

COMPLIANCE BULLETIN

November 24, 2008

U.S. EPA ISSUES LONG AWAITED RULES CLARIFYING AND STREAMLINING SPCC REQUIREMENTS AND PROPOSES NEW RULE TO EXTEND COMPLIANCE DEADLINE

ISSUE: The U.S. EPA issued a final SPCC rulemaking this week that includes important compliance information for petroleum marketers who store petroleum products in aboveground tanks. The final rule provides petroleum marketers with new flexibility in meeting SPCC plan revisions that must be implemented in 2009. The final rule will make compliance with SPCC revisions more streamlined and cost effective. In addition to the final rulemaking, the EPA simultaneously issued a proposed rule that extends by four months the date by which revised SPCC plans must be in place. Another final rulemaking issued on the same day restores a narrower definition of *navigable waters* under the SPCC regulations which avoids added regulatory burdens on petroleum marketers with bulk plants.

NEW PROPOSED SPCC COMPLIANCE DATE: The proposed rule extends the SPCC deadline for revising and implementing SPCC plans from July 1, 2009 to November 30, 2009. While the SPCC deadline extension has not been *officially* approved, the EPA adopted similar SPCC compliance extensions four times since the revised rule was first published in 2002. The current extension proposal will be adopted by the EPA shortly.

NEW FINAL SPCC RULE AMENDMENTS AND CLARIFICATIONS: The final rule addresses a number of SPCC compliance issues that are important to petroleum marketers including;

- **New Definition of "Facility" 49 CFR 112.2** - The EPA clarified in the final rule that the owner or operator of a bulk plant has discretion in determining which contiguous or non-contiguous buildings structures, parcels etc. make up the "facility" for purposes of compliance with the SPCC rule. This change is important because it allows bulk plant operators to define the limits of the SPCC "facility" for purposes of compliance. The change allows bulk plant operators to separate or aggregate storage containers to determine facility boundaries and applicability of SPCC requirements.
- **New Definition of "Loading Rack" 49 CFR 112.2** - Under the final rule, a "loading/unloading rack" means a fixed structure (such as a platform or gangway) necessary for loading or unloading a tank truck or rail tank car that is located at a facility subject to an SPCC plan. A loading rack includes an unloading arm and may include any combination of the following: piping, valves, pumps, shut off devices, overfill sensors or personnel safety devices. Under the new definition the EPA clarifies the limits of the loading/unloading rack area where **sized** secondary containment must be provided (sized secondary containment requires equipment sufficient to contain a release from the single largest compartment of the cargo tank vehicle). The loading/unloading rack area includes the loading arm.

According to the final rule, equipment present at a loading/unloading area where a pipe stand connects to a cargo tank vehicle or rail car is not considered a loading/unloading rack for purposes of compliance with the SPCC regulations. In addition, the rule clarifies that a loading/unloading rack attached to an otherwise exempt UST system must be equipped with **sized** secondary containment. This means that a loading rack alone, with no other above ground storage tanks may trigger SPCC requirements.

However, where an exempt UST system at a bulk plant facility is attached to a **dispenser** rather than a loading/unloading rack, the dispenser area must only meet **general** secondary containment requirements sufficient to contain only the most likely discharge from the dispenser. Such general containment measures would include addressing dispenser spills with absorbent material or other response actions.

- **Simplified Plans for Bulk Plants Under 10,000 Gals; Tier I Facilities 49 CFR 112.3(g)(1)** - The final rule establishes streamlined compliance procedures for small bulk plants under 10,000 gallons of aggregate capacity with no single storage tank **greater than** 5,000 gallons. Under the final rule these bulk plants are designated as “Tier I Facilities”. Owners and operators of Tier I Facilities may draft and self-certify SPCC plans or use a generic template plan adjusted to address the unique characteristics of the facility. Tier I Facilities are not required to comply with the following SPCC provisions; facility diagrams, facility description, loading and unloading racks, brittle fracture evaluation, facility drainage, facility transfer operations, and effluent treatment facilities. Involvement of a professional engineer is not required to prepare an SPCC plan for Tier I Facilities. In the alternative, owners and operators of Tier I Facilities may use a new EPA SPCC Plan template that contains a streamlined set of requirements. The EPA SPCC template for Tier I Facilities may be found at <http://www.epa.gov/emergencies/content/spcc/index.htm>. The template is at the end of the final rule in Appendix G. The EPA will also post the template at www.epa.gov/emergencies
- **Simplified Hybrid Plans for Bulk Plants Under 10,000 Gals; Tier II Facilities 49 CFR 112.3(g)(2)** -The final rule establishes a “hybrid” simplified compliance approach for bulk plants with total aggregate tank capacity under 10,000 gallons but with a single tank capable of storing **over** 5,000 gallons. In the final rule, the EPA designates these bulk plants as “Tier II Facilities”. The compliance requirements for these facilities remain unchanged under the final rule. Owners or operators are still permitted to draft, revise and self-certify SPCC plans. However, any deviation from the SPCC requirements must be certified by a professional engineer. Finally, the EPA clarified that the Appendix G SPCC streamlined plan template **may not** be used by Tier II facilities.
- **Tank Integrity Testing Amendment 49 CFR 112.8 (c)(6) and 49 CFR 112.12(c)(6)** - The final rule allows owners and operators of bulk plants to determine the scope and frequency of tank integrity testing that is appropriate according to site specific condition (type and age of tanks, etc) for all classes of bulk storage containers. Recognized industry standards for integrity testing are **not** considered alternative methods for compliance. Therefore, a professional engineer is not required to make in the SPCC plan a determination that the use of recognized standards for integrity testing is equally protective to the environment as requirements set forth in the SPCC regulations. The rule clarifies that where an alternative integrity testing procedure is used which is **not** a recognized industry standard, it must be based on “good engineering practices” and must be certified by a professional engineer that the method is environmentally equivalent to protections set forth in the SPCC regulations.

The rule continues to recognize settlement language with PMAA that allows visual integrity testing for elevated shop erected tanks under 30,000 gallons where all four sides of the tank are visible for inspection. Under the settlement, a professional engineer must establish the scope and frequency of an alternative testing method according to good engineering practices. The professional engineer must also include a determination in the SPCC plan that the method is the environmental equivalence of recognized national standards.

The EPA also clarified in the final rule that since the settlement with PMAA, a recognized national standard for visual tank integrity assessment has been developed. The Steel Tank Institute’s STI-SP001 *Standard for Inspection of Aboveground Storage Tanks* was recently modified to outline good engineering practices for visual inspection of shop erected tanks and

may be used without a determination in the SPCC plan by a professional engineer of environmental equivalence.

- **Security Requirement Amendment 49 CFR 112.7(g)** - The final rule amends existing SPCC security requirements for bulk plants to allow more flexibility. The final rule allows an owner or operator of a bulk plant to tailor security measures to specific characteristics and location of the bulk plant facility. The final rule eliminates onerous security requirements such as facility fencing, 24-hour monitoring and other security measures to prevent a release due to vandalism. Moreover, the rule does not require that a professional engineer approve the selected security measures. Instead, a facility owner or operator may select SPCC security requirements by including in the SPCC plan a description of the security methods used to accomplish each of the following:

1. Secure and control access to all oil handling, process and storage areas,
2. Secure master flow and drain valves,
3. Prevent unauthorized access to starter controls and oil pumps,
4. Secure out-of-service and loading/unloading connections of oil pipelines, and
5. Address the appropriateness of security lighting to prevent acts of vandalism and assist in the discovery of oil discharges.

IMPORTANT! The EPA is relying on the reasonable discretion of facility owners and operators to select effective security measures. While fencing and lighting are not required per se, these measures may be needed to secure bulk plants from vandals unless equally effective security measures are taken. In the event the EPA determines that selected security measures are ineffective, the facility will be found out of compliance with SPCC requirements.

- **Secondary Containment for Parked Cargo Tank Vehicles Amendment 49 CFR 112.7(c)** - The final rule eliminates the **size** secondary containment requirements for cargo tank vehicles containing product that are parked at bulk facilities between deliveries (generally overnight). Under size secondary containment requirement, cargo tank vehicles containing product must be parked within structures capable of containing the content of the single largest compartment of the cargo tank vehicle.

The EPA has been aggressively enforcing this requirement in recent years forcing petroleum marketers to build expensive secondary containment structures for cargo tank vehicles parked overnight at bulk plants. Under the final rule, instead of meeting **sized** secondary containment requirements, parked cargo tank vehicles containing product are now subject to the less onerous **general** secondary containment requirements. The SPCC general secondary containment requirements allow owners and operators of a facility to plan for the control of the "**most likely discharge**" from a parked cargo tank vehicle rather than a catastrophic rupture of the single largest compartment of the tank. The most likely discharge from a parked cargo tank vehicle is a leaky valve or hose.

These releases are small and may be addressed by providing inexpensive drip pans, absorbents or other response measures rather than building an expensive containment system of dikes, drains and oil water separators.

IMPORTANT! The EPA is not placing a limit on the period of time cargo tank vehicles containing product may remain parked at a facility. However, the EPA is warning the change from **sized** secondary containment to **general** secondary containment requirements **does not** permit owners and operators of bulk plant

facilities to use cargo tank vehicles as permanent storage in lieu of either aboveground or underground storage tanks. The agency will look at company records and other external factors to determine if cargo tank vehicles are used for delivery service or simply used as permanent storage.

IMPORTANT! Size secondary containment requirements still apply to cargo tank vehicles at loading racks. Under the SPCC regulations, loading racks **must** be equipped with size secondary containment sufficient to hold the content of the single largest compartment of the cargo tank vehicle tank.

Residential Heating Oil Tank Exemption 49 CFR 112.1(d)(2) - The final rule clarifies that residential heating oil tanks at single-family homes and farms are exempt from SPCC regulations. This exemption applies to aboveground containers as well as completely buried tanks. In addition, residential heating oil tanks at single family homes are not required to be counted for purposes of determining the 1320-gallon aggregate oil storage capacity that triggers SPCC compliance. However, the capacity of an oil heat tank at a non-residential home, such as used in buildings within a bulk plant facility must be counted towards the SPCC gallon threshold.

Navigable Waters Amendment 49 CFR 112.2 - On November 20, 2008, EPA promulgated another final rule to amend a Clean Water Act (CWA) section 311 regulation that defines the term "*navigable waters*." The EPA was forced to make the revisions to the definition of *navigable waters* pursuant to successful lawsuit brought by a group of industry representatives, including PMAA. The lawsuit alleged that the EPA violated its own rulemaking requirements when it adopted the new definition of *navigable waters* which placed additional compliance burdens on bulk plant owners and operators subject to the SPCC regulations. The U.S. District Court for the District of Columbia issued an order for the EPA to vacate the revised definition of navigable waters and to reinstate the narrower 1973 version. The new final rule does not amend the definition of "*navigable waters*" in any other regulation that has been promulgated by EPA. The restored 1973 definition of *navigable waters* for purposes of complying with the SPCC regulations is:

"The term "*navigable waters*" of the United States means "navigable waters" as defined in section 502(7) of the FWPCA, and includes: (1) all navigable waters of the United States, as defined in judicial decisions prior to the passage of the 1972 Amendments of the Federal Water Pollution Control Act, (FWPCA) (Pub. L. 92-500) also known as the Clean Water Act (CWA), and tributaries of such waters as; (2) interstate waters; (3) intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and (4) intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce."

IMPORTANT! These regulations are effective 60 days after publication in the *Federal Register*. Neither the two final rules nor the proposed rule to extend the SPCC compliance deadline have appeared in the *Federal Register*. However, official pre-publication copies are available at <http://www.epa.gov/emergencies/index.htm>

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