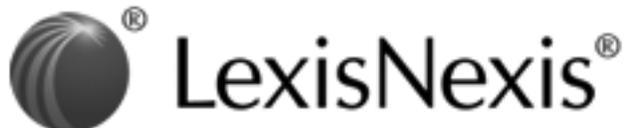


US EPA ARCHIVE DOCUMENT



## FEDERAL REGISTER

40 CFR Part 110

Water Programs; Discharge of Oil

[FRL 3119-6]

*52 FR 10712*

April 2, 1987

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is amending the discharge of oil regulation (40 CFR Part 110), which implements section 311 of the Clean Water Act (CWA). The original regulation established a trigger for notifying the federal government of oil discharges that are harmful to public health or welfare. The regulation defined a harmful quantity as the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. It has come to be known as the "sheen regulation."

Today's regulation incorporates the 1977, 1978, and 1980 amendments to section 311 of the CWA and implements section 18(m)(3) of the Deepwater Port Act (DWPA) of 1974 by designating a harmful quantity for DWPA purposes. In addition, the Agency is responding to two suggestions by industry for modifications to the requirements of 40 CFR Part 110. The intended effect is to upgrade the oil spill notification requirements.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Hubert Watters, Response Standards and Criteria Branch, Emergency Response Division (WH-548/B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2463, or the RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, 382-3000).

**TEXT: SUPPLEMENTARY INFORMATION:** The proposed rulemaking was published on pages 9776-9783 of the Federal Register of March 11, 1985, and invited comments for 60 days ending May 10, 1985. The comment period was subsequently extended to July 1, 1985. Comments were received from over 50 sources, and today's preamble summarizes the comments, suggestions, and actions taken.

The contents of the preamble are listed in the following outline:

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### I. Introduction

On March 11, 1985, the Environmental Protection Agency (EPA) proposed amendments to the discharge of oil regulation (40 CFR Part 110). The March 11, 1985 preamble discussed in detail the nature and purpose of the proposed amendments.

Today, EPA is promulgating final amendments to the regulation. In preparing the amendments to the regulation, EPA has carefully considered all of the public comments submitted on the proposed amendments and is making some modifications in response to those comments. Major issues raised by commenters are addressed in this preamble. A summary of all comments and EPA's response to each is included in the Responses to Comments Documents, which

may be found in the public docket for this rulemaking.

Section II of this preamble summarizes those changes made to the March 11, 1985, proposed rule. Statutory provisions, addressed in Section III of this preamble, include the following:

1. Extension of geographical scope of section 311 of the Clean Water Act (CWA) from the contiguous zone seaward to approximately 200 miles.
2. Modification of the harmful quantity definition from discharges of such quantities of oil that "will be harmful" to the public health or welfare of the United States to such quantities that "may be harmful" to the public health or welfare of the United States.
3. Exemption of oil discharges subject to CWA section 402 National Pollutant Discharge Elimination System (NPDES) from coverage under section 311 provisions.
4. Incorporation of the provisions under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), Annex I.
5. Definition of harmful quantities of oil for purposes of section 18(m)(3) of the Deepwater Port Act of 1974 (DWPA).

Section IV discusses other sections of 40 CFR Part 110, and Section V addresses two suggested changes requested by the regulated community for which comments were solicited in the preamble to the proposed rule. They are:

1. A request by Chevron to consider a volumetric amount of oil discharge as a trigger for notification to replace the sheen test.
2. A request by Esgard that EPA exempt its vegetable oil product, a corrosion inhibitor in ballast tanks, from the oil discharge notification requirements.

Section VI presents a summary of supporting analyses, and Section VII provides a list of subjects addressed by this rulemaking.

## II. Changes From Proposed To Final Rule

This section summarizes the substantive changes that have been made to the proposed rule. Four definitions have been modified slightly and one has been deleted. Modifications have also been made to the sections of the rule concerning applicability, prohibited discharges, demonstration projects, notice, and DWPA discharges. A copy of the final rule indicating all changes from the proposed rule has been placed in the docket for this rulemaking and is available for public inspection. The following summary is organized in the same order as the discharge of oil regulation (40 CFR Part 110) itself.

*Section 110.1.* The definition of "applicable water quality standards" has been amended to be consistent with the EPA water quality regulation, 40 CFR Part 131. The proposed definition in § 110.1 stated that applicable water quality standards were State standards "adopted by the State and approved by EPA . . . or promulgated by EPA . . ." In contrast, 40 CFR 131.21(c) states that:

A State water quality standard remains in effect, even though disapproved by EPA, until the State revises it or EPA promulgates a rule that supersedes the State water quality standard.

Accordingly, the words "and approved by EPA" have been deleted from the definition of applicable water quality standards in § 110.1 of the final rule.

A reference to section 311 of the CWA has been added to the definition of "discharge" to clarify that a different definition, as provided in § 110.11, applies to the DWPA.

The regulatory explanation of the 1977 amendment language which extended the scope of section 311's coverage beyond 12 miles has been deleted from 40 CFR Part 110 because a number of comments indicated confusion regarding the scope of the specific statutory language and the applicability of discharge reporting requirements within the area covered by the language. Under the pre-1977 statutory language of sections 311 (b)(3) and (b)(5), all prohibited discharges of oil in the territorial seas and contiguous zones must be reported. With the enactment of the 1977 CWA amendments, however, Congress inserted additional language in section 311(b)(3) which provided that prohibited discharges "in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)" must be reported. Since the jurisdiction of the three statutes referenced in the 1977 amendments extends *within* as well as beyond the contiguous zone, there was some question as to whether discharges within the zone now need only be reported if they are actually "in connection with" one of the three additional statutes. EPA believes that the correct interpretation of section 311(b)(3) is that *all* discharges of oil in the territorial seas and contiguous zone that create a sheen must continue to be reported. Discharges of oil beyond the contiguous zone, however, that create a sheen need only be reported if they are "in connection with activities" under the Outer Continental Shelf Lands Act, the Deepwater Port Act, or may affect natural resources subject to U.S. management authority under the Magnuson Fishery Conservation and Management Act. Today's rulemaking clarifies this issue by simply specifying appropriate reporting requirements in terms of whether the discharge and resulting sheen occurred in the territorial sea, the contiguous zone, or beyond 12 miles.

n 1 Specifically, the Deepwater Port Act of 1974 regulates ports beyond "the territorial limits of the United States," including associated components and equipment, such as pipelines, located seaward of the high water mark. The Outer Continental Shelf Lands Act governs the Outer Continental Shelf, which lies beyond "navigable waters," and the Magnuson Fishery Conservation and Management Act establishes a fishery conservation zone, which lies beyond "the territorial sea of the United States."

The definition of "oil" has been expanded to include references to both the CWA and the DWPA definitions of oil. Because oil is defined differently in the DWPA than in the CWA and is used in both contexts in the rule, the Agency believes it is desirable to provide references to both of these definitions of oil in § 110.1.

The reference to the Canal Zone has been deleted from the definition of "United States." The CWA no longer applies to the Canal Zone as a result of the Panama Canal Treaty of 1977 and the Panama Canal Act of 1979 (22 U.S.C. 3601 et seq.).

*Section 110.2.* A sentence has been added to the end of this section on applicability to indicate that the regulations also define the term "discharge" for purposes of section 18(m)(3) of the DWPA.

*Section 110.6* (formerly § 110.7). This section sets forth the provisions of CWA section 311(b)(3), which generally prohibits oil discharges in quantities as may be harmful, except for discharges permitted under MARPOL 73/78. The Agency believes that the MARPOL exemption extends to discharges under the DWPA as well. Section 19(a)(1) of the DWPA provides, in relevant part, that ". . . the treaties of the United States shall apply to a deepwater port . . . and to activities connected, associated, or potentially interfering with the use or operation of any such port . . .". Because MARPOL 73/78 is a "treaty of the United States," EPA interprets section 19(a)(1) as authorizing the application of MARPOL 73/78 provisions to discharges under the DWPA and, therefore, has also provided for an exemption of MARPOL 73/78 permitted discharges from DWPA requirements. This point has been clarified in the final rule, and the section on discharges defined for purposes of the DWPA (§ 110.11 in the final rule) has been modified to except discharges permitted under MARPOL 73/78.

*Section 110.9* (formerly § 110.10). In response to a commenter's recommendation to delete the geographic scope language from proposed § 110.10, the language has been replaced with the phrase "under section 311 of the Act." The Agency concurs with commenter's statement that the purpose of § 110.9 is to provide waiver authority to the Administrator, and therefore it is unnecessary to reprint the geographic scope in § 110.9.

*Section 110.10* (formerly § 110.11). The Agency has amended § 110.10 to make it consistent with Coast Guard discharge reporting regulations by incorporating the language in *33 CFR 153.203*, as amended on May 16, 1986 (*51 FR 17962*).

*Section 110.11* (formerly § 110.6). In the final rule, the section concerning discharges defined for purposes of the DWPA has been moved to the end of the regulation. This section has been modified to except discharges from properly functioning vessel engines (which are not deemed to be harmful for CWA purposes) and discharges permitted by MARPOL 73/78. The proposed rule contained an exception for DWPA discharges subject to section 402 of the CWA, but this exception has been deleted. There is nothing in the language or legislative history of the DWPA to suggest that Congress contemplated such an exception.

### III. Statutory Provisions Affecting the Oil Discharge Regulation

This section of the preamble describes the five amendments to the sheen rule that were required by changes to the CWA and by the DWPA. Commenters generally expressed support for these regulatory changes. Major issues raised by commenters concerning each of the changes are discussed below.

#### A. 1977, 1978, and 1980 Statutory Amendments

##### 1. *Extension of Geographical Scope*

In the 1977 amendments to the CWA (Pub.L. 95-217), Congress expanded the geographical scope of section 311 beyond the contiguous zone, which extends seaward to 12 miles, to include oil discharges in connection with a variety of activities out to approximately 200 miles. Specifically, sections 311 (b) and (c) of the Act were amended to apply not only to discharges of oil into navigable waters and the contiguous zone, but also to such discharges -- Q04

in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)" (*33 U.S.C. 1321*(b) and (c)).

The Agency has amended the jurisdictional provisions of 40 CFR Part 110 to reflect the expanded scope of section 311 in § 110.5.

One commenter acknowledged that the proposed extension of geographical scope is consistent with the CWA amendments, but had reservations about the extension because of "the sheer size of the area to be included." The commenter asserted that the extension "will exacerbate the U.S. Coast Guard's inability to investigate spills." EPA notes that the major purpose of these amendments to the oil discharge rule is to implement statutorily mandated changes. The ability of the Coast Guard to investigate spills in the extended area depends, of course, on the number of spills in the area at any one time, enforcement discretion, the existence of competing demands for Coast Guard action at any particular time, and the availability of resources. In their comments submitted on this rule, the Coast Guard has not indicated any concern about their ability to carry out necessary investigations.

##### 2. *Modification of Harmful Quantity*

In 1978, Congress modified the harmful quantity criteria of section 311 from discharge of oil that "will be harmful" to discharges that "may be harmful." More specifically, Congress modified the scope of prohibited discharges under section 311(b)(4) from quantities the "discharge of which, at such time, locations, circumstances, and conditions, will be harmful" to such quantities the "discharge of which may be harmful" (Pub. L. 95-576). Section 311(b)(3) was also amended to reflect this change.

The original oil sheen test was promulgated pursuant to the pre-1978 standard of "will be harmful." The Agency views the revised statutory standard "may be harmful" as being, at a minimum, at least as environmentally stringent and protective as the prior "will be harmful" standard, as discussed in more detail below, EPA has reviewed scientific research on the environmental effect of oil spills. It has assessed State and Federal experience in implementing the present "oil sheen" test, and it has carefully considered the alternatives suggested by commenters. On the basis of this review, the Agency has determined that the "oil sheen" is an appropriate, effective, and practical test for harmful quantities of oil under section 311(b)(4) of the CWA. As discussed later in this preamble, the Agency has made the same determination for discharges under section 18(m)(3) of the DWPA.

A number of commenters recognized that the replacement of "determined to be harmful" for "as may be harmful" in the regulations at 40 CFR Part 110 would be consistent with the CWA amendments. Some of these commenters advocated, however, adoption of a quantitative definition of harmful quantity of oil discharge using a volumetric trigger as an alternative to the sheen test. The scientific support for the oil sheen test together with the merits of adopting a volumetric trigger are addressed in detail in the discussion in Section V.A. concerning Chevron's proposal for a volumetric substitute to the sheen test.

### *3. Exemption of Discharges Subject to Section 402 of the CWA*

In the 1978 amendments to the CWA, Congress also modified the definition of "discharge" in section 311(a)(2) to exclude from section 311 coverage three types of discharges that are subject to the National Pollutant Discharge Elimination System (NPDES) regulations under section 402 and the enforcement provisions of section 309. Specifically, Congress provided that the following discharges be excluded from section 311 coverage:

. . . (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant opportunity or treatment systems.

Congress intended this amendment to clarify which section of the CWA governs discharges of oil and hazardous substances from point sources holding NPDES permits. Foreseeable or chronic point source discharges that are permitted under section 402, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of the treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402.

Several commenters suggested a need for EPA to clarify the three categories of excluded discharges. EPA provided an extensive explanation of these exclusions in the March 11, 1985, preamble to the proposed rule, and the Agency intends at the present time to continue this interpretation of the CWA provisions, which was based on the language in *40 CFR 117.12* promulgated in 1979 for reportable quantities of CWA hazardous substances. This interpretation, however, is currently being reevaluated by the Agency in the context of the present NPDES program and the interpretation of "federally permitted releases" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The Agency intends to address this issue more fully in a forthcoming rulemaking on CERCLA federally permitted releases.

#### 4. *Exemption of Discharges Permitted Under MARPOL 73/78*

Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), entered into force on October 2, 1983 (see *48 FR 45704-45727*, October 6, 1983). The purpose of MARPOL 73/78, which supersedes the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, is to eliminate marine pollution from ships. In 1980, the Act to Prevent Pollution from Ships implemented portions of MARPOL, 73/78. Specifically, section 13(b) of Pub. L 96-478 amended section 311(b)(3)(A) of the CWA to exempt certain discharges into waters seaward of the territorial sea permitted under MARPOL 73/78. Such discharges include the operational discharge of limited quantities of oil-water mixtures from ships. Thus, discharges into those waters from ships made in compliance with the requirements of Regulation 9 of MARPOL 73/78, Annex I (as implemented through 33 CFR Parts 151 and 157), are not subject to notification and liability provisions under the CWA even if they would otherwise be of "a quantity that may be harmful" under the CWA. The MARPOL exemption does not apply, however, to discharges into the internal waters and the territorial seas of the United States. Such discharges must satisfy the CWA harmful quantity discharge standard even if the MARPOL 73/78 discharge standards are met. Section 110.6 of the sheen rule now includes this exemption.

One commenter pointed out that a far greater amount of the oil discharged into the world's oceans comes from tankers rather than from U.S. Outer Continental Shelf production operations and therefore recommended that if an exemption is granted to ships covered under MARPOL 73/78, a volumetric trigger should be set for offshore platforms that operate in the same waters and discharge less oil. In response to this comment, the Agency points out that the principal purpose of this regulatory revision is to incorporate Congress' specific exemption for MARPOL permitted releases. The Agency also notes, however, that the standard under MARPOL is concentration-based rather than volumetric and that Regulation 9 of MARPOL 73/78 applies to all "ships" operating in the marine environment. Such "ships" include all vessels and both fixed and floating platforms. Thus, the MARPOL 73/78 exemption includes certain operational discharges from offshore platforms as well as from vessels (see Regulation 21 of MARPOL 73/78). Furthermore, some offshore platforms operate under NPDES permits with oil discharge limits, and discharges in compliance with such permits are also excluded from discharge of oil regulation coverage. The Agency has decided to retain the existing reporting trigger for discharges from offshore platforms at this time.

#### *B. Deepwater Port Act of 1974*

The Deepwater Port Act (DWPA) of 1974 (*33 U.S.C. 150-1524*) applies to the construction and operation of deepwater ports in waters beyond the territorial limits of the United States, including associated components and equipment, such as pipelines, located seaward of the high water mark. It contains provisions that prohibit the discharge of oil into the marine environment from a deepwater port, from a vessel that has received oil from another vessel at such a port, and from vessels within a port's safety zone. The DWPA also establishes deepwater port licensee and vessel owner or operator liability for cleanup costs and damages that result from a discharge of oil. Other features of the DWPA include discharge notification requirements, penalty provisions, and the establishment of the Deepwater Port Liability Fund. The fund is liable, without regard to fault, for all cleanup costs and damages in excess of those actually compensated by a liable deepwater port licensee or vessel owner or operator.

Action under each of the key pollution provisions of the DWPA is triggered by a discharge of oil in harmful quantities. Section 18(m)(3) of the DWPA defines "discharge" in terms of those "quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency" (*33 U.S.C. 1517(m)(3)*). In the proposed rule, EPA used the sheen test to complete the definition.

Several commenters favored, in one form or another, a volumetric trigger for discharges under the DWPA. After carefully reviewing the comments submitted and considering them in light of the statutory language of section 18(m)(3) of the DWPA and its supporting legislative history, EPA has decided to use the sheen test in the final rule to define "harmful quantities" for purposes of the DWPA. The Coast Guard, which has the responsibility for implementing the

requirements of the DWPA, agrees with this position. Both EPA and the Coast Guard believe that Congress intended that the DWPA definition of harmful quantity be the same as the CWA definition in the oil discharge rule. According to the legislative history of the DWPA, Congress expected the Administrator ". . . to define harmful quantities of oil as defined in regulations issued under section 311 of the Federal Water Pollution Control Act" (Sen. Rep. No. 93-1217, 93rd Cong. 2nd Sess. (1974)). As noted by commenters, the section 311 CWA harmful quantity determination was promulgated by the Department of the Interior in 1970 and adopted by EPA in 1971. When Congress enacted the DWPA in 1974 it specifically chose in section 18(m)(3) to define the word "discharge" in terms of "regulations issued by the Administrator of the Environmental Protection Agency". As the legislative history noted above makes explicitly clear, the regulations Congress was referring to were those issued under section 311 of the CWA. Those regulations defined harmful quantities in 1974 in precisely the same terms as today's rulemaking. Therefore, EPA and the Coast Guard believe the rule adopted today at 40 CFR 110.11 fulfills Congressional direction in this regard. Moreover, as discussed below, the Agency believes that the sheen test is an appropriate definition of harmful quantities for purposes of the DWPA.

One commenter submitted data from the Louisiana Offshore Oil Port (LOOP) monitoring program to show that there were no measurable short-term or long-term harmful effects that could be attributed to oil spills from the LOOP. n2 A review of the data submitted, however, suggests that the monitoring program was not specifically designed to assess the impacts of spills that have actually occurred at the LOOP. Moreover, the inconclusive indications that these data provide are more than offset in EPA's view by other scientific studies and research in the record that clearly demonstrate a connection between oil spills and adverse environmental effects, both at offshore oil platforms and other open ocean areas, as well as in controlled laboratory conditions. For this reason also, EPA believes that the determination in today's rulemaking that the oil sheen is an appropriate harmful quantity standard is reasonable and fully supportable.

n 2 The LOOP is the only operating deepwater port in the United States. It is located approximately 18 miles off the coast of Louisiana in the Gulf of Mexico.

Another commenter argued that the sheen test does not correspond with either actual or potential harm from deepwater port-related releases, which by definition, occur outside territorial waters. According to the commenter, the regulations assume that the same quantity of oil which presents a potential threat to the public health or welfare of the United States when spilled in navigable waters or in the contiguous zone creates a comparable potential for harm when discharged at a remote offshore location. The commenter challenges this assumption, citing a 1974 study by the U.S. Army Corps of Engineers on different areas of marine environmental sensitivity. It should be noted that this study does not state that there is no harm from oil spills offshore, but rather, that there is likely to be less harm from oil spills offshore than from those inshore. Other researchers have related the potential for harm from an oil spill to distance from shore, by noting that the potential for harm increases as water depths decrease from thousands to hundreds of feet. EPA believes that such a potential for harm exists at the LOOP because contrary to the commenter's suggestion that the LOOP represents a "remote offshore location," the depth of the water surrounding the LOOP platform is in fact on the order of one hundred feet. Furthermore, as mentioned previously, the DWPA definition of deepwater port includes pipelines and other components and equipment located seaward of the high water mark. Thus, LOOP discharges may occur within as well as beyond territorial waters.

Another commenter has indicated concern that unlike section 311 of the CWA, the provisions of the DWPA, specifically *33 U.S.C. 1517(c)(1)*, statutorily mandate a response action in every instance of a reported discharge, regardless of extreme weather conditions and resulting safety hazards that cleanup actions may entail. The Coast Guard, however, declines to adopt this interpretation of the DWPA. As explained in their comment letter of May 9, 1985 (OS-9-43 in the public docket), the Coast Guard interprets the provisions of the DWPA to give the Coast Guard discretionary authority to determine whether or not a response is necessary when a discharge occurs.

#### IV. Other Sections of the Oil Discharge Regulation

A few commenters recommended changes to other sections of the oil discharge regulation, particularly to §§ 110.1 and 110.8 of the proposed rule. For reasons discussed in the Responses to Comments documents, the Agency has decided not to incorporate these changes into the final rule.

#### V. Requests For Changes in the Oil Discharge Regulation

##### A. Volumetric Alternatives to Sheen Test

Chevron U.S.A., Inc., of San Francisco, California, has commented to EPA that the sheen test under section 311 of the CWA is too stringent and that alternative, volumetric limits would provide sufficient water quality protection at a lesser cost to the company. Chevron has suggested that the reportable quantity threshold be changed to 1 barrel (42 gallons), except where water quality standards are more stringent. The company maintains that spills of less than 1 barrel "rarely, if ever, cause environmental damage." Chevron claims, in material submitted to EPA, that approximately 75 percent of the spills it reports are of under 1 barrel and estimates that the cost to the company is \$500 to \$6,000 per spill report. Some commenters have urged that a volumetric test be adopted for harmful quantity determinations under the DWPA, as well.

A large number of commenters expressed support for the sheen test rather than a volumetric test. Several commenters cited the greater enforceability, administrative ease, and higher level of environmental protection afforded by the sheen test. A few commenters pointed to the success of the sheen test in promoting prompt reporting and preventing larger spills, as well as in encouraging spill prevention and cleanup by industry. The commenters also noted the problems inherent in a volumetric reporting trigger, including the potential for environmental harm from small quantities of oil in the aquatic environment; these commenters asserted that a volumetric trigger would fail to account for differing susceptibility of water to damage from oil. They noted that the receiving waters and type of oil spilled affect the environmental impact more than the quantity of oil spilled.

Commenters opposed to the sheen test raised questions about environmental harm and concerns about the stringency of the requirement. Several commenters favoring a volumetric alternative to the sheen test also addressed administrative and policy issues as outlined below and detailed in the Responses to Comments documents.

##### 811. Environmental Harm Issues

The majority of commenters opposing the sheen test expressed the belief that small oil spills do not have a significant impact on marine ecosystems. A few of the commenters referred to the fact that many scientific studies have been conducted since the Department of the Interior's 1970 determination that a sheen represents a "harmful quantity" of oil. For example, one suggested that many scientific studies have proven small quantities of oil to be harmless, and another asserted that EPA has failed to consider new data in its decision to retain the sheen test. Of all the commenters who expressed these opinions, only three submitted extensive documentation of scientific studies and literature reviews, which they felt illustrated the substantial amount of recent research that could support a volumetric reporting trigger. One of the commenters also recommended that EPA review the 1985 National Academy of Sciences study on the subject of oil pollution.

EPA has carefully reviewed the recent scientific literature on environmental effects of oil pollution, including documents submitted by commenters and other documents referenced in comment letters or compiled in the public docket during the comment period. EPA believes that the literature clearly demonstrates that discharges of small quantities of oil cause environmental harm. A discussion paper outlining the Agency's position and citing specific documents in support of that position has been placed in the public docket.

Many types of adverse effects from oil have been extensively documented, proving harmful effects from oil spills and chronic pollution in inland waters, in coastal environments, and in waters beyond 12 miles from shore. Evidence from reviews of laboratory studies further demonstrates that very small amounts of oil, e.g., less than 1 mg/L (1 ppm), can have lethal and sublethal effects on a wide variety of organisms. The National Academy of Sciences (NAS), in its 1985 comprehensive review, noted that "low concentrations (less than 1 mg/L) of petroleum hydrocarbons can apparently interfere with the normal behavior of marine organisms, especially the more fragile components such as the larval and juvenile forms of the marine food chain." The review articles and reports prepared by industry representatives that argue strongly for the commenters' position are either limited in their citation of scientific literature or highly selective in the conclusions drawn. The limited evidence cited by commenters to show little or no harm from oil discharges generally applies only to certain areas of chronic pollution (e.g., Milford Haven, United Kingdom), certain types of harm (e.g., permanent harm on a broad scale), or certain organisms. As discussed in the NAS report and in EPA's discussion paper, the studies of chronically polluted areas in the Gulf of Mexico that were cited by commenters are controversial and have been criticized by some scientists for their methodology and conclusions. Commenters provided no evidence disputing the widely recognized types of physical harm that may result from floating sheens of oil such as asphyxiation of fish and benthic fauna due to coating by oil, harm to waterfowl because of loss of buoyancy or loss of insulating capacity of feathers, and adverse aesthetic effects of fouled shorelines and beaches.

Moreover, some commenters appear to have defined potential harm as permanent biological harm on a broad scale. There simply is no persuasive indication in the statute that Congress intended this narrow interpretation of the harmful quantity standard. In fact, the Congressional policy expressed in CWA section 311(b)(1) "that there should be *no* discharges of oil" (emphasis added) suggests just the opposite.

Equally important, nothing in the legislative history of the CWA or in judicial interpretations of the Act suggests that a demonstration of permanent harm on a broad scale is required. Congress stated in the 1978 CWA Amendments that a prohibited discharge need only be a quantity that *may* be harmful. In cases such as *U.S. v. Atlantic Richfield Company*, 429 F.Supp. 830, 837 (E.D. Pa., 1977), the courts have suggested that Congress believed that even transitory pollution of waters was deleterious to the environment.

Many of the studies submitted by commenters support the fact that small oil spills do cause harm in certain waters (e.g., spawning grounds, estuaries). Many opponents of the sheen test concede that coastal and inland areas and sensitive habitats may be vulnerable to damage from low levels of oil pollution, and many admit that there may be at least temporary harm. Documents compiled in the public docket clearly show that small amounts of oil are harmful in a variety of locations and circumstances, including spawning grounds and sensitive habitats beyond 12 miles from shore. EPA has therefore chosen to retain the sheen test as an environmentally protective reporting trigger for purposes of both the CWA and the DWPA.

Several commenters favored the establishment of different oil discharge reporting triggers for different waters to ensure that the more stringent sheen test would be used for environmentally sensitive areas, while a less stringent volumetric test would be applied to less environmentally sensitive waters. To the extent that they favor retaining the sheen test for certain waters, EPA agrees with these commenters. EPA further believes that the sheen test must be applied to all waters to ensure certain, consistent and effective implementation of the harmful quantity standard. A single reporting trigger is entirely consistent with Congressional intent as reflected in the 1978 CWA amendments, which eliminated the requirement that a determination of harm must consider the specific "times, locations, circumstances, and conditions" of a given spill. Senator Muskie, in the debates on these amendments, stated that the determinations of harmful quantities under CWA section 311 "are nationally applicable, before-the-fact decisions and are not expected to reflect the myriad of actual circumstances that may occur" (*Congressional Record* at 519653, December 15, 1977). In the case of hazardous substances, which, like oil, are covered by CWA section 311, EPA has previously expressed the view that Congress intended a single reportable quantity to apply to all waters. As stated in the 1978 preamble to regulations establishing reportable quantities for hazardous substances, "Congress was aware that requiring tailoring of such determinations to water body type and other circumstances is administratively unwise and could prevent achievement of the goals of the [Clean Water] Act" (43 FR 10491, March 13, 1978). EPA believes that

this same principle should apply to discharges of oil. EPA continues to believe that a single reporting trigger is a practical and environmentally sound requirement. It is true that discharges of the same amount of oil into different bodies of water may result in different degrees of harm. The boundaries and differentiation of various ecologically significant waters, however, are not clearly defined nor readily discernible. Waters seaward of the territorial seas or the contiguous zone, which may contain neustonic communities or productive fisheries, can be sensitive to small spills. As sensitivity of individual aquatic environments to oil is dependent on much more than just distance from shore, EPA believes that it would be impractical to establish varying oil discharge reporting requirements for different waters. The sheen test, identifying a single threshold for all waters, provides a clear and definitive trigger for the reporting requirements of 40 CFR Part 110. A single reporting trigger for all waters is thus practical, effective, and fully reflective of Congressional intent underlying both section 311 of the CWA and section 18(m)(3) of the DWPA.

Several commenters argued that the sheen test will result in over reporting of discharges that may not be harmful. This argument, however, is true of any reporting trigger including the volumetric test. Moreover, any reporting trigger may in addition to requiring the reporting of some discharges that are not harmful, also allow some harmful discharges to go unreported. In comparison to the sheen test, for example, the volumetric triggers advocated by some commenters would allow nonreporting of a large number of spills that may be harmful both on an individual and cumulative basis. EPA believes that a sheen is an appropriate indicator of a discharge of harmful quantities of oil. A sheen is typically associated with discharges containing concentrations of oil in the 10 to 20 ppm range. In this regard, it is worth noting that Regulation 1(16) of MARPOL 73/78 defines clean ballast as either ballast that does not exceed 15 ppm, or ballast that, if discharged into clean, calm water on a clear day, would not produce a visible sheen. Thus, for purposes of this definition, a discharge causing a sheen may be roughly equated to a discharge with a concentration of 15 ppm. As detailed in the Agency's discussion paper in the public docket, adverse biological effects from oil occur at concentrations many times lower than 10-20 ppm. Furthermore, as noted above, the physical properties of floating sheens themselves may cause harm, such as coating birds' feathers and fouling beaches.

## 2. Administrative and Policy Issues

Some commenters suggested that a volumetric trigger would reduce the number of spill reports. With a reduction in reports, commenters asserted that there will be less of a paperwork burden on both industry and the implementing agencies and less need for administrative follow-up procedures such as inspections. EPA recognizes that in some cases reporting is already required under separate regulatory systems created under the Outer Continental Shelf Lands Act (OCSLA), under MARPOL 73/78, and under section 402 of the CWA. For facilities regulated under the OCSLU, *all* spills or leakage of oil or waste materials must be reported to the Director of the Minerals Management Service under 30 CFR 250.43 and OCS Order Number 7. The additional cost of complying with the reporting requirements under section 311 of the CWA would be minimal for these facilities.

In light of comments from implementing agencies, EPA believes that the cost of reporting under 40 CFR Part 110 are not excessive. For example, a State agency (Ohio EPA) estimated that the actual reporting phone call to the National Response Center's toll-free number normally takes less than 15 minutes. Furthermore, Ohio EPA has found that its data storage and administrative costs have generally been less than \$20 per reported spill. The Coast Guard pointed out that the costs of reporting small spills are very small in comparison to spill prevention and corrective action expenditures. In response to EPA's request for information on administrative costs of responding to small spills, the Coast Guard suggested that spill response costs vary with the level of response required. The cost per assessment will not be reduced, according to the Coast Guard, by a change to a volumetric standard because each report would still need to be assessed to determine the actual amount discharged. Furthermore, the volumetric test may not reduce the overall costs of the regulation nor simplify its administration because there are additional implementation considerations associated with a volumetric test that are not associated with current notification requirements. The costs of installing, maintaining, and repairing any required oil monitoring devices could be substantial. Field verification costs of the releaser as well as the State, Coast Guard, or EPA would likely increase for a given spill, if observers were required to determine the quantity spilled rather than simply the existence of a sheen.

Several commenters expressed the belief that the adoption of a volumetric standard would not entail a reduction in their cleanup operations. The commenters asserted that their commitment to cleanup of all spills should continue under the volumetric standard. EPA commends the commenters' desire for the continued cleanup of all spills. EPA believes, however, that the Coast Guard's efforts to ensure cleanup will suffer in cases of spills that do not meet the volumetric threshold and are therefore unreported. Moreover, if, as commenters assert, voluntary cleanup of all spills will take place, EPA does not believe that the requirement of toll-free telephone reporting places an undue additional burden on vessels and facilities handling oil.

A few other commenters expressed the opinion that a volumetric reporting trigger would be superior to the sheen test because the appearance of a sheen often depends on weather conditions and water turbulence. However, as discussed below, accurate volumetric determinations also can be dependent on weather and water conditions. The Agency believes that any potential shortcoming of the sheen test in particular circumstances are far outweighed by its overall usefulness, simplicity, and enforceability. A sheen provides a clear indication of a reportable discharge, enabling a responsible party to identify easily which discharges must be reported and facilitating third party (e.g., citizen) complaints or reports.

EPA also believes that the difficulty involved in determining the quantity of oil discharged, as evidenced in data from regulatory agencies, is one factor that makes a volumetric reporting trigger less effective than the sheen test. In many cases, the reports of oil spills are extremely inaccurate. In addition, a volumetric trigger may provide an incentive for underestimating the quantity discharged. In cases when an estimate of slick area and thickness must be made, an observer may require special training. Even under optimal viewing conditions, with a reference scale available for comparing dimensions, only rough estimates of volume may be possible. Moreover, in less than optimal viewing conditions (e.g., poor weather, turbulence, darkness), it is not clear that even rough estimates would be possible. Finally, any time-consuming determination of the amount spilled would be contrary to the spill reporting program goal of immediate notification and quick response to possible environmental threats.

Many commenters suggested that a volumetric reporting trigger would be consistent with the present reportable quantity (RQ) criteria for hazardous substances. EPA notes that an important purpose of the RQ program is to provide a readily implementable and easy to understand reporting trigger for a diverse set of hazardous substances. EPA believes that the sheen test satisfies this same regulatory objective for oil. The sheen test has been shown to be a successful notification trigger for oil under a variety of circumstances. The sheen test takes advantage of the physical properties of oil, which cause a film, sheen, or discoloration upon the surface of the water. Because oil generally floats, the sheen test may be used to provide a more simple, easily enforced, and reliable alternative to a volumetric trigger.

#### *B. Special Use Applications of Oil*

EPA has authority under the CWA, section 311(b)(3)(B), and Executive Order 11735 (38 FR 21243) to permit the discharge of oil "in quantities and at times and locations or under such circumstances or conditions" as the Agency determines not to be harmful. Thus, EPA may grant exemptions to section 311(b) and the sheen regulation under appropriate circumstances. The Agency has received a request for an exemption for vegetable oil products used to prevent salt water corrosion in the ballast tanks and void spaces of ships and semisubmersible oil rigs. Several comments were received on this issue. There was disagreement among the commenters as to whether vegetable oil products cause harm.

EPA has decided not to exempt the reporting of vegetable oil product discharges under the oil discharge rule. The Agency has reviewed the materials cited by commenters on the impacts of vegetable oils and believes that these materials do not support the conclusion that these oils do not cause environmental harm. Some harmful environmental effects of vegetable oils are similar to those of petroleum oils and include drowning of waterfowl, fishkills due to increased biological oxygen demand, asphyxiation of benthic life, and adverse aesthetic effects. Finally, the Agency believes that the reporting requirement does not pose such a burden that it would deter the application of a useful

vegetable oil product.

## VI. Summary of Supporting Analyses

### A. Classification and Regulatory Impact Analysis

Regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 22291 established the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of \$100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amended regulation is a nonmajor rule because the Agency has concluded that it meets none of the above criteria. An analysis has estimated that the upper bound total of annual economic costs from notification requirements, spill investigations, and increased cleanup liability is \$3.8 million, well below the \$100 million standard for a major rule classification. Data supporting this conclusion are in the rulemaking docket.

This regulation was submitted to OMB for review under Executive Order 12291.

### B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Agencies must evaluate the effects of a regulation on "small entities." That Act recognizes three types of such entities:

1. Small businesses (specified by Small Business Administration regulations);
2. Small organizations (independently owned, nondominant in their field, nonprofit); and
3. Small governmental jurisdictions (serving communities with fewer than 5,000 people).

If the rule is likely to have a "significant impact on a substantial number of small entities," the Act requires that a Regulatory Flexibility Analysis be performed. EPA certifies that the amended regulation will not have a significant impact on a substantial number of small entities. There may be some incremental costs of compliance owing the extension of jurisdiction beyond the contiguous zone to approximately 200 miles. These costs will, however, be borne by companies larger than those defined as small entities.

The regulated industry is dominated by a few dozen major corporations. Because regulatory costs will ultimately be borne by these major corporations, the expected compliance costs will not affect any identifiable group of small entities and thus a Regulatory Flexibility Analysis is not required.

### C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been

assigned OMB control number 2050-0046.

#### List of Subjects in 40 CFR Part 110

Administrative practice and procedure, Coastal zone, Continental shelf, Environmental protection, Fisheries, Hazardous substances, Intergovernmental relations, Liabilities, Marine resources, Natural resources, Oil pollution, Penalties, Petroleum, Public health, Reporting and recordkeeping requirements, Rivers, Treaties, Vessels, Water pollution control, Water resources, Waterways.

Dated: March 24, 1987.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, 40 CFR Part 110 is revised to read as follows:

#### PART 110 -- DISCHARGE OF OIL

Sec.

110.1 Definitions.

110.2 Applicability.

110.3 Discharge into navigable waters of such quantities as may be harmful.

110.4 Discharge into contiguous zone of such quantities as may be harmful.

110.5 Discharge beyond contiguous zone of such quantities as may be harmful.

110.6 Discharge prohibited.

110.7 Exception for vessel engines.

110.8 Dispersants.

110.9 Demonstration projects.

110.10 Notice.

## 110.11 Discharge at Deepwater Ports.

Authority: Secs. 311 (b)(3) and (b)(4) and 501(a), Federal Water Pollution Control Act, as amended (*33 U.S.C. 1321 (b)(3) and (b)(4) and 1361(a)*); sec. 18(m)(3) of the Deepwater Port Act of 1974 (*33 U.S.C. 1517(m)(3)*); E.O. 11735, *38 FR 21243, 3 CFR Parts 1971-1975 Comp., p. 793*.

## § 110.1 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

"Act" means the Federal Water Pollution Control Act, as amended, *33 U.S.C. 1251* et seq., also known as the Clean Water Act;

"Administrator" means the Administrator of the Environmental Protection Agency (EPA);

"Applicable water quality standards" means State water quality standards adopted by the State pursuant to section 303 of the Act or promulgated by EPA pursuant to that section;

"Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

"Deepwater port" means an offshore facility as defined in section (3)(10) of the Deepwater Port Act of 1974 (*33 U.S.C. 1502(10)*);

"Discharge," when used in relation to section 311 of the Act, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, that are caused by events occurring within the scope of relevant operating or treatment systems;

"MARPOL 73/78" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

"Navigable waters" means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

"NPDES" means National Pollutant Discharge Elimination System;

"Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"Oil", when used in relation to section 311 of the Act, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. "Oil," when used in relation to section 18(m)(3) of the Deepwater Port Act of 1974, has the meaning provided in section 3(14) of the Deepwater Port Act of 1974;

"Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States, other than submerged land;

"Person" includes an individual, firm, corporation, association, and a partnership;

"Public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

"Sheen" means an iridescent appearance on the surface of water;

"Sludge" means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

"United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel; and

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

#### § 110.2 Applicability

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act. This includes certain discharges into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). The regulations of this part also define the term "discharge" for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, as provided under § 110.11 of this part.

#### § 110.3 Discharge into navigable waters of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7 of this part, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) 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.

§ 110.4 Discharge into contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon the waters of the contiguous zone in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) 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.

§ 110.5 Discharge beyond contiguous zone of such quantities as may be harmful.

For purposes of section 311(b) of the Act, discharges of oil into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) in such quantities that it has been determined may be harmful to the public health or welfare of the United States, except as provided in § 110.7, include discharges of oil that:

(a) Violate applicable water quality standards, or

(b) 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.

§ 110.6 Discharge prohibited.

As provided in section 311(b)(3) of the Act, no person shall discharge or cause or permit to be discharged into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or into or upon waters seaward of the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) any oil in such quantities as may be harmful as determined in §§ 110.3, 110.4, and 110.5, except as the same may be permitted in the contiguous zone and seaward under MARPOL 73/78, Annex I, as provided in *33 CFR 151.09*.

§ 110.7 Exception for vessel engines.

For purposes of section 311(b) of the Act, discharges of oil from a properly functioning vessel engine are not deemed to be harmful, but discharges of such oil accumulated in a vessel's bilges shall not be so exempt.

§ 110.8 Dispersants.

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is

prohibited.

§ 110.9 Demonstration projects.

Notwithstanding any other provisions of this part, the Administrator may permit the discharge of oil, under section 311 of the Act, in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

§ 110.10 Notice.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of § 110.6, immediately notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area, 426-2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR Part 153, Subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart E. (Approved by the Office of Management and Budget under the control number 2050-0046)

§ 110.11 Discharge at deepwater ports.

(a) Except as provided in paragraph (b) below, for purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" shall include but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil that:

(1) Violate applicable water quality standards, or

(2) 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.

(b) For purposes of section 18(m)(3) of the Deepwater Port Act of 1974, the term "discharge" excludes:

(1) Discharges of oil from a properly functioning vessel engine, (including an engine on a public vessel), but not discharges of such oil accumulated in a vessel's bilges (unless in compliance with MARPOL 73/78, Annex I); and

(2) Discharges of oil permitted under MARPOL 73/78, Annex I.

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