



SPCC RULE RELAXATION and EXTENSION PROPOSAL

In a Federal Register notice dated December 26, 2006 (71 Fed. Reg. 77357), the U.S. Environmental Protection Agency (“EPA”) proposed to extend the deadline once again for implementing the “new” Spill Prevention, Control and Countermeasure (“SPCC”) Plan revisions, which were originally adopted on July 17, 2002 and amended a few times since then. **If the proposal is adopted, the deadline for preparing and implementing SPCC Plans in accordance with the new requirements will be extended from October 31, 2007 to July 1, 2009. CAUTION: In the interim, ensure that sites in operation on or before August 16, 2002 are in continuous compliance with the SPCC Plan regulations at 40 C.F.R. § 112.7 in effect prior to the promulgation of the July 17, 2002 amendments.**

In another Federal Register notice published on December 26, 2006 (71 Fed. Reg. 77266), EPA adopted final amendments to the SPCC regulations by relaxing a number of regulatory requirements, including the following requirements:

P.E. Review - Not Required under Self Certification: Sites that have no more than 10,000 gallons of oil storage capacity and meet “qualifying criteria”¹ are not required to have their SPCC Plans reviewed and certified by a Professional Engineer (“P.E.”). There is a specific exemption for oil discharges attributable to a natural disaster (e.g., hurricane, tornado, flood). Even if qualifying sites choose to have their SPCC Plans P.E. certified, these sites can still self certify technical amendments to the plans. See 40 C.F.R. § 112.6.

Secondary Containment - Alternative for “Qualified Oil-Filled Operational Equipment”: Sites with “oil-filled operational equipment”² (e.g., hydraulic systems, lubricating systems, gear boxes, machinery coolant systems, heat transfer systems, transformers, circuit breakers, etc.) can take advantage of an alternative to the general secondary containment requirements at 40 C.F.R. § 112.7(c) without applying for an impracticability determination, provided they meet the “qualifying criteria” for self certification outlined in footnote 1. The alternative includes: establishing and documenting inspection and/or monitoring program procedures to detect equipment failure and/or discharge; and, unless the site has a Facility Response Plan in place, including an oil spill contingency plan and a written commitment of manpower, equipment and materials in the site’s SPCC Plan. See 40 C.F.R. § 112.7(k).

¹ “Qualifying Criteria”: No oil discharges reaching waters of the United States in excess of: 1,000 gallons at any time; or 42 gallons on 2 separate occasions within a 12-month period, during the 3-year period prior to the self certification date.

² “Oil-filled Operational Equipment”: Equipment including 1 or more oil storage containers with oil present solely to support equipment operation.

Vehicle Fuel Tanks and Onboard Bulk Storage Containers - New Exemption: Certain types of vehicle fuel tanks and other onboard bulk oil storage containers used for motive power³ are exempt from the SPCC requirements and their capacities are not factored into the SPCC applicability determination calculation. See 40 C.F.R. § 112.1(d)(7). However, oil transfer activities occurring within a SPCC-covered facility continue to be regulated.

Mobile Refuelers - New Exemption: Mobile refuelers⁴ are exempt from the sized secondary containment requirements for bulk storage containers.

Animal Fats and Vegetable Oils - Removal of Specific Requirements: EPA removed and reserved the specific requirements at 40 C.F.R. §§ 112.13 through 112.15 because they are not appropriate for the storage of animal fats and vegetable oils.

Farms - Deferral of Requirements: Farms are deferred from the requirements to prepare SPCC Plans until EPA promulgates rules establishing specific requirements for the management of oil on farms.

The above-referenced changes are effective on February 26, 2007. Further information regarding the SPCC Plan implementation requirements may be obtained from Babst, Calland, Clements and Zomnir, P.C. by contacting Colleen Grace Donofrio at cdonofrio@bccz.com or (856) 686-4608.

³ “Motive power container”: Onboard bulk storage container used primarily to power a motor vehicle or ancillary onboard oil-filled operational equipment. Onboard bulk storage containers used to store or transfer oil for further distribution, as well as oil drilling or workover equipment, are not motive power containers.

⁴ “Mobile refueler”: A bulk storage container (either onboard a vehicle or towed) used solely to store or transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.