owner, developer, contractor, and other parties as applicable should determine up front who will:

- Decide if SPCC requirements apply by calculating the total oil storage capacity on the site and then determining whether an oil spill could reach navigable waters or adjoining shorelines of the United States (It is recommended that you use a Professional Engineer to decide if the requirements apply.);
- Develop the SPCC plan, which should include the following: procedures the site will use to prevent oil spills; control measures the site will install to prevent oil from entering navigable waters or adjoining shorelines; and countermeasures the site will use to contain, clean up, and mitigate the effects of an oil spill; and
- Meet the SPCC plan requirements.

If no party complies with the SPCC regulations, all parties can be found liable for violating federal law. If oil is brought on site for construction, the contractor or subcontractor is also responsible for meeting any SPCC requirements. If a spill occurs (regardless of the source), all parties need to make sure that the spill is properly reported and handled.

C. What Are the Penalties?

If you are the responsible party to an oil spill, you may be required to pay for any damages and cleanup costs resulting from that oil spill. Third parties also may be held responsible for damages and removal costs if the responsible party shows that the spill resulted from an incident caused solely by an act or omission by a third party. Administrative penalties can reach \$157,500 and civil penalties imposed in a judicial proceeding can reach \$32,500 per violation per day, or \$1,100 per barrel of oil spilled if the oil reaches waters of the United States or adjoining shorelines.

The fine for failing to notify the appropriate federal agency of an oil spill can reach a maximum of \$250,000 for an individual or \$500,000 for an organization. The maximum prison term is five years. The criminal penalties for violations have a maximum fine of \$250,000 and 15 years in prison.

The SPCC regulation is implemented at the federal level; however, states and localities may also have oil programs through which they may impose additional penalties (including unlimited liability), funding mechanisms, requirements for removal actions, and fines and penalties for responsible parties.

D. In General, What Are the Oil Spill Requirements?

The SPCC regulations require the owners and operators of facilities to prepare and implement spill prevention plans to avoid oil spills into navigable waters or adjoining shorelines of the United States. Your plan must identify operating procedures in place and control measures installed to prevent oil spills, and countermeasures to contain, clean up, or mitigate the effects of any oil spills

that occur. The plan must be updated as conditions change at your construction site. Specific items in the SPCC Plan include, but are not limited to, the following:

For more specific details on SPCC requirements, you can refer to the regulations or to EPA's "Required Elements of SPCC Plans" web page, <http://www.epa.gov/oilspill/spccmust.htm>.

- Professional Engineer certification;
- For plans not following the format listed in the rule (e.g., plans developed for a combined SWPPP and SPCC Plan), a cross-reference to the requirements in 40 CFR Part 112.7;
- Site diagram, identifying the location and contents of each container (including completely buried tanks that are otherwise exempted from the SPCC requirements);
- For each container, the type of oil stored and the storage capacity;
- Discharge prevention measures, including procedures for oil handling;
- Predictions of direction, rate of flow, and total quantity of oil that could be discharged from the site as a result of a major equipment failure;
- Site drainage;
- Site inspections;
- Site security;
- Five-year plan review (if construction lasts five years);
- Management approval;
- Requirements for mobile portable containers (e.g., totes, drums, or fueling vehicles that remain on facility grounds);
- Appropriate secondary containment or diversionary structures;
- Secondary containment for fuel transfer;
- Personnel training and oil spill prevention briefings;
- Tank integrity testing;
- Bulk storage container compliance; and
- Transfer procedures and equipment (including piping).

For information on the SPCC requirements, go to EPA's Oil Spill Program web site, <http://www.epa.gov/oilspill/>. Regional SPCC contacts are listed at <http://www.epa.gov/oilspill/spcccont.htm>.

Spill Response Requirements

If a spill occurs, you must follow the spill response procedures outlined in your SPCC plan. These procedures should include identifying the spilled material, restricting the flow of any remaining material within the original container, confining the spill area with absorbent materials or dikes, beginning remediation and decontamination of the affected areas, and notifying all of the appropriate parties.

The following groups should be notified in the event of a spill:

- The site Emergency Coordinator and any client representatives;
- The National Response Center at 1-800-424-8802 for spills that trigger the “sheen rule”;
- The State Emergency Response Commission for spills with the potential to harm people off site; and
- Local Emergency Planning Committees or the local fire department for spills with the potential to harm people off site.

EPA does not define an oil spill based on the volume of the spill. Rather, an oil spill is defined as a discharge in quantities that:

- Violate applicable water quality standards;
- Cause a film or “sheen” upon, or discoloration of, the surface of the water or adjoining shorelines; or
- Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

This definition is known as the “sheen rule” (see 40 CFR Part 110 for more information).

If an oil spill adversely impacts an Endangered Species Act listed species, an emergency Section 7 consultation may be needed (see Section XI-A of Part I of this document for more information).

EPA must be notified of any spills over 1,000 gallons or of any two spills over 42 gallons within a 12-month period. Additionally, the site should add a copy of the report with oil spill details to the SPCC Plan documentation for any reportable oil spills. The oil spill details should include correction actions taken, cause of discharge, and additional preventive measures taken.

E. What Questions Do You Need to Answer Before Starting Your Construction Project?

You can use the questions in Section II of Part I of this guide to start a discussion among all parties involved in the construction project and to assign tasks to ensure all environmental requirements are met. Each question has a space next to it to designate who will take the lead on each task. Note that designating a responsible party does not absolve you of meeting environmental requirements or liability for failing to meet these requirements.

F. Where Can You Get Additional Information?

For more information on oil spill requirements, review the following:

- The Oil Spill Prevention Self-Audit Checklist in Part II of this guide;
- EPA Oil Program web site: <http://www.epa.gov/oilspill/>;
- Spill Prevention Plan and Countermeasure Control Fact Sheet Guidance from EPA: <http://www.epa.gov/oilspill/pdfs/spccbluebroch2002.pdf>;
- EPA's "Where you live" page contains links to state environmental agencies: <http://www.epa.gov/epahome/wherelive.htm>;
- The Construction Industry Compliance Assistance Center provides information on requirements that apply to the construction industry: <http://www.cicacenter.org/index.cfm>; and
- The National Environmental Compliance Assistance Clearinghouse contains a search engine to help you find compliance assistance tools, contacts, and EPA- sponsored programs: <http://www.epa.gov/clearinghouse/>.