

Water Pollution

Oil Spills

EPA Final Rule Outlines Exemptions To Regulations for Spill Prevention Plans

The Environmental Protection Agency has released a final rule outlining a number of exemptions to its spill-prevention regulations that are expected to ease the requirements for drawing up plans for preventing spills of petroleum and other types of oil.

Specifically, EPA is exempting from the Spill-Prevention, Control, and Countermeasure (SPCC) regulations hot-asphalt mix; equipment and containers used to apply pesticides; containers for residential heating oil; and other items.

The rule was signed by Administrator Stephen Johnson Nov. 20 and is expected to be published soon in the *Federal Register*. It will take effect 60 days after it is published.

The SPCC regulations at 40 C.F.R. Part 112 require owners and operators of facilities that use, store, transfer, or consume oil or oil-based products to develop and implement professionally certified spill-prevention plans to avoid discharge of oil to the waters of the United States.

The rules apply to a cross-section of facilities with aboveground storage capacity of 1,320 gallons or underground capacity in excess of 42,000 gallons. EPA said they potentially cover facilities such as farms, electric utilities, petroleum refiners, chemical manufacturing sites, manufacturing plants that store animal fats or vegetable oils, fuel oil dealerships, and gasoline stations.

In drawing up the spill plans, facility owners or operators would not have to address the exempted items, and if exempting those items reduces the overall oil storage capacity below the threshold levels, the facility operators would not have to draw up the plans at all.

Compliance Dates Would Be Extended. In addition to promulgating the exemptions, the agency is clarifying a number of other provisions of the rules and amending security requirements to allow an owner or operator of a facility to tailor any security measures to the specific characteristics of the site.

Also Nov. 20, EPA released a proposed rule that would extend compliance dates for preparing or implementing the plans from July 1, 2009, to Nov. 20, 2009. For certain farms that have an aggregate aboveground storage capacity of 10,000 gallons or less and that meet other requirements to be considered a "qualified facility," the compliance date would be extended to Nov. 20, 2010, under the proposal.

Still other nonfarm production facilities meeting certain criteria as qualified facilities would have until Nov. 20, 2013, to comply. The proposed rule was published Nov. 26 (73 Fed. Reg. 72,016).

The agency also released a third document — a final rule that vacates a relatively broad definition of "navigable waters" promulgated in a version of the SPCC regulations in 2002 and restores the definition contained in the original SPCC rules dating to 1973.

The change in definitions is the result of an order in March by the U.S. District Court for the District of Columbia in a case brought by the American Petroleum Institute challenging the definition (*American Petroleum Institute v. Johnson*, 571 F. Supp.2d 165 (D.D.C. 2008)). This final rule also was published Nov. 26 (73 Fed. Reg. 71,941).

EPA Says Rule Provides Clarity. EPA said the amendments to the SPCC regulations outlined in the final rule were designed to "provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements" for owners and operators, which the agency said "should result in greater protection to human health and the environment."

The agency estimates the final rule will result in average compliance cost savings of \$176 million per year over a 10-year period.

The spill-prevention plans address operating procedures to prevent oil spills, control measures installed to prevent oil from entering navigable waters or adjoining shorelines, and countermeasures to contain, clean up, and mitigate the effects of an oil spill that has an impact on navigable waters or adjoining shorelines, according to EPA.

The SPCC rules were initially promulgated in 1973 and were updated in 2002. The 2002 rules were challenged in court, and EPA issued further amendments in 2006, although the agency said the 2006 rule did not address all issues of concern. The agency issued another proposed rule in October 2007 and finalized that proposal in the rule signed Nov. 20 (38 ER 2139, 10/5/07).

Small Business Agency Welcomes Rule. The Small Business Administration welcomed the final rule.

"EPA's announcement of the current SPCC rule reform shows that they have listened to the concerns of small business and have acted to alleviate those concerns," Shawne McGibbon, the SBA's acting chief counsel for advocacy, said in a statement.

The amendments are designed to increase overall compliance by small firms while reducing the regulatory burden on facilities that handle small volumes of oil and have a history of no reportable discharges, the statement said.

Comments on the proposed rule to extend compliance dates should be submitted to <http://www.regulations.gov> by Dec. 26 and refer to Docket ID No. EPA-HQ-OPA-2008-0546.

The final rules amending the SPCC regulations and redefining "navigable waters," along with the proposed rule to amend compliance dates, are available at <http://www.epa.gov/emergencies/content/spcc/index.htm>.