

EPA ISSUES SPCC RULE AMENDMENTS

On December 12, 2006, EPA issued final SPCC rule amendments, including an amendment removing certain provisions for animal fats and vegetable oils. The Agency also proposed to extend the deadline for compliance with the 2002 SPCC rules until 2009, to allow time for further SPCC revisions. The highlights of the SPCC actions are outlined below.

1. Animal Fats and Vegetable Oils

The SPCC amendments remove three sections of the SPCC requirements for animal fats and vegetable oils because – as FIEC has repeatedly demonstrated to EPA – these sections are not appropriate for such fats and oils. The removed sections apply to oil production, drilling and workover facilities. In addition, EPA noted that it had received comments suggesting ways of differentiating animal fats and vegetable oils from other classes of oils covered by the SPCC rules. The Agency stated that it “is continuing to examine these issues to determine the appropriateness of amendments” to differentiate requirements for animal fats and vegetable oils, and that it plans to address this issue in a future rulemaking.

2. Self-Certification for Smaller Facilities

The SPCC amendments allow facilities with aboveground storage capacity of 10,000 gallons or less to self-certify their SPCC plans, rather than having them certified by a professional engineer. To qualify for the self-certification provision, the facility must not have had in the preceding three years: (1) a discharge over 1,000 gallons or (2) two discharges each exceeding 42 gallons in any 12-month period. Qualifying facilities also may meet alternative tailored facility security and tank integrity inspection requirements without an engineer’s certification; however, any portions of a plan addressing impracticability determinations and environmentally-equivalent measures still will require such certification.

3. Oil-Filled Operational Equipment

The new SPCC rule provides an alternative compliance option for secondary containment for oil-filled operational equipment. Oil-filled operational equipment is defined as “equipment which includes an oil storage container (or multiple containers) in which the oil is present solely to support the function of the apparatus or the device.” EPA clarified that this equipment includes operational

equipment, such as hydraulic systems and lubricating systems, as well as electrical equipment such as transformers, but that it does not include generators. Importantly, oil-filled manufacturing equipment is not covered by the alternative compliance provision. Oil-filled manufacturing equipment includes any equipment used in processing or refining oils, including animal fats and vegetable oils; such equipment remains subject to SPCC secondary containment requirements.

Under the alternative compliance option for oil-filled operational equipment, facilities may meet secondary containment requirements by having an oil spill contingency plan and written commitment of manpower and materials to control any discharges, without having to make the impracticability determination that otherwise would be required under the regulations. Facilities also must have a documented inspection or monitoring program to detect equipment failures or discharges. To qualify for the alternative compliance provision, the facility must meet the same discharge history criteria as apply to the self-certification provision: it may not have had in the preceding three years: (1) a discharge over 1,000 gallons or (2) two discharges each exceeding 42 gallons in any 12-month period.

4. Motive Power Containers

Motive power containers are exempt from the SPCC regulations under the new rule, and their capacity does not count toward total facility oil storage capacity. Such containers are defined as “any onboard bulk storage container used primarily to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment.” Trucks, cars, bulldozers, aircraft, self-propelled cranes and heavy vehicles and locomotives are all motive power containers. Importantly, oil transfer activity – such as that involving a mobile refueler, or transfer of oil from an onsite tank to a motive power container – is not covered by the exemption and still would be subject to SPCC requirements (unless covered by the mobile refuelers exemption, as explained in the following section).

5. Mobile Refuelers and Mobile Storage Containers

A mobile refueler is a bulk storage container that is onboard a vehicle or towed, and that is designed to store and transport fuel for transfer into a motor vehicle, aircraft, ground service equipment or other oil storage container. Examples include cargo tanks and trucks used to fuel aircraft or other vehicles. Under the new SPCC amendments, these containers are exempt from the sized secondary containment requirements (i.e. dikes or catchment basins) for bulk storage containers; general secondary containment provisions continue to apply. EPA also clarified that other mobile or portable bulk storage containers that are being towed or moved, such as rail cars, would not be required to have sized secondary containment when they are being moved. However, once such containers are

situated in a stationary, unattended mode in a defined location, dikes or catchment basins would be needed.

6. Compliance Dates

EPA proposed to extend the deadline for compliance with the 2002 SPCC rules. Currently, plans must be amended and implemented by October 31, 2007. EPA proposed to extend that date to July 1, 2009 in order to allow time to promulgate further revisions and to update the SPCC regional inspectors' guidance. In addition, the SPCC amendments indefinitely postpone compliance with the 2002 rules for farms with 10,000 gallons of oil or less, until EPA issues a final rule specifically addressing farms.