

N00213.AR.000683
NAS KEY WEST
5090.3a

SPILL PREVENTION, CONTROL AND COUNTERMEASURES PLAN NAS KEY WEST FL
7/1/2007
VEETECH

FINAL

**SPILL PREVENTION, CONTROL, AND
COUNTERMEASURE PLAN**

Prepared for:



Naval Air Station Key West
Key West, Florida

Contract Number/Task Number
N62467-04-D-0131/0009

Reviewed and Updated by:



113 Centrewest Court
Cary, NC 27513
(919) 388-0037

www.veetechpc.com

July 2007

Table of Contents

CERTIFICATIONS	TAB 1
Management Approval.....	i
Record of Owner/Operator Plan Reviews and Amendments.....	ii
Professional Engineer’s Certification.....	v
Executive Summary.....	vi
Supplemental Deficiency Tracking Document	xi
OVERVIEW	TAB 2
1.0 Introduction.....	1-1
2.0 Facility Information	2-1
3.0 Oil Storage Information	3-1
4.0 Potential Spill Predictions, Volumes, Rates, and Control	4-1
Table 3-1 Facility Oil Storage Inventory	3-2
SITE SPECIFIC EVALUATIONS	TAB 3
5.0 Drainage Prevention Diversionary Structures and Containment.....	5-1
6.0 Impracticality of Secondary Containment	6-1
7.0 Inspections/Recordkeeping	7-1
8.0 Personnel Training on Spill Prevention Procedures.....	8-1
9.0 Site Security.....	9-1
10.0 Loading/Unloading Operations	10-1
11.0 Brittle Fracture or Other Catastrophe of Field-Constructed Tanks.....	11-1
12.0 Conformance with Other Applicable Requirements.....	12-1
13.0 Drainage Control	13-1
14.0 Bulk Storage Containers/Secondary Containment	14-1
15.0 Facility Transfer Operations, Piping and Pumping	15-1
Table 7-1 Inspection Schedule	7-1
Table 10-1 Tank Truck Loading/Unloading Stations	10-5
DISCHARGE REPORTING AND RESPONSE	TAB 4
16.0 Written Spill Report Guidelines	16-1
-Florida Department of Environmental Protection – Discharge Report Form	
-Florida Department of Environmental Protection – Incident Notification Form	

Table of Contents (cont'd)

APPENDICES

Appendix A	Applicable Regulations (40 CFR 110, 40 CFR 112, FLA DEP 62-761 and DEP 62-740)	
Appendix B	Tank Data Sheets and Photographs	
Appendix C	Inspection Forms	
Appendix D	Storm Water Drainage Basins	
Appendix E	NAS Key West Transformer Inventory	
Appendix F	Maps	
	ERAP Map # QR 15	Quick Reference Response Strategy
	ERAP Map # 1-1	Site Plan Boca Chica Field Plan Areas
	ERAP Map # 1-1A	Site Plan Boca Chica Field Plan Areas (Industrial Areas)
	ERAP Map # 1-1B	Tank Farm Boca Chica Field Plan Areas
	ERAP Map # 2	Site Plan Truman Annex Plan Areas
	ERAP Map # 3	Site Plan Trumbo Point Plan Areas
	ERAP Map # 4	Site Plan Sigsbee Park Plan Areas
	ERAP Map # 5	Site Plan Saddlebunch Key Plan Areas
	ERAP Map # 6	Site Plan Fleming Key Plan Areas
	ERAP Map # 7	Site Plan Naval Hospital Plan Areas

MANAGEMENT APPROVAL

This Spill Prevention, Control, and Countermeasures Plan, dated July 31, 2007, will be fully implemented as described herein.

My signature below signifies that I understand that the spill control measures required by 40 CFR 112 and included in this SPCC Plan (40 CFR 112 recommendations provided in Tab 1) will be fully implemented.

SPCC Plan recommendations that are not specifically required by 40 CFR 112 may or may not be implemented depending on priority of available funding.

J. R. BROWN
Captain, US Navy
Commanding Officer
Naval Air Station
Key West, Florida

Date: _____

RECORD OF OWNER/OPERATOR PLAN REVIEWS AND AMENDMENTS

In accordance with 40 CFR 112.3 and 112.5 of the Spill Prevention, Control, and Countermeasure Plan (SPCC) regulations, there are three events that require an amendment to the facility SPCC Plan.

- A. If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, by October 31, 2007, and implement the Plan no later than October 31, 2007. If your onshore or offshore facility becomes operational after August 16, 2002, through October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before October 31, 2007.
- B. The facility owner or operator must review and amend the SPCC Plan “when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge of oil into or upon the navigable waters of the United States or adjoining shore lines ... 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) that has oil in:
- (1) Any aboveground container;
 - (2) Any completely buried tank as defined in §112.2;
 - (3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise “permanently closed” as defined in §112.2;
 - (4) Any “bunkered tank” or “partially buried tank” as defined in §112.2, or any container in a vault, each of which is considered an aboveground storage container for purposes of this part.

Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation, or maintenance procedures at a facility. An amendment made under this section must be prepared

within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

- C. The facility owner or operator must complete a review and evaluation of the SPCC Plan at least once every five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in §112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, "I have completed review and evaluation of the SPCC Plan for NAS Key West, on (date), and will (will not) amend the Plan as a result."

A licensed Professional Engineer must review and certify any technical amendments to your SPCC Plan for it to be effective to satisfy the SPCC Rules.

To facilitate SPCC reviews and amendments, the tables on the next page are provided.

OWNER/OPERATOR RECORD OF FIVE-YEAR REVIEWS

I have completed review and evaluation of the SPCC Plan for Naval Air Station Key West on the date indicated below, and will (will not) amend the Plan as a result.

Signature of Reviewer	Date of Review	Will Amend the Plan	Will Not Amend the Plan
Robert E. Courtright – RPM	14 Sept 2006	X	
Amitava Sarkar, PE # (VEETech P.C., Inc.)	15 June 2007	X	

OWNER/OPERATOR RECORD OF SPCC PLAN AMENDMENTS

Description of Change (Administrative or Technical)	Date Entered	Posted By
Administrative and technical update of entire plan	14 Sept 2006	Robert E. Courtright – RPM (Not P.E.)
Technical update of SPCC Plan	31 July 2007	Amitava Sarkar, P.E.

PROFESSIONAL ENGINEER'S CERTIFICATION

In accordance with 40 CFR 112.3(d), I hereby certify that I or my agent has visited and examined the facility, and being familiar with the provisions of 40 CFR 112, *Environmental Protection Agency Regulations on Oil Pollution Prevention*, attest that the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part; that procedures for required inspections and testing have been established; and that the Plan is adequate for the facility.

This SPCC Plan supersedes the previous NAS Key West SPCC Plan dated May 2003.

Signature

Amitava Sarkar, P.E.

P.E. No. _____ (State of Registration)

July 31, 2007
Date

EXECUTIVE SUMMARY

The SPCC Rule (40 CFR Part 112) applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, use, or consume oil or oil products, and might reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. NAS Key West is subject to these regulations based on its oil capacity in aboveground storage containers.

Regulatory deficiencies as presented in this SPCC plan are listed below. Please refer to Supplemental Deficiencies Tracking Document – Status of Corrective Actions on Page vii

SPCC Plan Compiled Regulatory Deficiencies
40 CFR 112.7(a)(3)(vi), Facility Contact(s)
• None
40 CFR 112.7(a)(3), Facility Diagram
• None
40 CFR 112.7(a)(3)(i), Oil Storage
• None
40 CFR 112.7(b), Potential Spill Predictions, Volumes, Rates, and Control
• None
40 CFR 112.7(c), Drainage Prevention Diversions Structures and Containment
• See Section 14.2 and 14.8 ;112.8(c)(2) and 112.8(c)(8)
40 CFR 112.7(d), Impracticality of Secondary containment, 40 CFR 112.7(d)
• Increase inspections of high-risk transformers (adjacent waterways).
40 CFR 112.7(e), Inspection/Recordkeeping
• None
40 CFR 112.7(f)(1), Personnel Instructions
• None
40 CFR 112.7(f)(2), Designated Person Accountable for Spill Prevention
• None
40 CFR 112.7(f)(3), Spill Prevention Briefings
• None
40 CFR 112.7(g)(1), Fencing and Gates
• None
40 CFR 112.7(g)(2), Flow and Drain Valves Secured
• None
40 CFR 112.7(g)(3), Starter Controls Secured
• None

SPCC Plan Compiled Regulatory Deficiencies	
40 CFR 112.7(g)(4), Pipeline Loading/Unloading Connections Secured	<ul style="list-style-type: none"> None
40 CFR 112.7(g)(5), Lighting Adequate to Detect and Deter Spills	<ul style="list-style-type: none"> There is not sufficient lighting at the following tanks: Boca Chica Tanks A-229A and B; A-322 E, F, and G; A-419 D, E; A-924-R; A-925-R; A-1006-R; A-1103; A-4053-R; A-4085-R. Trumbo Point tank C-1 to be moved to Truman Annex Bldg 284. Project in process of contract award and execution.
40 CFR 112.7(h)(1), Adequate Secondary Containment and Vehicles	<ul style="list-style-type: none"> One of the three tank truck loading stations does not have secondary containment. In order to comply with this regulation, complete construction of containment at Boca Chica service station. (Install roll-over curbs at each end of loading station). Project in process of contract award and execution.
40 CFR 112.7(h)(2), Warning or Barrier System for Vehicles	<ul style="list-style-type: none"> None
40 CFR 112.7(h)(3), Vehicles Examined for Lowermost Drainage Outlets Before Leaving	<ul style="list-style-type: none"> None
40 CFR 112.7(i), Brittle Fracture or Other Catastrophe of Field-Constructed Tanks	<ul style="list-style-type: none"> None
40 CFR 112.7(j), Conformance with Other Applicable Requirements	<ul style="list-style-type: none"> As noted in various portions of this SPCC Plan.
40 CFR 112.8(b)(1), Drainage from Diked Storage Areas	<ul style="list-style-type: none"> None
40 CFR 112.8(b)(2), Valves Used on Diked Storage Areas	<ul style="list-style-type: none"> None
40 CFR 112.8(b)(3), Plant Drainage Systems from Undiked Areas	<ul style="list-style-type: none"> None
40 CFR 112.8(b)(4), Final Discharge of Drainage	<ul style="list-style-type: none"> None
40 CFR 112.8(b)(5), Facility Drainage Systems and Equipment	<ul style="list-style-type: none"> Check each of the oil-water separators that discharge to the Boca Chica wastewater treatment plant. Ensure that, should the pump fail, that an alarm be sounded or a backup pump be installed to prevent discharges of oil caused by overfilling. Project in process of contract award and execution.
40 CFR 112.8(c)(1), Tank Compatibility with its Contents	<ul style="list-style-type: none"> None

SPCC Plan Compiled Regulatory Deficiencies
40 CFR 112.8(c)(2), Diked Area Construction and Containment Volume for Storage Tanks
With respect to the Boca Chica Tank Farm:
<ul style="list-style-type: none"> Investigate the status and integrity of the Tank release detection system. Develop an appropriate operating, monitoring and testing procedure for implementation by tank farm operations staff. Project in process of contract award and execution.
With respect to the base wide Ancillary tanks:
<ul style="list-style-type: none"> 6 qty. 60 gallon-new product rack inside CBMU 202 building lacked secondary containment. Maintenance truck w/600 gallon piggy-backed fuel tank parked at CBMU 202 Building was parked outside with no secondary containment.
40 CFR 112.8(c)(3), Diked Area, Inspection and Drainage of Rainwater
<ul style="list-style-type: none"> None
40 CFR 112.8(c)(4), Corrosion Protection of Buried Metallic Storage Tanks
<ul style="list-style-type: none"> Not Applicable
40 CFR 112.8(c)(5), Corrosion Protection of Partially Buried Metallic Tanks
<ul style="list-style-type: none"> Not Applicable
40 CFR 112.8(c)(6), Aboveground Tank Periodic Integrity Testing
Field Fabricated Tanks:
<ul style="list-style-type: none"> None
40 CFR 112.8(c)(6), Aboveground Tank Periodic Integrity Testing (Continued)
Shop-Fabricated Tanks:
<ul style="list-style-type: none"> Implement inspection, testing and recordkeeping procedures outlined in the Steel Tank Institute "Standard for Inspection of In-Service Shop Fabricated Tanks for Storage of Combustible and Flammable Liquids, SP001-03.
40 CFR 112.8(c)(7), Control of Leakage through Internal Heating Coils
<ul style="list-style-type: none"> Not Applicable
40 CFR 112.8(c)(8), Liquid Level Sensing Devices
<ul style="list-style-type: none"> Tank bottom Cathodic Protection Inoperable for A-945 and A-958. During a May 2007 Cathodic Protection Survey it was noted that defective ammeters on two AST rectifiers will be replaced during the next bi-annual survey. This repair work is scheduled for November 2007. The following tanks have inoperable interstitial monitoring gauges: A-649-R, A-902-BR, A-929-B, A-935-R, 1020R, 1274-R, L47, A-4054, A-4085-R, and V-4114-R. This repair work is scheduled for September 2007.
40 CFR 112.8(c)(9), Observation of Disposal Facilities for Effluent Discharge
<ul style="list-style-type: none"> None
40 CFR 112.8(c)(10), Visible Oil Leak Corrections from Tank Seams and Gaskets
<ul style="list-style-type: none"> None
40 CFR 112.8(c)(11), Appropriate Position of Mobile or Portable Oil Storage Tanks
<ul style="list-style-type: none"> Tank truck containment design at the Boca Chica truck fill stand precludes parking of tank trucks within containment during operational hours. The tanker truck parking area containment roll-over

SPCC Plan Compiled Regulatory Deficiencies
curb needs be modified to mitigate damage to vehicles. A work order to modify the curbing is in process. Project is funded by DESC and contract award is in process.
40 CFR 112.8(d)(1), Buried Piping Installation Protection and Examination
<ul style="list-style-type: none"> None
40 CFR 112.8(d)(2), Not In-Service and Standby Service Terminal Connections
<ul style="list-style-type: none"> Isolate the Bulk Tank Farm Building 929 top off station from the piping system via blind flange; and drain the system.
40 CFR 112.8(d)(3), Pipe Supports Design
<ul style="list-style-type: none"> The following tanks have inadequate piping supports: tanks A-322-E, F, & G, A-437 (wooden blocks), A-1020-R, A-1274, 1350-R, 1351-R, A-4010, D-1292-BR, and F-02.
40 CFR 112.8(d)(4), Aboveground Valve and Pipeline Examination
<ul style="list-style-type: none"> The following tanks have moderate to severe piping corrosion: tanks A-132, A-322-E, F, & G, A-648-R (leaking pipe), A-649-R, A-924-R, A-925-R, A-935-R, A-1020-R, V-1274-R, 1279-BR, 1292-BR, 1350-R, V-1552-BR, A-4010, A-4054, A-4082, V-4111 (leaking pipe), V-4114-R, A-4212 (Single wall pipe into fiberglass outer pipe-line cap dry rotted), L-47, and F-02. This repair work is scheduled for September 2007.
40 CFR 112.8(d)(5), Aboveground Piping Protection from Vehicular Traffic
<ul style="list-style-type: none"> Tank C-5 at the Trumbo Point Fire Station needs bollards. In addition the piping from Tank 290-R at Truman Annex should be protected from large mowing equipment with bollards.

SPCC Plan – Supplemental Deficiency Tracking Document

** Refer to Tracking Document to understand current status of all deficiency corrective action plans. This document is inserted after the Executive Summary Listing of regulatory discrepancies and serves as an action plan for compliance.

Supplemental Deficiency Tracking Document						
Citation Number #	Description	Discrepancies Noted	EPR	TF-1 Written (date)	DESC Project #	Correction Actions Taken
40 CFR 112.7(a)(3)(vi),	Facility Contact(s)	None				
40 CFR 112.7(a)(3),	Facility Diagram	None				
40 CFR 112.7(a)(3)(i),	Oil Storage	None				
40 CFR 112.7(b)	Spill Predications Volumes, Controls	None				
40 CFR 112.7(c)	Drainage, Diversinary Structures, Containmt	See Section 14.2 and 14.8 ;112.8(c)(2) and 112.8(c)(8)				
40 CFR 112.7(d)	Impracticality of Secondary Containment	Increase inspections of high risk transformers (adjacent waterways).	EPR B0258 deleted by Proj Manager FY-04	N/A	N/A	NAVFAC Southeast requested to inspect and provide sorb material at select transformers.
40 CFR 112.7(e)	Inspection & Recordkeeping	None				
40 CFR 112.7(f)(1),	Personnel Instructions	None				
40 CFR 112.7(f)(2)	Designated Person Accountable for Spill Prevention	None.				
40 CFR 112.7(f)(3)	Spill Prevention Briefs	None				
40 CFR 112.7(g)(2)	Drain Valves Secure	None				
40 CFR 112.7(g)(3)	Starter Controls Secure	None				
40 CFR 112.7(g)(4)	Pipeline Loading / Unloading Connections Secure	None				
40 CFR 112.7(g)(5)	Lighting Adequate to Detect Leaks	There is not sufficient lighting at the following tanks: Boca Chica Tanks A-229A and B; A-322 E, F, and G; A-419 D, E; A-924-R; A-925-R; A-1006-R; A-1103; A 4053 R; A-4085-R. Trumbo Point tank C-1 to be moved to Truman Annex Bldg 284.	EPR B0259deleted by Proj Manager FY-04	18-Sep-06	N/A	Truman Tank #38R de-listed converted to City 2003 per Ruzich 9/14/06. Tank C-1 in process of being moved to Truman #284 well lit area. Tank #526 removed. Tanks #924 and #925 out of service. TF-1 written for unlit tanks Per Screen Board (9/25/06) given a low priority-pending completion. Project Underway (2/07). Project in process of contract award and execution.
40 CFR 112.7(h)(1)	Adequate Secondary Containment & Vehicles	One of the three tank truck loading stations does not have secondary containment. In order to comply with this regulation, complete construction of containment at Boca Chica service station. (Install roll-over curbs at each end of loading station).	EPR B0260 deleted by Proj Manager FY-04	N/A	KWT-04-1	Project in process of contract award and execution.
40 CFR 112.7(h)(2)	Warning or Barrier System for Vehicles	None				

Supplemental Deficiency Tracking Document						
Citation Number #	Description	Discrepancies Noted	EPR	TF-1 Written (date)	DESC Project #	Correction Actions Taken
40 CFR 112.7(h)(3)		None				
40 CFR 112.7(i)	Brittle Fracture or Other Catastrophe of Field-Constructed Tanks	None				
40 CFR 112.7(j),	Conformance with Other Applicable Requirements	As noted in various portions of this SPCC Plan.				
40 CFR 112.8(b)(1)	Drainage from Diked Storage Areas	None				
40 CFR 112.8(b)(2),	Valves Used on Diked Storage Areas	None				
40 CFR 112.8(b)(3),	Plant Drainage Systems from Undiked Areas	None				
40 CFR 112.8(b)(4),	Final Discharge of Drainage	None				
40 CFR 112.8(b)(5)	Facility Drainage Systems and Equipment	Check each of the oil-water separators that discharge to the Boca Chica wastewater treatment plant. Ensure that, should the pump fail, that an alarm be sounded or a backup pump be installed to prevent discharges of oil caused by overfilling.	EPR B0261	EPR activated	N/A	Awaiting CNRSE / CNIC award of funding. Project in process of contract award and execution.
40 CFR 112.8(c)(1)	Tank Compatibility with its Contents	None				
40 CFR 112.8(c)(2),	Diked Area Construction and Containment Volume for Storage Tanks	With respect to the Boca Chica Tank Farm:				
		Investigate the status and integrity of the Tank release detection system. Develop an appropriate operating, monitoring and testing procedure for implementation by tank farm operations staff.	N/A	N/A	N/A	Pending contract award by DESC
40 CFR 112.8(c)(2),	Diked Area Construction and Containment Volume for Storage Tanks	With respect to the base wide Ancillary tanks:				
		6 qty. 60 gallon-new product rack inside CBMU 202 building lacked secondary containment.	N/A	N/A	N/A	
		Maintenance truck w/600 gallon piggy-backed fuel tank parked at CBMU 202 Building was parked outside with no secondary containment.	N/A	N/A	N/A	
40 CFR 112.8(c)(3)	Diked Area, Inspection and Drainage of Rainwater	None				
40 CFR 112.8(c)(4)	Corrosion Protection of Buried Metallic Storage Tanks	Not Applicable				
40 CFR 112.8(c)(5)	Corrosion Protection of Partially Buried Metallic Storage Tanks	Not Applicable				

Supplemental Deficiency Tracking Document						
Citation Number #	Description	Discrepancies Noted	EPR	TF-1 Written (date)	DESC Project #	Correction Actions Taken
40 CFR 112.8(c)(6)	Aboveground Tank Periodic Integrity Testing (Continued)	Field Fabricated Tanks: None				
		Shop-Fabricated Tanks: Implement inspection, testing and recordkeeping procedures outlined in the Steel Tank Institute "Standard for Inspection of In-Service Shop Fabricated Tanks for Storage of Combustible and Flammable Liquids, SP001-03.				Pending DESC award of API-#753 and #570 contract in FY-08
40 CFR 112.8(c)(7)	Control of Leakage through Internal Heating Coils	Not Applicable				
40 CFR 112.8(c)(8)	Liquid Level Sensing Devices	Tank bottom Cathodic Protection Inoperable for A-945 and A-958. During a May 2007 Cathodic Protection Survey it was noted that defective ammeters on two AST rectifiers will be replaced during the next bi-annual survey.	N/A	N/A	N/A	This repair work is scheduled for November 2007.
		The following tanks have inoperable interstitial monitoring gauges: A-649-R, A-902-BR, A-929-B, A-935-R, 1020R, 1274-R, L47, A-4054, A-4085-R, and V-4114-R.	N/A	N/A	N/A	This repair work is scheduled for September 2007.
40 CFR 112.8(c)(9)	Observation of Disposal Facilities for Effluent Discharge	None				
40 CFR 112.8(c)(10)	Visible Oil Leak Corrections from Tank Seams and Gaskets	None				
40 CFR 112.8(c)(11)	Appropriate Position of Mobile or Portable Oil Storage Tanks	Tank truck containment design at the Boca Chica truck fill stand precludes parking of tank trucks within containment during operational hours. The tanker truck parking area containment roll-over curb needs be modified to mitigate damage to vehicles. A work order to modify the curbing is in process.	EPR B0263 deleted by Proj Manager FY-04	N/A	KWT-04-1	DESC approves project, pending contract award
40 CFR 112.8(d)(1)	Buried Piping Installation Protection and Examination	None				
40 CFR 112.8(d)(2)	Not In-Service and Standby Service Terminal Connections	Isolate the Bulk Tank Farm Building 929 top off station from the piping system via blind flange; and drain the system.	EPR B0263 deleted by Proj Manager FY-04	N/A		Pending contract award by DESC
40 CFR 112.8(d)(3)	Pipe Support Design	The following tanks have inadequate piping supports: tanks A-322-E, F, & G, A-437 (wooden blocks), A-1020-R, A-1274, 1350-R, 1351-R, A-4010, D-1292-BR, and F-02.		N/A	N/A	Pending contract award by DESC
40 CFR 112.8(d)(4)	Aboveground Valve and Pipeline Examination	The following tanks have moderate to severe piping corrosion: tanks A-132, A-322-E, F, & G, A-648-R (leaking pipe), A-649-R, A-924-R, A-925-R, A-935-R, A-1020-R, V-1274-R, 1279-BR, 1292-BR, 1350-R, V-1552-BR, A-4010, A-4054, A-4082, V-4111 (leaking pipe), V-4114-R, A-4212 (Single wall pipe into fiberglass outer pipe-line cap dry rotted), L-47, and F-02. This repair work is scheduled for September 2007.		N/A	N/A	This repair work is scheduled for September 2007.
40 CFR 112.8(d)(5)	Aboveground Piping Protections from Vehicle Traffic	Tank C-5 at the Trumbo Point Fire Station needs bollards. In addition the piping from Tank 290-R at Truman Annex should be protected from large mowing equipment with bollards.	EPR B0262 deleted by Proj Manager FY-04	18-Sep-06	N/A	TF-1 written to install pipe bollardsPer Screen Board (9/25/06) given a low priority

1.0 INTRODUCTION

The Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act of 1977 authorize the EPA to “develop, promulgate, and revise . . . regulations pertaining to oil . . .” and to publish regulations classifying toxic pollutants to control plant site runoff, spillage and leaks, sludge, waste disposal, and drainage from raw material storage. Because oils are stored and transferred at NAS Key West, the facility falls under the federal regulation for Oil Pollution Prevention, 40 CFR 112, and Chief of Naval Operations Instruction (OPNAVINST) 5090.1B. This regulation requires that a Spill Prevention, Control, and Countermeasure (SPCC) plan be implemented to establish procedures, methods, equipment, and other criteria to prevent the discharge of petroleum into or upon navigable waters. Appendix A contains a complete copy of EPA 40 CFR 112, dated 17 July 2002 (Plus 2004-2006 Amendments). In addition, 40 CFR 110 and Florida Department of Environmental Protection regulations 62-761 and 62-740 are included behind Appendix A,

A revised SPCC Plan was issued for NAS Key West in July 2007, subsequent to new rules promulgated on December 26, 2006. This SPCC plan has been written to accommodate the changes in 40 CFR 112 and supersedes the original April 2000 SPCC Plan and the revised version dated May 2003. There was an interim SPCC Plan revision performed internally (within the US Navy) in September 2006 to make sure current status of this Plan was updated.

1.1 Plan Update and Amendment

This SPCC plan will be reviewed by the owner or operator every five years as outlined in the Spill Prevention, Control, and Countermeasure Compliance Inspection Plan Review Page (page iv). Furthermore, the SPCC plan must be amended within six months and changes implemented within one year of any material changes to the facility. Any technical amendments to the SPCC Plan must be reviewed and certified by a licensed professional engineer.

1.2 Plan Purpose

The purpose of the SPCC Plan is to establish procedures, methods, equipment, and other criteria to prevent the discharge of oil products from non-transportation-related onshore and offshore facilities into or upon navigable waters of the United States or adjoining shorelines.

At a minimum, the SPCC Plan will address the following:

- *Spill Prevention* — System components and characteristics, and operating procedures to prevent the occurrence of oil spills.
- *Spill Control* — Control measures to prevent a spill from entering navigable waters.
- *Spill Countermeasures* — Countermeasures to contain, clean up and mitigate the effects of an oil spill that could impact navigable water.

This plan is organized by key elements required in a SPCC Plan. Where applicable, regulatory requirements listed in 40 CFR 112 are cited in the section or subsection heading. A discussion regarding conformance with the regulatory requirement is presented followed by listings of regulatory deficiencies and best engineering practice recommendations as warranted. Information is also provided on the marine-transportation-related portion of the facility as it is necessary to have a thorough picture of the entire NAS Key West fuel system. State regulations including Florida Department of Environmental Protection (FLA DEP) 62-761 (Petroleum Management Systems) and 62-740 (Petroleum Contact Water), and industry standards such as American Petroleum Institute (API) standards, National Fire Protection Association (NFPA), Steel Tank Institute (STI) and other recommended practices are referenced as necessary throughout the SPCC Plan. Copy of FLA DEP 62-761 and 62-740 are included in Appendix A.

1.3 Plan Focus

This SPCC plan is designed to address oil-containing structures at NAS Key West, except for any container with capacity less than 55-gallons. However, the major or high-risk oil-containing structures will receive special attention to expedite and simplify SPCC plan development, implementation, and amendment. Low-risk oil-containing structures such as drums are addressed as well, but not at the level of detail as the aboveground storage tank (AST) and fueling operations. The level of detail is intended to be commensurate with the level of risk (i.e., potential for oil release and subsequent harm/damage to navigable waterways).

1.4 Plan Organization and Regulatory References

In general, this plan follows the sequence of the regulatory requirements outlined in 40 CFR 112.7 and 112.8, and discusses the facility's conformance to the applicable regulatory requirements of that section. For sections with regulatory references, the

federal SPCC regulatory requirements are summarized; a complete version of the regulations is available in Appendix A. NAS Key West has a Facility Response Plan (FRP) that satisfies many of the SPCC regulations. Reference to the FRP is made in applicable sections in order to reduce duplication.

112.2: Definitions

The SPCC Final Rule includes new technical definitions for SPCC related terms. These can be found in Appendix A under citation 40 CFR 112.2.

For Details on 112.4	Refer to Section:
Written Spill Report Guidelines, 112.4	16.0
Amendment of SPCC Plan by Regional Administrator	16.1
Internal Spill Report	16.2

For Details on 112.7	Refer to Section:
40 CFR 112.7(a)(3)	
Physical Layout of the Facility	3.1
Oil Storage Inventory	3.2
Discharge Prevention Measures	5.0, 14.0
Discharge or Drainage Controls	13.0
Countermeasures for Discharge Recovery	Facility Response Plan
Methods of Disposal for Recovered Materials	Facility Response Plan
Contact List and Phone Numbers	2.2, 8.2
Discharge Reporting Responsibilities, 40 CFR 112.7(a)(4)	Facility Response Plan
Discharge Emergency Response Procedures, 40 CFR 112.7(a)(5)	Facility Response Plan
Potential Spill Predictions, Volumes, Rates, and Control, 40 CFR 112.7(b)	4.0
Drainage Prevention Diversionary Structures and Containment, 40 CFR 112.7(c)	5.0
Impracticality of Secondary Containment, 40 CFR 112.7(d)	6.0
Inspection/Recordkeeping, 40 CFR 112.7(e)	7.0

For Details on 112.7 (continued)	Refer to Section:
Personnel Training on Spill Prevention Procedures, 40 CFR 112.7(f)(1-3)	8.0
Personnel Instructions, (f)(1)	8.1
Designated Person Accountable for Spill Prevention, (f)(2)	8.2
Spill Prevention Briefings, (f)(3)	8.3

Site Security, 40 CFR 112.7(g)(1-5)	9.0
Fencing and Gates, (g)(1)	9.1
Flow and Drain Valves Secured, (g)(2)	9.2
Starter Controls Secured, (g)(3)	9.3
Pipeline Loading/Unloading Connections Secured, (g)(4)	9.4
Lighting Adequate to Detect and Deter Spills, (g)(5)	9.5
Loading/Unloading Operations, 40 CFR 112.7(h)(1-3)	10.0
Adequate Secondary Containment for Vehicles, (h)(1)	10.1
Warning or Barrier System for Vehicles, (h)(2)	10.2
Vehicles Examined for Lowermost Drainage Outlets before Leaving, (h)(3)	10.3
Brittle Fracture or Other Catastrophe of Field-Constructed Tanks, 40 CFR 112.7(i)	11.0
Conformance with Other Applicable Requirements, 40 CFR 112.7(j)	12.0

For Details on 112.8	Refer to Section:
-----------------------------	--------------------------

Drainage Control, 40 CFR 112.8(b)(1-5)	13.0
Drainage from Diked Storage Areas, (b)(1)	13.1
Valves Used on Diked Storage Areas, (b)(2)	13.2
Facility Drainage Systems from Undiked Areas, (b)(3)	13.3
Final Discharge of Drainage, (b)(4)	13.4
Facility Drainage Systems and Equipment, (b)(5)	13.5
Bulk Storage Tanks/Secondary Containment, 40 CFR 112.8(c)(1-11)	14.0
Tank Compatibility with Its Contents, (c)(1)	14.1
Diked Area Construction and Containment Volume for Storage Tanks, (c)(2)	14.2
Diked Area, Inspection and Drainage of Rainwater, (c)(3)	14.3
Corrosion Protection of Buried Metallic Storage Tanks, (c)(4)	14.4
Corrosion Protection of Partially Buried Metallic Tanks, (c)(5)	14.5
Aboveground Tank Periodic Integrity Testing, (c)(6)	14.6
Control of Leakage through Internal Heating Coils, (c)(7)	14.7
Liquid Level Sensing Devices, (c)(8)	14.8
Observation of Disposal Facilities for Effluent Discharge, (c)(9)	14.9

For Details on 112.8	Refer to Section:
-----------------------------	--------------------------

Visible Oil Leak Corrections from Tank Seams and Gaskets, (c)(10)	14.10
Appropriate Position of Mobile or Portable Oil Storage Tanks, (c)(11)	14.11
Facility Transfer Operations, Piping and Pumping 40 CFR 112.8(d)(1-5)	15.0

Buried Piping Installation Protection and Examination, (d)(1)	15.1
Not-In-Service and Standby Service Terminal Connections, (d)(2)	15.2
Pipe Supports Design, (d)(3)	15.3
Aboveground Valve and Pipeline Examination, (d)(4)	15.4
Aboveground Piping Protection from Vehicular Traffic, (d)(5)	15.5

THIS PAGE INTENTIONALLY LEFT BLANK

2.0 FACILITY INFORMATION

2.1 Facility Owner/Operator, Address, and Telephone:

Facility Owner/Operator: Commanding Officer
 Facility Name: Naval Air Station Key West
 Address: P.O. Box 9007
 Key West, Florida 33040-9007
 Telephone: (305) 293-2881

Latitude (Degrees: North): 24° - 5' - 00" N
 Longitude (Degrees: West): 81° - 42' - 30" W

2.2 Facility Contact(s)

112.7(a)(3)(vi): You must also address in your plan contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in 112.1(b).

NAS Key West is an OPA 90 facility and has a Facility Response Plan (FRP) that covers the requirements of this and many sections of the SPCC regulations, especially regarding spill response procedures. The primary contacts for the SPCC plan and for spill response coordination are excerpted here; however, the FRP should be used as the primary tool for spill response. The updated Facility Response Plan (July 2007) is maintained in offices of the Environmental Department's Office and at the Port Operations Spill Team office in Building #284 – Truman Annex. Additional copies are provided to Fire, Security, NAVOSH Safety, Public Affairs, Business Manager and Commanding Officer for their use during emergency spill responses.

QUALIFIED INDIVIDUAL INFORMATION		
FACILITY QUALIFIED INDIVIDUAL/INCIDENT COMMANDER	NAME	J. R. BROWN
	POSITION/TITLE	Commanding Officer
	ADDRESS	Naval Air Station, P.O. Box 9007 Key West, FL 33040-9007
	COMMERCIAL WORK PHONE	(305) 293-2866
		CDO Beeper (305) 293-4316 #124
	FAX NUMBER	Fax (305) 293-2230
	24-HOUR EMERGENCY PHONE	(305) 293-2268

QUALIFIED INDIVIDUAL INFORMATION		
ALTERNATIVE FACILITY QUALIFIED INDIVIDUAL/INCIDENT COMMANDER	NAME	Ron Demes
	POSITION/TITLE	Business Manager
	ADDRESS	Building A-324
	COMMERCIAL WORK PHONE	(305) 293-2488
	FAX NUMBER	(305) 293-2230
	24-HOUR EMERGENCY PHONE	(305) 797-4452
ALTERNATE FACILITY QUALIFIED INDIVIDUAL/DEPUTY INCIDENT COMMANDER	NAME	Robert Courtright
	POSITION/TITLE	Oil Spill Manager
	ADDRESS	Building A-629 (Temp Trailer #6)
	COMMERCIAL WORK PHONE	(305) 293-2881
	FAX NUMBER	(305) 797-2030
	24-HOUR EMERGENCY PHONE	(305) 797-4461
ALTERNATE FACILITY QUALIFIED INDIVIDUAL/DEPUTY INCIDENT COMMANDER	NAME	Chief James Cich
	POSITION/TITLE	Oil Spill Response Chief
	ADDRESS	Building 284
	COMMERCIAL WORK PHONE	(305) 293-5671 ext 2002
	DSN	483-5671 ext 2002
	FAX NUMBER	
	24-HOUR EMERGENCY PHONE	(305) 797-4445

Spill Response Contacts:

EMERGENCY NOTIFICATION PHONE LIST			
PRIORITIZED CONTACT LIST	RESPONSE ROLE	DAY PHONE	24-HOUR PHONE
Immediate Response Team Dispatcher (Fire Department)	First Responders	(305) 293-5888	(305) 293-3333
Facility Response/Cleanup Team	Mitigate and cleanup spills	(305) 293-2911 / 2881	(305) 293-3333
NATIONAL RESPONSE CENTER	Receiver of all spill reports and notifier of appropriate FOSC	(800) 424-8802	(800) 424-8802
Local Response Contractors Southern Waste Services — Environment First Response (BOA Contractor)	Provide additional equipment an personnel resources Provides response expertise	(800) 852-8878	(800) 852-8878

EMERGENCY NOTIFICATION PHONE LIST			
PRIORITIZED CONTACT LIST	RESPONSE ROLE	DAY PHONE	24-HOUR PHONE
Local Response Contractors Clean Caribbean, Inc.	Provide additional equipment an personnel resources Provides response expertise	(954) 983-9880	(954) 983-9880
Local Response Contractors Point of Contact: Cliff Berry, Inc. Cliff Berry	Provide additional equipment an personnel resources Provides response expertise	(954) 763-3390	(800) 899-7745
Key West Fire Department Point of Contact: Chief Tim Fahey Response Time: 5 - 15 Minutes	Emergency medical HazMat response support Fire suppression support	(305) 292-8186	(305) 292-8145 911
State Environmental Protection Agency Point of Contact: Florida Marine Patrol (District 9) Captain George Steinmetz	Incident reporting	(800) 342-5367 Ext. 103	(305) 289-2320
State Environmental Protection Agency Point of Contact: Lisa Gordon	Incident reporting Oil Spill Coordinator	(305) 289-2310	(800) 320-0519
State Emergency Response Commission (SERC) Point of Contact: Bureau of Operations (DCA) Rod Westall	Incident reporting	(850) 413-9970	(800) 635-7179
Local Emergency Planning Committee (LEPC) Assistant City Manager Point of Contact: John Jones	Incident reporting	(305) 292-8100	
Key West Pipeline Company Headquarters, Houston Point of Contact: Mark Rauch, President	KWPL Corporate Support	(713) 627-1700	Cell: (713) 829-0065 Hm: (713) 622-8004 Pgr: 281) 365-8843
Technical Support Point of Contact: EPA Region IV Southeast	Response Expertise Emergency Management	(404) 562-8705	(404) 562-8700

2.3 Facility Description

Naval Air Station (NAS) Key West is located on Boca Chica Key, Monroe County, Florida approximately eight miles east of Key West, Florida (Site Maps Set-Appendix F) and approximately 150 miles southwest of Miami, Florida. NAS Key West includes several annexes near Key West, Florida and encompasses approximately 5,000 acres. This SPCC plan addresses the all SPCC sites at NAS Key West: Boca Chica, Trumbo Point Annex, Truman Annex, Fleming Key, Sigsbee Park, Saddlebunch Key, and the Naval Regional Medical Center.

NAS Key West is a Navy training facility for tactical aviation squadrons. The mission of NAS Key West is to serve as the Navy's premier pilot training facility for transient aviation squadrons. The surrounding annexes support NAS Key West and its mission. Storage of oil products is a vital component for the successful execution of the mission requirement at NAS Key West and the surrounding annexes.

The Boca Chica Tank Farm (BCTF) stores the largest quantity of petroleum at NAS Key West covered under this SPCC plan.

The Trumbo Point Fuel Farm (TPFF) is located in Key West, at the northwest corner of the island, adjacent to the US Coast Guard (USCG) Station. This facility is the primary petroleum storage point for NAS Key West and receives JP-5 and gasoline for distribution to the facilities associated with NAS Key West. This site consists primarily of contractor owned, contractor operated (COCO) facilities (tanks and pipelines) and also includes government owned, and contractor operated (GOCO) facilities. Key West Pipeline Company (KWPL) owns and operates the major JP-5 storage facilities (COCO) at the TPFF. Hawthorne Services, Inc. (HSI) operates the remaining fuel storage facilities (GOCO) under a separate contract. The COCO facilities are not addressed in this plan. The SPCC plan development and implementation for the COCO facilities is the responsibility of KWPL; and refers to the NASKW SPCC Plan by reference.

The fueling pier is owned and operated by the USCG and the privately owned pipeline is regulated by the USCG in accordance with 33 CFR 154 and 156, and is not included in this SPCC plan. The jurisdictional boundary between the privately owned pipeline and the Navy owned storage facilities at BCTF, is the first valve inside the boundaries of the BCTF. The Navy-owned tanks and pipelines within the boundaries of the BCTF are included in this SPCC plan.

2.4 Topography and Drainage

The topography in and around the Key West area is typically flat and low with ground elevations ranging from 0 to 15 feet above mean sea level (MSL). The average elevation in the area is approximately four to five feet MSL and is below the 100-year flood elevation of eight feet MSL. Typically, the islands are bordered by low intertidal flats which gradually slope to deeper water. The highest point of the runway system at Boca Chica Field is six feet above MSL.

The original soils in the area are shallow marl over limestone with limestone rock outcrops at many locations. Many areas at NAS Key West and the surrounding annexes have been filled and graded. In addition, many of the areas are essentially land mass developed from the disposal of dredge material (Sigsbee Park and parts of Trumbo Point Annex).

Approximately 50 percent of the Key West area is drained by storm sewers. Drainage occurs via overland flow and gravity feed to storm sewer systems that route runoff to nearby tidal waters. The average annual rainfall in Key West is 40 inches with approximately half of the annual rainfall occurring in the months from June to October. The Key West area has periodically been subject to hurricane activity. Most of the hurricanes that have affected Key West have approached from the south and east and have brought high winds and tidal flooding to the area.

Drainage at NASKW, including Boca Chica, Fleming Key, Trumbo Point, Truman Annex, and Sigsbee Park, comprise 51 separate drainage basins. Within these 51 predominate areas, there are approximately 30 direct discharges either through drainage pipes or concentrated ditch flows. There are 21 drainage basins that either sheet flow to low points with no apparent outfall or sheet flow offsite with no concentrated outfall. The basins are described in Appendix D. In addition, the drainage basin boundaries are included on the Site Map Set in Appendix F.

THIS PAGE INTENTIONALLY LEFT BLANK

3.0 PETROLEUM STORAGE INFORMATION

3.1 Facility Diagram

112.7(a)(3): Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under §112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes.

The location and contents of the facility's oil storage containers, bulk fuel transfer stations and significant piping are included in the Site Map Set, Appendix F.

3.2 Oil Storage

112.7(a)(3)(i): You must also address in your Plan the type of oil in each container and its storage capacity.
112.8(c)(8): Engineer or update each container installation in accordance with good engineering practices to avoid discharges. You must provide a liquid level sensing device or use audible or coded signal communication.

Table 3-1 summarizes the oil storage containers at NAS Key West that are subject to SPCC requirements. These containers include ASTs, USTs, and emergency generators with external and/or internal tanks, oil-water separators, mobile tanks, and drums.

Information provided in Table 3-1 includes: location, tank type, tank capacity, substance stored, secondary containment, piping, flow direction and the year the tank was installed or upgraded, where available. Specific information regarding leak detection and high level alarms is also provided in Table 3-1. The Table 3-1 is a condensed version of the NASKW Tank Management Plan which provides detailed engineering information on each tank vessel.

Appendix B contains specific information and photographs for each AST and UST at NAS Key West. Each tank data sheet includes regulatory deficiencies required to be addressed and the best engineering practices (BEPs) recommended. For each site addressed in this plan, the federal and state regulations and BEPs are considered. Only the federal and state regulations must be implemented. BEPs are recommendations which take into consideration factors such as the spill potential of the site, product throughput, sensitivity of spill impact zones, cost of tank replacement versus upgrade or abandonment, remaining life of the system, and an evaluation of other applicable non-regulatory requirements which may decrease the spill potential. The deficiencies are summarized in the Executive Summary. Section 3.3 contains site specific evaluations of the SPCC sites at NAS Key West. Specific evaluations are included for sites which were considered to pose the highest risks. The risk determination was based on factors such as volume of stored product and proximity to

Tank Number	Container Type or Purpose	Tank Material / Pipe Material	Piping/Piping Containment	Year Installed	Good Engineering Practice	Contents	Type of Failure	Capacity/ Release Volume (gal)	Containment Capacity (gal)	Flow Direction/Receiver	Containment/Diversion Structure
TRUMAN ANNEX											
290-ER	AST for emergency generator for JIATF	Steel/Steel	Aboveground/SW	1997	Interstitial Alarm, Pneumatic Liquid Level Sensing System, Spill Containment Port	JP-5	Tank Rupture	6,000	GTPCC	West into parking lot	Double-Walled Tank
290-R	AST for emergency generator for JIATF	Steel/Steel	Aboveground/SW	2001	Interstitial Alarm, Pneumatic Liquid Level Sensing System, Spill Containment Port	JP-5	Tank Rupture	6,000	GTPCC	Southwest into parking lot	Double-Walled Tank
290-A	AST for JIATF Day Tank	Steel/Steel	Aboveground/SW	2001	Interstitial Alarm, Pneumatic Liquid Level Sensing System, Spill Containment Port	JP-5	Tank Rupture	150	GTPCC	West into parking lot	Double-Walled Tank
291	Internal Belly AST for emergency generator for JIATF	Steel/Steel	Aboveground/SW	1998	Interstitial Alarm	JP-5	Tank Rupture	4,000	GTPCC	North/Storm Drain Inlet	Double-Walled Tank
A-437	AST for emergency generator for commissary	Steel/Steel	Aboveground/SW	2006	Interstitial Alarm, Clock Gauge, Fill Port Containment	JP-5	Tank Rupture	500	GTPCC	West over concrete to Storm Drain Inlet	Double-walled Convault Tank
439-R	AST for emergency generator for Barracks	Steel/Steel	Aboveground/SW	1997	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	Northeast/Across Courtyard	Double-Walled Tank
1279-BR	AST for generator for CARIBROC	Steel/Steel	Aboveground/SW	1999	Level Gauges, Alarm, Fill Port Containment, Interstitial Alarm	JP-5	Tank Rupture	6,000	GTPCC	East/Toward Building	Double-Walled Tank
1351-R	AST for emergency generator for Barracks	Steel/Steel	Aboveground/SW	1997	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	North	Double-Walled Tank
1352	Internal AST for emergency generator for Barracks	Steel/Steel	Internal/SW	2002	Visual	JP-5	Tank Rupture	600	1,480	Northeast/Across Street	Concrete dike
1355	External Convault AST for FBIS Building 1355	Steel/Steel	Aboveground/SW	1995	Interstitial Gauge, Fill Port Containment	JP-5	Tank Rupture	250	GTPCC	South to seawall	Double-Walled Tank
4199-FT	AST for New Water Tower	Steel/Steel	Aboveground/SW	2005	Interstitial Gauge	JP-5	Tank Rupture	6,000	GTPCC	Northeast over grass to area of lower topography	Double-Walled Tank
BOCA CHICA											
A-132	AST for emergency generator for Firehouse	Steel/Steel	Aboveground/SW	1961	None	JP-5	Tank Rupture	300	500	Localized, No flow expected	Concrete Dike
A-229A	AST for emergency generator for Pump Station	Steel/Copper	Aboveground/SW	updated 1997	None	JP-5	Tank Rupture	200	700	Southwest	Concrete Dike
A-229B	AST for emergency generator for Pump Station	Steel/Copper	Aboveground/SW	updated 1997	None	JP-5	Tank Rupture	200	700	Southwest	Concrete Dike
A-230-R	AST for emergency generator for Electrical Station	Steel/Steel	Aboveground/SW	1999	Interstitial Gauge, Audible Alarms-High-High, High, Low, Fill Port Containment	JP-5	Tank Rupture	2,000	GTPCC	South/Towards Flight Line	Double-Walled Tank
A-322E	AST	Steel/Steel	Underground/DW	1999	High Level Alarms, Interstitial Gauge, Anti-Siphon Valve	Gasoline	Tank Rupture	10,000	GTPCC	South/Towards Flight Line	Double-Walled Tank
A-322F	AST	Steel/Steel	Underground/DW	1999	High Level Alarms, Interstitial Gauge, Anti-Siphon Valve	Gasoline	Tank Rupture	6,000	GTPCC	South/Towards Flight Line	Double-Walled Tank
A-322G	AST	Steel/Steel	Underground/DW	1999	High Level Alarms, Interstitial Gauge, Anti-Siphon Valve	Diesel	Tank Rupture	6,000	GTPCC	South/Towards Flight Line	Double-Walled Tank
A-324-R	AST for emergency generator for Administration	Steel/Steel	Aboveground/SW	2002	Interstitial Gauge, AAG Sight Gauge	Diesel	Tank Rupture	1,000	GTPCC	North	Double-Walled Tank
A-419D	AST for Power Plant day tank	Steel/Steel	Aboveground/SW	1944	Interstitial Gauge, Leak Detector	JP-5	Tank Rupture	300	GTPCC	East	Double-Walled Tank
A-419E	AST for Power Plant	Steel/Steel	Aboveground/SW	1944	Interstitial Gauge, Leak Detector	JP-5	Tank Rupture	300	GTPCC	East	Double-Walled Tank
A-419F	AST for Power Plant	Steel/Steel	Aboveground/DW	1999	Interstitial Gauge, anti-siphon valve, level gauge	JP-5	Tank Rupture	4,000	GTPCC	Localized, no flow expected	Double-Walled Tank
A-419G	AST for Power Plant	Steel/Steel	Aboveground/DW	1999	Interstitial Gauge, anti-siphon valve, level gauge	JP-5	Tank Rupture	4,000	GTPCC	Localized, no flow expected	Double-Walled Tank
A-447	AST for emergency generator for Pump Station	Steel/Steel	Aboveground/SW	2002	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	Localized, no flow expected	Double-Walled Tank
A-526-A (taken out of service) Moved to Flight Ops Area	AST for emergency generator for Galley	Steel/Steel	Aboveground/SW	1996	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	East	Double-Walled Tank
A-638-R	AST for emergency generator for CBQ	Steel/Steel	Aboveground/SW	1999	Interstitial Gauge	JP-5	Tank Rupture	1,000	GTPCC	South	Double-Walled Tank
A-639-R	AST for emergency generator for CBQ	Steel/Steel	Aboveground/SW	1999	Interstitial Gauge	JP-5	Tank Rupture	1,000	GTPCC	East	Double-Walled Tank
A-648-R	AST for emergency generator for CBQ	Steel/Steel	Aboveground/SW	1997	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	Localized, no flow expected	Double-Walled Tank
A-649-R	AST for emergency generator for CBQ	Steel/Steel	Aboveground/SW	1997	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	Localized, no flow expected	Double-Walled Tank
BOCA CHICA (continued)											

Tank Number	Container Type or Purpose	Tank Material / Pipe Material	Piping/Piping Containment	Year Installed	Good Engineering Practice	Contents	Type of Failure	Capacity/ Release Volume (gal)	Containment Capacity (gal)	Flow Direction/Receiver	Containment/Diversion Structure
A-727-R	AST for emergency generator for CBO	Steel/Steel	Aboveground/SW	2000	Interstitial Gauge, Fill Port Containment	JP-5	Tank Rupture	500	GTPCC	North	Double-Walled Tank
A-902-BR	AST for Truck Fill Stand	Steel/NA	NA/NA	1997	Interstitial Gauge	Used JP-5	Tank Rupture	500	GTPCC	East/Toward Storm Drain	Double-Walled Tank
A-924-R	AST for Tank Farm	Steel/Steel	Aboveground/SW	1996	Interstitial Gauge, Clock Gauge	Used JP-5	Tank Rupture	10,000	GTPCC	South	Double-Walled Tank
A-925-R (Out of Service)	AST for Tank Farm	Steel/Steel	Aboveground/SW	1996	Interstitial Gauge, Clock Gauge	Used Oil	Tank Rupture	10,000	GTPCC	South	Double-Walled Tank
A-929-B	AST for Tank Farm	Steel/Steel	Aboveground/SW	1998	Interstitial Gauge	Used JP-5	Tank Rupture	500	GTPCC	Localized, no flow expected	Double-Walled Tank
A-935-R	AST for Truck Fill Stand	Steel/Steel	Aboveground/SW	1997	Interstitial Gauge	Used JP-5	Tank Rupture	250	GTPCC	West to Mangrove Waterway	Double-Walled Tank
A-938	AST for Tank Farm	Steel/Steel	Above and Belowground/SW	1953 upgraded 1999	High Level Alarm, Groundwater Monitoring	JP-5	Tank Rupture	239,000	>239,000	Localized, no flow expected	Earthen Containment Berm
A-944	AST for Tank Farm	Steel/Steel	Above and Belowground/SW	1953 upgraded 1999	High Level Alarm, groundwater monitoring	JP-5	Tank Rupture	238,000	>238,000	Localized, no flow expected	Earthen Containment Berm
A-945	AST for Tank Farm	Steel/Steel	Above and Belowground/SW	1957 upgraded 1999	High Level Alarm, groundwater monitoring	JP-5	Tank Rupture	213,000	>213,000	Localized, no flow expected	Earthen Containment Berm
A-958	AST for Tank Farm	Steel/Steel	Above and Belowground/SW	1953 upgraded 1999	High Level Alarm, groundwater monitoring	JP-5	Tank Rupture	298,000	>298,000	Localized, no flow expected	Earthen Containment Berm
A-981-A	Bowser For fueling Operation Near Building 981	Steel/NA	None	2007	Grounding Straps, Fill Port Containment, Wheel Locks	JP-5	Tank Rupture	400	1,000	Inside Building to Drains to OWS A-981	OWS A-981
A-981-B	Bowser For fueling Operation Near Building 981	Steel/NA	None	2007	Grounding Straps, Fill Port Containment, Wheel Locks	JP-5	Tank Rupture	400	1,000	Inside Building to Drains to OWS A-981	OWS A-981
A-1004	AST for emergency generator for Message Center	Steel/Steel	Aboveground/SW	1987	None	JP-5	Tank Rupture	2,000	2,370	West	Concrete / Metal Pan
A-1006-R	AST for emergency generator for Transmitter Site	Steel/Steel	Aboveground/SW	1994	Interstitial Gauge	JP-5	Tank Rupture	250	GTPCC	West/Roadway	Double-Walled Tank
A-1019	AST for emergency generator for Message Center	Steel/flexible rubber tube	Aboveground/SW	1995	none	JP-5	Tank Rupture	25	66	East	Plastic basin
A-1020-R	AST for emergency generator for TACAN Site Building 1020	Steel/Steel	Aboveground/SW	1998	Interstitial Monitoring, Fill Port Containment, Clock Gauge	JP-5	Tank Rupture	250	GTPCC	North over grass to area of low topography	Double-Walled Tank
A-1103-R	AST for emergency generator for Building 1103	Steel/Steel	Aboveground/SW	1998	Interstitial Monitoring, Fill Port Containment, At-a-Glance Site Gauge	JP-5	Tank Rupture	1,000	GTPCC	South to Hawk Channel	Double-Walled Tank
A-1125	AST for emergency generator for TACTS building 1125	Steel/Steel	Aboveground/SW	1944	None	JP-5	Tank Rupture	275	GTPCC	South over grass to area of lower topography	Concrete Dike
A-4010	AST for emergency generator for Tank Farm Building 4010	Steel/Steel	Aboveground/SW	1998	Interstitial Monitoring, fill port containment, fill gauge	JP-5	Tank Rupture	250	GTPCC	Localized, no flow expected	Double-Walled Tank
A-4053-R	AST for emergency generator for Radar Site	Steel/Steel	Aboveground/SW	2003	Interstitial Monitoring, fill port containment, fill gauge	JP-5	Tank Rupture	500	GTPCC	West	Double-Walled Tank
A-4054	AST for emergency generator for PAR Site	Steel/Steel	Aboveground/SW	1998	Interstitial Gauge, fill port containment	JP-5	Tank Rupture	500	GTPCC	East	Double-Walled Tank
A-4082	AST for emergency generator for TACTS	Steel/Steel	Aboveground/SW	1994	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	North	Double-Walled Tank
A-4085-R	AST for emergency generator Airfield Operations	Steel/Steel	Aboveground/SW	1999	Interstitial Gauge, fill port containment	JP-5	Tank Rupture	1,500	GTPCC	South, Towards Flight line	Double-Walled Tank
A-4162-3	AST for Emergency Generator for Pump Station	Steel/Steel	Aboveground/SW	1995	None	JP-5	Tank Rupture	300	710	South	Concrete Dike
A-4162-4	AST for Emergency Generator for Pump Station	Steel/Steel	Aboveground/SW	1995	None	JP-5	Tank Rupture	250	710	South	Concrete Dike
A-4162-5	AST for Emergency Generator for Pump Station	Steel/Steel	Aboveground/SW	1995	None	JP-5	Tank Rupture	300	710	South	Concrete Dike
A-4165-R	AST for emergency generator Air Start	Steel/Steel	Aboveground/SW	1998	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	South	Double-Walled Tank
A-4173	AST for emergency generator for FAA	Steel/Steel	Aboveground/SW	1998	Interstitial Gauge, High Level Alarms, and Remote Monitoring, fill port containment	JP-5	Tank Rupture	2,000	GTPCC	Localized, no flow expected	Double-Walled Tank
A-4174	AST for emergency generator for Waste Water Treatment Plant	Steel/Steel	Aboveground/SW	2000	Interstitial Monitoring	JP-5	Tank Rupture	500	GTPCC	Northwest, Into Mangrove and Gulf 25'	Double-Walled Tank

Tank Number	Container Type or Purpose	Tank Material / Pipe Material	Piping/Piping Containment	Year Installed	Good Engineering Practice	Contents	Type of Failure	Capacity/ Release Volume (gal)	Containment Capacity (gal)	Flow Direction/Receiver	Containment/Diversion Structure
BOCA CHICA continued											
A-4203	Belly Generator for Operations Building 4203	Steel/Steel	Aboveground/SW	2005	Interstitial Monitoring, AAG Level Gauge	JP-5	Tank Rupture	600	GTPCC	Southwest over grass to low area of topography	Double-Walled Tank
A-4212-R (replaced A-1025)	AST for Control Tower	Steel/Steel	Belowground/SW	2003	Interstitial Gauge, High Level Alarms, fill port containment, AAG Level Gauge	JP-5	Tank Rupture	1,500	GTPCC	East over grass to low area of topography	Double-Walled Tank
NOAA-1A and 1B	2 ASTs for NOAA Engine Generator Building	Steel/Steel	Aboveground/SW	1996	None	Diesel	Tank Rupture	225 each	1,122	Northwest, Toward Gulf of Mexico	Concrete Diked Room
NOAA-1	AST for generator at Boca Chica Hawk Missile Site	Steel/Steel	Aboveground/SW	2000	Interstitial Monitoring	Diesel	Tank Rupture	1,000	GTPCC	Northwest, Toward Gulf of Mexico	Double-Walled Tank
AG-103-A through AG 840-A	ASTs for Boca Chica Runway Arresting Gear	Steel/Rubber Tubing	Aboveground/SW	1998	None	Gasoline	Tank Rupture	12	12 each	Localized, no flow expected	None
TRMUBO POINT											
C-1	AST for emergency generator for Port Operations	Steel/NA	None	2001	Interstitial Gauge, Fill Port Containment	Gasoline	Tank Rupture	1,000	GTPCC	North, Toward Ocean	Double-Walled Tank
C-5	AST for emergency generator at Fire Station	Steel/Steel	Aboveground/SW	2002	Fill Port Containment	JP-5	Tank Rupture	120	GTPCC	Southwest, along street into storm drain	Double-Walled Tank
C-83	AST for emergency generator for Water Reservoir	Steel/Steel	Aboveground/SW	1997	Interstitial Gauge	JP-5	Tank Rupture	500	GTPCC	North and South, relatively flat area	Double-Walled Tank
C-2076	AST for emergency generator at BOQ	Steel/Steel	Aboveground/SW	1999	Interstitial Gauge, Clock Gauge, Fill Port Containment	JP-5	Tank Rupture	1,000	GTPCC	Southwest, Towards storm drain	Double-Walled Tank
D-29R	AST for emergency generator for Fuel Farm	Steel/Steel	Aboveground/SW	1998	Interstitial Monitoring, Clock Gauge, Fill Port Containment	JP-5	Tank Rupture	500	GTPCC	Bermed around area, spill would pool	Double-Walled Tank
D-1292-BR (Out of Service)	AST next to Key West Pipeline Office	Steel/Steel	Aboveground/SW Belowground/DW (both are capped and plugged)	1991	High Level Alarm	EMPTY- Formerly contained Gasoline	Tank Rupture	20,000	22,000	North, toward gulf	Concrete Dike
SIGSBEE PARK											
V-1274	AST for emergency generator at Water Tower	Steel/Steel	Aboveground/SW	1998	Interstitial Monitoring, Clock Gauge, Fill Port Containment	JP-5	Tank Rupture	500	GTPCC	West	Double-Walled Tank
V-1552-BR	AST for emergency generator	Steel/Steel	Aboveground/SW	1995	Interstitial Monitoring	JP-5	Tank Rupture	500	GTPCC	South	Double-Walled Tank
V-4111-AR	AST for emergency generator Commissary	Steel/Steel	Aboveground/SW	2006	Interstitial Gauge, AAG Sight Gauge, Fill Port Containment	JP-5	Tank Rupture	2,000	GTPCC	Southeast, to Storm Drain Trench	Double-Walled Tank
V-4111-B	Secondary Containment AST for Commissary Generator	Concrete/Fiberglass	Belowground/SW	UK	None	JP-5	Tank Rupture	200	NA	Southeast, To storm drain trench	This is a secondary containment tank in place to contain releases from the Commissary generator and is empty.
V-4114-R	AST for generator at Navy Lodge	Steel/Steel	Aboveground/SW	1998	Interstitial Monitoring, Clock Gauge, Fill Port Containment	JP-5	Tank Rupture	500	GTPCC	Northeast	Double-Walled Tank
V-4186	AST at Marina (Building V 3005)	Steel/Steel	Underground/DW	1999	Interstitial Monitoring, High/Low Level Alarms, Fill Port Containment	Gasoline	Tank Rupture	5,000	GTPCC	East	Double-Walled Tank
SADDLEBUNCH KEY											
J-1561-A	AST Day Tank at Radio Transmitter	Steel/Steel	SW	2000	Leak Detection Alarm	JP-5	Tank Rupture	200	Inside Building	Inside Building	Building is Secondary Containment
J-1563-R	AST at Radio Transmitter	Steel/Steel	Aboveground/DW	1994	Overfill alarm	JP-5	Tank Rupture	10,000	10,731	Northwest, Toward the gulf	Concrete Dike
FLEMING KEY											
F-01	AST at Special Forces	Steel/Steel	Belowground/DW	1994	None	Diesel	Tank Rupture	2,650	GTPCC	Northwest, toward Building	Concrete Dike
F-01B	Day Tank generator for Building KW-200	steel/rubber hose	Aboveground/SW	1993	None	Diesel	Tank Rupture	50	> 50	West, Into paved drive	Floor Drain to OWS
F-01C	Day Tank generator for Building KW-200	steel/rubber hose	Aboveground/SW	1993	None	Diesel	Tank Rupture	50	> 50	West, Into paved drive	Floor Drain to OWS
F-01D	Day Tank generator for Building KW-200	steel/rubber hose	Aboveground/SW	1994	None	Diesel	Tank Rupture	25	> 25	West, Into paved drive	Floor Drain to OWS
F-02	AST	Steel/Steel	Aboveground/SW	1995	Interstitial Monitoring, AAG Sight Gauge, Fill Port Containment	Gasoline	Tank Rupture	4,000	GTPCC	Northeast to Golf of Mexico	Double-Walled Tank
KW-400	AST	Steel/Steel	Aboveground/SW	1993	Electric Pump w/Level Alarm	Diesel	Tank Rupture	250	140	Inside Building	Concrete Dike
NAVY MEDICAL CENTER											
L-47	AST for generator at Naval Regional Medical Center	Steel/Steel	Aboveground/SW	1999	Interstitial Gauge, Clock Gauge, Fill Port Containment	JP-5	Tank Rupture	500	GTPCC	SW, Into parking lot	Double-Walled Tank

Tank Number	Container Type or Purpose	Tank Material / Pipe Material	Piping/Piping Containment	Year Installed	Good Engineering Practice	Contents	Type of Failure	Capacity/ Release Volume (gal)	Containment Capacity (gal)	Flow Direction/Receiver	Containment/Diversion Structure
UNDERGROUND STORAGE TANKS (Sigsbee Park)											
V-4022-H	Building 800	Steel/Steel	Belowground/DW	1999	Interstitial Monitoring	Gasoline	Tank Rupture	10,000	GTPCC	Groundwater	Double-Walled Tank
V-4022-I	Building 800	Steel/Steel	Belowground/DW	1999	Interstitial Monitoring	Gasoline	Tank Rupture	6,000	GTPCC	Groundwater	Double-Walled Tank
V-4022-J	Building 800	Steel/Steel	Belowground/DW	1999	Interstitial Monitoring	Diesel	Tank Rupture	6,000	GTPCC	Groundwater	Double-Walled Tank
OIL WATER SEPERATORS											
OWS-A-318	PWD Vehicle Wash Rack Building A-318	Steel and Concrete/Steel or PVC	NA	Unknown	None	Oils and Grit	Overfilling	2,000	2,000	To sanitary sewer	To sanitary sewer
OWS-A-443	PWD heavy equipment	Steel and Concrete/Steel or PVC	NA	Unknown	None	Oils and Grit	Overfilling	500	500	To sanitary sewer	To sanitary sewer
OWS-A-981	Aircraft wash rack	Steel and Concrete/Steel or PVC	NA	Unknown	None	Oils and Grit	Overfilling	1,000	1,000	From sump to sanitary sewer	To sanitary sewer
OWS-A-986	AIMD/GSE	Steel and Concrete/Steel or PVC	NA	Unknown	None	Oils and Grit	Overfilling	500	500	To sanitary sewer	To sanitary sewer
FUEL LOADING and UNLOADING											
NA	Truck fill stand (Containment area for mobile tank/truck parking)	Concrete/Concrete	NA	2000	None	Oils and Grit	Overfilling	1,500	1,500	To Storm Water	Drain valve for the discharge from the oil-water separator is kept closed until after visual inspection
Variable numbers of mobile tanks and trucks	Truck fill stand (Containment area for mobile tank/truck parking)	Steel and Plastic/NA	NA	NA	None	JP5	Leak/Tank Rupture	3,000	3,000	To Storm Water	1500 gallon Oil-water separator and large curbed parking area to contain spills
DRUM STORAGE LOCATIONS											
NA	Drums at Small Engine Repair (Building A-329)	Steel	NA	NA	NA	Used oil, motor oil/1-2	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Drums at Auto Hobby Shop (Building A-730)	Steel	NA	NA	NA	Used oil/1-2	Drum rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Drums at Vehicle Washrack (Building A-4185)	Steel	NA	NA	NA	Used oil/1-2	Drum rupture	55	55	none	All drums located on secondary containment pallets
NA	Drums at OPS-OMD Building A – 331	Steel	NA	NA	NA	New Oil/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Drums at VF-101 Building A – 981	Steel	NA	NA	NA	New Oil and Used Oil/2	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Drums at AIMD HQ Building A-980	Steel	NA	NA	NA	New Oil and Used Oil/2	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Drums at PWD Oil Spill Response at C-1	Steel	NA	NA	NA	New Oil/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
2 Drums	Drums at	Steel	NA	NA	NA	New Oil and Used Oil/55	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Galley at Boca Chica	Grease Drum	NA	NA	NA	Grease/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	The Navigator's Bar and Grill (Marina at Boca Chica)	Grease trap to sanitary sewer	NA	NA	NA	Grease/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Sunset Bar and Grill (Marina at Sigsbee Park)	Grease trap to sanitary sewer	NA	NA	NA	Grease/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Bowling Alley at Boca Chica	Grease Drum	NA	NA	NA	Grease/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Special Forces Center (Fleming Key)	Grease trap to sanitary sewer	NA	NA	NA	Grease/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets
NA	Coast Guard Galley at Trumbo Point	Grease Drum	NA	NA	NA	Grease/1	Drum Rupture	55	55	Inside building	All drums located on secondary containment pallets

open waters and environmentally sensitive areas. Section 3.4 contains general information about the other types of oil storage at NAS Key West.

3.3 Highest Risk Oil Storage Sites

3.3.1 Boca Chica Tank Farm — Facility A-930

The Boca Chica Tank Farm (BCTF) is located at the south end of Midway Avenue, between Runway 7 and Runway 3. There are four large AST's that store JP-5 in bulk quantities, one AST that stores used oil, two ASTs that store used JP-5 in bulk quantities, and one small AST that stores JP-5 for emergency generator operation.

This facility is a government owned, contractor operated (GOCO) facility. Hawthorne Services, Inc. (HSI) operates the fuel transfer services under a contract with NAS Key West.

A small truck fill stand is located at the BCTF adjacent to Building A-929, south of the bulk storage AST's. Tanker trucks with capacities as large as 8,000 gallons occasionally transfer oil at this stand.

This site also includes a truck top-off station which is no longer in use.

Fuel is transferred from the Trumbo Point Fuel Farm (TPFF) to the bulk storage AST's at the BCTF through a 4" diameter, steel underground pipeline. The TPFF is located in Key West approximately 8 miles west of the BCTF. The transfer pipeline is owned and operated by a private company, the Key West Pipeline Company (KWPL).

Navy ownership and responsibility of the pipeline begins at the first manifold valve inside the BCTF boundary. The remainder of the pipeline back to the TPFF is privately-owned by KWPL and is addressed in a separate SPCC plan prepared by KWPL.

Fuel is transferred from the BCTF to the Boca Chica Truck Fill Stand through Navy-owned, underground bulk product pipelines. The Truck Fill Stand, Building A-935 is located about $\frac{3}{4}$ miles north of the BCTF. The (2) 6" diameter steel pipelines exit near the northeast corner of the BCTF and run north to Runway 7, then turn west along Runway 7 to the taxiway

crossover, turn north to the edge of the apron near the Aircraft Hangar, Building A-936, and turn east to the Truck Fill Stand, Building A-935. Fuel is dispensed to tanker trucks at the Truck Fill Stand which then transfer the fuel to locations throughout NAS Key West in support of aircraft operations. Throughput averages approximately 2,000,000 gallons per month.

Communication during pipeline fuel transfer operations from the TPF to the BCTF is provided by telephone and/or wireless phones. In an emergency situation, the flow valve at the fuel farm will be closed, causing the pump at the TPF to shut down due to high pressure.

The bulk storage AST's are single-walled, steel, field-erected tanks that have bottoms in contact with the soil. The bulk product piping is single-walled, steel underground pipelines. The two 10,000 gallon AST's and one 500 gallon AST are vaulted steel tanks. The small AST is a single-walled steel tank with concrete secondary containment.

The bulk storage AST's are equipped with high level alarms and manual shut-off valves. The bulk storage AST bottoms and the underground steel piping are provided with cathodic protection using an impressed current system. The four inch diameter supply pipeline from the Key West Pipeline Terminal on Trumbo Point to the Boca Chica Tank Farm is not cathodically protected. A dielectric flange is located at the junction of the KWPL and Navy pipelines. Detailed information on the tanks at the Boca Chica Tank Farm, are included in Table 3-1 and in Appendix B.

3.3.2 Boca Chica Truck Fill Stand — Facility A-902

The Boca Chica Truck Fill Stand is located at the south end of Shangrila Avenue just north of the east/west Taxiway to Runway 7 (Figure 5-2). The facility is used to maintain and operate fuel trucks and transfer fuel to aircraft on the flight line and storage tanks throughout NAS Key West.

The facility is a government owned, contractor operated (GOCO) facility. Hawthorne Services, Inc. (HSI) operates the fuel transfer services under contract with NAS Key West. The facility operates five 8,000 gallon JP-5 tanker trucks and two 2,000 gallon JP-5 tank trucks. One of the 2,000 gallon tank trucks is divided into two 1,000 gallon compartments; one for gasoline and the other for JP-5. The truck divided into two compartments is refilled with gasoline at the

Trumbo Point Fuel Farm and used to "top off" petroleum storage tanks throughout NAS Key West.

The facility includes a curbed and sloped parking area designed to provide secondary containment for fuel trucks, a truck fill stand, a truck maintenance area, an oil water separator, and an administrative office.

Fuel is transferred to the fill stand through two 6" diameter steel pipelines from the Boca Chica Tank Farm (BCTF). The pipelines run from the BCTF north to Runway 7, then turn west along Runway 7 to the taxiway crossover, turn north to the edge of the apron near the Aircraft Hangar, Building A-936, and turn east to the Truck Fill Stand, Building A-935. The lines are always under pressure. The pipelines are cathodically protected by an impressed current system. The cathodic protection system rectifier is located adjacent AST 944.

Fuel trucks are filled with JP-5 fuel at the Truck Fill Stand and deliver this fuel to aircraft on the flight line and storage tanks throughout NAS Key West.

A "Scully System" is used at the fill stand to prevent overfills. It is equipped with a dead-man switch to automatically shutoff the flow when the operator releases the hand-held switch.

Tank A-902-BR is a 500 gallon, vaulted, used JP-5 tank located east of Building A-902. The tank is filled manually by bucket and emptied by HSI on an as-needed basis.

Tank A-935-R is a 250 gallon, vaulted, used oil tank located south of the Boca Chica Truck Fill Stand, Building A-935. A filter stand routes water and used fuel directly into the tank via steel piping which is controlled by a manual shutoff valve. The tank is gravity fed from the filter stand. The tank is emptied by HSI on an as-needed basis.

Drums of petroleum products are stored in a concrete secondary containment basin located east of Building A-902. The drummed petroleum products are used for maintaining the tanker trucks and other support vehicles.

Detailed information on the tanks at the Boca Chica Truck Fill Stand is included in Table 3-1 and in Appendix B.

3.3.3 Boca Chica Service Station — Facility A-322

The Boca Chica Service Station, Facility A-322, is located at the east end of Langley Avenue (Figure 5-3). The facility operates during the daylight hours and provides retail sales and motor vehicle fuel to authorized personnel. An attendant is on duty to monitor fuel dispensing operations.

There are three vaulted AST's at the site. There is one 10,000 gallon AST and one 6,000 gallon AST that store gasoline for motor vehicle operation and one 6,000 gallon AST that stores diesel for motor vehicle operation. The AST's are connected to fuel dispensers by double-walled underground piping.

The AST's are filled by private companies using 8,000 gallon tanker trucks. The fuel is then dispensed to motor vehicles by standard suction dispensing pumps. Annual throughput is approximately 100,000 gallons of unleaded gasoline, and approximately 35,000 gallons of diesel fuel.

Detailed information on the tanks at the Boca Chica Service Station are included in Table 3-1 and in Appendix B.

3.3.4 Boca Chica Power Plant — Facility A-419

The Boca Chica Power Plant is located on the south side of Langley Avenue near the Public Works Vehicle Maintenance Facility (Figure 5-4). The facility is used to provide backup power during emergencies or other power outages.

There are two 4,000 gallon vaulted steel AST's and two 300 gallon double-walled steel AST's that store JP-5 for emergency generator operation. The AST's are connected to the emergency generators by small diameter, aboveground piping.

Fuel is delivered to the AST's by Hawthorne Services, Inc, the NAS Key West fuel transfer services contractor. The fuel is used for emergency generator operation. The annual throughput is approximately 1,000 gallons.

Detailed information on the tanks at the Boca Chica Power Plant is included in Table 3-1 and in Appendix B.

3.3.5 Truman Annex — Facility 284

The Truman Annex facility is located on Key West. The facility operates during daylight hours and provides fuel to authorized personnel for motor vehicle operation. There is one 1,000 gallon AST that stores gasoline for boat operation in support of the Port Operations Department. The AST has a fuel dispenser.

The tank is filled by private companies using 6,000 gallon tanker trucks. The fuel is dispensed to motor vehicles by a standard suction dispensing pump. Detailed information on the tank is included in Table 3-1 and in Appendix B.

3.3.5 Sigsbee Park Service Station — Facility V-4022

The Sigsbee Park Service Station is located on Sigsbee Road, one block from the Navy Exchange/Commissary (Figure 5-6). The facility is operated by the Navy Exchange. The facility operates during daylight hours and provides fuel to authorized personnel for motor vehicle operation. A cashier/ attendant is on duty to monitor fuel dispensing operations.

There are two UST's that store gasoline (10,000 and 6,000 gallon USTs) and one UST that stores 6,000 gallons of diesel for motor vehicle operation. The UST's are connected to fuel dispensers by double-walled underground piping.

The tanks are filled by private companies using 6,000 gallon tanker trucks. The fuel is dispensed to motor vehicles by standard suction dispensing pumps. Annual output of unleaded gasoline is approximately 100,000 gallons and for diesel is approximately 35,000 gallons.

Detailed information on the tanks at the Sigsbee Park Service Station are included in Table 3-1 and in Appendix B.

3.3.6 Sigsbee Park Marina — Facility V-4186

The Sigsbee Park Marina is located at the end of Arthur Sawyer Road (Figure 5-6). The facility is operated by the Morale, Welfare, and Recreation Department, NAS Key West. The facility provides unleaded gasoline for marine vessel operation.

There is a 5,000 gallon vaulted AST that stores gasoline for marine vessel operation. The AST is filled by private companies. The fuel is transferred by underground piping through a standard suction dispenser to marine vessels. The average throughput is approximately 8,000 gallons per month.

Detailed information on the tanks at the Sigsbee Park Marina is included in Table 3-1 and in Appendix B.

3.3.7 Fleming Key Special Forces — Facility F-02 and F-01

The Special Forces Facility is located at the north end of Fleming Key. The facility is used for survival training. There is one 4,000 gallon AST adjacent to the small craft pier that stores gasoline for marine vessel operation. In addition, there is one 2,000 gallon AST that is single walled located inside a concrete diked containment area at Building F-01. The tanks are connected to suction dispensers by aboveground piping. The dispenser is located in a portable building adjacent to the tank.

The ASTs are filled by private companies. The fuel is dispensed to marine vessels through a suction pump located in a portable building adjacent to the ASTs. Annual throughput is approximately 10,000 gallons.

Detailed information on the tanks at Fleming Key is included in Table 3-1 and in Appendix B.

3.3.9 Saddlebunch Radio Transmitter Site — Facility J-1561

The Naval Radio Transmitter Site is located north of US Route 1 approximately 11 miles east of Key West (Figure 5-10). The facility provides radio transmitter capability for NAS Key West. There is one 10,000 gallon AST at this site that stores JP-5 for emergency generator operation. The tank is a single-walled steel tank located in a concrete secondary containment basin.

The AST is filled by a private company. The AST is connected to an emergency generator by aboveground, small diameter piping. The annual throughput is approximately 1,000 gallons. Detailed information on this tank is included in Table 3-1 and in Appendix B.

3.4 Other Oil Storage Containers

3.4.1 Ancillary Aboveground Storage Tanks

In addition to the high-risk oil storage containers that were discussed in Section 2.3, there are ASTs that contain fuel for emergency generators. Detailed information, including photographs, regarding the ancillary ASTs at NAS Key West is included in Table 3-1 and in Appendix B. A few of the ancillary tanks contain less than 550 gallons exempting them from FLA DEP 62-761 requirements. All these tanks are located within adequate secondary containment.

3.4.2 Electrical Transformers

NAS Key West maintains an inventory of its pole-mounted and pad-mounted transformers throughout the facility (Appendix E). The transformers are located on the Site Map Set (Appendix F). These transformers are filled with a mineral oil-based dielectric fluid. The pole-mounted transformers contain a small quantity of oil (typically 30 gallons or less). The pole-mounted transformers are not addressed in detail in this SPCC Plan. It is acknowledged that should a pole-mounted transformer leak, spillage would be localized and thus easily contained/mitigated. Analytical testing and excavation of soil would be conducted to remediate the spill site. This SPCC Plan does address the ground-level transformers (i.e., pad-mounted transformers) that generally hold less than 300 gallons of dielectric fluid.



Pad-mounted transformers at the Saddlebunch Radio Transmitter Site, located within concrete dikes.

3.4.3 Facility Piping

Aboveground and underground facility piping associated with the significant fuel systems are shown on the Site Map Set in Appendix F. Oil primarily managed at NAS Key West is petroleum based and includes (1) jet fuel, (2) marine diesel fuel, (3) unleaded gasoline and vehicular diesel, (4) various lubricating and waste oils, (5) dielectric oil, and (6) waste fuel.

3.4.4 Mobile/Portable Containers, Bowsers, and Drums

NAS Key West maintains a variety of mobile/portable containers onsite (tanker truck and bowsers). In service drum storage on base is primarily associated with vehicle maintenance and food service. Table 3-1 includes an inventory of the drums stored on base.

3.5 Total Oil Storage Quantities

Containment capacity (not average volume maintained) of the various oil containers (where capacity is 55 gallons or more) is summarized below:

- ASTs — 1,143,539 gallons
- USTs — 22,000 gallons
- Oil-Water Separators — 4,000 gallons
- Drums — 2,035 gallons

4.0 POTENTIAL SPILL PREDICTIONS, VOLUMES, RATES, AND CONTROL

112.7(b): Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in your Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

Table 3-1 lists the oil storage structures, the type of failure that each structure could be subject to (i.e., worst-case release), and the maximum volume that could be released if a failure occurred. The worst-case spill rate is assumed to be an instantaneous release of the entire structure (i.e., rupture for bulk ASTs, overfill for USTs, and rapid leakage for transformers and drums). Worst-case spill scenarios for the facility's high-risk containers are discussed in Section 4.1.

Additionally, Table 3-1 lists a direction of flow from the storage structure, should the secondary containment device (if present) fail and be insufficient to handle the release. Also included in the table is the estimated capacity of the secondary containment device. Facility layout and drainage are shown on the Site Map Set in Appendix F.

4.1 Spill Scenarios for High-Risk Containers

4.1.1 Boca Chica Tank Farm — Facility A-930

The largest possible spill at this site is approximately 298,000 gallons, the volume of Tank A-958. The spill should be contained inside the dikes by an impervious inner-berm liner, as long as the drainage valves are closed.

The area around the fuel farm is surrounded by low-lying marshy mangroves and small lagoons. Spills outside the diked areas would generally flow radially away from the site, directly impacting the environmentally sensitive area.

Aboveground piping is generally limited to the proximity of the fuel filters. Should a pipeline rupture occur, release volume would depend on the pumping rate and the elapsed time to shutdown the system. Estimated spill volume could range from a few gallons to several thousand gallons.

4.1.2 Boca Chica Truck Fill Stand — Facility A-902

The largest potential tank spill at this site is 8,000 gallons, the volume of a tanker. A spill volume of 2,000 gallons is possible due to manifold rupture on one compartment of the fuel delivery truck. The spill rate from a ruptured fuel transfer line (tank to truck) would be approximately 150-300 gpm.

The largest potential pipeline spill at this site is 15,000 gallons, the volume of the pipeline. The spill rate would be dependent on the size and type of rupture. The fill stand dispenses product at a rate of 300 gpm. The pipeline is not operated at night. The pipeline is maintained in a non-pressurized state when not in use and valves at the tank farm and fill stand are locked in a closed position. Should the leak occur at night and go unnoticed, although the pipeline capacity is several thousand gallons, potential only a fraction of that amount could be released. The pipeline traverses wetland areas and therefore, any spill would reach environmentally sensitive areas and contaminate the surrounding soil and groundwater.

Should the Scully system fail during a hose rupture, 1,500 to 2,000 gallons could be spilled, depending on the time it takes to close the valves on the main line and the subsequent volume of line drainage.

Other small spills could occur as a result of valve, filter, or hose failures. Small spills associated with the drum storage area, although not normally significant for any individual event, could pose a groundwater contamination problem over a long period of time.

A spill from the area near Building A-902 would flow radially across the pavement and possibly reach the surrounding soil and low lying areas. A spill from the truck fill stand area would likely reach environmentally sensitive areas adjacent to the truck fill stand. Any spill, except those that are contained on the pavement, would contaminate the surrounding soil and likely the groundwater.

4.1.3 Boca Chica Service Station — Facility A-322

The largest potential spill at this site is 10,000 gallons, the volume of the largest AST. A spill volume of 3,000 gallons is possible due to manifold rupture on one compartment of the fuel supply truck.

Smaller, more probable spills on the order of 100-500 gallons can be expected due to ruptured supply hoses.

Spilled product from the tanks would spread across the pavement and surrounding terrain. If the spill were large enough, it might flow to a nearby storm drain located south of Building A-322. Smaller spills would spread radially across the pavement and be absorbed by the soil surrounding the site.

4.1.4 Boca Chica Power Plant — Facility A-419

The largest potential spill at this site is 5,000 gallons, the volume of the largest AST. A spill volume of 1,000 gallons is possible due to manifold rupture on one compartment of the fuel supply truck. Spilled product would flow radially to the surrounding terrain.

4.1.5 Truman Annex — Facility 284

The largest potential spill at this site is 6,000 gallons, the volume of the gasoline delivery truck. A spill volume of 3,000 gallons is possible due to manifold rupture on one compartment of the fuel delivery truck. Smaller, more probable spills on the order of 100-500 gallons can be expected due to ruptured supply hoses.

Due to the location of AST 284, most spills would be expected to quickly sheet flow across the paved area toward the ocean.

4.1.6 Sigsbee Park Service Station — Facility V-4022

The largest possible spill at this site would be 10,000 gallons, the volume of the largest tank. A spill volume of 3,000 gallons is possible due to manifold rupture on one compartment of the fuel supplying truck.

A spill near the UST's would fill the concrete containment area and flow radially to the surrounding terrain. A spill at the pump island would be minimal and would likely be contained on the surrounding pavement.

4.1.6 Sigsbee Park Marina — Facility V-4186

The largest potential spill at this site is 6,000 gallons, the volume of the fuel delivery truck. A spill volume of 3,000 gallons is possible due to manifold rupture on one compartment of the fuel delivery truck. Smaller, more probable spills on the order of 100-500 gallons can be expected due to ruptured supply hoses.

Due to the location of the Marina, most spills would be expected to discharge into the adjacent lagoon.

4.1.7 Fleming Key Special Forces — Facility F-02

The largest potential spill at this site is 6,000 gallons, the volume of the fuel truck supplying fuel to the site. A spill volume of 3,000 gallons is possible due to manifold rupture on one compartment of the fuel delivery truck. Smaller, more probable spills on the order of 100-500 gallons can be expected due to ruptured supply hoses.

Due to the location of the site, most spills would be expected to discharge to the open waters.

4.1.8 Saddlebunch Radio Transmitter Site — Facility J-1561

The largest potential spill at this site is 10,000 gallons, the volume of the AST. A spill volume of 3,000 gallons is possible due to manifold rupture on one compartment of the fuel delivery truck. Smaller, more probable spills on the order of 100-500 gallons can be expected due to ruptured supply hoses.

A spill from this site would travel radially and leach into the surrounding soils. The fuel could possibly reach environmentally sensitive areas adjacent to the site. A spill would likely contaminate the surface waters and possibly the groundwater.

4.2 Facility Oil Spill History

Summarized Spill History

Displayed below are the summarized spill history statistics for NAS Key West from 2002 to the present. Table 4.1 summarizes the spill history for NAS Key West.

The data arrayed covers the following items currently on record at the office of Public Works:

- a. Date of the spill
- b. Location of the spill
- c. Within sensitive habitat (yes/no)
- c. Total gallons spilled
- d. Type of fuel spilled
- e. Reason for spill

DATE	Location of Spill (Facility)	Surface Area (sq. feet)	Within Sensitive Habitat (yes / no)	Total Gallons of Spill	Media (JP-5) (Avgas) (Other)	Reason For Fuel Spill
2002 Spill Reports						
1/16/02	T-line	50	no	30	JP-5	Refueling Op-Overfill 100% Capacity
1/25/02	Supply Bldg	75	no	30	Hydraulic	Hydraulic Line Busted
3/15/02	A-902	30	no	30	JP-5	Refueling Op-Overfill 100% Capacity
4/5/02	Fleming Key	25	no	4	JP-5	Leaking Diesel Tank Line
9/5/02	Flight Tower	20	no	10	JP-8	Refueling Op-Overfill 100% Capacity
9/16/02	AGE Compound	100	no	40	MOGAS	Overturnd Fuel Tank
11/19/02	Bldg A-981	20	no	15	Herbicide	Refueling Op-Overfill 100% Capacity
12/19/02	Bldg A-902	200	adjacent to	30	JP-5	Refueling Op-Overfill 100% Capacity
2003 Spill Reports						
1/21/03	Flight Tower	200	no	30	JP-5	Mechanical Fuel Cell Failure
6/20/03	Flight Tower	1,000	no	100	JP-5	Refueling Op-Overfill 100% Capacity
9/4/03	NEX Service Station-BC	700	no	50	MOGAS	Tank leakage
9/9/03	NEX Service Station-BC	50	no	20	MOGAS	Tank leakage
9/29/03	Flight Tower	500	no	50	JP-5	Refueling Op-Overfill 100% Capacity
9/30/03	Flight Tower	100	no	20	JP-5	Refueling Op-Overfill 100% Capacity
10/3/03	A-936	1,500	no	150	JP-5	Aircraft Fuel Cell Rupture
11/10/03	A-718	200	no	20	Mineral Oil	Leaking Transformer
2004 Spill Reports						
2/6/04	Boca Chica Marina	200	yes	5	Diesel Fuel	Bildge Pumped into water
2/13/04	Trumbo Pier D-1	200	yes	15	Hydraulic	Hydraulic Line Busted
3/30/04	A-980	200	no	5	Hydraulic	Hydraulic Line Busted
4/15/04	Truman Outer Pier	600	yes	15	JP-5	Leaking from old pilings
4/29/04	Flight Tower	UK	no	20	JP-5	Refueling Op-Overfill 100% Capacity
5/21/04	Boca Chica Marina	N/A	no			No Spill - Responded to Boat Fire

DATE	Location of Spill (Facility)	Surface Area (sq. feet)	Within Sensitive Habitat (yes / no)	Total Gallons of Spill	Media (JP-5) (Avgas) (Other)	Reason For Fuel Spill
2005 Spill Reports						
1/31/05	Lift Station	100	no	20	Sewage	Sewage Spill at CHT Hose
2/10/05	Boiler House	40	no	5	JP-5	Diesel Line Leak
3/16/05	A-981	40	no	10	JP-5	Refueling Op-Overfill 100% Capacity
3/20/05	A-981	30	no	10	JP-5	Refueling Op-Overfill 100% Capacity
4/4/05	A-981	50	no	10	JP-5	Spill During Tank Re-Filling Process
4/19/05	A-322 NEX	50	no	15	MOGAS	Spill During Tank Re-Filling Process
7/22/05	Flag Pole Area	25	no	300	Hydraulic	Oil Dumped into Manhole
7/28/05	Trumbo Pier D-3	1/4 Mile				City of Key West Spill - Non US Navy
2006 Spill Reports						
1/12/06	Trumbo Gate	300 Ft. Long	no	50	Hyd. Oil	Broken hydraulic line on Contractor vehicle
2/7/06	Open Ocean	n/a	yes	500	JP-5	FA-18 crash 6 miles off shore with belly tank spillage
2/22/06	Sigsbee Housing	100	no	10	Motor Oil	Motor Oil placed in construction debris dumpster
2/22/06	Sigsbee RV Park	20	no	5	Solvents	Resident illegal cleaning motor with solvents on ground
4/14/06	Sigsbee Causeway	20	no	2	Roof Cement	Contractor spills roof adhesive from truck
4/18/06	Hangar A-981	20,000	no	1,000	AFFF Foam	AFFF Fire Suppression System mis-fired
8/29/06	BC Marina Road	750	no	0	MOGAS	Car accident - no spillage onto ground
11/15/06	Hangar A-981	25	no	10	JP-5	Re-fueling truck valve equipment leakage
12/15/06	Hangar A-981	25	no	10	JP-5	Refueling Operation - Overfill 100% Capacity
2007 Spill Reports						
1/24/07	Truman CO House	750	no			Suspected Spill Along Beach
2/20/07	A-936	150	no	20	Hydraulic	Hydraulic Line Busted
2/20/07	Boca Chica Gate	50	no	1	Motor Oil	Leaking POV Oil Pan
2/21/07	Trumbo Pt	300	no	5	Motor Oil	Leaking POV Oil Pan
3/2/07	Air OPS Tower	100	no	15	JP-5	Refueling Operation - Overfill 100% Capacity
3/8/07	Patio Beach	50	no	10	Hydraulic	Hydraulic Line Busted
4/19/07	Boca Chica NEX	50	no	5	MOGAS	Re-fueling truck valve equipment leakage

Regulatory Deficiencies

- None

Best Engineering Practice Recommendations

- Due to the close proximity of tanks to navigable waters, spill kits are installed adjacent the following tank sites: Truman Annex, Sigsbee Park Marina, Fleming Special Forces, and Saddlebunch.

5.0 DRAINAGE PREVENTION DIVERSIONARY STRUCTURES AND CONTAINMENT

112.7(c): Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in §112.1(b). The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

- (1) For onshore facilities:
 - (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;
 - (ii) Curbing;
 - (iii) Culverting, gutters, or other drainage systems;
 - (iv) Weirs, booms, or other barriers;
 - (v) Spill diversion ponds;
 - (vi) Retention ponds; or
 - (vii) Sorbent materials.

 - (2) For offshore facilities:
 - (i) Curbing or drip pans; or
 - (ii) Sumps and collection systems.
-

All areas in which oil is stored, with the exception of the Boca Chica Tank Farm, some transformers, some mobile tanks and trucks, and arresting gear tanks on the Boca Chica runways, are equipped with appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse, as required by 40 CFR 112.7(c). Table 3-1 lists the secondary containment method for each tank/oil storage area at the facility. Secondary containment is in conformance with Industry standards as noted below.

The field fabricated bulk storage tanks AST 938, 944, 945, and 958 warrant special comment. In accordance with Florida DEP conditional approval of August 31, 1998, NAS Key West is exempted from secondary containment system upgrades that would otherwise be required under FLA DEP 62-761 and 40 CFR 112. These improvements were waived as a result of improvements agreed to and constructed during 1999, i.e., double wall tank bottoms, tank interstice release detection system, and containment pads at key pipe fittings, valves, and pumps. Since receipt of the conditional exception by FDEP, an impervious inner-berm liner was inserted (circa 2006) to ensure adequate secondary containment at BCTF.

Consideration of Industry Standards

As a reference, the industry standards for "Impounding Around Tanks by Diking" and "Secondary Containment Tanks" are outlined below. Except for the tank capacity standard limit of 12,000 gallons, these standards are generally incorporated into FLA DEP 62-761.

I
N
D
U
S
T
R
Y

S
T
A
N
D
A
R
D

C
O
N
S
I
D
E
R
A
T
I
O
N

Impounding Around Tanks by Diking (NFPA Section 2.3.2.3.2)

- (1) A slope of not less than 1 percent away from the tank shall be provided for at least 50 feet or to the dike base, whichever is less.
- (2) The volumetric capacity of the diked area shall not be less than the greatest amount of liquid that can be released from the largest tank within the diked area, assuming a full tank.
- (3) The outside base of the of the dike at ground level shall be no closer than 10 feet to any property line, where the property is or can be built upon.
- (4) Walls of the diked area shall be of earth, steel, concrete, or solid masonry designed to be liquid-tight and to withstand a full hydrostatic head and restricted to a maximum height of 6 feet.
- (5) Each diked area containing two or more tanks shall be subdivided, preferably by drainage channels or at least by intermediate dikes to prevent spills from endangering adjacent tanks within the diked area.
- (6) Draining water from diked areas shall be controlled to prevent liquids from entering natural water resources, public sewers, or public drains.

Secondary Containment Tanks (NFPA Section 2.3.2.3.3)

- (1) Tank capacity should not exceed 12,000 gallons.
- (2) Piping connections to the tank should be made above the normal liquid level.
- (3) Means shall be provided to prevent the release of liquid from the tank by siphon low.

- (4) Means shall be provided for determining the liquid level of tank (i.e., stick, gauge, etc.)
- (5) Means shall be provided to prevent overfilling by sounding an alarm when the liquid level in tank reaches 90% capacity and automatically stopping delivery in the tank when liquid level reaches 95% capacity.
- (6) Tank shall be capable of resisting the damage from the impact of a motor vehicle or suitable collision barriers shall be provided.
- (7) Where secondary containments are enclosed, it shall have appropriate emergency venting.
- (8) Liquid capacity of secondary containment should be designed to withstand hydrostatic head and the maximum capacity of the primary tank.
- (9) The interstitial space between the primary and secondary containment shall be tested either hydrostatically or with air pressure in accordance with the tank's listing or manufacturer's instructions.

Regulatory Deficiencies
<ul style="list-style-type: none">• See Section 14.2 and 14.8
Best Engineering Practice Recommendations
<ul style="list-style-type: none">• See Section 14.2 and 14.8

THIS PAGE INTENTIONALLY LEFT BLANK

6.0 IMPRACTICALITY OF SECONDARY CONTAINMENT, 40 CFR 112.7(d)

112.7(d): If you determine that the installation of any of the structures or pieces of equipment listed in 40 CFR 112.7 (c) and (h)(1), and 112.8(c)(2), 112.8(c)(11), ... to prevent a discharge as described in 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under 112.20, provide in your Plan the following:

- (1) An oil spill contingency plan following the provisions of 40 CFR 109.
- (2) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

This rule is adequately addressed in the NAS Key West Facility Response Plan (FRP). NAS Key West has a strong oil spill response contingency action plan in accordance with 40 CFR 109 as identified in the FRP. Copies of NAS Key West's FRP are maintained in offices of the Environmental Department's Office and at the Port Operations Spill Team office in Building 284 at Truman Annex. NAS Key West has a commitment of manpower and equipment from the Fire Department on base that would expeditiously control a release of oil products.

Secondary containment is impractical for electrical equipment containing mineral oil (i.e., single- and three-phase pad-mounted transformers). Large electrical equipment typically does not have secondary containment due to electrical safety issues. Spill response and absorbent materials will be used as the primary means of containment in these circumstances. NAS Key West has an inventory of its transformers (Appendix E). Furthermore, NAS Key West completes an extensive preventive maintenance program of annual external inspections and operational checks to ensure that all transformers are well maintained and monitored. One set of transformers at the Saddlebunch radio transmitter site is located within secondary containment due to their remote location and proximity to surface waters.

Regulatory Deficiencies
<ul style="list-style-type: none"> • Increase inspections of high-risk transformers (adjacent waterways).
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

THIS PAGE INTENTIONALLY LEFT BLANK

7.0 INSPECTION/RECORDKEEPING

112.7(e): Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

The following table summarizes the inspections schedule for NAS Key West. Additional details regarding the inspection process may be found in Appendix C (inspection forms). The Environmental Department maintains copies of all inspection records.

Table 7-1 Inspection Schedule					
Type of Inspection	Frequency	Responsible Person	Regulatory Driver	Inspection Form	Record Retention
<i>Bulk Tanks</i>					
External Visual (routine)	monthly ¹	Public Works Environmental	FLA DEP 62-761	Appendix C	3 yr.
External Visual (non-routine)	IAW API 653 4.3.2.1	FL P.E. or API 653 Authorized Inspector	FLA DEP 62-761	_____	Indefinite
External Ultrasonic ² (non-routine)	IAW API 653 4.3.3.2	FL P.E. or API 653 Authorized Inspector	FLA DEP 62-761	_____	Indefinite
Internal (non-routine)	IAW API 653 4.4.2 or 4.4.3	FL P.E. or API 653 Authorized Inspector	FLA DEP 62-761	_____	Indefinite
<i>Cathodic Protection System³</i>					
External (non-routine)	IAW API RP 651	IAW API RP 651	FLA DEP 62-761	_____	Indefinite
General (non-routine)	within 6 months of installation/repair and annually thereafter	Corrosion Professional or Cathodic Protection Tester	FLA DEP 62-761	_____	Indefinite
Operational (routine)	every month	Public Works Environmental ⁴	FLA DEP 62-761	Appendix C	Indefinite
<i>Product Piping</i>					
External Visual (routine)	monthly	Public Works Environmental	FLA DEP 62-761	Appendix C	3 yr.
Operational (routine)	during fuel transfer	Public Works Environmental	NAS Key West SOP	_____	3 yr.
Pressure Testing ⁵ (non-routine)	annual	Qualified Inspector	nMTR - FLA DEP 62-761; MTR - 33 CFR 156.170	_____	3 yr.
<i>Tank Truck Fuel Loading Stations</i>					
External Visual (routine)	weekly	Public Works Environmental	40 CFR 112 and FLA DEP 62-761	Appendix C	3 yr.

Table 7-1 Inspection Schedule					
Type of Inspection	Frequency	Responsible Person	Regulatory Driver	Inspection Form	Record Retention
Ancillary Tanks					
External Visual (routine)	monthly	Public Works Environmental	FLA DEP 62-761 (for ASTs > 550 gal.); 40 CFR 112	Appendix C	3 yr.
Generators					
External Visual (routine)	monthly	Public Works Environmental	40 CFR 112	Appendix C	3 yr.
Transformers					
External Visual (routine)	annually	Public Works Environmental	40 CFR 112	Appendix C	3 yr.
Oil Water Separators					
External Visual (routine)	quarterly	Public Works Environmental	40 CFR 112	Appendix C	3 yr.
Drums					
External Visual (routine)	monthly	Public Works Environmental	40 CFR 112	Appendix C	3 yr.

Notes:

- 1 monthly, yet no later than 35 days from the previous inspection (per FLA DEP 62-761)
 - 2 internal (non-routine) inspection may substitute for external ultrasonic inspection **IF** API 653 4.3.3.3 is met
 - 3 Impressed current systems that are inoperative for a cumulative period exceeding 1,440 hours (60 days) shall be assessed by a Corrosion Professional to ensure the storage tank system is structurally sound, free of corrosion holes, and operating in accordance with design criteria (per FLA DEP 62-761)
 - 4 inspector must be knowledgeable about cathodic protection system and impressed current principles and operation
 - 5 non-marine transportation related product piping – per API RP 1110 or ASME B31.4, or equivalent as approved by FLA DEP; marine transportation related product piping B per 33 CFR 156.17
- routine inspection can be performed by a qualified NAS Key West personnel (recommend Environmental Engineer)
- non-routine inspection is performed by qualified personnel in accordance with regulatory requirements (FLA DEP 62-761 or 33 CFR 156.170) and/or industry accepted standards

API	American Petroleum Institute
ASME	American Society of Mechanical Engineers
CFR	Code of Federal Regulations
FLA DEP	Florida Department of Environmental Protection
IAW	in accordance with
MTR	marine transportation related
nMTR	non-marine transportation related
Ancillary Tanks	FSII tank and all other heating fuel oil, hazardous waste (fuel lab) gasoline, and vehicular diesel tanks
Bulk Tanks	Jet Fuel Area tanks (i.e., primary fuel storage at NAS Key West that receive AND issue fuel)

7.1 High Risk Site Inspections and Records

7.1.1 Boca Chica Tank Farm — Facility A-930

The tanks at the BCTF are gauged continuously. The readings are reconciled with the previous day's inventory and the fuel dispensed at the Truck Fill Stand. The inventory is maintained in a log by the BCTF manager at the Truck Fill Stand, Building A-902.

The tanks, piping and fill stand are visually inspected daily for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are maintained by the BCTF manager at the Truck Fill Stand, Building A-902.

FLA DEP 62-761 requires bi-monthly inspection of cathodic protection systems and monthly printouts of tank alarm histories. Evidence of these cathodic protection system inspections are located in the Environmental Department Office. The Bulk Fuel Farm level alarm system is not currently capable of printing required alarm histories.

7.1.2 Boca Chica Truck Fill Stand — Facility A-902

The fill stand meter readings are checked against the BCTF inventory readings daily. The inventory records are maintained at the Truck Fill Stand, Building A-902.

The storage tank systems are inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept in Building A-902.

7.1.3 Site 3: Boca Chica Service Station — Facility A-322

Daily inventory control is maintained by manual stick reading and computer reconciliation from issued fuel. Records on inventory and tank testing are kept at the Navy Exchange, Sigsbee Park, and Building V-4111.

The tank systems are inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept at the Navy Exchange, Sigsbee Park, and Building V-4111.

7.1.4 Boca Chica Power Plant — Facility A-419

The tanks are inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept at the Electrical Shop, Building A-126.

7.1.5 Truman Annex — Facility 284

The AST is gauged manually and inventory reconciled daily. The inventory records are kept in the Trumbo Fuel Farm Office.

The AST system is inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept in the Truman Annex Port Operations Office.

7.1.6 Sigsbee Park Service Station — Facility V-4022

Daily inventory control is maintained by manual stick gauging and computer reconciliation from issued fuel. Records of inventory and tank testing are kept at the Navy Exchange, Sigsbee Park, and Building V-4111.

The tank systems are inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept at the Navy Exchange, Sigsbee Park, and Building V-4111.

7.1.7 Sigsbee Park Marina — Facility V-4186

The AST is gauged manually and inventory reconciled daily. The inventory records are kept in the Marina Facility, Building V-3000.

The AST system is inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept in the Marina Facility, Building V-4186.

7.1.8 Fleming Key Special Forces — Facility F-02

The AST system is inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The monthly inspection records and other maintenance records are kept in the Facility Maintenance Office, Building KW-900.

7.1.9 Saddlebunch Radio Transmitter Site — Facility J-1561

The AST system is inspected monthly for signs of leakage, as well as corrosion, cracks, structural damage, or other similar problems. The secondary containment area undergoes visual inspection prior to discharge. The monthly inspection records and other maintenance records are kept in Building J-1561.

Regulatory Deficiencies
<ul style="list-style-type: none">• None
Best Engineering Practice Recommendations
<ul style="list-style-type: none">• None

THIS PAGE INTENTIONALLY LEFT BLANK

8.0 PERSONNEL TRAINING AND SPILL PREVENTION PROCEDURES

8.1 Personnel Instructions

112.7(f)(1): At a minimum, train your oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge prevention protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan.

NAS Key West provides spill training (prevention, awareness, and response) to all new employees involved with oil equipment operation, maintenance or oversight. Annual refresher training and exercises/drills are completed as well as part of the Facility Response Plan requirements. Intermediate training sessions are conducted for affected personnel when a process or procedure changes, as well as for new employees who are responsible for the implementation of any portion of the SPCC Plan.

Specific individuals, who are designated as SPCC inspection personnel are also trained on the inspection procedures to be employed, the frequency of inspections, recordkeeping requirements, and procedures for reporting and correcting detected problems.

Required Training Topics

- Discussion of applicable pollution control laws, rules, and regulations
- Operation and maintenance of equipment to prevent oil discharges
- Discharge prevention protocols
- Purpose and overview of SPCC plan
- General facility operations

Other Training Topics

- Review of potential spill areas and drainage routes
- Review of emergency response procedures
- Review of spill cleanup equipment locations and the use of the equipment
- Recent spill events, subsequent response and corrective action

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

8.2 Designated Person Accountable for Spill Prevention

112.7(f)(2): Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management.

The Environmental Department’s Oil Spill Manager is the designated person accountable for spill prevention at NAS Key West. Alternates (i.e., line management) to the Oil Spill Manager are noted in Section 2.2.

The following NAS Key West representative is the primary contact for the SPCC Plan.

Title	Telephone
Oil Spill Manager	(305) 293-2881

Regulatory Deficiencies
<ul style="list-style-type: none"> None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> None

8.3 Spill Prevention Briefings

112.7(f)(3): Schedule and conduct discharge prevention briefings for your oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in §112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

NAS Key West schedules and conducts spill prevention briefings as part of their annual SPCC training. The purpose of the briefings is to discuss: (1) recent spill events, (2) causes of the spill, and (3) corrective action to prevent reoccurrence of similar spills. These briefings may also be performed in conjunction with Hazardous Waste Training and Storm Water Pollution Prevention Training. The following personnel are typically included in the SPCC Plan briefings: personnel responsible for the oil storage areas/inspections, contractor’s representatives, security guards and spill response personnel.

Additionally, the inspection checklists cited in this SPCC Plan will be reviewed monthly by the Oil Spill Manager, and additional “case-specific” spill prevention briefings will be conducted and documented with appropriate personnel if deficiencies are noted in the inspection logs.

Regulatory Deficiencies
<ul style="list-style-type: none"> None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> None

9.0 SITE SECURITY

9.1 Fencing and Gates

112.7(g)(1): Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended.

NAS Key West is fully fenced and security personnel are present at the facility 24-hours per day, 365 days per year. The facility has controlled access through a manned security gate and conforms to the industry standard outlined for fencing and security (Section 11.3.6 of API 2610). The entrances to the various installations that make up NAS Key West are only accessible to employees/visitors who have been cleared by Security at NAS Key West. There is one exception discussed below.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

9.2 Flow and Drain Valves Secured

112.7(g)(2): Ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status.

The master flow and drain plugs (i.e., tank, rather than secondary containment, drains plugs) are maintained in a closed position, except to drain water. Tank transfer valves at the Boca Chica Bulk Fuel Farm are secured by locks and chains.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

9.3 Starter Controls Secured

112.7(g)(3): Lock the starter control on each oil pump in the “off” position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status.

The starter controls for oil pumps are maintained in an “off” position and locked. Access to starter controls is limited to authorized personnel only. Each starter control is located in a secure area of a local building, or within a locked concrete-walled pump house adjacent to the applicable UST or AST. Only authorized personnel have access to keys to the pump houses and starter controls.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

9.4 Pipeline Loading/Unloading Connections Secured

112.7(g)(4): Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure.

All loading/unloading connections are securely capped or blank-flanged when not in service or standby service. Designated NAS Key West personnel who observe loading/unloading activities verify that these connections are properly capped following each loading/unloading event.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

9.5 Lighting Adequate to Detect and Deter Spills

112.7(g)(5): Provide facility lighting commensurate with the type and location of the facility that will assist in the:

- (i) Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and
- (ii) Prevention of discharges occurring through acts of vandalism.

Adequate security lighting is generally provided for tanks at NAS Key West. However, there was identified in the previous SPCC Plan that insufficient lighting provided at a number of tanks (listed in at the end of this section and in the Executive Summary), and tank truck loading areas

to identify a release, should one occur. Requisite corrective work service orders have been applied and it is expected that corrections will be made in 2007. In general, lighting at NAS Key West should conform to the industry standard (API 2610, Section 11.2.2), which recommends the following:

INDUSTRY STANDARD CONSIDERATION:

- (1) Use high intensity discharge lamps such as mercury vapor or high pressure sodium lighting
- (2) Intersperse incandescent lighting fixtures in areas that require immediate return of lighting after power dips or outages.
- (3) Consider photoelectric cell control where automatic switching of yard and rack lighting is required.
- (4) Install explosion proof lighting in areas containing Class I liquids (those with a flash point below 100° F and having a vapor pressure not exceeding 40 pounds per square inch) conforming with NFPA 70 and maintained in good condition.

9.5.1 High Risk Site Specific Lighting

9.5.1.1 Boca Chica Tank Farm — Facility A-930

The lighting appears to be adequate.

9.5.1.2 Boca Chica Truck Fill Stand — Facility A-902

The lighting is adequate to detect a spill during darkness.

9.5.1.3 Boca Chica Service Station — Facility A-322

The lighting is inadequate to detect a spill during darkness. If a piping rupture or tank failure occurred during darkness, the spill may not be detected promptly. Spill volumes under this scenario could be large. (Refer to corrective action stated in #9.5 above).

9.5.1.4 Boca Chica Power Plant — Facility A-419

The lighting is inadequate for detecting a spill during darkness. If a piping rupture or tank failure occurred during darkness, the spill may not be detected promptly. Spill volumes under this scenario could be large. (Refer to corrective action stated in #9.5 above).

9.5.1.5 Truman Annex— Facility 284

The lighting is inadequate for detecting a spill during darkness. If a piping rupture or tank failure occurred during darkness, the spill may not be detected promptly. Spill volumes under this scenario could be large. (Refer to corrective action stated in #9.5 above).

9.5.1.6 Sigsbee Park Service Station — Facility V-4022

The lighting is considered to be adequate.

9.5.1.7 Sigsbee Park Marina — Facility V-4186

The lighting is considered to be adequate.

9.5.1.8 Fleming Key Special Forces — Facility F-02

The lighting is considered to be adequate.

9.5.1.9 Saddlebunch Radio Transmitter Site — Facility J-1561

The lighting is considered to be adequate.

Regulatory Deficiencies
<ul style="list-style-type: none"> There is not sufficient lighting at the following tanks: Boca Chica Tanks A-229A and B; A-322 E, F, and G; A-419 D, E; A-924-R; A-925-R; A-1006-R; A-1103; A-4053-R; A-4085-R. Trumbo Point tank C-1 (to be relocated to Truman Annex building 284). Project in process of contract award and execution.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> None

10.0 LOADING/UNLOADING OPERATIONS

For the purpose of this section of the SPCC Plan, a fuel loading/unloading station is defined as a tank truck fueling area where fuel is transferred to “and” from large bulk ASTs and USTs. This section does not apply to intra-facility transfer of fuel by government vehicles or transfer of fuel to ancillary (i.e., end-use containers such as generators or small ASTs). NAS Key West Loading/unloading stations covered in this SPCC Plan include the Boca Chica Truck Fill Stand, the emergency Bulk Tank Farm Truck receiving station, the Boca Chica service station, and the Sigsbee Park service station.

NAS Key West practices very stringent discharge prevention practices during fuel transfer and fueling operations in accordance with NATOPS fuel transfer procedures. These procedures are maintained at the Boca Chica Truck Fill Stand admin office.

Prevention practices at tanks maintained across the various Navy facilities adhere to the following spill prevention protocols:

GENERAL FUEL — TRANSFER PROCEDURES

Before fuel transfer

1. Use a spotter during backing of tank truck.
2. Use a spotter during movement of tank truck at or near loading/unloading rack.
3. Set parking brake.
4. Ground truck electrically.
5. Ensure female Kam-Loc is wired or locked shut and valve is closed, if applicable.
6. Set fuel meters to zero.
7. Use dead-man switch, if equipped on truck.
8. Ensure tank valves are open prior to fuel transfer.
9. Ensure driver is aware of fuel transfer amount — no overfills.

During fuel transfer

1. Pump fuel.
2. Monitor the transfer of fuel.

After fuel transfer

1. Evacuate fuel hose after fuel transfer and prior to hose roll-up.
2. Close and lock tank caps
3. Record fuel transfer amount.
4. Check to be sure that all valves are closed and locked prior to truck departure.

Commercial vendors transferring fuel to base tanks are monitored by base personnel. Extreme caution is taken to prevent spills from trucks due to faulty connections or hose ruptures. The following procedures are followed during all fuel deliveries:

- Exercise extra precautions and diligence for deliveries during rainy weather. Fuel migration rates increase in water filled ditches and rain saturated soil and a reduced spill response time remains to prevent a spill from reaching waterways or sensitive ecological areas.
- Gauge tanks prior to filling to ensure adequate space available in the tanks for the product being delivered. A tank should never be topped off completely, adequate headspace at the top of the tank should be left to allow for product expansion.
- Storm drains in the immediate vicinity of the fueling operation should be covered with a flexible mat during fueling operations.
- Spill containment equipment shall be readily accessible and prepared for deployment during fueling operations.
- All used sorbent material shall be disposed of promptly and should not be allowed to remain on the ground or other surface where it could possibly cause further contamination. Used sorbent material shall be drummed and properly disposed by the Hazardous Waste Facility (293-2583).

Industry Standards Considerations:**INDUSTRY STANDARD CONSIDERATION:**

All transporters of oil to and from this facility are required to meet the minimum requirements and regulation established by the Department of Transportation. Loading/unloading procedures of hazardous materials, as defined in 49 CFR 172, at this facility are to meet the requirements of 49 CFR 177 Subpart B. Transporters who load/unload material at this facility must comply with the following requirements:

- Provide a qualified person to be in attendance at all times when a tank truck is loaded/unloaded.
- The attendant must be awake, have an unobstructed view of the tank truck, and be within 25 feet of the tank truck throughout the event.
- The attendant must be aware of the nature of the hazardous material which is to be loaded/unloaded, trained on the procedures to be followed in emergencies, authorized to move the tank truck, and have a means to move the cargo tank.
- Manholes and valves must be closed and secured during transport.

Additional requirements apply when the transporter is loading/unloading materials with flash points below 140 degrees Fahrenheit. These materials meet the DOT definition of a Class 3 flammable liquid. Combustible materials with flash points from 140 to 200 degrees Fahrenheit are not subject to these requirements.

- Unless the engine of the tank truck vehicle is to be used for the operation of a pump, the engine will not be running during the loading/unloading of the material.
- Bonding and grounding procedures for tanks trucks and containers during the transfer of material are to be implemented according to 49 CFR 177.837 (b) and (c). The current process for loading/unloading meets these requirements.
- Furthermore, NAS Key West follows extensive standard operating procedures for all fuel transfer operations as described in their operations manual.

INDUSTRY STANDARD CONSIDERATION:

An industry standard (Section 5.6 of NFPA 30) outlines the following loading/unloading operational guidelines that are applicable to NAS Key West:

- (1) Tank vehicle loading/unloading facilities should be separated from ASTs, buildings, and nearest property lines by a distance of 25 feet for Class I and Class II liquids and 15 feet for Class III liquids.
- (2) Loading/unloading facilities shall be provided with drainage systems or other means to contain spills.
- (3) Loading/unloading facilities that are used to load liquids into tank vehicles through open domes shall be provided with a means of electrically bonding to protect against static electricity hazards.
- (4) Equipment used for the transfer of Class I liquids between tanks shall not be used for Class II or Class III liquids.
- (5) Liquids shall be loaded only into tanks whose material of construction is compatible with the chemical characteristics of the liquid (see Section 5.6.10 of NFPA for detailed loading/unloading guidelines).
- (6) To prevent hazards due to a change in flash point of liquids, no tank car (rail) or tank vehicle that has previously contained a Class I liquid shall be loaded with a Class II or Class III liquid unless proper precautions are taken.

10.1 Adequate Secondary Containment for Vehicles

112.7(h)(1): Where loading/unloading area drainage does not flow into a catchment basin or treatment facility designed to handle spills, use a quick drainage system for tank car (rail) or tank truck loading and unloading areas. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car (rail) or tank truck loaded or unloaded at the facility.

Table 10-1 summarizes three active AST fuel loading and unloading stations at NAS Key West; Boca Chica Truck Fill Stand, Boca Chica Tank Farm emergency receiving station, and the Boca Chica service station.

Table 10-1 Tank Truck Loading Stations		
Location	Potential Spill/Containment (Gallons)	Potential Release Discharge Point
Boca Chica Truck Fill Stand	8,000 (Truck)/15,000 @ Rack /37,000 @ Parking area /3000 @ O/W Separator	To an Oil Water Separator that discharges to the storm water
Boca Chica Tank Farm Emergency Receiving Station:	8,000 (Truck)/10,700	
Boca Chica Service Station:	8,000 (Truck)/0	Parking lot and sewer (Containment structure not complete)

The following operational procedures are employed during fuel loading activities to prevent a release from entering navigable waterways :

Boca Chica Truck Fill Stand

- The truck loading rack is situated within curbed concrete containment. The tank truck parking area incorporates sloped features and curbing to ensure containment. This containment area is equipped with a drainage collection gutter and slide gate. The gutter is sewered to an adjacent oil water separator that ensures capture of any fuel spillage. The truck rack likewise connects to the oil water separator via sewers.
- Designated facility personnel observe each loading event in its entirety. Facility personnel ensure that the proper procedures are employed, that correct material is being loaded and that the appropriate personnel are notified immediately if a release occurs (as previously described). Because this facility operates 24-hours per day, 7 days per week, emergency response personnel are available onsite. Prior to the initiation of loading activities, designated facility personnel ensure that the appropriate secondary containment drains are closed and locked. The purpose of this task is to ensure that if a release does occur, it will be prevented from entering the storm water drainage system.
- An emergency contact number is posted at each loading area, and the designated facility personnel have access to a radio or other device to notify emergency response personnel if a release occurs. The designated employee who observes the loading event is trained in the SPCC Plan training discussed in Section 8.
- Spill kits are maintained and accessible at each fuel loading area. Facility personnel who are responsible for observing loading activities are trained in the use of the contents of

the spill kit. The designated employee who is responsible for the inspection of the fuel loading areas (Table 7-1) is also responsible for ensuring that the spill kit is replenished promptly.

- Should a release occur during a loading event, the designated employee who observed the procedure notifies appropriate personnel to vacuum the contents of the secondary containment structure beneath the fuel transfer valves for offsite disposal.

Boca Chica Tank Farm Emergency Receiving Station:

This loading/unloading station is used very infrequently and only in the event the four inch fuel supply line from the Trumbo Point Key West Pipeline Terminal is out of service. In this situation, tank trucks are used to fill the ASTs. The fueling manifold and truck parking site are located with a curbed concrete containment area.

Boca Chica Service Station:

The tank truck unloading site for the three gasoline and diesel ASTs has been furnished with raised concrete curbing along the length of the unloading station. The roll-over curbs at each end are missing; therefore no effective containment is provided.

INDUSTRY STANDARD CONSIDERATION:

The fuel loading operations are in general conformance with industry standards. Section 5.6 of NFPA 30 specifies that "loading and unloading facilities shall be provided with drainage systems or other means to contain spills" and Section 9.3.1 of API 2610 specifies that "spill containment for truck loading rack areas *should* include concrete pavement with a raised edge (curbing) or other spill containment method provided around the loading rack perimeter. The raised edge *should* be sloped or rounded to facilitate truck access. Concrete joints *should* be sealed with petroleum resistant sealants to prevent leaks to subgrade. Pavement *should* be sloped toward catch basins and drains that are piped to containment or treatment facilities."

Regulatory Deficiencies
<ul style="list-style-type: none"> • One of the three tank truck loading stations does not have secondary containment. In order to comply with this regulation, complete construction of containment at Boca Chica service station. (Install roll-over curbs at each end of loading station). Project in process of contract award and execution.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

10.2 Warning or Barrier System for Vehicles

112.7(h)(2): Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle brake interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

Signs are posted at the fuel loading stations listed in Table 10-1 to prevent vehicular departure before complete disconnect of transfer lines. Additionally, designated personnel are present throughout the fuel loading process, and verify that all fuel lines have been properly disconnected, and all valves properly closed prior to vehicular departure.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

10.3 Vehicles Examined for Lowermost Drainage Outlets Before Leaving

112.7(h)(3): Prior to filling and departure of any tank car (rail) or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.

At all fuel loading stations, designated personnel are present during the loading process. Following each delivery, the area and tank truck connections are examined for leakage. Before tank truck departure, the contractor and tank custodian perform a walk-around inspection of the tanker to verify that all transfer lines have been disconnected and properly stowed and drains and valves are closed.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

THIS PAGE INTENTIONALLY LEFT BLANK

11.0 BRITTLE FRACTURE OR OTHER CATASTROPHE OF FIELD-CONSTRUCTED TANKS

112.7(i): If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.

NAS Key West has implemented an inspection and maintenance program consistent with the standards and protocols established with API 653 — Tank Inspection, Repair, Alteration, and Reconstruction. The program addresses all aspects associated with maintenance inspections, repair, alteration, relocation, and reconstruction of tanks, as applicable.

The program is designed to assess and confirm suitability for continued service in instances where tank inspections indicate a change of service from original physical condition has occurred.

The inspection program incorporates procedures for the assessment of tanks for suitability for continued operation or change of service with respect to brittle fracture.

NAS Key West has established an inspection frequency schedule for each tank that includes non-routine external in service and internal out of service inspections, and also address non-destructive testing options and protocols outlined in API 653. Inspection frequencies have been established based on historical inspection records and known or projected tank wall corrosion rates. Inspection frequencies can vary between 5 and 20 years. Refer to Table 7-1.

Construction, inspection, repair/alteration history records and reports consistent with API 653 are required to be maintained for the life of the tank system. Only authorized API certified inspectors will support these non-routine inspection and maintenance actions.

Bulk Storage Tanks at Boca Chica Tank Farm

Tanks 938, 944, 945, and 958 are field fabricated tanks bulk fuel storage tanks and as such are required to be evaluated for Brittle Fracture Evaluation. These four tanks were subject to extensive modifications and API 653 inspections and integrity testing between 2004 - 2006.

Future Service Intervals for API -653 Inspections

Tank No. **A938** re-inspection frequency as per the API-653 inspection conducted by HMT on October 4, 2005:

Internal Inspections: The next internal inspection should be conducted within **10** years if all areas of corrosion resulting in a remaining thickness less than 0.270 inch are repaired. If the bottom has thin-film coating applied (after repairs), then the next inspection should be conducted within **20** years, provided that the expected life of the coating meets or exceeds this interval (ref. API 653, Para. 4.4.7).

External Inspections: The next external API 653 inspection should be conducted within **5** years and no later than October 2010 (Ref. API 653, Para. 6.3.2.1).

Tank No. **A944** re-inspection frequency as per the API-653 inspection conducted by HMT on May 25, 2006:

Internal Inspections: The next internal inspection should be conducted within **10** years if all areas of soil side corrosion resulting in a remaining thickness of 0.265 inch or below are repaired and all areas of internal corrosion with a pit depth of 0.047 inch or greater are repaired. If all such areas are repaired and the bottom is internally coated, the next inspection should be conducted within **20** years, provided that the expected life of the coating meets or exceeds this interval (ref. API 653, Para. 4.4.7).

External Inspections: The next external API 653 inspection should be conducted within 5 years and no later than May 2011 (Ref. API 653, Para. 6.3.2.1).

Tank No. A945 re-inspection frequency as per the API-653 inspection conducted by Naval Facilities Engineering Services Command on 21 and 26 January 2004:

External Inspections: For the tank shell, repeat external UT measurements shall be taken within **5** years, and an external visual inspection within **2.5** years (API 653, section 6.3). The current shell life of 9.5 years (see Appendix F) may be adjusted following these follow up UTs.

Internal Inspections: For the tank floor, the next internal inspection should be performed within a time not to exceed 10 years (API 653, section 6.4.2).

Tank No. A958 re-inspection frequency as per the API-653 inspection conducted by HMT on 22 February 2006.

Internal Inspections: The next internal inspection should be conducted within **20** years if all areas of soil side corrosion resulting in a remaining thickness of 0.285 inch or below are repaired and all areas of internal corrosion with a pit depth of 0.027 inch or greater are repaired (Ref. API 653, Para. 4.4.7).

External Inspections: The next external API 653 inspection should be conducted within **5** years and no later than February 2011 (Ref. API 653, Para. 6.3.2.1).

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

THIS PAGE INTENTIONALLY LEFT BLANK

12.0 CONFORMANCE WITH OTHER APPLICABLE REQUIREMENTS

112.7(j): In addition to the minimal prevention standards listed under this section, include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.

ASTs, with capacities of 550 gallons and larger, and USTs are regulated under FLA DEP 62-761 Petroleum Storage Tank Regulations. NAS Key West is also regulated by FLA DEP 62-740, Petroleum Contact Water Regulations. NAS Key West maintains a very proactive regulatory compliance program administered by the Environmental Department. Discussions regarding conformance with the requirements of FLA DEP 62-740, FLA DEP 62-761, as well as American Petroleum Institute, National Fire Protection Association, and Steel Tank Institute standards, and other industry standards are integrated where applicable through out this SPCC Plan.

Regulatory Deficiencies
<ul style="list-style-type: none"> As noted in various portions of this SPCC Plan
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> As noted in various portions of this SPCC Plan

THIS PAGE INTENTIONALLY LEFT BLANK

13.0 DRAINAGE CONTROL

13.1 Drainage from Diked Storage Areas

112.8(b)(1): Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

All bulk fuel tanks are located in diked storage areas with drainage valves and/or sumps. Manually operated normally sealed closed drainage valves secure all bulk fuel tank diked storage areas. The smaller tanks/containers are also located in diked areas (i.e., curbed structures) with drainage pipes with manually operated normally sealed closed control valves at all but one location, noted below.

Regulatory Deficiencies:
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations:
<ul style="list-style-type: none"> • None

13.2 Valves Used on Diked Storage Areas

112.8(b)(2): Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an onsite wastewater treatment plant, you must inspect and may drain uncontaminated retained storm water, as provided in 112.8(c)(3)(ii), (iii), and (iv).

Flapper type drain valves are not used for secondary containment structures at NAS Key West. The valves of choice are gate valves. All accumulated rainwater is inspected per Section 14.3 prior to discharge.

Regulatory Deficiencies:
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations:
<ul style="list-style-type: none"> • None

13.3 Plant Drainage Systems from Undiked Areas

112.8(b)(3): Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.

All oil storage structures within the facility are contained in diked or otherwise contained areas, except for the transformer areas, mobile tanks and trucks at Public Works, and small arresting gear tanks. These areas are considered low risk. This facility is manned 24-hours per day, 365 days per year and personnel are trained to notify the proper personnel if a release is discovered.

Small sections of the two six-inch fuel transfer lines (extending from the Boca Chica Tank Farm to the Boca Chica Truck Fill Stand) are aboveground and located outside the Tank Farm secondary containment dikes. Potential spillage would flow into adjacent lagoons. A series of culvert and response measures identified within the NAS Key West facility Response Plan would prevent migration of oil into navigable waters.

Regulatory Deficiencies:
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations:
<ul style="list-style-type: none"> • None

13.4 Final Discharge of Drainage

112.8(b)(4): If facility drainage is not engineered as in 112.8(b)(3), equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

Other than where specifically noted in this section of the SPCC Plan, the existing system complies with 40 CFR 112.7(e)(1). Therefore, there is no additional requirement to have a “diversion system” to “return the oil to the plant” in an uncontrolled spill.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

13.5 Facility Drainage Systems and Equipment

112.8(b)(5): Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two "lift" pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in §112.1(b) in case there is an equipment failure or human error at the facility.

NAS Key West maintains the following oil-water separators that drain into the sanitary sewer system at Boca Chica: OWS-A-318 at the Public Works Department's Vehicle Wash Rack, OWS-A-443 at the Public Works Department's Heavy Equipment Building, OWS-A-981 at the Aircraft Wash Rack, and OWS-A-98 at the AIMD Ground Service Equipment Building. These separators are subject to routine inspections. Periodically, as required, accumulated oil is removed by vacuum truck for disposal.

Regulatory Deficiencies:
<ul style="list-style-type: none"> Check each of the oil-water separators that discharge to the Boca Chica wastewater treatment plant. Ensure that, should the pump fail, that an alarm be sounded or a backup pump be installed to prevent discharges of oil caused by overfilling. Project in process of contract award and execution.
Best Engineering Practice Recommendations:
<ul style="list-style-type: none"> None

THIS PAGE INTENTIONALLY LEFT BLANK

14.0 BULK STORAGE TANKS/SECONDARY CONTAINMENT

14.1 Tank Compatibility with Its Contents

112.8(c)(1): You must not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

All aboveground oil storage tanks are made of material (i.e., steel) that is compatible with its contents (i.e., jet fuel, marine diesel fuel, heating fuel oil, vehicular diesel, unleaded gasoline, waste oil, lubrication oil) and therefore conform with the relevant industry standard (NFPA 30 Flammable and Combustible Liquids Code Section 5.6.10.1). All generators and transformers are also built of materials (i.e., steel) that are compatible with its contents (i.e., JP-5). See Table 3-1 for tank specific details such as: content/capacity, tank and pipe material, year installed and good engineering practices (i.e., overfill and leak alarms, etc.)

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

14.2 Diked Area Construction and Containment Volume for Storage Tanks

112.8(c)(2): You must construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

With the exception of the Bulk Fuel Farm Tanks all bulk storage tanks are constructed so that secondary containment is provided for the largest single tank plus sufficient freeboard to allow for precipitation. Table 3-1 summarizes the secondary containment capacities measured for each tank. Containment capacities are sufficient to meet the intent of 40 CFR 112.8 contain 110% of the contents of the largest tanks as required by FLA DEP 62-761.500(3)(c), with the exception of the tanks at the Boca Chica Tank Farm.

14.2.1 Boca Chica Tank Farm

The tanks at the Boca Chica Tank Farm has been upgraded by the installation of a new berm wall impervious barrier liner within the berm areas. The tanks now meet the intent of 40 CFR 112.8 and the specific impermeability requirements of FLA DEP 62-761.500(1)(e). Tanks #938,

#944, #945 and #958 have been repaired under API 653 inspections and tests were performed during October/November 2005 - 2006 certifying Tanks 938, 944, 945, and 958 suitable for service provided repair recommendations were implemented and safe fill height recommendations were adhered to. Following are API 653 inspection recommended safe operating limits and actual limitations imposed by Operations:

Tank	API 653 Safe Fill Height	Actual Operating Maximum High Level	Actual Operating High — High Level
AST 938	18.875'	16'-6 9/16"	16'-7"
AST 944	20'	17'-2 3/16"	17'-5"
AST 945	18.75'	16'-2 11/16"	16'-5"
AST 958	30'	28'-0"	28'-8"

Secondary containment dikes at the Tank farm are constructed of in-situ soils and limestone and have an impervious vinyl barrier within the berm walls; constructed in 2006. Conditions of the perimeter embankments are generally good and would likely halt rapid widespread migration of oil in the event of a major release. Secondary containment capacity estimates are provided in Table 3-1. These estimates, based on field measurements, indicate individual tank secondary containment capacities to be insufficient based on 40 CFR112 SPCC requirements. Reduced capacity is likely the result of natural sloughing of the separating embanked dike walls. However, dike walls separating AST 945 and 958, and 944 and 938, are breached thereby expanding containment capacities to acceptable limits. The FLA DEP conditional approval eliminates this issue as a concern for NAS Key West.

Florida Petroleum Storage Tank Regulations specify certain requirements not specifically addressed within the Alternate Procedures document noted above: monthly alarm history print-out, cathodic protection system check — every month. The alarm system is not currently configured to permit printing.

The Bulk Tank interstice monitoring wells (4) were observed to be filled with water. Conversations between Mr. Frank Benkalowycz — Petroleum Partners and Mr. Lee Shokes — SOUTHNAVFACENGCOM suggest the well system is designed/intended to be isolated from groundwater and should be maintained in dry state.

Regulatory Deficiencies:
<ul style="list-style-type: none"> ▪ Investigate the status and integrity of the Tank release detection system. Develop an appropriate operating, monitoring and testing procedure for implementation by tank farm operations staff. Project in process of contract award and execution.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

14.2.2 Ancillary Fuel Tanks – Lack of Adequate Secondary Containment

Regulatory Deficiencies:
<ul style="list-style-type: none"> • 6 qty. 60 gallon-new product rack inside CBMU 202 building lacked secondary containment. • Maintenance truck w/600 gallon piggy-backed fuel tank parked at CBMU 202 Building was parked outside with no secondary containment.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

14.3 Diked Area, Inspection and Drainage of Rainwater

112.8(c)(3): You must not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

- (i) Normally keep the bypass valve sealed closed.
- (ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in 112.1(b).
- (iii) Open the bypass valve and reseal it following drainage under responsible supervision; and
- (iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with 40 CFR 122.41(j)(2) and 40 CFR 122.41(m)(3).

Following each major rainfall event, designated facility personnel, who are trained in SPCC Plan procedures, inspect diked areas to determine if the rainwater needs to be removed from the structure, and to assess whether a oil sheen is present. Secondary containment areas are drained when necessary prior to impacting grounds maintenance or fueling operations. Most often, the water inside the containment areas is removed by means of evaporation. However, when necessary, a fuel operator inspects the water to be drained, opens the drain valve, and drains the area into the applicable storm water drainage ditch. The date, time, location and name of individual that performed the operation are logged into the secondary containment drainage log (Appendix C), which is located in the Environmental Department’s Office.

If free product or a sheen is observed, the SPCC Program Manager or the Oil Spill Manager are immediately notified to determine the source of the sheen (e.g., overfill or leak). The contaminants are removed by a vacuum truck and transported offsite for disposal. For smaller

tankage, rainwater that does not have a sheen is either released to the ground through drainage valves or pumped onto the storm water drainage system. Once the source of the sheen is determined, appropriate corrective measures are taken.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

14.4 Corrosion Protection of Buried Metallic Storage Tanks

112.8(c)(4): You must protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

No completely buried metallic storage tanks are present at NAS Key West; therefore, this section is not applicable.

Regulatory Deficiencies
<ul style="list-style-type: none"> • Not Applicable
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • Not Applicable

14.5 Corrosion Protection of Partially Buried Metallic Tanks

112.8(c)(5): You must not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

No partially buried or bunkered metallic tanks are present at NAS Key West; therefore, this section is not applicable.

Regulatory Deficiencies
<ul style="list-style-type: none"> • Not Applicable
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • Not Applicable

14.6 Aboveground Tank Periodic Integrity Testing

112.8(c)(6): You must test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as

floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

Bulk fuel facility field fabricated tanks: undergo a well defined and very extensive inspection program that includes daily, weekly, monthly, and periodic inspections. The Bulk Fuel Farm tanks have been constructed to API 650 standards. An API 653 inspection and testing program is employed in support of tank maintenance and repair projects to ensure and certify continued suitability for service. Records are maintained by the Environmental Department. All four tanks were last subject to API 653 inspections and integrity testing in 2006. Documentation of a comprehensive API 653 inspection program including inspection frequency schedules for the tanks identified in 1999.

FLA DEP Petroleum Storage Tank Regulation 62-761 requires additional monthly release detection monitoring, alarm history printout/recordkeeping, and bi-monthly inspection of cathodic protection systems. Records of cathodic system inspections are located in the Environmental Department Office. The current tank gauging system is not equipped to facilitate printouts. Monthly release detection inspection records are maintained but as note in as noted in Section 14.2.1, the interstitial release detection system requires review.

Other oil storage tank systems: include above-ground shop fabricated tanks of single and double wall steel, steel and concrete (convault), and fiberglass double wall construction. These tank systems undergo visual monthly inspections that address tank condition, leak detection leakage, foundation, piping, alarms and controls, ancillary equipment and features, and containment and drainage systems, as applicable. Responsibility for inspections is delegated across the various departments.

In accordance with this 40 CFR 112.7(e), it is considered prudent to adopt the Steel Tank Institute "Standard for Inspection of In-Service Shop Fabricated Tanks for Storage of Combustible and Flammable Liquids, SP001-03" as the governing standard for all non-field fabricated above-ground tanks, irrespective of materials of construction (with exception of any possible pressure testing requirements for fiberglass tanks). SP001-03 inspection and integrity testing criteria embrace monthly, quarterly, yearly, and ten year inspection procedures that depend on specific tank considerations such as whether the tank: is in direct contact with the

ground or not, has a manway, or is of single or double wall construction. The standard also addresses specific inspection requirements associated with tank incidents. Specific inspection items address presence of water within the primary tank, release detection within interstices and/or monitoring wells, piping connections, presence of water and bacteria in tanks/interstices, vents, gaskets, foundations, corrosion, etc.

Underground storage tanks: In accordance with FLA DEP 62-761, NAS Key West conducts annual tightness testing on its UST tanks. Records are maintained by the environmental Department. USTs of fiberglass reinforced plastic double wall construction are equipped with inertial monitors. These tanks are pressure and/or vacuum tested at the time of manufacture and again pressure tested after installation to certify suitability for use. Manufacturers, such as Solution Containment, recommend ongoing monitoring of the interstitial gauges to ensure ongoing integrity of tank systems; Solution Containment provides no other integrity testing recommendation with the exception for tanks located in California, where periodic vacuum testing under certain situations is being considered.

Piping Systems: In accordance with FLA DEP 62-761, NAS Key West conducts annual tightness testing on the two six-inch fuel transfer lines that extend between the Bulk fuel Tank farm and the Boca Chica Truck Fill Stand. The piping manifold is equipped with a tightness testing station. Records are maintained by the environmental Department.

NAS Key West also conducts API 570, "Piping Inspection Code, Inspection, Repair, Alteration, and Rerating on In-Service Piping Systems", inspections on the two six-inch fuel transfer lines between the Bulk Fuel Farm and the Truck Fill Stand. The most recent inspection occurred in 1999. Corrosion rate based determinations recommend continued testing at ten year intervals. Other piping systems across the activity, associated with shop fabricated tanks and underground storage tanks are small diameter and either completely above ground or below grade protected by double walls. Monthly inspections and release detection monitoring as addressed above and within the SPCC Plan sufficiently addresses inspection requirements.

Regulatory Deficiencies
Field Fabricated Tanks:
<ul style="list-style-type: none"> • None

Regulatory Deficiencies
Shop-Fabricated Tanks: <ul style="list-style-type: none"> Implement inspection, testing and recordkeeping procedures outlined in the Steel Tank Institute "Standard for Inspection of In-Service Shop Fabricated Tanks for Storage of Combustible and Flammable Liquids, SP001-03".
Best Management Practice Recommendations
<ul style="list-style-type: none"> Obtain certification of integrity testing from the manufacturer or installer prior to placing the tank into service. Follow the inspection frequency schedule for each tank that includes routine in-service external inspections and also address non-destructive testing options and protocols outlined in API 653 as outlined in Section 11. Inspection frequencies should be established based on historical inspection records and known or projected tank wall corrosion rates. Anticipated inspection frequencies can vary between 5 and 10 years.

14.7 Control of Leakage through Internal Heating Coils

112.8(c)(7): You must control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

No tanks at are equipped with internal heating coils at NAS Key West; therefore, this section is not applicable.

Regulatory Deficiencies
<ul style="list-style-type: none"> Not Applicable
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> Not Applicable

14.8 Liquid Level Sensing Devices

112.8(c)(8): You must engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

-
- (i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.
 - (ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.
 - (iii) Direct audible or code signal communication between the container gauger and the pumping station.
 - (iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.
 - (v) You must regularly test liquid level sensing devices to ensure proper operation.
-

As indicated in Table 3-1, good engineering practices at the various tanks and tank systems include the following:

- Automatic Tank Gauge
- Automated Fuel Handling Equipment System
- Low Level Alarm
- High Level Alarm
- High / High Level Alarm
- System Shut Off
- Leak Detection
- Cathodic Protection
- Ground Water Monitoring Network
- Direct Communications between Tank Gauger and the Fuel Provider

The high liquid level alarms for the Boca Chica Fuel Farm and service station tanks are regularly tested to ensure proper operation. Bulk fuel storage tank overfill protection and leak detection is provided by vigilant monitoring of tank operating levels, high level alarms, and an extensive inventory reconciliation process between the NAS Key West Bulk Fuel and the Key West Pipeline Company, and between the Fuel Farm and the Truck Fill Stand.

INDUSTRY STANDARD CONSIDERATION:

In addition to the general fuel loading guidelines outlined in Section 10, NAS Key West personnel should be cognizant of the following overfill protection guidelines outlined in API 2350 Section 2.2.2:

- (1) If an electrical or mechanical failure occurs that affects the level detectors, product receipt shall stop and not recommence until (a) the detectors are functioning properly or (b) manual operations and procedures are implemented (as outlined in Section 10).
- (2) When only one detector is used, this high-high level detector shall be located at or above the safe fill levels and shall alarm/signal to provide sufficient time to shut off or divert product flow before the overfill is reached.
- (3) When used for overfill protection, the high-high level detector shall be independent of the automatic tank gauge system to provide greater reliability and to comply with the requirements of NFPA 30 (Section 2-10).
- (4) If a tank is to be filled above its normal fill level (normal capacity) up to its safe fill level (tank rated capacity), a trained and qualified person shall be assigned by the operator to be present at the tank. *API does not recommend routinely filling a tank above the safe fill level due to the increase in overfill risk.*
- (5) Any shutdown or diversion procedures should be compatible with the transporter's operations to prevent consequential damage such as hydraulic shock or overpressuring the piping system.

Regulatory Deficiencies

- Tank bottom Cathodic Protection Inoperable for A-945 and A-958. During a May 2007 Cathodic Protection Survey it was noted that defective ammeters on two AST rectifiers will be replaced during the next bi-annual survey. **This repair work is scheduled for November 2007.**
- The following tanks have inoperable interstitial monitoring gauges: A-649-R, A-902-BR, A-929-B, A-935-R, 1020R, 1274-R, L47, A-4054, A-4085-R, and V-4114-R. **This repair work is scheduled for September 2007.**

Best Engineering Practice Recommendations

- None

14.9 Observation of Disposal Facilities for Effluent Discharge

112.8(c)(9): You must observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in §112.1(b).

Wastewater discharges are routed to one of two wastewater treatment systems for NAS Key West. The Boca Chica facility's wastewater is discharged to the Boca Chica Wastewater Treatment Plant (WWTP). This facility discharges its effluent by groundwater injection. No seep to surface water is expected from this discharge.

Regulatory Deficiencies

- None

Best Engineering Practice Recommendations

<ul style="list-style-type: none"> • None
--

14.10 Visible Oil Leak Corrections from Tank Seams and Gaskets

112.8(c)(10): You must promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

NAS Key West maintains a very proactive and distributed facility inspection program. Problems and repairs are addressed in very expedited fashion.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

14.11 Appropriate Position of Mobile or Portable Oil Storage Tanks

112.8(c)(11): You must position or locate mobile or portable oil storage containers to prevent a discharge as described in §112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

Table 3-1 contains a list of mobile tank and trucks at NAS Key West. Mobile or portable oil storage tanks are used in daily operations at this facility. They are used to fuel and collect waste oils. Mobile tanks and trucks are parked at the truck fill stand parking area when not in use. The truck fill stand tanker truck parking area has secondary containment. The containment roll-over curb is excessively high and causes damage to tanker truck undercarriages during routine operations. Tanker trucks are parked outside of containment during the day to avoid problems. They are parked within containment during non-business hours.

Regulatory Deficiencies
<ul style="list-style-type: none"> • Tank truck containment design at the Boca Chica truck fill stand precludes parking of tank trucks within containment during operational hours. The tanker truck parking area containment roll-over curb needs be modified to mitigate damage to vehicles. A work order to modify the curbing is in process. DESC approves project, pending contract award.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

15.0 FACILITY TRANSFER OPERATIONS, PIPING AND PUMPING

15.1 Buried Piping Installation Protection and Examination

112.8(d)(1): Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in 40 CFR 280 or a State program approved under 40 CFR 281. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as indicated by the magnitude of the damage.

The buried pipelines at the Boca Chica facility are contractor owned and operated and are not included in this SPCC plan. Once the Key West Pipeline Company's pipeline enters the Boca Chica Fuel Farm (at the first shut off valve), it becomes the responsibility of NAS Key West. One of three bulk transfer pipelines passing beneath the concrete staircase (along the north dike wall and adjacent pumphouse) is not protected within a double-walled casing pipe and is therefore in contact with soil. This creates corrosion potential.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

15.2 Not In-Service and Standby Service Terminal Connections

112.8(d)(2): Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

Terminal connections in the Boca Chica truck fill stand and the Boca Chica Tank Farm are capped when not in use. Fuel origin is marked on all not in service and standby service terminal connections. Pipelines that are out of service are evacuated and blank flanged or a blind/spectacle flange is used; except as noted below.

The Bulk Tank Farm Building 929 Top-Off Station has reportedly been out-of-service for over 4 years. Although the electrical system has been deactivated, the piping system remains connected to operational pipelines. The inlet isolation valve (not locked) is maintained in the closed position but apparently leaks as evidenced by occasional fuel buildup in the on-line fuel filter (observed via sight glass). Operations staff periodically drains the pipeline and transfer recovered fuel to the adjacent used JP 5 AST for disposal. The present situation presents an unnecessary risk.

Regulatory Deficiencies
<ul style="list-style-type: none"> Isolate the Bulk Tank Farm Building 929 top off station from the piping system via blind flange; and drain the system. Pending contract award by DESC.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> None

15.3 Pipe Supports Design

112.8(d)(3): Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

Pipe supports at NAS Key West are designed to minimize abrasion and corrosion, and to allow for expansion and contraction.

Regulatory Deficiencies
<ul style="list-style-type: none"> The following tanks have inadequate piping supports: tanks A-322-E, F, & G, A-437 (wooden blocks), A-1020-R, A-1274, 1350-R, 1351-R, A-4010, D-1292-BR, and F-02. Pending contract award by DESC.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> None

15.4 Aboveground Valve and Pipeline Examination

112.8(d)(4): Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

Aboveground valves and pipelines are examined monthly (and daily) in accordance with the aboveground tank monthly routine inspections outlined in Section 7 (Table 7-1) to satisfy FLA DEP 62-761.610(3)(b). Operational personnel are trained and instructed to notify the individuals listed in Section 2 any time leaks or signs of deterioration are observed.

Regulatory Deficiencies
<ul style="list-style-type: none"> The following tanks have moderate to severe piping corrosion: tanks A-132, A-322-E, F, & G, A-648-R (leaking pipe), A-649-R, A-924-R, A-925-R, A-935-R, A-1020-R, V-1274-R, 1279-BR, 1292-BR, 1350-R, V-1552-BR, A-4010, A-4054, A-4082, V-4111 (leaking pipe), V-4114-R, A-4212 (Single wall pipe into fiberglass outer pipe-line cap dry rotted), L-47, and F-02. Project in process of contract award and execution.
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> None

15.5 Aboveground Piping Protection from Vehicular Traffic

112.8(d)(5): Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

Yellow concrete bollards are used in the vicinity of aboveground piping that is adjacent to roadways and tank truck loading stands at NAS Key West, except where noted below.

Regulatory Deficiencies
<ul style="list-style-type: none">• Tank C-5 at the Trumbo Point Fire Station needs bollards. In addition the piping from Tank 290-R at Truman Annex should be protected from large mowing equipment with bollards.
Best Engineering Practice Recommendations
<ul style="list-style-type: none">• None

THIS PAGE INTENTIONALLY LEFT BLANK

16.0 WRITTEN SPILL REPORT GUIDELINES

This section addresses written spill reporting requirements for government agencies and for internal recordkeeping requirements.

16.1 Amendment of SPCC Plans by Regional Administrator

According to 40 CFR 112.4^{*}, NAS Key West is required to report a spill event to the Regional Administrator of the Environmental Protection Agency if it meets either of the criteria shown at right:

-
1. Greater than 1,000 gallons of oil into or upon the navigable water of the United States or adjoining shorelines in a single spill event.
- OR
2. More than 42 U.S. gallons of oil in each of two discharges occurring within any 12-month period.
-

The owner or operator of the facility shall submit a written report within 60 days of the date of the spill. The following information must be provided in the report:

- Name of the facility
- Your name
- Location of the facility
- Maximum storage or handling capacity of the facility and normal daily throughput
- Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements
- An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary
- The cause of such discharge as described in §112.1(b), including a failure analysis of the system or subsystem in which the failure occurred

^{*} Amendment of SPCC plans by Regional Administrator

- Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence

- Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

16.2 Special Florida Reporting Requirements:

Florida regulations 62-761 require additional notifications as follows:

- **For onsite releases that do not reach navigable waters but pose potential hazard to human health or to the environment** — Contact the State Warning Point or Local Fire Department.
 - A copy of Discharge Report Form 62-761-900(1) (Included in Facility Response Plan Tab C) must be faxed to the County (Monroe County Health Department) within 24-hours.

- **For onsite spills meeting following criteria:**
 - 500 gallons petroleum product into dike.
 - 100 gallons petroleum product onto impervious surface or other secondary containment.
 - A copy of Incident Notification Form 62-761-900(6) (Included in Facility Response Plan Tab C) must be faxed to the County (Monroe County Health Department) within 24-hours.
 - 25 gallons of petroleum product onto pervious surface.

Regulatory Deficiencies
<ul style="list-style-type: none"> • None
Best Engineering Practice Recommendations
<ul style="list-style-type: none"> • None

Appendix A
Applicable Regulations
(40 CFR 110, 40 CFR 112, (Plus 2004-2006 Amendments),
FLA DEP 62-761 and FLA DEP 62-740)

ENVIRONMENT CODIFIED REGULATIONS
TITLE 40—PROTECTION OF ENVIRONMENT
PART 110—DISCHARGE OF OIL
[Sections of PART 110—DISCHARGE OF OIL]

[Sections of PART 110—DISCHARGE OF OIL

]

40 CFR 110.1 Definitions.

Terms not defined in this section have the same meaning given by the Section 311 of the Act. As used in this part, the following terms shall have the meaning indicated below:

[§110.1 introductory text revised at 61 FR 7421, Feb. 28, 1996]

"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" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"Deepwater port" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"Discharge" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"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; Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

[Amended at 58 FR 45035, Aug. 25, 1993]

"NPDES" means National Pollutant Discharge Elimination System;

"Offshore facility" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"Oil" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"Onshore facility" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"Person" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"Public vessel" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"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; and

"Vessel" [Removed]

[Removed at 61 FR 7421, Feb. 28, 1996]

"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.

40 CFR 110.2 Applicability.

[§110.2 revised at 61 FR 7421, Feb. 28, 1996]

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act.

40 CFR 110.3 Discharge of oil in such quantities as "may be harmful" pursuant to section 311(b)(4) of the Act.

[§110.3 heading and text amended at 61 FR 7421, Feb. 28, 1996]

For purposes of section 311(b) of the Act, discharges of oil in such quantities that the Administration has determined may be harmful to the public health or welfare of the environment of the United States 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.

40 CFR 110.4 Dispersants.

[Former §110.4 removed and former .8 redesignated as new .4 at 61 FR 7421, Feb. 28, 1996]
Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

40 CFR 110.5 Discharges of oil not determined "as may be harmful" pursuant to Section 311(b) (3) of the Act.

[§110.5 heading and text revised at 61 FR 7421, Feb. 28, 1996]
Notwithstanding any other provisions of this part, the Administrator has not determined the following discharges of oil "as may be harmful" for purposes of section 311(b) of the Act:

- (a) Discharges of oil from a properly functioning vessel engine (including an engine on a public vessel) and any discharges of such oil accumulated in the bilges of a vessel discharged in compliance with MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A; and
- (b) Other discharges of oil permitted under MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A; and
- (c) Any discharge of oil explicitly permitted by the Administrator in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

40 CFR 110.6 Notice.

[Former §110.6 removed and former .10 amended and redesignated as new .6 at 61 FR 7421, Feb. 28, 1996; corrected at 61 FR 14032, March 29, 1996]

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 section 311(b)(3) of the Act, immediately notify the National Response Center (NRC) (800-424-8802; in the Washington, DC metropolitan area, 202-426-2675). 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)

40 CFR 110.7 [Removed]

[§110.7 removed at [61 FR 7421](#), Feb. 28, 1996]

40 CFR 110.9 [Removed]

[§110.9 removed at [61 FR 7421](#), Feb. 28, 1996]

40 CFR 110.11 [Removed]

[§110.11 removed at [60 FR 33913](#), June 29, 1995]

ISSN 1529-7918

Copyright © 2003, [The Bureau of National Affairs, Inc.](#)

Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy. <http://www.bna.com/corp/index.html#V>

◀ Previous Page Next Page ▶



Federal Register

**Wednesday,
July 17, 2002**

Part II

Environmental Protection Agency

40 CFR Part 112

**Oil Pollution Prevention and Response;
Non-Transportation-Related Onshore and
Offshore Facilities; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL-7241-5]

RIN 2050-AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency or we) is amending the Oil Pollution Prevention regulation promulgated under the authority of the Clean Water Act. This rule includes requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans, and for Facility Response Plans (FRPs). The final rule includes new subparts outlining the requirements for various classes of oil; revises the applicability of the regulation; amends the requirements for completing SPCC Plans; and makes other modifications. The final rule also contains a number of provisions designed to decrease regulatory burden on facility owners or operators subject to the rule, while preserving environmental protection. We expect that today's rule will reduce the paperwork burden associated with SPCC requirements by approximately 40%. We have also made the regulation easier to understand and use.

DATES: This rule is effective August 16, 2002.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. The docket numbers for the final rule are SPCC-1P, SPCC-2P, and SPCC-7. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to review the docket by calling 703-603-9232. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you \$0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703-603-8769 (*fleischman.hugo@epa.gov*); or the RCRA/Superfund Hotline at 800-424-9346 (in the Washington, DC metropolitan area, 703-412-9810)(*epahotline@bah.com*). The Telecommunications Device for the Deaf (TDD) Hotline number is 800-553-7672 (in the Washington, DC metropolitan area, 703-412-3323). You may wish to visit the Oil Program's Internet site at *www.epa.gov/oilspill*.

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

- I. Entities Affected by This Rule
- II. Introduction

- A. Statutory Authority
- B. Background of This Rulemaking
- III. Summary of Major Rule Provisions
- IV. Discussion of Issues
 - A. Reorganization of the Rule
 - B. Plain Language Format
 - C. "Should to Shall to Must" Clarification
 - D. Professional Engineers (PEs)
 - 1. State Registration
 - 2. PEs Employed by the Facility
 - 3. Completion of Testing
 - 4. Site Visits
 - E. Electrical Facilities and Other Operational Users of Oil
 - F. Discretionary Provisions
 - G. Design Capabilities of Drainage Systems, Other than Production Facilities
 - H. Compliance Costs
 - I. Contingency Planning and Notification
 - J. Reproposal
 - K. Industry Standards
- V. Section by Section Analysis (Includes: Background, Comments, and Response to Comments)
- VI. Summary of Supporting Analyses
 - A. Executive Order 12866—OMB Review
 - B. Executive Order 12898—Environmental Justice
 - C. Executive Order 13045—Children's Health
 - D. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
 - E. Executive Order 13132—Federalism
 - F. Executive Order 13211—Energy Effects
 - G. Regulatory Flexibility Act
 - H. Unfunded Mandates Reform Act
 - I. Paperwork Reduction Act
 - J. National Technology Transfer and Advancement Act
 - K. Congressional Review Act

I. Entities Affected by This Rule

Entities Potentially Regulated by this Rule Include:

CATEGORY	NAICS Codes
Crop and Animal Production	111-112.
Crude Petroleum and Natural Gas Extraction	21111.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116.
Electric Power Generation, Transmission, and Distribution	2211.
Heavy Construction	234.
Petroleum and Coal Products Manufacturing	324.
Other Manufacturing	31-33.
Petroleum Bulk Stations and Terminals	42271.
Gasoline Stations/Automotive Rental and Leasing	4471/5321.
Heating Oil Dealers	454311.
Transportation (including Pipelines), Warehousing, and Marinas	482-486/488112-48819/4883/48849/492-493/71393.
Elementary and Secondary Schools, Colleges	6111-6113.
Hospitals/Nursing and Residential Care Facilities	622-623.

"NAICS" refers to the North American Industry Classification System, a method of classifying various facilities. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the Standard Industrial Classification (SIC) code. This table is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be regulated by this action. It lists the types of entities of which we are now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine

the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations and of today's rule, which explain the applicability of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

A. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or Act), 33 U.S.C. 1251, requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency. Executive Order 12777, section 2(b)(1), (56 FR 54757, October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same Executive Order, the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT), and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. See Executive Order 12777, section 2(i) regarding authority to redelegate. The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

B. Background of This Rulemaking

Part 112 of 40 CFR outlines the requirements for both the prevention of and the response to oil spills. The prevention aspect of the rule requires preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. This

rulemaking affects SPCC and FRP requirements. The SPCC requirements were originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or completely buried oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that, because of their location could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines.

We have amended the SPCC requirements a number of times, and those amendments are described in an October 22, 1991 **Federal Register** proposed rule. 56 FR 54612. In the October 1991 document, in addition to the description of past amendments, EPA proposed new revisions that involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. We have finalized some of those proposed revisions, with modifications, in this rule.

On February 17, 1993, we again proposed clarifications of and technical changes to the SPCC rule. We also proposed facility response planning requirements to implement the Oil Pollution Act of 1990 (OPA). 58 FR 8824. The proposed changes to the SPCC rule included clarifications of certain requirements, response plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. We promulgated the facility response planning requirements of the 1993 proposal on July 1, 1994, (59 FR 34070), and they are codified at 40 CFR 112.20–

112.21. We have finalized the proposed 1993 prevention requirements, with modifications, in this rule.

In 1996, EPA completed a survey and analysis of SPCC facilities. The survey was designed to ensure that data on the sampled facilities could be statistically extrapolated to the nation as a whole for all facilities regulated by EPA's SPCC regulation. We used the results of that survey and analysis to develop a proposed rule affecting SPCC facilities on December 2, 1997. 62 FR 63812. The survey and analytical results are part of the administrative record for this rulemaking.

The purpose of the 1997 proposal was to reduce the information collection burden imposed by the prevention requirements in the SPCC rule and the FRP rule without creating an adverse impact on public health or the environment. We also proposed changes in information collection requirements for facility response plans, but have withdrawn them in this rulemaking. Those changes would have affected the calculation of storage capacity at certain facilities for response plan purposes. 62 FR 63816. However, see new § 112.1(d)(6). The 1997 SPCC proposals, as modified, are finalized in this rule.

On April 8, 1999, we proposed revision to facility response plan requirements. 64 FR 17227. The main purpose of the proposal was to provide a more specific methodology for planning response resources that can be used by an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. We finalized that proposal on June 30, 2000. 65 FR 40776. The final rule included four new definitions that are applicable to all of part 112.

III. Summary of Major Rule Provisions

For your convenience, we have developed a table showing a summary of the major revisions in this rule. The table does not always use exact rule text, but summarizes rule provisions. For exact rule text, see 40 CFR part 112 (2000) for text of the current rule; for exact text of the revised rule, see the rule text following this preamble.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES

Current SPCC rule	Revised SPCC rule	Comment
Section 112.1: General Applicability		

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
<p>§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, or consume oil and oil products, and might reasonably be expected to discharge oil in harmful quantities into or upon navigable waters of the United States or adjoining shorelines.</p>	<p>§ 112.1(b): Explains that the SPCC rule applies to owners or operators of facilities that drill, produce, gather, store, process, refine, transfer, distribute, use, or consume oil and oil products, and might reasonably be expected to discharge oil in quantities that may be harmful into or upon navigable waters of the United States or adjoining shorelines, or waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or Deepwater Port Act, or affecting certain natural resources.</p>	<p>§ 112.1(b): The revised rule clarifies that users of oil are also subject to the rule. It also expands the scope of the rule to conform with the expanded jurisdiction in the amended Clean Water Act.</p>
<p>§ 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, found in § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.</p>	<p>§ 112.1(d)(2)(i): Section 112.1(d)(2) exempts from the rule a facility which meets both criteria specified in § 112.1(d)(2)(i) and (ii). The first criterion, § 112.1(d)(2)(i) is: the completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks, as defined in § 112.2, that are currently subject to all of the technical requirements of 40 CFR part 280 or all of the technical requirements of a State program approved under 40 CFR part 281. Also, the completely buried storage capacity of a facility does not include the capacity of completely buried tanks that are “permanently closed,” as defined in § 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.</p>	<p>§ 112.1(d)(2)(i): The revised rule provides that completely buried tanks subject to all of the technical requirements of parts 280 or 281 do not count in the calculation of the 42,000 gallon threshold. It also clarifies that permanently closed tanks do not count in the calculation of that threshold. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity contained in tanks.</p>
<p>§ 112.1(d)(2)(ii): The second criterion, found in § 112.1(d)(2)(ii) is: the storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided that no single container has a storage capacity of greater than 660 gallons. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers.</p>	<p>§ 112.1(d)(2)(ii): The second criterion found in § 112.1(d)(2)(ii) is: the aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aboveground storage capacity of a facility does not include the capacity of containers that are “permanently closed,” as defined in 112.2. The threshold applies to storage capacity contained in operating equipment as well as to storage capacity in containers.</p>	<p>§ 112.1(d)(2)(ii): The revised rule raises the threshold for aboveground storage capacity by eliminating the provision that triggers the requirement to prepare and implement an SPCC Plan if any single container has a capacity greater than 660 gallons. It maintains the greater than 1,320 gallon threshold. The revised rule also establishes a de minimis container capacity size to calculate aboveground storage capacity. Only containers with a capacity of 55 gallons or greater are counted in the calculation of aboveground storage capacity. The revised rule clarifies that permanently closed containers do not count in the calculation of aboveground storage capacity. The threshold continues to apply to storage capacity contained in operating equipment as well as to storage capacity in containers.</p>
<p>§ 112.1(d)(4): No counterpart in current rule</p>	<p>§ 112.1(d)(4): Exempts from the SPCC requirements completely buried storage tanks, as defined in § 112.2, as well as connected underground piping, underground ancillary equipment, and containment systems, when such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281, except that such tanks must be marked on the facility diagram as required by § 112.7(a)(3), if the facility is otherwise subject to this part.</p>	<p>§ 112.1(d)(4): Completely buried storage tanks subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 are no longer required to comply with SPCC provisions, except for the facility diagram. EPA estimates that under this new rule, most gasoline service stations will drop out of the SPCC program.</p>
<p>§ 112.1(d)(5): No counterpart in current rule</p>	<p>§ 112.1(d)(5): The revised rule exempts containers with a storage capacity of less than 55 gallons of oil from all SPCC requirements.</p>	<p>§ 112.1(d)(5): In response to comments, EPA has established a minimum size container for purposes of the regulatory threshold. Containers with a storage capacity of less than 55 gallons of oil are exempt from all SPCC requirements.</p>

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.1(d)(6): No counterpart in current rule	§ 112.1(d)(6): Exempts any facility or part thereof from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.	§ 112.1(d)(6): A facility or part thereof used exclusively for wastewater treatment will no longer be subject to prevention planning unless it is used to meet part 112 requirements.
§ 112.1(f): No counterpart in current rule	§ 112.1(f): Notwithstanding any regulatory exemptions, the Regional Administrator may require that the owner or operator of any facility subject to EPA jurisdiction under section 311(j) of the Clean Water Act (CWA), prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA. The rule includes notice and appeal provisions.	§ 112.1(f): This amendment gives the Regional Administrator authority to require preparation of an entire SPCC plan, or applicable part, by an owner or operator of a facility exempted from SPCC requirements when it becomes necessary to achieve the purposes of the CWA. This authority will be exercised on a case-by-case basis. The decision to require a Plan could be based on the presence of environmental concerns not adequately addressed under other regulations, or other relevant environmental factors, for example, discharge history.
Section 112.2—Definitions		
§ 112.2—definition of <i>facility</i> : No counterpart in current rule.	§ 112.2—definition of <i>facility</i> : “Facility” is defined as any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil transfer, oil distribution, and waste treatment, or in which oil is used. . . .”	§ 112.2—definition of <i>facility</i> : The revised rule clarifies that a facility may be as small as a piece of equipment, for example, a tank, or as large as a military base.
Section 112.3: Requirement to prepare and implement Spill Prevention, Control, and Countermeasure Plan		
§ 112.3(a): An owner or operator of an onshore or offshore facility in operation on or before January 10, 1974, that has had a discharge to navigable waters or adjoining shorelines, or, due to its location, could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare and fully implement an SPCC Plan, in writing and in accordance with § 112.7. The owner or operator must prepare the Plan within 6 months, and fully implement it as soon as possible, but not later than within 1 year.	§ 112.3(a): An owner or operator (O/O) of an onshore or offshore facility in operation on or before August 16, 2002, that has had a discharge as described in § 112.1(b), or, due to its location, could reasonably be expected to have a discharge as described in § 112.1(b), must prepare a written Plan in accordance with § 112.7 and any other applicable section within 6 months of the effective date of the rule, and implement it as soon as possible, but not later than within 1 year of the effective date of the rule. The O/O of facility that becomes operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003.	§ 112.3(a): For those facilities already in operation on the effective date of the rule, an owner or operator of a facility subject to the rule must prepare an SPCC Plan within the current time frame of six months. He may take up to an additional six months to implement the Plan. The revised rule extends this same time frame to amendments necessary to bring the Plan into compliance with rule revisions. An owner or operator of a facility becoming operational after August 16, 2002 through August 18, 2003 must prepare and implement a Plan not later than August 18, 2003.
§ 112.3(b): The owner or operator of an onshore and offshore facility that becomes operational after January 10, 1974, and that has had a discharge to navigable waters or adjoining shorelines, or could reasonably be expected to have a discharge to navigable waters or adjoining shorelines, must prepare an SPCC Plan. Unless the owner or operator is granted an extension of time to prepare and implement the Plan by the Regional Administrator, he must prepare the Plan within 6 months and fully implement it as soon as possible, but not later than within 1 year.	§ 112.3(b): The owner or operator of an onshore or offshore facility that becomes operational after August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), from that facility, must prepare and implement an SPCC Plan before beginning operations.	§ 112.3(b): The owner or operator of a facility that becomes operational after August 18, 2003 must now prepare and implement an SPCC Plan before beginning operations. The time frame in the current rule is up to 6 months for Plan preparation and up to 6 months more for Plan implementation.

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
<p>§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a Registered Professional Engineer (PE). By means of this certification the PE, having examined the facility and being familiar with the provisions of the SPCC rule, attests that the SPCC Plan has been prepared in accordance with good engineering practices. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements.</p>	<p>§ 112.3(d): No SPCC Plan is effective to satisfy the requirements of the SPCC rule unless it has been reviewed and certified by a PE. By means of this certification the PE attests that: (i) he is familiar with the requirements of the SPCC rule; (ii) he or his agent has visited and examined the facility; (iii) the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of the SPCC rule; (iv) procedures for required inspections and testing have been established; and, (v) the Plan is adequate for the facility. The PE's certification does not relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement the Plan in accordance with all applicable requirements.</p>	<p>§ 112.3(d): The revised rule adds specificity to the PE's attestation. The specificity includes a requirement that the PE consider applicable industry standards and certify that the Plan is prepared in accordance with part 112 requirements. Presently, the PE must attest only that the Plan has been prepared in accordance with good engineering practice. The revised rule allows an agent of the PE to visit and examine the facility in place of the PE, but the PE must review the agent's work, and certify the Plan.</p>
<p>§ 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended as least 8 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours.</p>	<p>§ 112.3(e): An owner or operator of a facility for which an SPCC Plan is required must maintain a complete copy of the Plan at the facility if the facility is attended at least 4 hours per day, or at the nearest field office if the facility is not so attended, and must make the Plan available to the Regional Administrator for on-site review during normal working hours.</p>	<p>§ 112.3(e): The revised rule requires the facility owner or operator to maintain a copy of the Plan at the facility if it is attended at least 4 hours a day, in contrast to the current requirement to maintain it at the facility if it is attended at least 8 hours a day.</p>
<p>§ 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain.</p>	<p>§ 112.3(f): The Regional Administrator may authorize an extension of time for the preparation and implementation of an SPCC Plan, or any amendment thereto, when he finds that the owner or operator cannot comply with all SPCC requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond his control and without his fault, or the fault of his agents or employees. The rule also specifies what the letter requesting an extension must contain.</p>	<p>§ 112.3(f): The revised rule provides for extension for amendments of the Plan, as well as the entire Plan.</p>

Section 112.4: Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator

<p>§ 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single discharge to navigable waters or adjoining shorelines, or (2) discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in each of 2 discharges to navigable waters or adjoining shorelines, reportable under section 311(b)(5) of the Clean Water Act, within any 12-month period, the owner or operator of the facility must submit to the Regional Administrator (RA), within 60 days from the time the facility becomes subject to this section, 10 different items of information, plus additional information pertinent to the Plan if the RA requests it.</p>	<p>§ 112.4(a): Whenever an SPCC facility has: (1) discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or (2) discharged more than 42 U.S. gallons of oil, as described in § 112.1(b), in each of 2 discharge, within any 12-month period, the owner or operator of the facility must submit to the RA, within 60 days from the time the facility becomes subject to this section, 8 different items of information, plus additional information pertinent to the Plan if the RA requests it.</p>	<p>§ 112.4(a): We have revised the geographic scope of the rule in accordance with the CWA amendments, by using the phrase "discharge as described in § 112.1(b)." We also raised the threshold for reporting two discharges as described in § 112.1(b), from a "reportable" quantity under the Clean Water Act, to a threshold of more than 42 U.S. gallons, or 1 barrel, in each of those discharges. The 1,000 gallon threshold for a single discharge as described in § 112.1(b) remains unchanged. We also reduced the amount of information that must minimally be submitted to the RA.</p>
<p>§ 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3.</p>	<p>§ 112.4(b): Section 112.4 does not apply until the expiration of the time permitted for the preparation and implementation of the Plan under § 112.3.</p>	<p>§ 112.4(b): Section 112.3 in the revised rule allows more time for some facilities for preparation and implementation of a Plan, or any amendments thereto, than in the 1991 proposed rule. Therefore, the implementation of the requirements of § 112.4 is postponed until the new time frames in § 112.3 have passed.</p>

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
<p>§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of water pollution control activities in and for the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility.</p>	<p>§ 112.4(c): The owner or operator is required to provide the same information he provided to EPA, under § 112.4(a), to the State agency in charge of oil pollution control activities in the State in which the facility is located at the same time he provides it to EPA. After receiving that information, the State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from the facility.</p>	<p>§ 112.4(c): The revised rule changes the requirement from notification to the State agency in charge of water pollution control activities to notification to the State agency in charge of oil pollution control activities. There may be more than one such agency in some States.</p>
<p>§ 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c).</p>	<p>§ 112.4(d): This section allows the Regional Administrator to require a facility owner or operator to amend his Plan after review of materials the owner or operator submits under § 112.4 (a) and (c), or after on-site review of the Plan.</p>	<p>§ 112.4(d): The revised rule provides that the Regional Administrator may require Plan amendment after on-site review of the Plan.</p>
<p>Section 112.5: Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators</p>		
<p>§ 112.5(b): This section requires an owner or operator to review his Plan at least every 3 years from the date a facility becomes subject to the SPCC rule. As a result of this review and evaluation, the owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge to navigable waters or adjoining shorelines from the facility; and (2) if such technology has been field-proven at the time of the review.</p>	<p>≤§ 112.5(b): This section requires an owner or operator to review his Plan at least every 5 years from the date a facility becomes subject to the SPCC rule; or for an existing facility, 5 years from the date the last review was required under this part. The owner or operator must amend the SPCC Plan within 6 months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility; and (2) if such technology has been field-proven at the time of the review. Implementation of amendments is required within 6 months following amendment. The owner or operator must document completion of the review and evaluation, and must sign a statement as to whether he will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following will suffice, "I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result."</p>	<p>§ 112.5(b): The revised rule changes the period of review for SPCC Plans from 3 to 5 years. It also requires documentation of completion of the review and evaluation.</p>
<p>§ 112.5(c): This section requires that a Professional Engineer certify any amendments to an SPCC Plan.</p>	<p>§ 112.5(c): This section requires that a Professional Engineer certify any technical amendments to an SPCC Plan.</p>	<p>§ 112.5(c): The revised rule clarifies that a Professional Engineer must certify only technical amendments. PE certification is not required for non-technical amendments, like changes to phone numbers, names, etc.</p>
<p>Section 112.7: Spill Prevention, Control, and Countermeasure Plan general requirements. We have reorganized § 112.7 of the current regulation into §§ 112.7, 112.8, 112.9, 112.10, 112.11, 112.12, 112.13, 112.14, and 112.15 of the final rule based on facility type and type of oil.</p>		

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
<p>§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule.</p>	<p>§ 112.7: This section specifies that a Plan must be prepared in accordance with good engineering practices, and have the full approval of management at a level with authority to commit the necessary resources. The SPCC Plan must follow the sequence specified in the rule, and include a discussion of the facility's conformance with the requirements of the rule. If you do not follow the sequence specified in the rule, you must prepare an equivalent prevention Plan acceptable to the Regional Administrator that meets all applicable requirements, and you must supplement it with section cross-referencing the location of requirements listed in the SPCC rule to the equivalent requirements in the other prevention plan.</p>	<p>§ 112.7: The revised rule allows differing formats for the Plan, other than the one format now specified. While you may use the format specified in the rule, you may also use other formats, such as State plans, Integrated Contingency Plans, and any other formats acceptable to the Regional Administrator. If you use another format, you must cross-reference its provisions to the requirement listed in the SPCC rule. Also, if you use another format, you must ensure that the format includes all applicable SPCC requirements, or you must supplement that format to include all applicable SPCC requirements.</p>
<p>§ 112.7(a)(2): No counterpart in current rule</p>	<p>§ 112.7(a)(2): This provision explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend the Plan.</p>	<p>§ 112.7(a)(2): The revised rule explicitly allows deviations from most of the rule's substantive requirements (except for secondary containment requirements), provided that you explain your reasons for nonconformance with the requirement, and provide equivalent environmental protection with an alternate measure. If the Regional Administrator determines that the alternate measure described in your Plan does not provide equivalent protection, he may require that you amend your Plan.</p>
<p>§ 112.7(a)(3): No counterpart in current rule</p>	<p>§ 112.7(a)(3): This section requires a facility owner or operator to describe the physical layout of the facility and include a facility diagram in the Plan.</p>	<p>§ 112.7(a)(3): The facility diagram must include completely buried tanks exempted from other SPCC requirements.</p>
<p>§ 112.7(c): This section is the general provision requiring secondary containment.</p>	<p>§ 112.7(c): This section is the general provision requiring secondary containment.</p>	<p>§ 112.7(c): The revised rule maintains the current standard that dikes, berms, or retaining walls must be "sufficiently impervious" to contain oil. We withdrew the proposed standard that such secondary containment must be impermeable for 72 hours.</p>
<p>§ 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.</p>	<p>§ 112.7(d): When it is not practicable to install secondary containment at your facility, this section requires that you explain why and provide a strong oil spill contingency plan in your SPCC Plan. The contingency plan must follow the provisions of 40 CFR part 109. You must also provide in your SPCC Plan a written commitment to manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful; conduct periodic integrity testing of the containers; and, conduct periodic integrity and leak testing of the valves and piping.</p>	<p>§ 112.7(d): The revised rule adds new requirements for periodic integrity testing of containers, and periodic integrity and leak testing of valves and piping. We clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.</p>
<p>§ 112.7(e)(8): This section requires that the owner or operator conduct required inspections in accordance with written procedures developed for the facility. The owner or operator must maintain these written procedures and a record of inspections, signed by the appropriate supervisor or inspector, as part of the SPCC Plan, and maintain them for a period of 3 years.</p>	<p>§ 112.7(e): This section requires that the owner or operator conduct required inspections and tests in accordance with written procedures developed by him or by the certifying engineer for the facility. The owner or operator must maintain these written procedures and a record of inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan, and maintain them for a period of 3 years. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule.</p>	<p>§ 112.7(e): The revised rule allows use of usual and customary business records to serve as a record of tests or inspections, instead of keeping duplicate records. It also allows the owner or operator to keep those records as an appendix to the Plan, or in a separate log, etc., with the Plan, rather than requiring that those records be a part of the Plan. The rule also acknowledges that the certifying engineer, as well as the owner or operator, has a role in the development of inspection procedures.</p>

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
<p>§ 112.7(e)(10): The owner or operator of a facility is responsible for properly instructing personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges to navigable waters or adjoining shorelines, or failures, malfunctioning components, and recently developed precautionary measures.</p>	<p>§ 112.7(f): The owner or operator of a facility, at a minimum, must train oil-handling personnel in the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. An owner or operator must designate a person at each facility who is accountable for oil discharge prevention and who reports to facility management. An owner or operator must schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b), or failures, malfunctioning components, and recently developed precautionary measures.</p>	<p>§ 112.7(f): The revised rule mandates training only for oil-handling employees, instead of all employees. It specifies additional topics for the training of these employees. It also specifies that discharge prevention briefings must be conducted at least once a year, instead of at "intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility."</p>
<p>§ 112.7(i): No counterpart in current rule</p>	<p>§ 112.7(i): This section requires evaluation for field-constructed aboveground containers undergoing repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to fracture or other catastrophe. It also requires such evaluation when there has actually been a discharge or failure due to brittle fracture or other catastrophe.</p>	<p>§ 112.7(i): The brittle fracture requirement was triggered by the Ashland Oil tank collapse in 1988 due to brittle fracture.</p>
<p>Section 112.8: Requirements for onshore facilities (excluding production facilities).</p>		
<p>§ 112.7(e)(2)(iii): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events.</p>	<p>§ 112.8(c)(3): This section establishes substantive requirements for stormwater drainage from diked areas, and recordkeeping requirements for stormwater bypass events. The revised rule provides that records required under permits issued in accordance with the National Pollutant Discharge Elimination Systems (NPDES) rules are sufficient for recording stormwater bypass events.</p>	<p>§ 112.8(c)(3): The revised rule allows records required by NPDES permit regulations to record stormwater bypass events to be used for SPCC purposes in lieu of events records specifically prepared for purpose.</p>
<p>§ 112.7(e)(2)(vi): This provision requires that aboveground containers be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. The owner or operator must keep comparison records where appropriate, and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas.</p>	<p>§ 112.8(c)(6): The revised rule requires that aboveground containers be tested for integrity on a regular schedule, and when material repairs are done. The frequently and type of testing must take into account container size and design (floating roof, skid-mounted, elevated, partially buried, for example). The owner or operator must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other system of non-destructive shell testing. The owner or operator must keep comparison records and must include tank supports and foundations in these inspections. In addition, operating personnel must frequently inspect the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Records of inspections and tests kept pursuant to usual and customary business practices are sufficient for purposes of the rule.</p>	<p>§ 112.8(c)(6): The revised rule requires that an owner or operator test aboveground containers for integrity on a regular schedule, and when material repairs are done. The rationale for adding a testing requirement when material repairs are done is that material repairs might increase the potential for oil discharges. Usual and customary business records may be used for the purpose of integrity testing, instead of records specifically created for this purpose.</p>

SUMMARY OF MAJOR REVISIONS TO THE CURRENT SPCC RULES—Continued

Current SPCC rule	Revised SPCC rule	Comment
§ 112.7(e)(3)(i): This section requires that buried piping installations have protective wrapping and coating and cathodic protection, if soil conditions warrant.	§ 112.8(d)(1): This section requires that buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281.	§ 112.8(d)(1): The revised rule requires that all buried piping that is installed or replaced on or after August 16, 2002 must have protective wrapping and coating and cathodic protection, or otherwise satisfy the corrosion protection provisions for piping in 40 CFR part 280 or a State program approved under 40 CFR part 281, for all soil conditions.
Section 112.9: Requirements for onshore oil production facilities.		
§ 112.7(e)(5)(ii): This section provides requirements for stormwater drainage events.	§ 112.9(b)(1): This section provides requirements for stormwater drainage events.	§ 112.9(b)(1): The revised rule provides that records required by NPDES permit regulations are allowable to record stormwater bypass events for SPCC purposes in lieu of records specifically generated for that purpose.
§ 112.7(e)(5)(iii)(B): This section requires secondary containment for onshore production facilities.	§ 112.9(c)(2): This section requires secondary containment for onshore production facilities.	§ 112.9(c)(2): The revised rule clarifies that the secondary containment must include sufficient freeboard to contain precipitation.

IV. Discussion of Issues

Below is a discussion of the major issues for which we solicited comments in the 1991, 1993, and 1997 proposals. We also discuss the use of industry standards to comply with the rule. Following these issues, we discuss the revisions to each section and the major comments received, as well as responses to those comments. A detailed Response to Comments document addressing all comments is also part of this rulemaking and may be found in the administrative record for this rule.

A. Reorganization of the Rule

Background

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The purpose of that proposed reorganization was to clarify SPCC Plan requirements for different types of facilities. In this rulemaking, we are dividing the rule into subparts. Subpart A consists of an applicability section,

definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of facilities storing and using different types of oils. Subpart B is for facilities storing or using petroleum oils or other non-petroleum oils, except those oils covered by subpart C. Subpart C is for facilities storing or using animal fats and oils and greases, or fish and marine mammal oils; and, oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response requirements.

If you have already prepared an SPCC Plan, you were required to follow the sequence of § 112.7 of the current rule, prior to today's revisions. Today, we are reorganizing that portion of the rule into §§ 112.7 through 112.15, based on facility type and type of oil. Under the introduction to § 112.7 of today's rule, if your Plan does not follow the revised sequence, you must supplement it with a section cross-referencing the location of requirements listed in the revised

rule and the equivalent requirements in your Plan. To assist you in preparing this cross-reference, the following table lists each requirement in the revised rule, provides the corresponding paragraph of the current rule, and leaves a space where you can show the location of the provision in your Plan. We have put this rule, including the table below, on our website for your convenience. You may download it for your use. See our Web site at www.epa.gov/oilspill.

Under the revised rule, § 112.7 sets out the general requirements for SPCC Plans for all facilities and all types of oil. Sections 112.8 to 112.11 set out the SPCC Plan requirements for petroleum oil and for non-petroleum oils other than animal fats and vegetable oils. Sections 112.12 to 112.15 set out the SPCC Plan requirements for animal fats and oils and greases, and fish and marine mammal oils; and for oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels.

Revised rule	Current rule	Description of rule	Page
§ 112.7	§ 112.7	General requirements for SPCC Plans for all facilities and all oil types.	.....
§ 112.7(a)	§ 112.7	General requirements; discussion of facility's conformance with rule requirements; deviations from Plan requirements; facility characteristics that must be described in the Plan; spill reporting information in the Plan; emergency procedures.	.....
§ 112.7(b)	§ 112.7(b)	Fault analysis	.....
§ 112.7(c)	§ 112.7(c)	Secondary containment	.....
§ 112.7(d)	§ 112.7(d)	Contingency planning	.....
§ 112.7(e)	§ 112.7(e)(8)	Inspections, tests, and records	.....
§ 112.7(f)	§ 112.7(e)(10)	Employee training and discharge prevention procedures	.....
§ 112.7(g)	§ 112.7(e)(9)	Security (excluding oil production facilities)	.....
§ 112.7(h)	§ 112.7(e)(4)	Loading/unloading (excluding offshore facilities)	.....
§ 112.7(i)	n/a	Brittle fracture evaluation requirements	.....
§ 112.7(j)	§ 112.7(e)	Conformance with State requirements	.....

Revised rule	Current rule	Description of rule	Page
§ 112.8 § 112.12	§ 112.7(e)(1)	Requirements for onshore facilities (excluding production facilities).	.....
§ 112.8(a), § 112.12(a)	n/a	General and specific requirements	.....
§ 112.8(b), § 112.12(b)	§ 112.7(e)(1)	Facility drainage	.....
§ 112.8(c), § 112.12(c)	§ 112.7(e)(2)	Bulk storage containers	.....
§ 112.8(d), § 112.12(d)	§ 112.7(e)(3)	Facility transfer operations, pumping, and facility process	.....
§ 112.9, § 112.13	§ 112.7(e)(5)	Requirements for onshore production facilities	.....
§ 112.9(a), § 112.13(a)	n/a	General and specific requirements	.....
§ 112.9(b), § 112.13(b)	§ 112.7(e)(5)(ii)	Oil production facility drainage	.....
§ 112.9(c), § 112.13(c)	§ 112.7(e)(5)(iii)	Oil production facility bulk storage containers	.....
§ 112.9(d), § 112.13(d)	§ 112.7(e)(5)(iv)	Facility transfer operations, oil production facility	.....
§ 112.10, § 112.14	§ 112.7(e)(6)	Requirements for onshore oil drilling and workover facilities	.....
§ 112.10(a), § 112.14(a)	n/a	General and specific requirements	.....
§ 112.10(b), § 112.14(b)	§ 112.7(e)(6)(i)	Mobile facilities	.....
§ 112.10(c), § 112.14(c)	§ 112.7(e)(6)(ii)	Secondary containment—catchment basins or diversion structures.	.....
§ 112.10(d), § 112.14(d)	§ 112.7(e)(6)(iii)	Blowout prevention (BOP).	.....
§ 112.11, § 112.15	§ 112.7(e)(7)	Requirements for offshore oil drilling, production, or workover facilities.	.....
§ 112.11(a), § 112.15(a)	n/a	General and specific requirements	.....
§ 112.11(b), § 112.15(b)	§ 112.7(e)(7)(ii)	Facility drainage	.....
§ 112.11(c), § 112.15(c)	§ 112.7(e)(7)(iii)	Sump systems	.....
§ 112.11(d), § 112.15(d)	§ 112.7(e)(7)(iv)	Discharge prevention systems for separators and treaters	.....
§ 112.11(e), § 112.15(e)	§ 112.7(e)(7)(v)	Atmospheric storage or surge containers; alarms	.....
§ 112.11(f), § 112.15(f)	§ 112.7(e)(7)(vi)	Pressure containers; alarm systems	.....
§ 112.11(g), § 112.15(g)	§ 112.7(e)(7)(vii)	Corrosion protection	.....
§ 112.11(h), § 112.15(h)	§ 112.7(e)(7)(viii)	Pollution prevention system procedures	.....
§ 112.11(i), § 112.15(i)	§ 112.7(e)(7)(ix)	Pollution prevention systems; testing and inspection	.....
§ 112.11(j), § 112.15(j)	§ 112.7(e)(7)(x)	Surface and subsurface well shut-in valves and devices	.....
§ 112.11(k), § 112.15(k)	§ 112.7(e)(7)(xi)	Blowout prevention	.....
§ 112.11(l), § 112.15(l)	§ 112.7(e)(7)(xiv)	Manifolds	.....
§ 112.11(m), § 112.15(m)	§ 112.7(e)(7)(xv)	Flowlines, pressure sensing devices	.....
§ 112.11(n), § 112.15(n)	§ 112.7(e)(7)(xvi)	Piping; corrosion protection	.....
§ 112.11(o), § 112.15(o)	§ 112.7(e)(7)(xvii)	Sub-marine piping; environmental stresses	.....
§ 112.11(p), § 112.15(p)	§ 112.7(e)(7)(xviii)	Inspections of sub-marine piping	.....

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, and fish and marine mammal oils; oils of vegetable origin; petroleum oils, and other non-petroleum oils and greases. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. In response to EORRA, as noted above, we have divided the requirements of the rule by subparts for facilities storing or using the various classes of oils listed in that act.

Because at the present time EPA has not proposed differentiated SPCC requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate among the requirements for the facilities storing or using various classes of oil. 64

FR 17227, April 8, 1999. If after considering these comments, there is adequate justification for differentiation among the requirements for those facilities, we will propose rule changes.

B. Plain Language Format

We have rewritten the SPCC rule in a plain language format to make it clearer and easier to use. A plain language format includes maximum use of the active voice; short, clear sentences; and, in this rule, a summary table of the major regulatory changes. This format is part of the Agency's ongoing efforts in regulatory reinvention. While we have made substantive changes in some provisions, the plain language changes are only editorial. The plain language format used in today's rule may appear different from other rules, but it establishes binding, enforceable legal requirements.

In this preamble, as in the rule text, we often use the pronoun "he" as a generic term. "He" does not necessarily mean a man; it may be a woman, or in some cases, a business organization when referring to an owner or operator.

C. "Should to Shall to Must" Clarification

Background

EPA has always considered that § 112.3 of the SPCC rule requires that SPCC Plans be prepared in accordance with § 112.7, which in turn requires that Plans be prepared in accordance with good engineering practice. However, clarification of the current rule is necessary because of confusion on the part of some facility owners or operators who have interpreted the current rule's use of the words "should" and "guidelines" in § 112.7 as an indication that compliance with the applicable provisions of the rule is optional. The rule used the words "should" and "guidelines" to provide flexibility for facilities with unique circumstances. Those circumstances might be such that mandated regulatory provisions would not be in accord with good engineering practice. Therefore, the rule gave facilities the opportunity to provide alternative methods that achieve equivalent environmental protection, or to show that the provisions were inapplicable based on specific circumstances.

In 1991, we proposed to clarify that misunderstanding by generally substituting "shall" in place of "should" throughout the reorganized rule. In today's final rule, we have editorially changed "shall" to "must" in furtherance of the Agency's "plain language" objectives. The "shall" to "must" is not a substantive change, but merely an editorial change. Nor will the change add to the information collection burden. We have always included requirements prefaced by "should" in the information collection burden for the rule. We will continue to provide flexibility for an owner or operator who can explain his reasons for nonconformance with rule requirements, and can provide alternate measures from those specified in the rule, which achieve equivalent environmental protection. Section 112.7(a)(2) will provide such flexibility. In the exercise of our authority to inspect facilities and SPCC Plans, we reserve the right to find that such alternate methods do not provide equivalent environmental protection. In such cases, we would require the owner or operator of the facility to amend the SPCC Plan to provide equivalent environmental protection.

Comments. Guidance. Several commenters supported the proposed change. One asked that discretionary provisions might be better placed in a separate guidance document. Several commenters were concerned that there are no guidance documents outlining equivalency as provided in proposed § 112.7(a)(2) and that it may be impossible to prove equivalency to EPA.

PE certification. Other commenters suggested that if the Professional Engineer (PE) certified the Plan as adequate for the facility, then the mandated requirements were unnecessary, as he would have determined that all appropriate equipment and planning is in place.

Substantive change. Some commenters argued that the proposal was a substantive change, contrary to legislative intent, and that we failed to give opportunity for proper notice and comment, as required by the Administrative Procedure Act.

Small production facilities. One commenter suggested that the clarification should not apply to small production facilities, defined as those with less than 3000 barrels of storage capacity, because those facilities would suffer severe hardship as a result.

Response to comments. Guidance. EPA agrees with the comment that recommendations have no place in this rule because we do not wish to confuse the regulated public as to what is

mandatory and what is discretionary. Instead, some recommendations are discussed in the preamble to this document, while others can be found in separate guidance documents or policy statements. When the rule or preamble is silent, or no published guidance or policy documents exist, we will generally use industry standards as guidance for rule compliance.

PE certification. While we generally agree that certification by a PE should show that all necessary equipment and planning are in place, we reserve the right to make a determination that additional measures may be necessary to comply with the rule. EPA made it clear in proposed § 112.3(d), which is finalized today, that a PE certification does not relieve the owner or operator of the duty to prepare and fully implement an SPCC Plan in accordance with the rule's requirements.

Substantive change. We disagree that the change is either substantive or contrary to legislative intent. Section 311(j)(1)(C) of the Act authorizes the President and, through delegation, EPA, to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges." That authority is ample to provide the basis for a mandatory SPCC rule, that is, a rule that establishes "requirements * * * to prevent discharges."

We also disagree that the proposed rule failed to provide proper notice and comment. The preamble to the 1991 proposed rule fully explained the rationale for the proposed change (56 FR 54620, October 22, 1991), and numerous commenters responded. Furthermore, we have always interpreted and enforced our rules as mandatory requirements.

EPA recognizes, however, that this clarification may result in certain owners or operators of regulated facilities recognizing for the first time that they have been and are subject to various provisions of part 112. Such owners and operators should, of course, take all necessary steps to come into compliance with this part as soon as possible. In exercising its prosecutorial discretion, the Agency always takes into account the good faith and efforts to comply of an owner or operator who has been in noncompliance with applicable laws and regulations when deciding whether or not to take an enforcement action.

Small production facilities. We disagree that the "should" to "must" change will generally pose a severe

hardship for small production facilities. As noted above, EPA has always interpreted the "shoulds" as "musts." Further, when a particular requirement is not feasible for a particular facility, under § 112.7(a)(2) that facility may explain the reasons for nonconformance with the requirement, and provide alternate measures that achieve equivalent environmental protection.

D. Professional Engineers (PEs)

Background. In the preamble to the 1991 proposal (56 FR 54618), EPA posed several questions to commenters regarding how PEs could help to implement the SPCC Plan. An owner or operator of a facility is required to secure the certification of a PE on an SPCC Plan, and on technical amendments to the Plan. By means of this certification, the PE attests that the Plan or the amendment has been prepared in accordance with good engineering practice.

1. State Registration

Background. We solicited comments on the advantages and disadvantages associated with the PE being registered in the State in which the facility is located. EPA noted that "a requirement that a PE be licensed in the State in which the facility is located would allow the State licensing board to more easily address the actions of the PE under its jurisdiction, and that the PE may have greater familiarity with the State and local requirements related to the facility under review." 56 FR 54619.

Comments. Favorable comments. Several commenters supported a requirement that the PE be registered in the State in which the facility is located. The rationales often expressed were that: (1) Letting any PE certify any SPCC Plan effectively removed the PE from the supervision of the State board; and, (2) familiarity with the State and local requirements related to the facility as well as the State itself are essential for viable SPCC Plans. One commenter suggested that when an out-of-State PE prepares the Plan, the Plan should bear the seal of the PE who prepared the Plan along with the seal of a PE registered in the State in which the facility is located, assuring that the proposed Plan conforms to any additional State requirements.

Opposing comments. Opposing commenters argued that: (1) A State licensing board will address the actions of an engineer regardless of the engineer's location when he applies his seal; (2) suggestions that the potential liability of the engineer might be limited if the engineer holds an out-of-State license are specious; (3) SPCC Plan

preparation is a Federal activity, therefore, it is unnecessary to have State registration; and, (4) such a requirement would reduce the available pool of qualified PEs. One commenter volunteered that the proposal was "superfluous" because the practice of engineering in a State without being professionally registered in that State is unlawful in most States.

Response to comments. We agree with commenters that it is unnecessary that the PE be registered or licensed in the State in which the facility is located because any abuses will be corrected by the licensing jurisdiction. We also agree that such a requirement might unnecessarily reduce the availability of PEs and increase the cost of certification without any tangible benefits. The professional liability of a PE would likely be unaffected by the place of his registration. When State law precludes a PE from applying his seal if he is not licensed in that State, the question of State registration becomes moot. However, that is not the case in every State.

We also disagree that if a PE is not licensed in the State, he will be unfamiliar with State and local requirements for the facility. Any PE may become familiar with both Federal and State and local requirements for a facility. Therefore, to require that the PE be registered in the State in which the facility is located would impose unnecessary financial burdens on the facility and would challenge the integrity of the PE. Such a requirement would also reduce the pool of PEs available for facilities.

2. PEs Employed by the Facility

Background. EPA asked whether the rule should specify that the PE not be an employee of the facility or have any other direct financial interest in the facility. This request for comment had its origin in a U.S. General Accounting Office (GAO) report issued on February 22, 1989, "Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents" (GAO/RCED-89-65)." The GAO report recommended that EPA evaluate the advantages and disadvantages of requiring facilities to obtain certifications from independent engineers. EPA noted that "not having the PE otherwise associated with the facility may avoid any potential conflicts of interest or appearance of conflicts of interest that could arise from allowing an employee of a regulated party to certify a SPCC Plan." 56 FR 54619. On the other hand, for both the issues of whether to require State registration and whether to allow PEs employed by the facility to certify SPCC

Plans, EPA noted that some organizations objected to the proposals as "challenging the integrity of professional engineers." 56 FR 54619. We also pointed out that some professional organizations believe that such requirements "would impose substantial costs without enhancing the integrity of the certification process." 56 FR 54619.

Comments. Favorable comments. Several commenters supported a requirement that the PE not be an employee of the facility or not have a direct financial interest in it. The rationales most often asserted were: (1) A Plan would better satisfy regulatory objectives and better serve the public; (2) the Plan would be less subject to compromise by other factors; (3) Plan certification is less likely to be a coerced or superficial effort, and undue economic and moral pressures would be avoided; (4) more cooperative efforts among regulatory bodies, engineers, and the facility would be possible; (5) more economic and effective Plan development is assured; and, (6) more competent and more professional Plan development is guaranteed.

Opposing comments. Opposing commenters asserted that: (1) Such a proposal would limit the availability of PEs, leading to delays in Plan certification; (2) administrative action to correct abuses would be a better approach; and, (3) such an approach insults the ethical integrity of PE. One commenter suggested that "to suppose a facility employee would break the law and jeopardize his license to practice his profession and do it more willingly than an "independent" engineer has no basis in fact"; (4) an in-house PE may be the person most familiar with the facility; (5) the proposal would place an undue and unnecessary financial burden on the owner or operator of a facility by forcing him to hire an outside engineer; and, (6) it is uncertain whether an independent PE can afford the insurance necessary to certify his work given that the liability incurred might run into the millions of dollars.

Compromise position. One commenter suggested that a compromise position might be that the PE who certifies the Plan would be required to disclose in the Plan certification his relationship to the facility owner, the facility improvements owner, and the facility landowner.

Response to comments. We agree that a proposal to restrict certification by a PE employed by a facility or having a financial interest in it would limit the availability of PEs, possibly leading to delays in Plan certification. Therefore, we will not adopt it. Nor do we favor

the proposal to require the PE to disclose his relationship to the facility owner, the facility improvements owner, or the facility landowner. Such disclosure would add no environmental protection to the SPCC certification process. Administrative action to correct abuses would be a better approach. We believe that most PEs, whether independent or employees of a facility, being professionals, will uphold the integrity of their profession and only certify Plans that meet regulatory requirements. We also agree that an in-house PE may be the person most familiar with the facility. EPA believes that a restriction of in-house PE certification might place an undue and unnecessary financial burden on owners or operators of facilities by forcing them to hire an outside engineer.

3. Completion of Testing

Background. The Agency proposed that the PE must attest that required testing has been completed and the Plan meets the requirements of the regulation for the facility. This proposal was advanced to "promote the Agency's intent in the original promulgation of § 112.3(d) that SPCC Plans be certified by a Registered Professional Engineer exercising independent judgment." 56 FR 54619. These new requirements were to be met when a new Plan is prepared after promulgation of the rule, or when an existing Plan is amended, under § 112.5.

Comments. Favorable comments. One commenter supported a requirement that the PE attest to the completion of testing and that the Plan meets regulatory requirements.

Opposing comments. Some opposing commenters believed that the PE should "enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations." Others believed that completion of required testing is the responsibility of the operator and not the PE. Another commenter believed such a requirement would be impossible, because "required testing may take up to a year to complete."

Response to comments. EPA agrees that the PE is not responsible for certifying that all required testing has been completed. Rather, such responsibility belongs to the owner or operator of the facility. Testing may be ongoing long after the Plan is certified. The PE is responsible for certifying that the Plan is adequate and meets all regulatory requirements, including enumeration of all tests that have been

completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. Therefore, we are changing the proposed requirement to a requirement in which the PE attests that the procedures for required inspections and testing have been established, and the Plan is adequate for the facility. See the discussion of § 112.3(d), below.

4. Site Visits

Background. We stated that EPA “believes the current regulatory language (e.g., requiring the engineer to examine the facility) clearly requires the certifying Engineer to visit the facility prior to certifying the SPCC Plan.” We added that the proposed change “clarifies this requirement by specifying that the Professional Engineer must be physically present to examine the facility.” 56 FR 54619.

Comments. Favorable comments. Many commenters favored the requirement that the PE make a site visit prior to certifying a Plan. Those commenters called such a visit “absolutely necessary.” Some argued that a generic plan prepared by an engineer who has never seen the facility is unacceptable.

Opposing comments. Opposing commenters asserted that such visits only involve additional costs and duplication of efforts without any tangible benefits. Many opposing commenters argued that customary engineering practice includes the use of engineering technicians, technologists, graduate engineers, and others to prepare preliminary reports, studies, and evaluations. After preparation of these documents, the PE would then perform a careful review of all pertinent material and then sign and seal the appropriate plans and drawings. Other commenters argued that such a requirement would be impractical, particularly at electrical substations, due to their large number.

Particular cases. One commenter urged that small facilities be exempted from the site visit requirement where “a determination is made that sufficient documentation of site characteristics is available for plan certification.” That commenter noted that in many instances sufficient information is available from topographic maps, aerial photographs, soil surveys, hydrologic studies, engineering and construction reports, and local operating personnel to eliminate the need for site visits prior to certification. Another commenter urged an exemption for temporary storage facilities because given their emergency

nature, certification is impractical. One commenter asked for clarification that the certification of an existing Plan is sufficient until the Plan update is required. Another suggested that the rule should only require that the PE be familiar with the operation and design of the type of facility, and that he would have visited and examined one or more facilities of this type.

Response to comments. In general. EPA agrees that the rule should not necessarily require a site visit by a certifying PE, but we believe that a site visit should occur before the PE certifies the Plan. We have modified proposed § 112.3(d)(ii) to reflect this position. The PE’s agent may perform the visit. We agree that customary engineering practice allows someone under the PE’s employ such as an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. Then the PE could legitimately certify the Plan. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

Particular cases. EPA agrees that a PE site visit requirement might be impractical at electrical substations, due to their large number. However, the PE need not go. One of his agents may go, and he may review the agent’s work. We disagree with commenters who believe that a site visit is unnecessary at small facilities and temporary storage facilities. Site visits are necessary for those facilities to ensure Plan adequacy and to prevent discharges.

EPA has interpreted the current rule language to contain a requirement that the PE examine the facility. Because of the uncertainty concerning the nature of this requirement, however, we will not require documentation of a site visit by a PE or his agent until after the effective date of this rule. We disagree that the rule should only require that the PE be familiar with the operation and design of the type of facility. We also disagree that merely because the PE has visited and examined one or more facilities of a particular type that no site visit is necessary. A facility may have individual characteristics that differ from those of its type in general, and a site visit by a PE or agent may be necessary to detect those characteristics and accommodate them in the Plan. Such individual characteristics include geographic conditions, possible flow paths, facility design and construction, type of containers, product stored,

particular equipment, and the integrity of containment at the facility. Therefore, even if a PE has inspected many facilities of a particular type, that fact does not eliminate the need for a site visit at each facility. After the site visit, the PE will have to devise appropriate inspection and testing standards based on the facility’s unique characteristics.

E. Electrical Facilities and Other Operational Users of Oil

Background. In 1991, we proposed that certain facilities having equipment containing oil that is used for operational purposes, such as electrical transformers, would not have to comply with secondary containment requirements and certain other provisions proposed in §§ 112.8(c) and 112.9(d) because such facilities are not bulk storage facilities. EPA asked for comment on this and also asked commenters to identify other possible operational uses of oil, other than electrical transformers, that may not currently use secondary containment as a common industry practice and that should not be subject to bulk storage provisions. 56 FR 54623.

Comments. Use of oil. Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

Response to comments. Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define “bulk storage container” in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also meet the needs of section 311(j)(1)(C) of the CWA. EPA will continue to evaluate whether the general secondary containment requirements found in § 112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. We intend to publish a notice asking for additional data and comment on this issue.

In addition, a facility may deviate from most SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. See § 112.7(a)(2). See also § 112.7(d).

F. Discretionary Provisions

Background. In the preamble to the 1991 proposal (at 56 FR 54616), we asked for comments as to whether the provisions proposed as recommendations in rule text should be made requirements. We then noted that we were “particularly interested in receiving comments and information on the advisability of establishing” certain provisions as “requirements for large facilities, but as recommendations for small facilities.” These provisions were: (1) Proposed § 112.8(d)(4)—“that facilities have all buried piping tested for integrity and leaks annually or have buried piping monitored monthly in accordance with the provisions of 40 CFR part 280.” We also recommended that records of testing or monitoring be kept for five years.; and, (2) proposed § 112.8(d)(5)—“that facilities post vehicle weight restrictions to prevent

damage to underground piping.” Individual proposals will be discussed under their relevant sections in this preamble. Large facilities were defined for this purpose as facilities with more than 42,000 gallons of SPCC-regulated storage capacity. Conversely, we asked whether such provisions should be discretionary for smaller facilities. The rationale expressed in the question was EPA believes that “larger volumes of oil stored at a facility increase the chances of a spill occurring, and that spills from large-capacity facilities may be greater in magnitude than those from smaller facilities, thus posing a greater potential threat to the waters of the United States.”

EPA also requested comments on two other practices it proposed as recommendations, but did not include in rule text. Those practices were: (1) “That owners and operators of facilities affix a signed and dated statement to the SPCC Plan indicating that the revision has taken place and whether or not amendment of the Plan is required;” and, (2) “That owners and operators of onshore facilities other than production facilities state the design capabilities of their drainage system in the SPCC Plan if the system is relied upon to control spills or leaks.” Concerning the first practice, see also the discussion under § 112.5(b) of today’s rule. The rationale for these recommendations was that “these provisions may not for all facilities achieve the standard of provisions based on good engineering practice, which is the basic standard of the regulation. EPA, however believes that implementation of these provisions at most facilities would contribute to the facilities’ overall effort to prevent oil discharge and to mitigate those spills that may occur.” The Agency also asked whether some of these provisions should be mandatory.

Comments. Large or small facility regulation, in general. EPA received a number of comments on this issue, some directed towards regulation of larger and smaller facilities in general, and others toward specific provisions proposed. Some commenters believed that larger facilities could better bear the costs of regulation than smaller facilities, some of which were financially marginal and might go out of business as a result of environmental regulation.

Storage capacity level. Commenters suggested different storage capacity levels at which to differentiate large from small facilities. Those suggestions ranged from 10,000 to 100,000 gallons in storage capacity. Many, however, supported the 42,000-gallon level.

Other factors. One commenter suggested that other factors such as proximity to navigable waters or environmentally sensitive areas, as well as the use of good engineering practices should be considered in the regulation of facilities. The commenter argues that these factors might avoid overburdening a large facility with a low potential for impact on a navigable water or exempting a small facility with a high potential for impact on a navigable water.

Discretionary provisions. Favorable commenters. Numerous commenters favored discretionary provisions in the interest of maintaining flexibility in the program, noting that what may be appropriate for one facility may not be appropriate for another. Some commenters favored applying discretionary provisions to small facilities only, leaving the provisions as requirements for larger facilities.

Discretionary provisions. Opposing commenters. Some commenters argued that discretionary provisions are inappropriate in a rule as a matter of principle because they complicate mandatory rule documents and enforcement, and they confuse the regulated community. Yet others urged that such provisions were unnecessary in any case because they believe that no risks exist for which the discretionary provisions were proposed.

Response to comments. We will discuss specific comments under the discussion of specific sections. See section IV.G of today’s preamble for a discussion of the “Design Capabilities of Drainage Systems, other than Production Facilities.” Our general discussion follows.

Large or small facility regulation, in general. We have decided not to regulate facilities differently based merely on storage capacity, provided that the capacity is above the regulatory threshold of over 1,320 gallons. This decision is based on environmental reasons. Small discharges of oil that reach the environment can cause significant harm. Sensitive environments, such as areas with diverse and/or protected flora and fauna, are vulnerable to small spills. EPA noted in a recent denial of a petition for rulemaking: “Small spills of petroleum and vegetable oils and animal fats can cause significant environmental damage. Real-world examples of oil spills demonstrate that spills of petroleum oils and vegetable oils and animal fats do occur and produce deleterious environmental effects. In some cases, small spills of vegetable oils can produce more environmental harm than numerous large spills of petroleum

oils." 62 FR 54508, 54530, October 20, 1997. Describing the outcome of one small spill of 400 gallons of rapeseed oil into Vancouver Harbor, we noted that " * * * 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died during treatment. The number of casualties from the rapeseed oil spills was probably higher than the number of birds recovered, because heavily oiled birds sink and dying or dead birds are captured quickly by raptors and scavengers." 62 FR 54525.

A small discharge may also cause harm to human health or life through threat of fire or explosion, or short-or long-term exposure to toxic components.

Other factors. Finally, EPA notes that the rule affords flexibility to an owner or operator of a facility to design a Plan based on his specific circumstances. It allows him to choose methods that best protect the environment. It permits deviations from most of the mandatory substantive requirements of the rule when the facility owner or operator can demonstrate a reason for nonconformance, and can provide equivalent environmental protection by other means. Consequently, both small and large facilities have the opportunity to reduce costs by alternative methods if they can maintain environmental protection. Because smaller facilities may require less complex plans than larger ones, their costs may be less.

Discretionary provisions. We agree that discretionary provisions have no place in this rule because we do not wish to confuse the regulated community and complicate enforcement by blurring what is mandatory and what is discretionary. We will provide guidance or policy statements on various issues, as necessary, that will incorporate some or all of these recommendations. In the absence of such guidance or policy statements, you should look to current industry standards for guidance on technical issues. See also our discussion of industry standards and good engineering practice under section IV.K of today's preamble and under § 112.3(d) in section V of today's preamble.

G. Design Capabilities of Drainage Systems, Other than Production Facilities

Background. In the 1991 preamble, we asked for comments on, but did not propose, a provision that owners or operators of onshore facilities other than

production facilities describe the design capabilities of their drainage systems in the SPCC Plan if the system is relied upon to control spills or leaks. 56 FR 54616, October 22, 1991. See also section IV.F of today's preamble for a discussion of other "Discretionary Provisions."

Comments. Favorable comments. Commenters favoring such a requirement asserted that such a description would help identify all paths of escape for discharges at a facility, assess the spill retention capacity of the facility's containment system, and identify the risks to the public of a discharge. Those commenters generally believed that the Professional Engineer should develop the description for the Plan.

Opposing comments. Commenters opposing making the recommendation a requirement argued that it was unnecessary because the rules already require certain descriptions of design capabilities of drainage systems. They asserted that such a requirement would be redundant in that if a drainage system is relied upon to control spills or leaks, then it must have design capabilities to control such spills or leaks.

Response to comments. The question of description of the design capabilities of drainage systems for onshore facilities other than production facilities is adequately covered by rules pertaining to drainage. See, for example, §§ 112.7(a)(3) and (4), 112.7(b), 112.8(b), and 112.10(c). Therefore, we will not promulgate any additional requirements on this subject. These provisions generally require that a facility owner or operator design the facility drainage system to prevent discharges, or if prevention fails, to contain the discharge within the facility.

H. Compliance Costs

Background. We provided an extensive discussion of the costs and benefits of the proposed 1991 rule. 56 FR 54628–54629, October 22, 1991. We requested comments in the 1991 preamble concerning the new compliance costs associated with the proposed rule.

Comments. EPA received numerous comments on this issue. The overwhelming majority of commenters asserted that the proposed rule would impose costs that few could bear. Many argued that such costs were unnecessary or should be applied to large facilities only.

Response to comments. EPA considered cost factors in finalizing the requirements in this rule. We believe that facilities in compliance with the

current rule will incur minimal additional cost due to the revisions in this rule. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in today's rule, we have provided flexibility in several ways. Many of the provisions we proposed in 1991 that commenters believed were too costly were not finalized in this rule. In addition, in the deviation provision, § 112.7(a)(2), we permit you to substitute alternate measures that provide equivalent environmental protection if you can explain a reason for nonconformance with the prescribed requirement. We also rely on the use of industry standards in many provisions, rather than mandating any particular procedure, or any particular monitoring or inspection schedule. We assume that most facilities follow industry standards, and therefore will not incur additional costs for many provisions where they do. We recognize, however, that to the extent any facility does not follow current industry standards, it might incur additional costs. Furthermore, we are finalizing other provisions in this rule which will reduce burden in other ways and will exempt certain facilities from having to prepare an SPCC or FRP Plan. EPA has also prepared an assessment of the costs of rule compliance, which is discussed in part VI.F (Regulatory Flexibility Act) of this preamble, and we have included the specific comments related to costs and our responses in relevant sections of this preamble.

I. Contingency Planning and Notification

Background. We requested comments in the 1991 preamble on spill contingency planning needs (at 56 FR 54615) and on proposed facility notification requirements (at 56 FR 54614). You will find a detailed discussion of contingency requirements and facility notification requirements (§ 112.7(d) and proposed § 112.1(e)) in Section V of today's preamble. On those subjects, we briefly summarize the comments and our responses below.

Comments. Contingency planning. Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. Some said that contingency planning was not practicable because

the costs are too high, but these commenters did not provide specific cost estimates.

Notification. A number of commenters favored the proposal, including some industry commenters. Most industry commenters opposed the proposal either in part or in its entirety. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports.

Response to comments. Contingency planning. Contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. Because we have not finalized either the 1991 or 1993 contingency plan proposals, there are no new costs. We note that we finalized response planning requirements in 1994. Contingency plans prepared for other purposes are acceptable for SPCC purposes if they satisfy all SPCC requirements.

Notification. Withdrawal of proposal. We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

J. Reproposal

Background: In the 1997 proposal, we stated that we would finalize the 1991 and 1993 proposals without seeking additional comments on those proposals.

Comments: Some commenters suggested that we repropose the 1991 proposal "so that the public can view the proposed changes in a comprehensive manner." Other commenters suggested that the time that has elapsed, the changes in operational procedures of the oil and gas industry which have improved the degree of environmental protection, and the new information EPA obtained from its tank survey, justified reproposal. Others cited changes in oil industry personnel as a reason to repropose the rule. Some commenters believed that the

implementation of the Facility Response Plan (FRP) rule alone requires us to solicit additional comments concerning the SPCC proposals.

Response: Additional comments or reproposal. We believe it is unnecessary to repropose the 1991 and 1993 proposals because of mere passage of time. We received numerous comments on every side of most issues. In developing this final rule, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. We have also considered changes in the various industries which comprise the universe of SPCC facilities which have occurred since our original proposals. We encourage the use of industry standards to implement the rule, without incorporating any particular standard into the rule, thereby averting possible obsolescence of those standards. We used the results of our 1995 SPCC facility survey to develop our 1997 proposed rule. These results are also part of the administrative record for this rulemaking. We considered all the comments we received in 1997, even if they dealt with issues proposed in 1991 or 1993. We have also considered and responded to all of the comments received in 1991 and 1993 in their respective Comment Response Documents or in the preamble to today's final rule.

Personnel changes. In developing this final rule, as noted above, we have considered changes that have taken place in the oil industry, industry standards, and regulations that may affect the SPCC rule. For the past 26 years, owners and operators of regulated facilities have been responsible for training their personnel in applicable regulations, such as 40 CFR part 112. Such responsibility is in effect now, and will continue under the revised rule. New companies and new personnel of those companies are on notice as to applicable rules and proposals. They have also had the opportunity to comment on the 1997 proposal. Furthermore, we have considered cost implications for all three proposals which we are finalizing today.

Response plan requirements. We have no plans to require SPCC facilities for which secondary containment is not practicable to develop response plans. However, we have withdrawn § 112.7(d) as proposed in 1993. Only a contingency plan following the provisions of 40 CFR part 109 and compliance with other provisions of § 112.7(d) is necessary when secondary containment is impracticable. Only onshore facilities that meet the criteria

of substantial harm and/or significant and substantial harm facilities need to comply with the FRP requirements in 40 CFR 112.20–21.

K. Industry Standards

Throughout the rule we generally allow for the application of industry standards where the standards are both specific and objective, and their application may reduce the risk of discharges to and impacts to the environment. We recognize that as technology advances, specific standards change. By referencing industry standards throughout the preamble, we anticipate that the underlying requirements of the rule itself will change as new technology comes into use without the need for further amendments. We believe that industry standards today represent good engineering practice and generally are environmentally protective. However, as under the current rule, if an industry standard changes in a way that would increase the risk of a discharge as described in § 112.1(b), EPA will apply and enforce standards and practices that protect the environment, rather than the less protective industry standard.

Under the terms of this rule, when there is no specific and objective industry standard that applies to your facility (for example, whether there is no standard or a standard that uses the terms "as appropriate," "often," "periodically," and so forth), you should instead follow any specific and objective manufacturer's instructions for the use and maintenance or installation of the equipment, appurtenance, or container. If there is neither a specific and objective industry standard nor a specific and objective manufacturer's instruction that applies, then it is the duty of the PE under § 112.3(d) to establish such specific and objective standards for the facility and, under § 112.3(d), he must document these standards in the Plan. If the PE requires the use of a specific standard for implementation of the Plan, the owner or operator must also reference that standard in the Plan.

Throughout this preamble, we list industry standards that may assist an owner or operator to comply with particular rules. The list of those standards is merely for your information. They may or may not apply to your facility, but we believe that their inclusion is helpful because they generally are applicable to the topic referenced. The decision in every case as to the applicability of any industry standard will be one for the PE.

For your convenience, we are including a list of organizations below

that may be helpful in the identification and explanation of industry standards.

Name	Address	Phone #	Web Site/E-mail
American National Standards Institute (ANSI).	11 West 42nd Street, New York, NY 10036.	212-642-4900 212-398-0023 fax.	www.ansi.org ansionline@ansi.org
American Petroleum Institute (API)	1220 L Street, NW Washington, DC 20005.	202-682-8000 202-682-8232 fax.	www.api.org standards@api.org standards2@api.org www.asme.org infocentral@asme.org
American Society of Mechanical Engineers (ASME).	Three Park Avenue New York, NY 10016-5990.	800-843-2763 973-882-1717 fax.	www.asnt.org
American Society for Nondestructive Testing (ASNT).	PO Box 28518, 1711 Arlingate Lane Columbus, OH 43228-0518.	800-222-2768 614-274-6899 fax.	www.astm.org webmastr@astm.org
American Society for Testing and Materials (ASTM).	100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.	610-832-9585 610-832-9555 fax.	www.bocai.org webmaster@bocai.org
Building Officials and Code Administrators (BOCA) International.	4051 West Flossmoor Road Country Club Hills, IL 60478.	708-799-2300 .. 708-799-4981 fax.	www.intlcode.org staff@intlcode.org
International Code Council (ICC)	5203 Leesburg Pike, Suite 708 Falls Church, VA 22041.	703-931-4533 703-379-1546 fax.	www.icbo.org
International Conference of Building Officials (ICBO).	5360 Workman Mill Road Whittier, CA 90601-2298.	888-699-0541 888-329-4220 fax.	www.ifci.org webmaster@icbo.org
International Fire Code Institute (IFCI) ...	5360 Workman Mill Road Whittier, CA 90601-2298.	562-699-0124 562-699-8031 fax.	www.mss-hq.com info@mss-hg.com
Manufacturers Standardization Society of The Valve and Fittings Industry Inc. (MSS).	127 Park Street, N.E. Vienna, VA 22180-4602.	703-281-6613 703-281-6671 fax.	www.nace.org
National Association of Corrosion Engineers (NACE).	1440 South Creek Drive Houston, TX 77084.	281-228-6200 281-228-6300 fax.	www.nfpa.org hazchem@nfpa.org
National Fire Protection Association (NFPA).	1 Batterymarch Park PO Box 9101 Quincy, MA 02269-9101.	617-770-3000 617-770-0700 fax.	www.pei.org pei@peinet.org
Petroleum Equipment Institute (PEI)	P.O. Box 2380 Tulsa, OK 74101-2380	918-494-9696 918-491-9895 fax.	www.sbcci.org info@sbcci.org
Southern Building Code Congress International (SBCCI).	900 Montclair Road Birmingham, AL 35213-1206.	205-591-1853 205-591-0775 fax.	www.swri.org action67@swri.org www.steeltank.com ankiefer@steeltank.com
Southwest Research Institute (SwRI)	P.O. Box Drawer 28510 San Antonio, TX 78228-0510.	210-684-5111	www.ul.com northbrook@ul.com
Steel Tank Institute (STI)	570 Oakwood Road Lake Zurich, IL 60047.	847-438-8265 .. 847-438-8766 fax.	www.wfca.com wfadmin@wfca.com
Underwriters Laboratories (UL)	333 Pfingsten Road Northbrook, IL 60062-2096.	847-272-8800 847-272-8129 fax.	
Western Fire Chiefs Association (WFCA)	300 N. Main St. #25 Fallbrook, CA 92028.	760-723-6911 760-723-6912 fax.	

V. Section by Section Analysis (Includes: Background, Comments, and Response to Comments)

Subpart A—Applicability, definitions, and general requirements for all facilities

Background. In the reformatted rule, subpart A defines the applicability of part 112, provides definitions applicable to all subparts, and prescribes general requirements that are applicable to all facilities subject to part 112.

Section 112.1(a)(1)—General Applicability of the Rule

Background. We have redesignated § 112.1(a) as § 112.1(a)(1) due to the addition of a new paragraph (a)(2). In 1991, we proposed changes in § 112.1(a) to conform to the 1977 CWA amendments. Those amendments extended the geographic scope of EPA's authority under CWA section 311. Formerly the geographic scope of the rule extended only to navigable waters of the United States and adjoining

shorelines. The final rule extends the geographic scope of EPA's authority beyond discharges to navigable waters and adjoining shorelines to include a discharge 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). Hereinafter, a discharge as described above in quantities that may be harmful is also referred to as “a discharge as described in § 112.1(b).”

Comments. Geographic scope of rule. One commenter wrote to support the geographic extension of the rule, noting that the extended definition “will allow for more clarity in determining which facilities are subject to SPCC requirements.”

Natural resources. Another commenter was concerned that the extension of the rule to facilities with the potential to affect natural resources “would bring under the scope of 40 CFR 112 a significant number of operating facilities which did not previously require SPCC plans.” Still another commenter proposed limiting the scope of natural resource jurisdiction under the rule to resources under the Magnuson Fishery and Conservation Act to avoid “another unnecessary workload on the judicial system over the years.”

Response to comments. Geographic scope of rule. EPA believes that the geographic extension of the rule to agree with statutory amendments is the proper course, and has finalized the rule as proposed.

Natural resources. Limiting the scope of natural resource jurisdiction under the rule to natural resources under the Magnuson Fishery Conservation and Management Act would be inconsistent with this statutory language. We also believe that few, if any new facilities, will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

Editorial changes and clarifications. While revisions to the rule published today are not retroactive, any violation of the current rule which occurs before the effective date of today’s rule is subject to enforcement and penalties.

Section 112.1(a)(2)—Number and Gender

Background. We added a new § 112.1(a)(2) to make clear that words in the singular include the plural, and words in the masculine include the feminine, and vice versa. This amendment is for clarification purposes only.

Section 112.1(b)—Facilities Covered by the Rule—Non-Transportation-Related Facilities

Background. We have redesignated this section to add four new paragraphs. This section describes generally the type of facilities which are subject to the SPCC rule.

In 1991, EPA proposed changes in § 112.1(b) to reflect changes in the geographic scope of EPA’s authority under CWA section 311, as described in the discussion under § 112.1(a)(1). EPA also proposed to change the phrase “harmful quantities” to “quantities that may be harmful, as described in part 110.” Amendments to the CWA also reflected the broadening of quantities that may be harmful to include those not only harmful to the “public health or welfare,” but also to the environment.

Comments. Facilities. Several commenters argued that EPA jurisdiction, under statutory authority, does not extend to facilities, merely to requirements for oil spill prevention and containment equipment. The commenters’ argument noted that the statute doesn’t mention jurisdictional criteria relating to proximity to water or oil storage capacity, only EPA rules do. Therefore, the commenters argued, if EPA is successful in its assertion of facility regulation, then every pipe, valve, meter, and flange on the wellsite along with tubing and casing in the hole, stock tanks, drainage ditches, and roads are all subject to EPA jurisdiction and specifications. More importantly, they argued, every facility, in every industry, which at some time or other handles oil or hazardous substances could be subject to EPA rules concerning its spill prevention and containment procedures, methods, or equipment.

Use of oil. Numerous commenters, especially in the electric utility industry, asserted that EPA has no jurisdiction to regulate the operational use of oil generally, or specifically in electrical transformers, substations, and other equipment. Some manufacturers of other products agreed. They argued that the legislative history of the Act showed no Congressional intent for such regulation. However, many commenters asked EPA specifically to clarify this jurisdictional issue.

Distance to navigable waters. Two commenters proposed that we exempt from the rule facilities more than one mile from surface waters or those located outside the coastal zone.

Response to Comments: Facilities. We disagree that our authority does not extend to facilities. Section 311(j)(1)(C) of the statute authorizes and requires

the President (and EPA, through delegation in Executive Order 12777, 56 FR 54757, October 22, 1991) to issue regulations consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, and consistent with maritime safety and with marine and navigation laws, which establish “procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges.” This language authorizes the President to issue oil spill prevention rules which pertain to onshore facilities and offshore facilities and not just “equipment.”

In order to fulfill the statutory mandate, it is necessary to regulate the facilities from which discharges emanate. Moreover, although the term “facility” is not defined in the statute, both “onshore facility” and “offshore facility” are defined terms in CWA section 311. They have also been defined terms in the SPCC rule since its inception in 1974. In the 1991 proposal, EPA proposed a definition of “facility” to implement the CWA. That definition was based on a Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 (36 FR 24080). The MOU, which has been published as Appendix A to part 112 since December 11, 1973 (38 FR 34164, 34170), defines in detail what constitutes a facility. Thus, there has long been a common understanding of the term. That understanding has been reinforced by frequent use of the term in context within the SPCC rule since it became effective in 1974. To promote clarity and to maintain all definitions in one place, the proposed definition has been finalized in this rulemaking.

While section 311(j)(1)(C) of the Act may not explicitly mention jurisdictional criteria, section 311(b) of the Act does. Section 311(b) establishes as the policy of the United States that there shall be “no discharges of oil or hazardous substances into or upon the navigable waters of the United States, 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 which 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).” Thus, the location or “jurisdictional” criteria contained in § 112.1(b) are appropriate for inclusion in the rule.

Use of oil. We disagree that operational equipment is not subject to the SPCC rule. We have amended § 112.1(b) to clarify that using oil, for example operationally, may subject a facility to SPCC jurisdiction as long as the other applicability criteria apply, for example, oil storage capacity, or location. Such a facility might reasonably be expected to discharge oil as described in § 112.1(b). Therefore, the prevention of discharges from such facility falls within the scope of the statute.

However, we have distinguished the bulk storage of oil from the operational use of oil. We define "bulk storage container" in the final rule to mean any container used to store oil. The storage of oil may be prior to use, while being used, or prior to further distribution in commerce. For clarity, we have specifically excluded oil-filled electrical, operating, or manufacturing equipment from the definition.

Facilities that use oil operationally include electrical substations, facilities containing electrical transformers, and certain hydraulic or manufacturing equipment. The requirements for bulk storage containers may not always apply to these facilities since the primary purpose of this equipment is not the storage of oil in bulk. Facilities with equipment containing oil for ancillary purposes are not required to provide the secondary containment required for bulk storage facilities (§ 112.8(c)) and onshore production facilities (§ 112.9(c)), nor implement the other provisions of § 112.8(c) or § 112.9(c). Oil-filled equipment must meet other SPCC requirements, for example, the general requirements of this part, including § 112.7(c), to provide appropriate containment and/or diversionary structures to prevent discharged oil from reaching a navigable watercourse. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also the needs of section 311(j)(1)(C) of the CWA.

In addition, a facility may deviate from any inappropriate SPCC requirements, if the owner or operator explains his reasons for nonconformance and provides equivalent environmental protection by some other means. See § 112.7(a)(2). See also § 112.7(d).

Distance to navigable waters. We do not believe that any rule which exempts facilities beyond any particular distance meets the intent of the statute. The locational standard in the rule is whether there is a reasonable possibility

of discharge in quantities that may be harmful from the facility. A facility that is more than one mile from navigable waters might well fit within that standard. For example, piping or drainage from that facility might lead directly to navigable water. If discharged oil may reach or does reach navigable waters, adjoining shorelines, or protected resources, the distance which the discharged oil travels is irrelevant.

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as §§ 112.1(b) and 112.1(b)(1). We have combined the paragraphs and added two new paragraphs. The new paragraphs describe the types of containers subject to the rule, which in addition to the two paragraphs we already proposed, better describe those containers. We also changed plural references in the proposal to singular throughout the section.

Section 112.1(b)(1)—Aboveground Storage Containers

Background. We added this paragraph to clarify that aboveground storage containers are a subset of the containers subject to the rule. In 1991, we noted that containers used for standby storage, temporary storage, or containers that are not permanently closed, are subject to the rule. We also noted that bunkered tanks and partially buried tanks are subject to the rule. The inclusion of this paragraph and paragraph (b)(2), which refers to completely buried tanks, completes the universe of containers subject to the rule.

Section 112.1(b)(2)—Completely Buried Tanks

Background. We added this paragraph to clarify that completely buried tanks are a subset of the containers subject to the rule. See also the discussion under § 112.1(b)(1).

Section 112.1(b)(3)—Standby, Temporary, or Seasonal Storage Facilities

Background. We proposed in 1991 to clarify that tanks used for standby, temporary, or seasonal storage, or that are not otherwise permanently closed, are subject to the SPCC rule. The Agency noted that such tanks are not permanently closed and can reasonably be expected to experience a discharge as described in § 112.1(b). 56 FR 54617. The facilities described in § 112.1(b)(3) are a subset of the facilities described in § 112.1(b)(1) and (b)(2).

Comments. One commenter asserted that temporarily closed tanks should be exempted from the rules because they

are required to be drained and, while awaiting temporary closure, are no threat to the environment through oil spills. Another commenter urged that temporary storage facilities should be exempted from the SPCC rule, and handled under the Facility Response Plan (FRP) rules, found at 40 CFR 112.20–21. A third commenter argued that frac tanks, used to store oil for the short periods of time while maintenance or workover operations are underway, should be exempted from the rule because their use is of short duration and does not necessarily increase the potential for discharge. Another commenter stated that it would be impractical to maintain an up-to-date SPCC Plan for temporary storage at remote parts of a large mining operation.

Response to comments. If a tank is not permanently closed, it is still available for storage and the possibility of a discharge as described in § 112.1(b), remains. Nor does a short time period of storage eliminate the possibility of such a discharge. Therefore, a prevention plan is necessary. A tank closed for a temporary period of time may contain oil mixed with sludge or residues of product which could be discharged. Discharges from these facilities could cause severe environmental damage during such temporary storage and are therefore subject to the rule. As to the argument that it is impractical to maintain an up-to-date Plan for temporary facilities at remote parts of mining sites, we disagree. Plans for such storage are analogous to or may be Plans for mobile facilities, which may be general Plans, but still provide environmental protection against a discharge as described in § 112.1(b).

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as § 112.1(b)(2). We have redesignated it as § 112.1(b)(3).

Section 112.1(b)(4)—Bunkered, Partially Buried, and Vaulted Tanks

Background. In 1991, we proposed to clarify that bunkered tanks, partially buried tanks, and tanks in subterranean vaults are considered aboveground tanks for purposes of the SPCC rule. The tanks or containers in these facilities are a subset of the facilities described in § 112.1(b)(1). The Agency explained that compared to completely buried tanks, discharges from these tanks are more likely to enter surface waters regulated under the CWA. 56 FR 54626.

Comments. Partially buried and bunkered tanks. A commenter suggested that partially buried and bunkered tanks should be considered underground storage tanks (USTs) and regulated under that program because ten percent

or more of the product is below grade either in the tank or in the pipeline. The commenter argued that tanks in compliance with the UST program, found at 40 CFR part 280, would not pose a significant threat to the environment. In fact, the commenter argued, they might be less likely to cause a spill than one in compliance with the SPCC rule. The commenter further argued that dual regulation would be unnecessarily burdensome without providing any additional environmental protection.

Vaulted tanks. Several commenters asserted that since vaulted tanks are already regulated by fire and safety authorities, they should not be regulated under the SPCC program. Others argued that vaulted tanks meeting the technical requirements of 40 CFR part 280, or which have engineering controls designed to contain product released from failure or overflow, should likewise be exempted from the SPCC rule. These commenters asserted that a discharge from such tanks would not reach water.

Response to comments. Partially buried and bunkered tanks. We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. The rules differ in important aspects. Tanks which are partially underground pose a risk of a discharge as described in § 112.1(b), which could have an adverse impact on navigable water, adjoining shorelines, or affected resources. Some tanks that are not completely buried contain engineering controls designed to prevent discharges. However, such controls may fail due to human or mechanical error and cause severe environmental damage. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b).

Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b). We will, however, accept UST program forms, e.g., the Notification for Underground Storage Tanks, EPA Form 7530-1, or approved State program equivalents, insofar as such forms contain information relevant to the SPCC program. For example, the UST

form (item 12) contains information regarding corrosion protection for steel tanks and steel piping which would be relevant for SPCC purposes. Other items on the form may also be relevant for SPCC purposes. We are, however, excluding from the rule completely buried storage tanks (including connected underground piping, underground ancillary equipment, and containment systems) that are currently subject to all of the technical requirements of 40 CFR part 280 or 281. See § 112.1(d)(4).

Vaulted tanks. Vaulted tanks are generally excluded from the scope of 40 CFR part 280. The definition of “underground storage tank” at 40 CFR 280.12(i) excludes from its scope a “storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.” These tanks might reasonably experience a discharge as described in § 112.1(b). Therefore, it is reasonable that they be within the scope of part 112. Merely because these tanks are the subject of local fire and safety regulations does not guarantee that there will be adequate environmental protection to prevent a discharge as described in § 112.1(b), because that is not the purpose of those regulations. Such codes may provide lesser protection than part 112. For example, NFPA 30:2-3.4.3(b) specifically indicates that a dike need only provide containment for the largest tank, while part 112 requires freeboard for precipitation.

Editorial changes and clarifications. In the proposed rule, this paragraph was designated as § 112.1(b)(3). We have redesignated it as § 112.1(b)(4). Section 112.1(b)(3) of the proposed rule uses the term “aboveground storage containers,” in place of “aboveground storage tanks.” See 56 FR 54630. We continue to use “containers” in the final rule. We deleted the word “subterranean,” which modified vaulted tanks in the proposed rule, because vaulted tanks are considered aboveground tanks under this rule whether they are subterranean or not.

Section 112.1(c)—Federal Agencies—Applicability of Rule

Background. In 1991, we republished the already existing provisions of § 112.1(c), which provide that agencies, departments, and instrumentalities of the Federal government are subject to the rule to the same extent as any person, except for the provisions relating to civil penalties. The provision relating to civil penalties was rescinded

on March 11, 1996, because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646. Therefore, we have reserved § 112.6 for future use.

Comments. One commenter suggested that Federal agencies are subject to civil penalties which are imposed under the CWA—including fines.

Response to comments. EPA disagrees that Federal agencies are subject to penalties or fines under the CWA because the Federal government is not a “person” under sections 311(a)(7) or 502 of the CWA. Only “persons” (including owners or operators and persons in charge) are subject to such penalties. Therefore, although Federal agencies must comply with requirements of a CWA section 311 rule in accordance with CWA section 313, they are not subject to civil or criminal penalties or fines. See *U.S. Department of Energy v. Ohio*, 503 U.S. 607, 618 (1992) (because the CWA does not define “person” to include the United States, the civil penalty provisions are not applicable).

Section 112.1(d)—Exemptions From Applicability

Section 112.1(d)(1)—Exemptions Based on Jurisdiction

Section 112.1(d)(1)(i)—Exemptions Based on Location

Background. In 1991, we described the facilities, equipment, and operations that are exempt from the SPCC rule because they are not subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. These facilities include those which, due to their location, could not be reasonably expected to have a discharge as described in § 112.1(b).

In making the determination of whether there is a reasonable possibility of a discharge as described in § 112.1(b), we proposed that you may consider only the geographical and locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.). We proposed that you could not consider manmade structures such as dikes, equipment, or other structures which may serve to restrain, hinder, or otherwise contain a discharge as described in § 112.1(b), in making that same determination.

Comments. Geographic scope of rule. One commenter agreed that the extension of the geographic scope of the rule will allow for more clarity in determining which facilities are subject to SPCC requirements. The commenter added that the inclusion of natural

resources sets the stage for the implementation of Natural Resource Damage Assessments, as required by the Oil Pollution Act of 1990.

Manmade structures. Other commenters argued that EPA should modify its rules to provide that a facility with no reasonable possibility of discharge because of some combination of natural and manmade features, which are present for operational rather than pollution prevention purposes, should be excluded from the scope of the rule. Another commenter urged that the rule allow consideration of manmade structures where the structures are inherent in the design of the facility and serve functional and operational purposes distinct from the containment of oil spills.

Groundwater. Another commenter argued that Congress intended for EPA to develop SPCC requirements that prevent releases to groundwater, in addition to requirements that prevent releases to navigable water. At a minimum, that commenter argued, § 112.1(d)(1)(i) should contain language stating that clear hydrologic connections between groundwater underlying a facility and navigable waters require a facility to develop and implement an SPCC Plan. Yet another commenter, in opposing exemption of USTs from the SPCC program noted that groundwater eventually becomes surface water. The commenter added that, hydrologically, oil released into underground waters may migrate to surface water within minutes or months. The commenter argued that in the absence of emergency response provisions, some USTs could damage the nation's ground and surface water resources.

Response to comments. Geographic scope of rule. We also believe that few, if any, new facilities will be subject to the rule because of its extension to facilities with the potential to affect certain natural resources. We believe that most affected facilities are either already subject to the rule, or not subject to our jurisdiction due to a Memorandum of Understanding between EPA, the U.S. Department of Transportation (DOT), and the U.S. Department of the Interior (DOI), which assigns jurisdiction over most of those facilities to DOT or DOI. See 40 CFR part 112, Appendix B.

We have amended this provision to be consistent with the revised statutory language found in sections 311(b)(1) and (c)(1)(A) of the CWA. This rule focuses on preventing discharges to navigable waters, adjoining shorelines, the exclusive economic zone, and natural resources belonging to, appertaining to, or under the exclusive jurisdiction of

the United States. Once a prohibited discharge of oil occurs and affects such natural resources, the NRDA provisions of OPA sections 1002(b)(2)(A) and 1006 apply. The National Oceanographic and Atmospheric Administration has promulgated a set of regulations which govern the process for conducting NRDA under the OPA. 15 CFR part 990.

Manmade structures. To allow consideration of manmade structures (such as dikes, equipment, or other structures) to relieve a facility from being subject to the rule would defeat its preventive purpose. Because manmade structures may fail, thus putting the environment at risk in the event of a discharge, there is an unacceptable risk in using such structures to justify relieving a facility from the burden of preparing a prevention plan. Secondary containment structures should be part of the prevention plan.

Groundwater. EPA agrees with the commenter that groundwater underlying a facility that is directly connected hydrologically to navigable waters could trigger the requirement to produce an SPCC Plan based on geographic or locational aspects of the facility. See the discussion below for tanks regulated under 40 CFR part 280 or under a State program approved under 40 CFR part 281.

EPA does not agree with the commenter that 40 CFR part 280 and a State program approved under 40 CFR part 281 (the rules governing most completely buried tanks) lack adequate emergency response provisions for regulated tanks and piping. 40 CFR part 280 and State programs approved under 40 CFR part 281 require corrective action, reporting, and recordkeeping requirements for any release from regulated tanks and piping. Also, 40 CFR parts 280 and 281 require various measures intended to prevent contamination that could result from releases from regulated tanks and piping. Although groundwater underlying a facility may eventually connect hydrologically to navigable waters, the requirements of 40 CFR part 280 and State programs approved under 40 CFR part 281 are intended to address the prevention of releases from underground storage tanks that might have an impact on groundwater and to require rapid response and corrective action at such sites if they compromise groundwater quality.

Editorial changes and clarifications. The proposed phrase in the first sentence which read, “* * * could not reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part,” becomes “* * * could not

reasonably be expected to have a discharge as described in § 112.1(b).” The proposed phrase in the last sentence of the paragraph which read, “* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines. * * *” becomes “* * * which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in § 112.1(b).”

Section 112.1(d)(1)(ii)—Exemptions Based on Function—DOT

Background. In 1991, we republished, without substantive change, the current exemption for equipment or operations of vessels or transportation-related onshore and offshore facilities that are subject to the authority and control of the U.S. Department of Transportation (DOT). While we received no comments on the proposal, we believe that this provision merits a few words to clarify the understanding of the regulated community. The Executive Order (EO) implementing the Act assigns regulatory jurisdiction to three Federal agencies based on the function of facilities. Section 2(b)(1) of EO 12777 (56 FR 54757, October 22, 1991) delegates to the Administrator of EPA authority in section 311(j)(1)(C) relating to the establishment of procedures, methods, and equipment, and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities. Section 2(b)(2) of the EO delegates similar authority to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports to the Secretary of Transportation. Section 2(b)(3) of the EO delegates similar authority for offshore facilities, including associated pipelines, other than deepwater ports, to the Secretary of the Interior. A Memorandum of Understanding (MOU) among EPA, DOT, and the U.S. Department of the Interior (DOI), found at Appendix B to part 112, redelegated from DOI to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. Similarly the MOU redelegated from DOI to DOT the responsibility for transportation-related offshore facilities, including pipelines, landward of the coastline.

In 1993, we proposed a definition for the term “complex,” which is a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section

311(j) of the Clean Water Act. We published that definition on July 1, 1994. 59 FR 34097. A commenter on the definition of "breakout tank" (*see also* discussion below on "breakout tank") asked for guidance as to which agency, DOT or EPA, regulates such tanks. Because of confusion in the regulated community over which Federal agencies have jurisdiction in complexes, we discuss the issue below.

Complexes. "Complex" is defined at § 112.2 as a "facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act." The jurisdiction over a component of a complex is determined by the activity occurring at that component. An activity might at one time subject a facility to one agency's jurisdiction, and a different activity at the same facility using the same structure or equipment might subject the facility to the jurisdiction of another agency.

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those facilities are also engaged in activities subject to EPA jurisdiction, such activities would subject the equipment, operation, or facility to EPA jurisdiction. An example of an activity subject to EPA jurisdiction would be the loading or unloading of oil into a tank truck or railcar. Under an MOU between EPA and DOT (See Appendix A of part 112), transportation-related activities regulated by DOT and non-transportation-related activities regulated by EPA are defined. The MOU provides that highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate, are considered transportation-related activities, subject to DOT jurisdiction.

Another example of activities that might be considered a complex and therefore subject to both sets of rules is that of a breakout tank which is used for both transportation and non-transportation purposes. It is the activity to which the tank is put that determines jurisdiction. If you are an owner or operator of a complex, while you may not choose which agency will regulate your facility, you may choose not to engage in activities which would subject your facility to the jurisdiction of a particular agency if you do not wish to comply with that agency's rules.

Otherwise, if you engage in activities subjecting your facility to the jurisdiction of two agencies, your facility would be subject to the more stringent of rules if there were to be a conflict or an inconsistency in those rules. For example, a facility with breakout tanks used solely to relieve surges in a pipeline, and not having another non-transportation-related activity or component, would not be required to have an SPCC Plan.

Which activity would be subject to DOT jurisdiction and which activity which would be subject to EPA jurisdiction is defined by the MOU in Appendix A to part 112. The definitions in the MOU are keyed to the delegations of authority in EO 12777.

Because regulatory jurisdiction is predicated upon the owner's or operator's activities at the facility, an owner or operator might have questions concerning that jurisdiction at his facility. To clarify regulatory jurisdiction, in February 2000, EPA and DOT signed a policy memorandum that described how the two agencies would work together to bring their respective regulations into alignment and, ultimately, to eliminate overlapping jurisdiction over tanks when possible.

Recently, DOT informed EPA of a voluntary initiative to collect information from industry on breakout tanks, beginning in December 2001. In anticipation of receiving the new tank information, DOT is considering updating the National Pipeline Mapping System (NPMS) data standards to reflect the guidelines for tank data submissions. Operators' data submissions will include the location of each tank farm with breakout tanks, information about each tank, and information about the accuracy of the data. The data will be depicted as a geospatial location in a digital file or a point located on a USGS 1:24,000 topographic quad map.

In addition to upgrading the NPMS, DOT is training its inspectors in tank inspection. In the President's Fiscal Year 2002 budget request, DOT expressed its intent to make tanks a priority in its compliance program, particularly where the tanks are in sensitive areas. DOT and EPA have agreed to provide cross-training of their respective personnel. As the two agencies proceed with tank oversight plans, the goal is to ensure that every tank is regulated and no tank is subject to overlapping regulations from two agencies.

Editorial changes and clarifications. "EPA Administrator" becomes "Administrator of EPA." Another

revision corrects an incorrect citation to the 1971 MOU between EPA and DOT.

Section 112.1(d)(1)(iii)—Exemptions Based on Function—DOT and DOI

Background. We have added a new paragraph to the applicability section of the rule to note the jurisdictional changes resulting from an MOU between DOT, DOI, and EPA redelegating certain functions. The MOU was published on July 1, 1994 (at 59 FR 34102). The addition of this paragraph is not a substantive change in the rules, but merely an editorial revision to mark the jurisdiction of the respective agencies in this rule. It complements the other paragraphs in § 112.1(d)(1) that describe facilities which are not subject to EPA jurisdiction. Due to the MOU, the referenced facilities, equipment, and operations of DOT and DOI in § 112.1(d)(1)(iii), like the facilities, equipment, and operations described in § 112.1(d)(1)(i) and (ii), are not subject to EPA jurisdiction under section 311(j)(1)(C) of the Act. They are not subject to EPA jurisdiction either because of their location, in the case of DOI facilities, or because of their activities, which are strictly transportation-related, in the case of DOT facilities.

EO 12777 (56 FR 54757, October 22, 1991) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of EO 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) of the CWA defines the term "offshore facility" to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf was expanded by EO 12777 to include inland lakes, rivers, streams, and any other inland waters.

Under section 2(i) of EO 12777, DOI redelegated, and EPA and DOT accepted, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of the EO. DOI redelegated to EPA the responsibility for non-transportation-related offshore facilities located landward of the coastline. To DOT, DOI redelegated responsibility for transportation-related facilities, including pipelines, located landward of the coastline. DOT retained jurisdiction for deepwater ports and the associated seaward pipelines. DOI retained jurisdiction over facilities, including pipelines, located seaward of

the coastline, except for deepwater ports and associated seaward pipelines. For purposes of the MOU, the term "coastline" means "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

Section 112.1(d)(2)—Other Exemptions

Section 112.1(d)(2)(i)—Completely Buried Storage Tanks Currently Subject to all of the Technical Requirements of 40 CFR PART 280 or State Programs Approved under 40 CFR PART 281

Background. Part 280 and approved State programs. In 1991, we proposed to exempt from the underground storage capacity of facilities in the SPCC rule the storage capacity of buried underground storage tanks (USTs) currently subject to all of the technical requirements of 40 CFR part 280. We proposed this change as § 112.1(d)(2)(i) in 1991. We did not at the time include approved State programs in the proposal because in 1991 few if any States had such programs. In 40 CFR part 281 (published on September 23, 1988 at 53 FR 37212), EPA established regulations whereby a State could receive EPA approval for its State program to operate in lieu of the Federal program. In order to obtain EPA program approval under part 281, a State program must demonstrate that its requirements are no less stringent than the corresponding Federal regulations set forth in part 280, and that it provides adequate enforcement of these requirements. Thus, we have decided to exempt also the storage capacity of USTs subject to all of the technical requirements of State UST programs which EPA has approved. By January 2000, EPA had approved 27 State programs, plus programs in the District of Columbia and Puerto Rico. The rationale for exempting the storage capacity of these facilities from the SPCC regime is because 40 CFR part 280 and the approved State programs under 40 CFR part 281 provide comparable environmental protection for the purpose of preventing discharges as described in § 112.1(b).

Facilities with storage capacity not subject to part 280 or deferred from its provisions.

Storage capacity not subject to part 280. Some UST facilities have storage capacity that is not subject to part 280, for example: any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous wastes and other regulated substances; wastewater treatment tank

systems that are part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act; equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks; and, UST systems whose capacity is 110 gallons or less. Also, part 280 does not provide for regulation of USTs storing animal fats and vegetable oils. All of these facilities remain potentially subject to the SPCC program.

Tanks deferred from compliance with part 280 rules. Other facilities with storage capacity subject to part 280 are deferred from current compliance with most of the technical requirements of that part, including: wastewater treatment tank systems; any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); any UST system that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR part 50, Appendix A; airport hydrant fuel distribution systems; UST systems with field-constructed tanks; and, any UST system that stores fuel solely for use by an emergency power generator. All of these facilities remain potentially subject to the SPCC program.

Tanks excluded from part 280 UST definition. Excluded from the definition of "underground storage tank" or "UST" in part 280 are a: (1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; (2) tank used for storing heating oil for consumptive use on the premises where stored; (3) septic tank; (4) pipeline facility (including gathering lines) regulated under: (a) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), (b) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or (c) which is an intrastate pipeline facility regulated under State law comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979; (5) surface impoundment, pit, pond, or lagoon; (6) storm-water or wastewater collection system; (7) flow-through process tank; (8) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or, (9) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. An UST system includes the tank itself, connected underground

pipings, underground ancillary equipment, and containment system. Therefore, any of these tank systems may be potentially subject to the SPCC program.

Definitions. EPA proposed to define an UST as any tank which is completely covered with earth. Part 280 includes a broader definition of underground storage tanks, and includes partially buried and bunkered tanks. Partially buried tanks and bunkered tanks are excluded from the definition of "completely buried tank" in part 112, and are considered aboveground storage tanks (ASTs) for purposes of the rule, as are tanks in vaults. These tanks are not included in today's exemption because compared to completely buried tanks, partially buried and bunkered tanks are more likely to cause a discharge as described in § 112.1(b).

Although most USTs will be exempt from the SPCC rule (see the above discussion on § 112.1(d)(4)), a facility might have non-exempt USTs for which it must prepare a facility SPCC Plan. If part of your facility is subject to the rule, you must mark the location and contents of all containers, including exempt and non-exempt USTs, on the facility diagram. 40 CFR 112.1(d)(4). The rationale for this requirement is to help response personnel to easily identify dangers from either fire or explosion, or physical impediments during spill response activities. In addition, facility diagrams may be referred to in the event of design modifications. 56 FR 54626.

Capacity calculations. To calculate the 42,000-gallon threshold which subjects a facility operating a completely buried tank to the SPCC rule, you may exclude the storage capacity of any completely buried tank currently subject to all of the technical requirements of 40 CFR part 280 or of an approved State program under 40 CFR part 281. Thus we expect you will count few completely buried tanks containing petroleum products in that calculation. You must count the capacity of completely buried tanks containing products which are not regulated under part 280 or an approved State program under part 281, or which are not currently subject to all of its technical requirements.

Permanently closed tanks. In 1991, EPA proposed that the underground storage capacity of a facility does not include the capacity of underground tanks that are "permanently closed" as defined in § 112.2. Under today's rule, you may exclude the capacity of tanks that are permanently closed, as defined in § 112.2, in completely buried tank capacity calculations.

Comments. Completely buried storage tanks. Favorable comments.

Commenters overwhelmingly favored eliminating dual regulation of ASTs and USTs. Most agreed that the UST program provides protection comparable to the SPCC program. Several argued that all USTs as defined in part 280, which includes partially buried and bunkered tanks, should be exempted. Others argued that tanks deferred under the UST program should be exempted from the SPCC program. Another commenter suggested that piping connecting exempted USTs to regulated ASTs should be exempted from the SPCC rules. The commenter added that if such piping is subject to leak detection requirements for USTs under 40 CFR part 280, then it should remain exclusively under UST rules and be exempted from SPCC rules.

Opposing comments. Several commenters, however, opposed the proposed exemption of USTs from the SPCC program. Those commenters argued that the SPCC rules are not duplicative. They asserted that UST rules lack provisions concerning contingency planning; emergency response; periodic training of personnel to deal with emergencies; maintenance of records regarding inspections and tests; maintenance of records regarding discharges to navigable waters or adjoining shorelines; diking of fuel transfer areas; fuel transfer area operational procedures; illumination of fuel transfer areas; stormwater drainage system design; posting of vehicle weight restrictions in areas where there is underground piping and/or design of underground piping to withstand vehicular loadings; a requirement for an application of "good engineering practice," in other words, no requirements that the design and construction of a UST system be overseen by a Professional Engineer; a requirement that management sign the Plan; and, "other topics enumerated in 40 CFR 112.7." One commenter noted that since groundwater becomes surface water eventually, whether within minutes or months, the absence of emergency provisions in the UST program might cause environmental problems. Another commenter argued that the new regulatory scheme would be confusing because a facility might have some containers subject to SPCC and some that are not, as well as containers that may be subject to State regulation.

Response to comments. Completely buried storage tanks. As we noted above, in the discussion of § 112.1(d)(1)(i), the UST program provides comparable environmental

protection to the SPCC program. While not all aspects of the programs are identical, the UST program ensures protection against discharges as described in § 112.1(b), and protection of the environment. Therefore, dual regulation is unnecessary. In response to commenters asserting that UST rules lack provisions concerning contingency planning; emergency response; certain recordkeeping requirements; and other alleged deficiencies, we disagree. The UST rules have numerous safeguards addressing the commenter's issues.

Partially buried tanks and bunkered tanks. We disagree that partially buried tanks and bunkered tanks should be considered completely buried tanks, and therefore excluded from SPCC provisions. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in § 112.1(b). Such tanks are also not subject to secondary containment requirements under part 280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in § 112.1(b).

Contingency planning. While it is true that UST rules do not require contingency planning, spills and overfills of USTs resulting in a discharge to the environment are much less likely as a result of those rules. An owner or operator of an underground storage tank subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 was required to install spill and overflow prevention equipment no later than December 22, 1998. 40 CFR 280.20 and 280.21. The use of this equipment will greatly reduce the likelihood of both small and large releases or discharges of petroleum to the environment through surface spills or overfilling underground storage tanks. In addition, the UST rules place a general responsibility on the owner or operator to ensure that discharges due to spilling and overfilling do not occur. See 40 CFR 280.30.

Emergency response and release reporting. The UST rules also have several requirements related to emergency response and release or discharge reporting. The UST rules generally require that releases of regulated substances be reported to the implementing agency within 24 hours. As part of the initial response

requirements (found at 40 CFR 280.61), an owner or operator must take immediate action to prevent further release of the regulated substance and must identify and mitigate fire, explosion, and vapor hazards.

Reporting and recordkeeping. In addition to the reporting requirements mentioned above, there are numerous reporting and recordkeeping requirements in the rules governing underground storage tanks. Among these are: corrective action plans; documentation of corrosion protection equipment; documentation of UST system repairs; and, information concerning recent compliance with release detection requirements. Thus, the UST rules have significant reporting and recordkeeping requirements, including specific requirements related to spills and overfills.

Transportation rules. In addition to the EPA UST rules, the U.S. Department of Transportation has hazardous material regulations related to driver training, emergency preparation, and incident reporting and emergency response. Training regulations, for example, can be found at 49 CFR part 172, and loading and unloading regulations can be found at 49 CFR 177.834 and 49 CFR 177.837. These regulations apply, for example, to truck drivers delivering gasoline or diesel fuel to gas stations with underground storage tanks.

Section 112.1(f). Finally, as a safeguard, today's rule (see § 112.1(f) in today's preamble) provides the Regional Administrator with the authority to require any facility subject to EPA jurisdiction under section 311 of the CWA, regardless of threshold or other regulatory exemption, to prepare and implement an SPCC Plan when necessary to further the purposes of the Act.

Regulatory jurisdiction. To eliminate any possible confusion over regulatory jurisdiction, we explain in this preamble (see the above background discussion) which containers in a facility are subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 and which are subject to part 112.

Piping, ancillary equipment, and containment systems. EPA has modified the scope of the proposed exemption for completely buried tanks (which are excluded from the scope of the SPCC rule if they are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281) by clarifying that the exemption includes the connected underground piping, underground ancillary equipment, and containment

systems, in addition to the tank itself. This modification is consistent with the definition of underground storage tank system found at 40 CFR 280.12. In addition, this clarification is responsive to the comment which asked that the piping be included in the exemption.

Deferred tanks. We disagree that we should not regulate tanks which are deferred from compliance with any of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. These are containers from which a discharge as described in § 112.1(b) may occur, and thus are properly subject to the SPCC rule. Furthermore, if they were not regulated by SPCC rules, they may, in some instances, not be regulated at all.

Effect on Facility Response Plan facilities. The exemption for completely buried tanks subject to all the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281 applies to the calculation of storage capacity both for SPCC purposes and for Facility Response Plan (FRP) purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities with large capacity completely buried tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 might no longer be required to have FRPs. Calculations for planning levels for worst case discharges will also be affected. However, the Regional Administrator retains authority to require the owner or operator of any non-transportation-related onshore facility to prepare and submit a FRP after considering the factors listed in § 112.20(f)(2). See § 112.20(b)(1).

Editorial changes and clarifications. "Underground storage tanks" becomes "completely buried storage tanks." The phrase "does not include" becomes "excludes." We have amended the rule to clarify that facilities must be subject to "all of" the technical requirements of 40 CFR part 280 or of a State program approved under 40 CFR part 281 to qualify for the SPCC exemption. If a facility is subject to some, but not all of the UST requirements, it may be subject to the SPCC rule. Facilities in this category include those which are excluded from UST requirements, or deferred from compliance with some or all of those requirements.

Section 112.1(d)(2)(ii)—AST Threshold, Minimum Container Size, Permanently Closed Tanks

Background. Regulatory thresholds. In the 1997 preamble, we asked for comment as to whether any change in the level of storage capacity which subjects a facility to this rule is justified.

62 FR 63813. We noted that we were considering eliminating the provision in the current rule that requires a facility having an aboveground container in excess of 660 gallons to prepare an SPCC Plan, as long as the total aboveground capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aboveground storage capacity greater than 1,320 gallons.

In 1991, EPA also proposed that the aboveground storage capacity of a facility does not include the capacity of aboveground storage containers that are "permanently closed" as defined in § 112.2.

Comments. Minimum size container. Numerous commenters suggested a *de minimis* size for containers to be used for AST capacity calculations. Most of the suggestions came in the context of the discussion of the proposed definition of "bulk storage tank." Suggestions for a minimum size ranged from over 55 gallons to 25,000 gallons. The bulk of the commenters favored either a greater than 55-gallon number, or a greater than 660-gallon figure.

Regulatory thresholds. Higher threshold. Commenters offered numerous threshold levels in both 1991 and 1997. Suggestions for the regulatory threshold in 1991 ranged from greater than 1,320 gallons to 120,000 gallons. Many commenters, particularly utilities, favored thresholds in the 10,000–42,000-gallon range. In 1997, when EPA suggested it might consider a greater than 1,320-gallon threshold, many commenters favored that suggestion. Others urged thresholds ranging up to 15,000 gallons.

Lower threshold. A few commenters suggested lowering the threshold. Commenters suggested threshold levels of 110 and 250 gallons. The general rationale for these suggestions was that oil spills causing even a sheen can be devastating. Therefore, these commenters reasoned that sheens from home heating oil tanks of 110 gallons, i.e., two 55-gallon drums, are every bit as important as sheens from crude oil tanks. An advocate for a lower threshold noted that manufacturers now sell, market, and produce fuel containers of 650 gallons designed to avoid compliance with the rule, whether the site is adjacent to navigable waterways or not. The commenter added that most manufacturers market or sell a "listed" tank of 250 gallons, and that under current rules, five of these tanks would not subject a facility to the SPCC rule, yet the risk would be nearly identical to one larger tank of 1,250 gallons depending upon the design of the tank.

Response to comments. Minimum container size. In response to comments, we are introducing a minimum container size. The 55 gallon container is the most widely used commercial bulk container, and these containers are easily counted. Containers below 55 gallons in capacity are typically end-use consumer containers. Fifty-five gallon containers are also the lowest size bulk container that can be handled by a human. Containers above that size typically require equipment for movement and handling. We considered a minimum container size of one barrel. However, a barrel or 42 gallons is a common volumetric measurement size for oil, but is not a common container size. Therefore, it would not be appropriate to institute a 42 gallon minimum container size.

You need only count containers of 55 gallons or greater in the calculation of the regulatory threshold. You need not count containers, like pints, quarts, and small pails, which have a storage capacity of less than 55 gallons. Some SPCC facilities might therefore drop out of the regulated universe of facilities. You should note, however, that EPA retains authority to require any facility subject to its jurisdiction under section 311(j) of the CWA to prepare and implement an SPCC Plan, or applicable part, to carry out the purposes of the Act.

While some commenters had suggested a higher threshold level, we believe that inclusion of containers of 55 gallons or greater within the calculation for the regulatory threshold is necessary to ensure environmental protection. If we finalized a higher minimum size, the result in some cases would be large amounts of aggregate capacity that would not be counted for SPCC purposes, and would therefore be unregulated, posing a threat to the environment. We believe that it is not necessary to apply SPCC or FRP rules requiring measures like secondary containment, inspections, or integrity testing, to containers smaller than 55 gallons storing oil because a discharge from these containers generally poses a smaller risk to the environment. Furthermore, compliance with the rules for these containers could be extremely burdensome for an owner or operator and could upset manufacturing operations, while providing little or no significant increase in protection of human health or the environment. Many of these smaller containers are constantly being emptied, replaced, and relocated so that serious corrosion will likely soon be detected and undetected leaks become highly unlikely. While we realize that small discharges may harm

the environment, depending on where and when the discharge occurs, we believe that this measure will allow facilities to concentrate on the prevention and containment of discharges of oil from those sources most likely to present a more significant risk to human health and the environment.

Effect on Facility Response Plan facilities. The exemption for containers of less than 55 gallons applies to the calculations of storage capacity both for SPCC purposes and for FRP purposes because the exemption applies to all of part 112. Therefore, a few FRP facilities might no longer be required to have FRPs. The calculations for planning levels for worst case discharges would also be affected.

Regulatory thresholds. We have decided to raise the current regulatory threshold, as discussed in the 1997 preamble, to an aggregate threshold of over 1,320 gallons. We believe that raising the regulatory threshold is justified because our Survey of Oil Storage Facilities (published in July 1996, and available on our Web site at www.epa.gov/oilspill) points to the conclusion that several facility characteristics can affect the chances of a discharge. First, the Survey showed that as the total storage capacity increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Likewise, the Survey also pointed out that as the number of tanks increases, so does the propensity to discharge, the severity of the discharge, and the costs of cleanup. Finally, the Survey showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup.

The threshold change will have several benefits. The threshold increase will result in a substantial reduction in information collection associated with the rule overall. Some smaller facilities will no longer have to bear the costs of an SPCC Plan. EPA will be better able to focus its regulatory oversight on facilities that pose a greater likelihood of a discharge as described in § 112.1(b), and a greater potential for injury to the environment if a discharge as described in § 112.1(b) results.

We raise the regulatory threshold realizing that discharges as described in § 112.1(b) from small facilities may be harmful, depending on the surrounding environment. Among the factors remaining to mitigate any potential disasters are that small facilities no longer required to have SPCC Plans are still liable for cleanup costs and damages from discharges as described in

§ 112.1(b). We encourage those facilities exempted from today's rule to maintain SPCC Plans. Likewise, we encourage facilities becoming operable in the future with storage or use capacity below the regulatory threshold to develop Plans. We believe that SPCC Plans have utility and benefit for both the facility and the environment. But, we will no longer by regulation require Plans from exempted facilities.

While we believe that the Federal oil program is best focused on larger risks, State, local, or tribal governments may still decide that smaller facilities warrant regulation under their own authorities. In accord with this philosophy, we note that this Federal exemption may not relieve all exempted facilities from Plan requirements because some States, local, or tribal governments may still require such facilities to have Plans. While we are aware that some States, local, or tribal governments have laws or policies allowing them to set requirements no more stringent than Federal requirements, we encourage States, local, or tribal governments to maintain or lower regulatory thresholds to include facilities no longer covered by Federal rules where their own laws or policies allow. We believe that CWA section 311(o) authorizes States to establish their own oil spill prevention programs which can be more stringent than EPA's program.

Regulatory safeguard. When a particular facility that is below today's threshold becomes a hazard to the environment because of its practices, or when needed for other reasons to carry out the Clean Water Act, the Regional Administrator may, under a new rule provision, require that facility to prepare and implement an SPCC Plan. See § 112.1(f). This provision acts as a safeguard to an environmental threat from any exempted facility.

Editorial changes and clarifications. The reference to "underground storage tanks" was deleted because it is unnecessary. A reference to the exemption of certain "completely buried" storage tanks from the rules is contained in § 112.1(d)(4).

Section 112.1(d)(3)—Minerals Management Service Facilities

Background. In 1991, EPA proposed to exempt from the SPCC rule facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations. The rationale for the 1991 proposal was to avoid redundancy in regulation, based on EPA's analysis that MMS Operating Orders require adequate spill prevention, control, and countermeasures that are directed more

specifically to the facilities subject to MMS requirements. Until October 22, 1991, the date of the 1991 proposed rule, responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was delegated to EPA. Under EO 12777 (56 FR 54747, October 22, 1991), responsibility for the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil from offshore facilities, including associated pipelines, other than deepwater ports subject to the Deepwater Ports Act, was redelegated to the U.S. Department of the Interior (DOI). These facilities are generally offshore oil production or exploration facilities.

In 1994, in another Memorandum of Understanding (MOU) found in Appendix B of part 112, EPA, DOI, and DOT redelegated the responsibility to regulate non-transportation-related offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA.

Because of the redelegation of responsibility, some DOI facilities again became subject to the jurisdiction of EPA under section 311(j)(1)(C) of the Act. We added a reference to the MOU in the rule.

Comments. Most commenters favored the proposed exemption because they believed that MMS orders, notices, and regulations require oil spill prevention and contingency planning equivalent to the environmental protection envisioned by EPA's rules. Two commenters, both States, opposed the proposal. One was concerned with MMS' "historic treatment of identified violations." The other suggested that the more stringent of EPA or MMS regulations apply.

Response to comments. We have retained our original proposal, except for the editorial revision, because we believe that MMS will provide equivalent environmental protection for the facilities under its jurisdiction. MMS regulations require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements.

Editorial changes and clarifications. The term "Operating Orders" becomes "regulations."

Section 112.1(d)(4)—Completely Buried Storage Tanks

Background. This paragraph is a companion paragraph to § 112.1(d)(2)(i) for purposes of SPCC exemption. As in § 112.1(d)(2)(i), we have also exempted connected underground piping, underground ancillary equipment, and containment systems subject to all of the technical requirements of part 280 or a State program approved under 40 CFR part 281. We also added a clause noting that these exempted tanks must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part. See the discussion above concerning § 112.1(d)(2)(i).

Editorial changes and clarifications. “Underground storage tanks” becomes “completely buried storage tanks.” We also reference 40 CFR part 281.

Section 112.1(d)(5)—Minimum Size Exemption

Background. This is a new section we added in response to comments pertaining to the regulatory threshold/minimum container size issue discussed above. This section clarifies that any aboveground or completely buried container with capacity of less than 55 gallons is not subject to the rule. It is a companion rule to § 112.1(d)(2)(ii) for purposes of SPCC exemption. See the discussion above concerning § 112.1(d)(2)(ii).

Section 112.1(d)(6)—Wastewater Treatment Facility Exemption

Background. In 1991, EPA proposed various changes to § 112.1(d) concerning exemptions to part 112, and received comments on its proposals. Among those comments was one suggesting an exemption for certain treatment systems.

Comments. One commenter suggested that the “§ 112.1 exceptions should be expanded to include facility storage and treatment tanks associated with ‘non-contact cooling water systems’ and/or ‘storm water retention and treatment systems.’ Although these tanks are designed to remove spilled oil from manufacturing operations and parking lot runoff, the concentration of oil in the water at any given time would be insignificant. These tanks are typically very large, *i.e.*, in excess of 100,000 gallons, and are typically not contained by diked walls or impervious surfaces. GM believes the cost to contain these structures could be better spent on other SPCC regulatory requirements.”

Response to comments. We agree with the commenter that certain wastewater treatment facilities or parts thereof

should be exempted from the rule, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. We have therefore amended the rule to reflect that agreement. No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily wastewater.

Many of these wastewater treatment facilities or parts thereof are subject to NPDES or state-equivalent permitting requirements that involve operating and maintaining the facility to prevent discharges. 40 CFR 122.41(e). The NPDES or state-equivalent process ensures review and approval of the facility’s: plans and specifications; operation/maintenance manuals and procedures; and, Stormwater Pollution Prevention Plans, which may include Best Management Practice Plans (BMP).

Many affected facilities are subject to a BMP prepared under an NPDES permit. Some of those plans provide protections equivalent to SPCC Plans. BMPs are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMPs may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. See 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMPs as effluent limitations guidelines. NPDES rules provide for BMPs when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA. In addition, each NPDES or state equivalent permit for a wastewater treatment system must contain operation and maintenance requirements to reduce the risk of discharges. 40 CFR 122.41(e).

Additionally, some wastewater is pretreated prior to discharge to a permitted wastewater treatment facility. The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through or interfere with the operation of POTWs. The General Pretreatment Regulations (GPR), which set for the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. The GPR prohibit a user from introducing a pollutant into a POTW which causes pass through or interference. 40 CFR 403.5(a)(1). More specifically, the GPR also prohibit the introduction into of POTW of

“petroleum, oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. 40 CFR 403.5(b)(6). EPA believes that the GPR and the more specific categorical pretreatment standards, some of which allow indirect dischargers to adopt a BMP as an alternative way to meet pretreatment standards, will work to prevent the discharge of oil from wastewater treatment systems into navigable waters or adjoining shorelines by way of a POTW.

However, if a wastewater facility or part thereof is used for the purpose of storing oil, then there is no exemption, and its capacity must be counted as part of the storage capacity of the facility. Any oil storage capacity associated with or incidental to these wastewater treatment facilities or parts thereof continues to be subject to part 112. At permitted wastewater treatment facilities, storage capacity includes bulk storage containers, hydraulic equipment associated with the treatment process, containers used to store oil which feed an emergency generator associated with wastewater treatment, and slop tanks or other containers used to store oil resulting from treatment. Some flow through treatment such as oil/water separators have a storage capacity within the treatment unit itself. This storage capacity is subject to the rule. An example of a wastewater treatment unit that functions as storage is a treatment unit that accumulates oil and performs no further treatment, such as a bulk storage container used to separate oil and water mixtures, in which oil is stored in the container after removal of the water in the separation/treatment process.

We do not consider wastewater treatment facilities or parts thereof at an oil production, oil recovery, or oil recycling facility to be wastewater treatment for purposes of this paragraph. These facilities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. Production facilities are normally unmanned and therefore lack constant human oversight and inspection. Produced water generated by the production process normally contains saline water as a contaminant in the oil, which might aggravate environmental conditions in addition to the toxicity of the oil in the case of a discharge.

Additionally, the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil, while eliminating impurities in the oil, including water, whereas the goal of a wastewater

treatment facility is to purify water. Neither an oil production facility, nor an oil recovery or oil recycling facility treats water, instead they treat oil. For purposes of this exemption, produced water is not considered wastewater and treatment of produced water is not considered wastewater treatment. Therefore, a facility which stores, treats, or otherwise uses produced water remains subject to the rule. At oil drilling, oil production, oil recycling, or oil recovery facilities, treatment units subject to the rule include open oil pits or ponds associated with oil production operations, oil/water separators (gun barrels), and heater/treater units. Open oil pits or ponds function as another form of bulk storage container and are not used for wastewater treatment. Open oil pits or ponds also pose numerous environmental risks to birds and other wildlife.

Examples of wastewater treatment facilities or parts thereof used to meet a part 112 requirement include an oil/water separator used to meet any SPCC requirement. Oil/water separators used to meet SPCC requirements include oil/water separators used as general facility secondary containment (*i.e.*, § 112.7(c)), secondary containment requirements for loading and unloading (*i.e.*, § 112.7(h)), and for facility drainage (*i.e.*, § 112.8(b) or § 112.9(b)).

Whether a wastewater treatment facility or part thereof is used exclusively for wastewater treatment (*i.e.*, not storage or other use of oil) or used to satisfy a requirement of part 112 will often be a facility specific determination based on the activity associated with the facility or part thereof. Only the portion of the facility (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment and not used to meet any part 112 requirement is exempt from part 112. Storage or use of oil at such a facility will continue to be subject to part 112.

Although we exempt wastewater treatment facilities or parts thereof from the rule under certain circumstances, a mixture of wastewater and oil still is "oil" under the statutory and regulatory definition of the term (33 U.S.C. 1321(a)(1) and 40 CFR 110.2 and 112.2). Thus, while we are excluding from the scope of the rule certain wastewater treatment facilities or parts thereof, a discharge of wastewater containing oil to navigable waters or adjoining shorelines in a "harmful quantity" (40 CFR part 110) is prohibited. Thus, to avoid such discharges, we would expect owners or operators to comply with the applicable permitting requirements, including best management practices

and operation and maintenance provisions.

Proposed § 112.1(e)—Facility Notification

Background. In 1991, EPA proposed to require that any facility subject to its jurisdiction under the Clean Water Act which also meets the regulatory storage capacity threshold notify the Agency on a one-time basis of its existence. CWA section 311(m) provides EPA with the authority to require the owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311. Any owner or operator who failed to notify or knowingly submitted false information in a notification would be subject to a civil penalty. This type of notice is separate from the notice required at 40 CFR 110.3 of discharges which may be harmful to the public health or welfare or the environment. We did not propose any changes to the notice requirements in § 110.3.

We proposed that facility notification include, among other items, information concerning the number, size, storage capacity, and locations of ASTs. The proposal would have exempted information regarding the number and size of completely buried tanks, as defined in § 112.2, from the notification requirement. The rationale for notification was that submission of this information would be needed to help us identify our universe of facilities and to help us administer the Oil Pollution Prevention Program by creating a data base of facility-specific information. We also asked for comments regarding the form on which notification would be submitted, and on various possible items of information that could be included besides the ones proposed. Lastly, we asked for comments on alternate forms of facility notification. 56 FR 54614–15.

Comments. Favorable comments. A number of commenters favored the proposal, including some industry commenters. These commenters stated that there was generally no current procedure whereby EPA can identify the universe of sites subject to the SPCC rule, and that an inventory of these facilities is necessary.

Opposing comments. Most industry commenters opposed the proposal either in part or in its entirety.

Sources of information. Commenters who opposed the proposal in its entirety asserted that it was unnecessary, largely because they believed the information sought might be better obtained from other sources, such as State sources or SARA Title III reports. Some States

wanted copies of the notifications EPA would receive, and at least one suggested requiring updates. One commenter suggested that we gather the information through representative sampling at on-site surveys. Another commenter suggested that we use spill reports already submitted because it makes more sense to regulate those facilities whose practices have led to a spill.

Applicability. Other commenters criticized the fact that the proposal would have been applicable to facilities which were not subject to the SPCC rule. Their solution was to limit applicability to facilities currently regulated under part 112.

Terrorism. One commenter suggested that the aggregation of such strategic information in an easily accessed data base like a facility notification data base could provide an intelligence windfall to terrorists and other enemies of our nation.

Small facilities. Commenters for small facilities argued that facility notification would cause a deluge of notifications to be sent to EPA with little or no environmental benefit. Some of these commenters suggested exempting small facilities at various levels of storage capacity, for example, 42,000 gallons or 100,000 gallons.

Notification time line. In particular, commenters questioned various aspects of the proposal. Many questioned the necessity of providing the information within the proposed two months time frame. Some commenters suggested other time periods ranging from "more than two months" to 18 months. However, the bulk of the commenters favored a six month period for facility notification if notification were to be required. Others favored a "phase-in" of the requirements.

Who must notify. Some commenters asked who must notify, the owner or operator. They noted that these might be different persons. One commenter suggested that the operator of the facility, the owner of any improvements at the facility, and the owner of the land at the facility should be required to submit facility notification. The commenter argued that the United States government is the landowner most prejudiced by the absence of a requirement of landowner involvement in the preparation of an SPCC plan because an owner or operator can prepare a minimal SPCC Plan and not even inform the landowner of it.

Location issues. Others questioned the proposed requirement for the name, address, and zip code of the facility, arguing that provision of such information was not always possible,

especially in remote rural areas. Some noted that drilling rigs move from location to location as often as every few months. Commenters suggested alternatives such as use of longitude and latitude, or the Universal Transverse Mercator system, or a mailing address.

Storage capacity. A number of commenters had concerns about the requirement for the total number and size of ASTs, and the total AST capacity of the facility. Commenters noted that there was no space on the form for containers less than 250 gallons. Other commenters asked if additions to storage capacity would trigger a new notification. Some commenters believed that storage capacity could be measured by SARA Title III information.

Distance to navigable waters. The proposed requirement to detail the distance to the nearest navigable water elicited many comments. Some commenters noted that there was no definition of navigable waters on the form, making it difficult for some responders to answer the question. Others asserted that making the determination on distance to navigable waters was a difficult one due to litigation concerning the definition of the term. Yet other commenters thought that we should specify a minimum distance to navigable waters, on the theory that only facilities within a certain distance would have a reasonable possibility of discharge to such waters.

Classification of facilities. One commenter noted that exploration and production facilities rarely have Dun & Bradstreet numbers, and that the information received from Dun & Bradstreet might be irrelevant for our purposes. Regarding the reporting of Standard Industrial Classification codes (SIC) (now replaced by North American Industry Classification System (NAICS) codes), commenters asserted that EPA used inaccurate codes, that no codes were listed for edible oil facilities, and that the codes listed were misleading in that they did not cover all possible industries regulated.

Use of oil. Permanently closed containers. Facilities using primarily oil-filled equipment, not bulk storage containers, asked whether they too were covered by the notification proposal. Other commenters asked for clarification as to whether permanently closed tanks were covered by the proposal.

Possible additional items. There were numerous comments on various additional items for which EPA had requested comment, but which were not included in the proposal. Possible additional items included: latitude and

longitude of the facility; location of environmentally sensitive areas and potable water supplies; presence of secondary containment; spill history; leak detection equipment and alarms; age of the tanks; potential for adverse weather; and, for field verification purposes, a requirement to have storage facilities placarded or similarly identified. Most commenters opposed the inclusion of additional items. Several supported these additions as well as the addition of other information, particularly information concerning tank materials, methods of construction (for example, field-or shop-erected) and substance stored.

Response to comments. Withdrawal of proposal. We have decided to withdraw the proposed facility notification requirement because we are still considering issues associated with establishing a paper versus electronic notification system, including issues related to providing electronic signatures on the notification. Should the Agency in the future decide to move forward with a facility notification requirement, we will repropose such requirement.

Section 112.1(e)—Proposed as § 112.1(f)—Compliance With Other Laws

Background. While today's rule is substantially similar to the current one, EPA suggested in the 1991 preamble that facility owners consider industry standards in preparing SPCC Plans. 56 FR 54617.

Comments. State rules. Several States wrote to ask EPA to be as consistent with current State rules as possible. One industry commenter complained that EPA rules were more stringent than some State rules. Other industry commenters opposed either State or Federal regulation, or both.

Industry standards. Several commenters wrote to urge that EPA incorporate industry standards into the rule, on the theory that if EPA wants to require these standards, they must be incorporated into the rule. Others wrote to urge the inclusion of specific standards, such as fire codes or steel tank codes.

Response to comments. State rules. Section 311(o)(2) of the CWA specifically provides that nothing in section 311 "shall be construed as preempting any State or political subdivision thereof from imposing any requirements or liability with respect to the discharge of oil * * *." We are aware that Federal rules often set the standard for State rules, and at least set a floor for State rules. Under CWA section 311(o)(2), States are free to

impose more stringent standards relating to prevention of oil discharges, or none at all. EPA encourages States to set up their own oil pollution prevention programs because we believe that oil pollution prevention efforts should be a joint Federal-State effort.

Industry standards. Under this rule, a facility is required to at least consider the use of all relevant measures, including the use of industry standards, as a way to implement those measures. The requirement comes in the language of revised § 112.3(d)(1)(iii) requiring the PE to attest that "the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part." A facility should use industry standards whenever possible in preparing and implementing its SPCC Plan, and should discuss their use in Plans. While facility owners or operators should look to specific industry standards as a guide for preparing SPCC Plans, we do not believe that incorporating specific standards into this rule is appropriate. Such incorporation freezes standards into rules, which may swiftly become outdated or obsolete.

Editorial changes and clarifications. The new introductory language is, "This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans." The new language covers all SPCC requirements, both general and specific. That language replaces "This part provides for * * *." The phrase "Plans prepared in accordance with §§ 112.7, 112.8, 112.9, 112.10, and 112.11" was eliminated because new introductory language makes it unnecessary.

Section 112.1(f)—Proposed as § 112.1(g)—Plans for Exempted Facilities

Background. This is a new section, proposed in 1993, that allows the Regional Administrators (RAs) to require preparation of entire an SPCC Plan, or applicable part, by the owner or operator of an otherwise exempted facility, that is subject to the jurisdiction of EPA under section 311(j) of the CWA. The proposal stems from the 1988 Interagency SPCC Task Force and subsequent GAO report, "Inland Oil Spills" (GAO/RCED-89-65).

Comments. Authority. One commenter called the proposal "arbitrary and capricious" and feared political use of the authority. Some commenters questioned EPA authority for the proposal.

Standard to use authority. One commenter favored the proposal and suggested that we look at additional physical characteristics of the facility in order to make a determination to require the owner or operator to prepare an SPCC Plan. Other commenters asserted that the standards for requiring Plans need to be specified, or that "good cause" be the standard.

Response Plans. One commenter urged a "vastly abbreviated" version of this section in the event that the Regional Administrator requires a small Appalachian facility to prepare a facility response plan in addition to an SPCC Plan, because the "extensive requirements outlined in the appendices and attachments have little applicability" to a small Appalachian oil field storage facility. The commenter added that the availability of secondary containment at most Appalachian facilities mitigates many of the requirements of the complete response plan which is directed towards large oil storage tanks.

Appeals process. Other commenters called for an appeals process, and specification of time frames within which the RA must act.

Response to comments. Authority. EPA believes that it has adequate authority under section 311 of the CWA to require any facility within its jurisdiction to prepare a Plan that could because of its location, cause a discharge as described in § 112.1(b). This authority is broad enough to encompass the storage or use capacity of any exempted facility within EPA's jurisdiction, regardless of size.

Standard to use authority. RAs may invoke this section to carry out the purposes of the Act on a case-specific basis when it is needed to prevent a discharge as described in § 112.1(b), and thus protect the environment. While we expect to use this section sparingly, it is necessary to address gaps in other regulatory regimes that might best be remedied by requiring a facility to have an SPCC Plan. Factors the RAs may consider in making a determination that a facility needs an SPCC Plan include, but are not limited to, the physical characteristics of the facility, the presence of secondary containment, the discharge history of the facility, and the proximity of the facility to sensitive environmental areas such as wetlands, parks, or wildlife refuges. An example of the use of this section might be when a facility is exempted from SPCC rules because its storage capacity is below the regulatory threshold, but the facility has been the cause of repeated discharges as described in § 112.1(b). The RA might require an entire Plan, or might only

require a partial Plan addressing secondary containment, for example, to prevent future discharges as described in § 112.1(b).

Partial Plans. We clarify that the RA may require partial Plans to cover situations where the preparation of only a partial Plan may be necessary, such as to supplement an existing document other than a Plan or to address a particular environmental threat. The decision to require a Plan (or partial Plan) could be based on the presence of environmental concerns not adequately addressed under UST or NPDES regulations, or due to other relevant environmental factors. The section may be invoked when the RA determines it is necessary to "carry out the purposes of the Act."

The decision to require a partial Plan is separate from a decision to require an amendment to a Plan. In one case, the assumption is that a Plan doesn't exist; in the other, that an existing Plan needs amendment.

Response Plans. Section 112.1(f) applies only to the total or partial preparation of an SPCC Plan. It does not authorize the Regional Administrator to require you to prepare a facility response plan. We have withdrawn a proposal (see 1993 proposed § 112.7(d)(1)) which would have required you to prepare a response plan when your SPCC facility lacked secondary containment. Therefore, most facilities will incur no response planning costs. Instead, if your facility lacks secondary containment, you must prepare a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). As a result, requirements to prepare a facility response plan are contained solely in § 112.20, and not § 112.1(f).

Appeals process. We agree that an appeals process is appropriate for this section. Therefore we have added a new paragraph (f)(5) to include such a process, and have provided time frames for the process. The appeals process is modeled upon current § 112.4(f), which we repropose in 1991 and have finalized today.

Editorial changes and clarifications. We deleted the proposed requirement to "submit" a Plan in paragraph (f)(2), because we only require submission of Plans in certain circumstances, such as when there has been a discharge(s) as described in § 112.1(b) over the threshold amount provided for in § 112.4(a), and the RA believes that submission of the Plan is necessary. We do not require Plan submission as a general rule.

Section 112.2—Definitions

Background. Definitions proposed in 1993 and 1999, and promulgated in the Facility Response Plan rule of 1994 and 2000 are reprinted in the rule for the convenience of the reader. No substantive changes were made to those definitions and they are not discussed further in this preamble, except where we made editorial changes in today's rule. The discussion for those editorial changes, and for proposed definitions that were not already finalized in the 1994 and 2000 FRP rule, follows.

Adverse Weather

Editorial changes and clarifications. We have made slight editorial changes to this definition, none of which are substantive. In the first sentence, the phrase "will be considered" becomes "must be considered." In the second sentence, the phrase "as appropriate" is placed in parentheses.

Alteration

Background. In 1993, we proposed a definition of "alteration" in conjunction with the proposed rule for ensuring against brittle fracture. We proposed the definition of "alteration" to mean "any work on a tank or related equipment involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of a tank."

Comments. One commenter suggested that we conform the proposed definition of "alteration" with the API 653 definition, specifically deleting the phrase "or related equipment."

Response to comments. Related equipment. We agree with the commenter and will not include the term "or related equipment" in the definition to conform with API Standard 653, which does not include alterations of related equipment as a criterion for brittle fracture evaluation. In the preamble to the 1993 proposal, we gave examples of alteration that included the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height. 58 FR 8843.

Industry Standards. An industry standard that may be helpful in understanding the definition of "alteration" is API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Editorial changes and clarifications. "Tank" becomes "container."

Breakout tank

Background. We proposed this definition and the definition of "bulk storage tank" in 1991 to clarify the distinction between facilities regulated

by DOT and EPA. Breakout tanks are used mainly to compensate for pressure surges or to control and maintain pressure through pipelines. They are also sometimes used for bulk storage. These tanks are frequently in-line, and may be regulated by EPA, DOT, or both. When a breakout tank is used for both storage and for pipeline control, it becomes in itself a "complex," and is regulated as such. See the discussion on "complexes" in today's preamble at § 112.1(d)(1)(ii).

Comments. A number of commenters suggested that EPA adopt the DOT definition of breakout tank. Another commenter asked for guidance as to which agency, DOT or EPA, regulates such tanks.

Response to comments. On the suggestion of commenters, EPA has adopted a modified version of the DOT definition in 49 CFR 195.2. This revision promotes consistency in the DOT and EPA definitions to aid the regulators and regulated community. We modified the DOT definition by substituting the word "oil" for "hazardous liquid," because our rules apply only to oil. We also use in the definition the term "container" rather than just "tank" to cover any type of container. This terminology is consistent with other terminology used in this rule.

A breakout tank that is used only to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline is subject only to DOT jurisdiction. When that same breakout tank is used for other purposes, such as a process tank or as a bulk storage container, it is no longer solely within the definition of breakout tank, and may be subject to EPA or other jurisdiction with the new use.

EPA and DOT also signed a joint memorandum dated February 4, 2000, clarifying regulatory jurisdiction on breakout tanks. That memorandum is available to the public upon request. It is also available on our Web site at <http://www.epa.gov/oilspill> under the "What's New" section.

Bulk Storage Container—Formerly Bulk Storage Tank

Background. Along with "breakout tank," we proposed this definition in 1991 to help clarify the distinctions between facilities regulated by EPA and those regulated by DOT. The proposed definition was originally for "bulk storage tank." As explained below, we changed the definition to "bulk storage container."

Comments. Many electric utility commenters urged that EPA explicitly

exclude electrical equipment from the definition because such equipment is not bulk storage. Other commenters asked for a minimum size to which the definition should apply.

Response to comments. We agree that electrical equipment is not bulk storage. See the above discussion on the applicability of the rule to electrical and other operating equipment under § 112.1(b). See also the definition of "bulk storage container" in § 112.2. For a discussion of minimum size containers to which the rule applies, see the discussion under § 112.1(d)(2)(ii).

Editorial changes and clarifications. "Tank" becomes "container" because "container" is more accurate. Many containers storing oil are not tanks, but provide bulk storage. A bulk storage container may be either aboveground, partially buried, bunkered, or completely buried.

The definition of "bulk storage container" adopted in today's rule should not be confused with the definitions of "container" used in several fire codes. Sometimes those codes limit a container to one below a certain size. See for example, the BOCA National Fire Prevention Code, section F-2302.1 (1999) and NFPA 30 section 1-6 (1996). The definition adopted in today's rule is broader than the definitions in the codes in that it is not limited to a particular amount of storage capacity.

We also clarify in today's rule that oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered Tank

Background. We proposed this definition in 1991 to clarify that bunkered tanks are a subset of partially buried tanks, and as such, subject to part 112 as aboveground tanks.

Comments. One commenter wrote that the definition is "undecipherable and should be rewritten." The commenter wrote that the definition should be, "Bunkered tank means a partially buried tank, the portion of which lies above grade is covered with earth, sand, gravel, asphalt, or other material."

Response to comments. EPA agrees that the commenter's proposed definition is clearer, and we have used it with slight editorial changes.

Editorial changes and clarifications. We added a sentence to the definition noting that bunkered tanks are a subset of aboveground storage containers for purposes of this part.

Completely Buried Tank—Proposed as "Underground Storage Tank"

Background. In 1991, we proposed adding a definition for "underground storage tank." It differed from the Underground Storage Tank (UST) program definition in 40 CFR part 280 because it excluded tanks which are partially buried or bunkered, as well as some other tanks or containers included within the part 280 definition, such as containers storing certain hazardous substances. Partially buried and bunkered tanks still have a potential to discharge oil into navigable waters, adjoining shorelines, or affecting natural resources. Therefore, we proposed to retain those tanks within our regulatory jurisdiction, while we proposed to exclude all completely buried tanks storing petroleum that are subject to all of the technical requirements of the UST program (40 CFR part 280 or a State program approved under 40 CFR part 281).

Comments. Consistency with the definition of underground tanks in 40 CFR part 280. One commenter supported the proposal. A number of commenters thought that the definitions of underground tanks in parts 112 and 280 should be consistent.

Vaulted tanks. Commenters divided on whether subterranean vaulted tanks should be considered ASTs or USTs. The commenter opposing the treatment of subterranean vaulted tanks as ASTs in the UST definition argued that discharges from those tanks pose no threat to the environment or public health.

Response to comments. Consistency with the definition of underground tanks in 40 CFR part 280. We disagree that the scope of the part 112 exclusion for underground tanks should be consistent with the scope of the definition of "underground storage tank" in part 280. The programs are designed for different purposes, therefore, the definitions used will necessarily differ. To eliminate confusion with the part 280 definition, we have changed the proposed part 112 definition of "underground storage tank" to "completely buried tank" in this final rule.

Part 280 includes within its UST definition tanks which have a volume up to ninety percent above the surface of the ground, which are considered aboveground tanks for part 112 purposes. Part 280 also regulates underground storage tanks containing hazardous substances, while the SPCC program regulates only facilities storing or using oil as defined in CWA section 311. The SPCC program regulates

facilities with relatively large completely buried storage capacity, while the bulk of facilities regulated under part 280 are small capacity facilities such as gasoline filling stations. The SPCC program also regulates other types of containers and facilities which part 280 excludes, such as: tanks used for storing heating oil for consumptive use on the premises where stored; certain pipeline complexes where oil is stored; and, oil-water separators.

Vaulted tanks. Aboveground vaulted tanks are clearly ASTs. While subterranean vaulted tanks may be completely below grade, they may not be completely covered with earth. Because of their design, they pose a threat of discharge into the environment, and are thus excluded from our definition of completely buried tank. Subterranean vaulted tanks are also excluded from the part 280 UST definition of underground tank if the storage tank is situated upon or above the surface of the floor in an underground area providing enough space for physical inspection of the exterior of the tank. Therefore, if subterranean tanks were excluded from our definition of completely buried tank, they would likely not be regulated at all, and thereby be likely to pose a greater threat to the environment.

Other completely buried tanks excluded from the part 280 UST definition. Tanks in underground rooms or above the floor surface, or in other underground areas such as basements, cellars, mine workings, drifts, shafts, or tunnels are also not considered USTs for purposes of the part 280 definition. The purpose of the part 112 definition is to clarify that these are tanks that are technically underground but that, in a practical sense, are no different from aboveground tanks. They are situated so that, to the same extent as tanks aboveground, physical inspection for leaks is possible. Also, some of these tanks are designed such that in case of a discharge, oil would escape to navigable waters or adjoining shorelines, a result which our program seeks to prevent.

Editorial changes and clarifications. The words "completely below grade and * * *" were added to the first sentence of the definition. The purpose of that revision was to distinguish completely buried tanks from partially buried and bunkered tanks, which break the grade of the land, but are not completely below grade. We further clarify that such tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into

accord with the coverings noted in the definition of "bunkered tank." In the second sentence, the word "subterranean" was deleted from "subterranean vaults" because all vaulted tanks, whether subterranean or aboveground, are counted as aboveground tanks for purposes of this rule.

Contiguous Zone

Background. The definition of "contiguous zone" was proposed in 1991 to conform with 1978 amendments to the CWA, and the 1990 amendments to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) dealing with the scope of discharges. EPA received no substantive comments. Thus, we have finalized the proposed definition.

The contiguous zone is the area that extends nine miles seaward from the outer limit of the territorial sea. A presidential proclamation of December 17, 1988 (No. 5928, 54 FR 777, January 9, 1989) extended the territorial seas of the United States to 12 nautical miles from the baselines of the United States as determined in accordance with international law. However, the proclamation provided that nothing therein "extends or otherwise alters existing federal or state law or any jurisdiction, rights, legal interests, or obligations derived therefrom * * *."

Contract or Other Approved Means

Editorial changes and clarifications. We corrected the title of the definition to read "contract or other approved means," in place of "contract or other approved." We also changed some plural references to singular ones.

Discharge

Background. The 1991 proposed changes to the definition of "discharge" reflected changes to the statutory definition in the 1978 amendments to the CWA. For clarity, the words "of oil" were added in the first sentence because the definition applies only to discharges of oil.

Comments. One commenter asked for a clarification of the term "discharge." The commenter asked whether a drop of diesel fuel that fell onto the outside casing of a tank during refilling would be considered a "discharge," even if the oil did not reach the ground. Other commenters recommended that the definition include at least an imminent danger that the spilled material would reach a navigable waterway. Another commenter asked EPA to exempt from the definition those discharges regulated under the CWA, such as National Pollutant Discharge Elimination System

(NPDES) discharges. The rationale was that any potential environmental impacts of these discharges have been considered in the issuance of a facility's NPDES permit and there is no reason to subject such facilities to dual regulation.

Response to comments. A discharge includes, but is not limited to, any "spilling, leaking, pumping, pouring, emitting, emptying, or dumping," of oil. A discharge as described in § 112.1(b) need not reach the level of an imminent danger to affected lands, waters, or resources to be a discharge. It includes any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any amount of oil no matter where it occurs. It may not be a reportable discharge under 40 CFR part 110 if oil never escapes the secondary containment at the facility and is promptly cleaned up. If the discharge escapes secondary containment, it may become a discharge as described in § 112.1(b), and if that happens, the discharge must then be reported to the National Response Center.

Foreseeable or chronic point source discharges that are permitted under section 402 of the CWA, 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. Other oil discharges in reportable quantities are subject to the requirements of section 311 of the CWA. Such spills or discharges are governed by section 311 even where the discharger holds a valid and effective NPDES permit under CWA section 402. Therefore, a discharge of oil to a publicly owned treatment work (POTW) would not be a discharge under the § 112.2 definition if the discharge is in compliance with the provisions of the permit; or resulted from a circumstance identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402; or if it were a continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402, which is caused by events occurring within the scope of relevant operating or treatment systems. 33 U.S.C. 1321(a)(2); 40 CFR 117.12. Otherwise, the discharge is subject to the provisions of section 311 of the CWA as well as the unpermitted discharge prohibition of section 301(a) of the CWA. 33 U.S.C. 1311(a).

Editorial changes and clarifications. We have revised the citation for the River and Harbor Act of 1899 so that it refers only to the U.S. Code, and have

deleted the reference to the Statutes at Large.

Facility

Background. Because we regulate facilities in the SPCC rule, we proposed a definition of "facility" in 1991. It is based on the Memorandum of Understanding (MOU) between the Secretary of DOT and the EPA Administrator, dated November 24, 1971 (36 FR 24080). A discussion of the types of facilities covered is found in Appendix A to this rule.

Comments. Facility boundaries. One commenter asked for clarification as to whether the facility is the petroleum storage site or a single tank at the site.

Electrical or operational equipment. Utility commenters argued that electrical equipment is not a facility because no oil is being stored in the equipment.

Buried pipelines, gathering lines, flowlines, waste treatment equipment. One commenter urged that buried pipelines at mining sites should be excluded from the definition because such pipelines are often put in place without recording their location. The commenter added that typically the lines are emptied and abandoned as part of final reclamation. Other commenters urged the exclusion of gathering lines and flowlines from the definition because of the cost of providing secondary containment and contingency planning for such lines. Another commenter protested the inclusion of waste treatment as a possible activity covered under the definition, and therefore the rule.

Mobile or fixed facilities. One commenter urged that mobile equipment be excluded from the definition because the commenter believed that the SPCC Plan would otherwise have to be amended each time the mobile equipment is moved.

Response to Comments. Facility boundaries. A facility includes any building, structure, installation, equipment, pipe or pipeline in oil well drilling operations, oil production, oil refining, oil storage, and waste treatment, or in which oil is used at a site, whether it is mobile or fixed. It may also include power rights of way connected to the facility. The extent of the facility will vary according to the circumstances of the site. It may be as small as a single container or as large as all of the structures and buildings on a site. Some specific factors to use in determining the extent of a facility may be the ownership or operation of those buildings, structures, equipment, installations, pipes or pipelines, or the

types of activities being carried on at the facility.

Electrical or operational equipment. We disagree with commenters who maintained that electrical equipment "using" oil as opposed to "storing" it should not fall within the definition of "facility" in part 112. Section 311(j)(1)(C) of the CWA, which authorizes EPA to promulgate the SPCC rule, does not distinguish between the storage and the usage of oil. The section simply authorizes EPA, as delegated by the President, to establish "requirements to prevent discharges of oil * * * from onshore and offshore facilities, and to contain such discharges * * *." 33 U.S.C. 1321(j)(1)(C). Nor do the definitions of "onshore facility" or "offshore facility" in sections 311(a)(10) of the CWA distinguish between the use or storage of oil. Although the definition of "facility" in section 1001(9) of the OPA is limited by the "purpose" of the facility, no such limitation appears in CWA section 311. Moreover, EPA believes that although much of the electrical equipment may arguably "use" oil, in effect the oil is "stored" in the equipment because it remains in the equipment for such long time frames. We added language to the definition to clarify that such types of equipment are facilities subject to the SPCC rule whether they are storing or using oil. Therefore, we revised the definition to include the words "or in which oil is used." However, we note that a facility which contains only electrical equipment is not a bulk storage facility.

Buried pipelines, gathering lines, flowlines, waste treatment equipment. Buried pipelines that carry oil at mining sites are part of a facility unless they are permanently closed as defined in § 112.2. Such pipelines may otherwise be the source of a discharge as described in § 112.1(b). Likewise, the same rationale applies to gathering lines and flowlines, and waste treatment equipment. Note that any facility or part thereof used exclusively for wastewater treatment and not to satisfy any part 112 requirement is exempted from the rule. The production, recovery, or recycling of oil is not considered wastewater treatment for purposes of the rule. See § 112.1(d)(6).

While such gathering lines, flowlines, and waste treatment equipment are subject to secondary containment requirements, the appropriate method of secondary containment is an engineering question. Double-walled piping may be an option, but is not required by these rules. The owner or operator and Professional Engineer certifying the Plan should consider whether pursuant to good engineering

practice, double-walled piping is the appropriate method of secondary containment according to good engineering practice. In determining whether to install double-walled piping versus an alternative method of secondary containment, you could consider such factors as the additional effectiveness of double-walled piping in preventing discharges, the technical aspects of cathodically protecting any buried double-walled piping system, the cost of installing double-walled pipe, and the potential fire and safety hazards of double-walled pipes. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b), including containment that prevents discharge of oil through groundwater that might cause a discharge as described in § 112.1(b). What is practical for one facility, however, might not work for another.

Mobile or fixed facilities. Either mobile or fixed equipment might be the source of a discharge as described in § 112.1(b), and therefore both are included within the definition of "facility." Section 112.3(c) of this rule already provides that it is not necessary to amend your Plan each time a mobile facility moves to a new site.

Editorial changes and clarifications. In the first sentence we added the words "oil gathering, oil processing, oil transfer, oil distribution" to the list of activities listed. The added activities track the activities listed in § 112.1(b). We also clarify that a vessel or a public vessel is not a facility or part of a facility. We deleted the word "may" in the second sentence of the definition regarding site-specific factors of facility boundaries, because it is redundant with the inclusion of the words, "including, but not limited to."

Fish and Wildlife and Sensitive Environments

Editorial changes and clarifications. We made four editorial changes. We deleted the word "either" in the first sentence because it is unnecessary. "Endangered/threatened species" becomes "endangered or threatened species." We also deleted the colon in the last sentence because it is unnecessary. "Discharges of oil" becomes "discharges."

Maximum Extent Practicable

Editorial changes and clarifications. In the first sentence the phrase "the limitations used to determine" becomes "within the limitations used to determine." In the beginning of second sentence, "It considers * * *." becomes "It includes * * *."

Navigable Waters

Background. We proposed a revision of the definition of “navigable waters” in 1991. The rationale was to have the part 112 definition track the definition of “navigable waters” in 40 CFR part 110, which deals with the discharge of oil.

Comments. Clarification of the meaning of navigable waters, maps. A number of commenters asked for a clarification of the definition of navigable waters because of the difficulty of determining which waters fall within the definition. Some asked for EPA maps to aid in this determination.

Navigability, legal authority. Other commenters believed that the definition related to navigability. Some thought the definition was legally unsupportable because it is so broad. One commenter suggested that the term be limited to unobstructed streams that free flow at least fourteen consecutive days per year.

Wetlands. Another commenter believed that the definition should not apply to wetlands because SPCC protections are not needed when wetlands are regulated under a permit program.

Response to comments. Clarification of the meaning of navigable waters, maps. In this definition, we clarify what we mean by navigable waters by describing the characteristics of navigable waters and by listing examples of navigable waters. We also note in the definition that certain waste treatment systems are not navigable waters.

We are unable to provide a map to identify all navigable waters because not all such waters have been identified on a map. However, the rule provides guidelines as to where such waters may be found.

Navigability, legal authority. Navigable waters are not only waters on which a craft may be sailed. Navigable waters include all waters with a past, present, or possible future use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide. Navigable waters also include intrastate waters which could affect interstate or foreign commerce. The case law supports a broad definition of navigable waters, such as the one published today, and that definition does not necessarily depend on navigability in fact.

Wetlands. We disagree that SPCC regulation of wetlands is redundant. The definition includes wetlands, as defined in § 112.2 and discussed below, because wetlands are waters of the United States. Different programs serve

different purposes, and merely because an activity or function is regulated for one purpose (for example, NPDES) does not mean that regulation for another purpose is redundant. The purpose of a permit discharge system is waste treatment and management. The purpose of the SPCC rule is oil pollution prevention.

Offshore Facility

Background. EPA proposed in 1991 to revise the definition of “offshore facility” to conform with the CWA and NCP definitions.

Comments. EPA or DOI jurisdiction. One commenter noted that if the definition of offshore facility is taken in context with the definition of navigable waters, then many facilities traditionally subject to EPA jurisdiction would become subject to DOI authority.

CWA definition. Another commenter suggested that the EPA definition should instead be that contained in CWA section 311(a)(11).

Response to comments. EPA or DOI jurisdiction. The 1994 Memorandum of Understanding between DOI, DOT, and EPA addresses the jurisdictional issue to which the commenter refers, transferring to EPA those non-transportation-related offshore facilities landward of the coastline.

CWA definition. EPA agrees with the commenter urging that the EPA definition track the statutory definition. The part 112 definition, except for minor editorial changes, is identical to the CWA definition. There is no difference between the substance of the part 112 definition and the CWA definition.

Editorial changes and clarifications. Permanently moored vessels and other former transportation equipment. We also note that barges which store oil, and have been determined by the Coast Guard to be permanently moored, are no longer vessels, but storage containers that are part of an offshore facility. Likewise, a container, whether onshore or offshore, which was formerly used for transportation, such as a truck or railroad car, which now is used to store oil, is no longer used for a transportation purpose, and is a bulk storage container.

Oil

Background. In 1991, EPA reprinted the definition of oil without suggesting any changes. In response to Edible Oil Regulatory Reform Act (EORRA) of 1995 (33 U.S.C. 2720) requirements, we have reworded the definition to include the categories of oil included in EORRA. Those categories are: (1) Petroleum oils, (2) animal fats and vegetable oils; and,

(3) other non-petroleum oils and greases. Animal fats include fats, oils, and greases of animal origin (for example, lard and tallow), fish (for example, cod liver oil), or marine mammal origin (for example, whale oil). Vegetable oils include oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Examples of vegetable oils include: corn oil, rapeseed oil, coconut oil, palm oil, soy bean oil, sunflower seed oil, cottonseed oil, and peanut oil. Other non-petroleum oils and greases include coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils. Petroleum oils include crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

EORRA requires that Federal agencies establish separate classes for at least these three types of oils. It further requires agencies to differentiate between those classes of oil in relation to their environmental effects, and their physical, chemical, biological, and other characteristics. EPA has provided new subparts within part 112 to facilitate differentiation between the categories of oil listed in EORRA. In an advance notice of proposed rulemaking, published on April 8, 1999 (64 FR 17227), we requested ideas on how to differentiate among the SPCC requirements for facilities storing or using the various categories of oil. These ideas for further differentiation will be considered in a future rulemaking.

Today’s amendments to the definition and the creation of subparts have no effect on information collection, because we already include all types of oil in our information collection burden calculations. Similarly, the definition imposes no new requirements, because all oils have always been subject to the substantive requirements of the rule.

Comments. What is oil. Several commenters favored the proposed 1991 definition, which is identical to the current definition. Some asked for clarification as to its scope, particularly in reference to animal and vegetable oils, synthetic oils, mineral oils, and petroleum derivatives.

Specific substances. Others asked about specific substances like aromatic hydrocarbons and asphaltic cement. One commenter asked if bilge water is oil.

Authority. Some commenters suggested that EPA’s authority did not extend beyond petroleum-based oils.

Exclusions. Some commenters sought exclusions from the definition, generally based on contentions that certain oils (such as vegetable oils) are not harmful

to the environment if discharged. One commenter suggested a definition based on the liquidity of oil, founded on a rationale that solid or gaseous oils do not pose a threat to waters of the United States when discharged at a fixed facility. Another commenter urged that we exempt refined petroleum products from the definition because releases from many of these products are regulated by other statutes, such as the Solid Waste Disposal Act. One State commenter noted that animal and vegetable oils are not subject to regulation under that State's statutes regulating oil.

Oil mixed with wastes or hazardous substances. Others asked for clarification as to whether mixed substances, used oil, and waste oils were oil.

Part 280 definition. One commenter noted the difference in definitions between the part 112 definition and the definition in 40 CFR part 280.

Response to comments. What is oil. EPA interprets the definition of oil to include all types of oil, in whatever form, solid or liquid. That includes synthetic oils, mineral oils, vegetable oils, animal fats, petroleum derivatives, etc.

Specific substances. As to certain specific substances, asphaltic cement is oil because it is a petroleum-based product and exhibits oil-like characteristics. A discharge of asphaltic cement may violate applicable water quality standards, or cause a film or sheen or discoloration 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. Aromatic hydrocarbons may or may not be oil, depending on their physical characteristics and environmental effects. Some aromatic hydrocarbons are hazardous substances. Bilge water that contains sufficient oil such that its discharge would violate the standards set out in 40 CFR 110.3 is considered oil. The percentage of oil concentration in the water is not determinative for the purpose of the definition or the discharge standards.

Authority. We disagree that our authority only extends to petroleum-based oils. Our interpretation is consistent with Congressional intent as expressed in section 311(a)(1) of the CWA, which extends to all types of oils in any form. EPA's definition tracks that statutory definition. Our revised definition also reflects EORRA requirements for differentiation. EORRA did not expand or contract the universe of substances that are oils, it only required differentiation, when necessary, between the requirements for

facilities storing or using different types of oil.

Exclusions. While States may choose to regulate all oils or some oils, the CWA definition is designed to prevent the discharge of all oils.

A definition based on liquidity would exclude solid oils, such as certain animal fats, a result that would be inconsistent with Congressional intent. Concerning gaseous oils, see our discussion on *Highly volatile liquids* below.

While releases or discharges of some refined petroleum products may be regulated under the Solid Waste Disposal Act as waste products, that program is dedicated more to waste management, and does not regulate storage of non-waste oil.

All oils, including animal fats and vegetable oils, can harm the environment in many ways. Oil can coat the feathers of birds, the fur of mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility.

Oils can act on the epithelial tissue of fish, accumulate on gills, and prevent respiration. The oil coating of surface waters can interfere with natural processes, oxygen diffusion/reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas.

Oils can increase biological or chemical oxygen demand and deplete the water of oxygen sufficiently to kill fish and other aquatic organisms.

Oils can cause starvation of fish and wildlife by coating food and depleting the food supply. Animals that ingest large amounts of oil through contaminated food or preening themselves may die as a result of the ingested oil. Animals can also starve because of increased energy demands needed to maintain body temperature when they are coated with oil.

Oils can exert a direct toxic action on fish, wildlife, or their food supply. Oils can taint the flavor of fish for human consumption and cause intestinal lesions in fish from laxative properties. Tainted flavor of fish used for human consumption and the causation of rancid odors are public health or welfare concerns within the scope of our rules. Tainted flavor of fish used for human consumption may indicate a disease in the fish which could render them inedible and thus have a substantial impact on the fishermen who harvest them and communities who may rely on them for a food supply.

Oils can foul shorelines and beaches. Oil discharges can create rancid odors. Rancid odors may cause both health impacts and environmental impacts. For example, the 1991 Wisconsin Butter Fire and Spill resulted in a discharge of melted butter and lard. After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment. 62 FR 54526.

Highly volatile liquids. We do not consider highly volatile liquids that volatilize on contact with air or water, such as liquid natural gas, or liquid petroleum gas, to be oil. Such substances do not violate applicable water quality standards, do not cause a reportable film or sheen or discoloration upon the surface of water or adjoining shorelines, do not cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, and are not removable. Therefore, there would be no reportable discharge as described in 40 CFR 110.3.

Oil mixed with wastes or hazardous substances. Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Part 280 definition. The definition of petroleum in 40 CFR part 280 is a subset of the part 112 definition of "oil." The part 112 definition of oil is broader than the part 280 definition of petroleum because part 112 regulates all types of oils, whereas part 280 regulates only petroleum.

Oil drilling, production, or workover facilities (offshore)

Background. See the definition of "production facility," into which this definition has been merged.

Oil Production Facilities (Onshore)

Background. See the definition of "production facility," into which this definition has been merged.

Onshore Facility

Background. As proposed, we deleted as unnecessary surplus the reference to the facility not being transportation-

related. There were no substantive comments.

Partially Buried Tank

Background. In 1991, EPA proposed the definition of “partially buried tank” to clarify the distinction between partially buried tanks and underground storage tanks. We have renamed underground tanks in this rule as “completely buried tanks,” i.e., those tanks completely covered with earth. Partially buried tanks are subject to the SPCC rule the same as aboveground containers.

Comments. One commenter wrote that the definition as proposed was “undecipherable” and should be rewritten. That commenter suggested another definition for clarity. Two other commenters suggested that we adopt the part 280 UST definition for partially buried tank, which includes any tank system such as tank and piping which has a volume of 10 percent or more beneath the surface of the ground.

Response to comments. We agree that the definition could be clearer and have clarified it. We decline to adopt the part 280 UST definition (at 40 CFR 280.12) and to classify partially buried tanks as completely buried tanks, because they are not. The UST definition might also exclude some tanks or containers which would be covered by the SPCC definition. The UST definition includes tanks whose volume (including the volume of underground pipes connected thereto) are 10 percent or more beneath the surface of the ground. The SPCC definition of “partially buried tank” contains no volume percentage and applies to any tank that is partially inserted or constructed in the ground, but not entirely below grade, and not completely covered with earth.

Editorial changes and clarifications. We clarify that partially buried tanks may be covered not only with earth, but with sand, gravel, asphalt, or other material. The clarification brings the definition into accord with the coverings noted in the definition of “bunkered tank.” We added a sentence to the definition noting that partially buried tanks are considered aboveground storage containers for purposes of this part.

Permanently Closed

Background. EPA proposed a definition of “permanently closed” in 1991 to clarify the scope of facilities and tanks or containers excluded from coverage under the SPCC rule. Permanently closed containers are those containers which are no longer capable of storing or using oil. Permanently closed facilities are those facilities

which are no longer capable of storing or using oil.

In permanently closed containers and facilities, physical changes have been made so that storage capacity or use is rendered impossible. Therefore, the definition describes those changes which must have occurred before a container or facility is “permanently closed.”

Comments. In general. Several commenters favored the proposed definition. Others opposed it as unnecessary, believing that “if a tank is not used for the storage of oil, it simply is not subject to the provisions of the SPCC regulations.” Finally, several commenters suggested that the definition specifically exclude temporarily closed tanks.

Waste disposal. Several commenters urged that the part of the proposal that dealt with waste disposal be deleted because waste disposal is already covered under other programs and should not be a concern of spill prevention unless flowable oil is part of the waste.

Non-oil products. One commenter asked for clarification that a container which is no longer used for oil but is used for some non-oil product be considered permanently closed.

Connecting lines. Another commenter asked for clarification as to the meaning of connecting lines. The commenter assumed that connecting lines means the sections of pipe that run between the tank and the nearest block valve.

Explosive vapors. Numerous commenters urged that EPA delete any rules dealing with explosive vapors on the theory that such vapors are regulated by the Occupational Health and Safety Administration (OSHA) program and other programs. Many of these same commenters suggested that placing a sign on a tank indicating that it has been freed of gas is not a good safety practice because gas might subsequently build up within the tank with catastrophic results.

Retroactivity. Several commenters suggested that the requirements for a tank to be permanently closed should not be applied retroactively to tanks previously removed from service. The rationale was that the cost would be prohibitive, although commenters did not provide specific cost estimates, and that it might cause confusion as to which tanks would have to be included in facility capacity calculations. These commenters also asserted that such tanks have been abandoned and empty, sometimes for many years, and pose no threat of discharge.

Response to comments. In general. A definition is necessary to clarify when a

container is permanently closed and no longer used for the storage of oil. Containers that are only closed temporarily may be returned to storage purposes and thus may present a threat of discharge. Therefore, they will continue to be subject to the rule.

Waste disposal. Reference to waste disposal in accordance with Federal and State rules in proposed § 112.2(o)(1) was deleted as unnecessary surplus. EPA agrees that other programs adequately handle waste disposal.

Non-oil products. Containers that store products other than oil and never store oil, are not subject to the SPCC rule whether they are “permanently closed” as defined or not. If the containers sometimes store oil and sometimes store non-oil products, they are subject to the rule.

Connecting lines. We agree with the commenter’s assumed definition of connecting lines. Connecting lines that have been emptied of oil, and have been disconnected and blanked off, are considered permanently closed.

Explosive vapors. We deleted proposed § 112.2(o)(2) on the suggestion of commenters that references to explosive vapors are an OSHA matter and inappropriate for EPA rules. We modified proposed § 112.2(o)(3) to eliminate the reference to signs warning that “vapors above the LEL are not present,” because the operator cannot guarantee that warning remains correct. To help prevent a buildup of explosive vapors, we have revised the definition to provide that ventilation valves need not be closed. We agree with commenters that a sign might be misleading and dangerous.

Retroactivity. We believe that containers that have been permanently closed according to the standards prescribed in the rule qualify for the designation of “permanently closed,” whether they have been closed before or after the effective date of the rule. Containers that cannot meet the standards prescribed in the rule will not qualify as permanently closed. We disagree that the cost of such closure is prohibitive. We have simplified the proposal and deleted the proposed requirement to render the tank free of explosive vapor. Therefore, costs are lower. To clarify when a container has been closed, we have amended the rule to require that the sign noting closure show the date of such closure. The date of such closure must be noted whether it occurred before or after the effective date of this provision. Some States and localities require a permit for tank closure. A document noting a State closure inspection may serve as

evidence of container closure if it is dated.

Industry standards. Industry standards that may be useful to effect the permanent closure of containers or facilities include: (1) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code"; (2) Building Officials and Code Administrators International (BOCA), "National Fire Prevention Code"; (3) American Petroleum Institute (API) Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks"; and, (4) API Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks."

Editorial changes and clarifications. "Tank" becomes "container." We revised the introduction to the definition to remove the phrase "that has been closed" because the definition would have been circular with that language. Instead the introduction references the events which must have occurred in order for a container to meet the definition.

Person

Background. The definition of "person" proposed in 1991 was substantively unchanged from the current rule.

Comments. We received one comment which urged that we should make clear that the United States is bound by every provision of these rules.

Response to comments. See the discussion above (at § 112.1(c)) for the applicability of the rule to Federal agencies and facilities.

Production Facility

Background. The definition of "production facility" replaces two definitions in the proposed rule, i.e., Oil drilling, production, or workover facilities (offshore), proposed § 112.2(j), and Oil production facilities (onshore), proposed § 112.2(k). We replaced the two proposed definitions with the revised definition for editorial brevity as the proposed definitions contained many identical elements. This editorial effort effects no substantive changes in the requirements for the particular types of production facilities. Each facility must follow the requirements applicable to that facility, which is generally based on its operations, for example, a workover facility.

Comments. Flowlines and gathering lines. Several commenters suggested that flowlines and gathering lines should be deleted from the definition because they believed that the installation of structures and equipment to prevent discharged oil from reaching

navigable waters is not practicable for flowlines and gathering lines.

Wells and separators. Other commenters also argued for the exemption of wells and separators.

DOT definition. Another commenter urged consistency between the proposed EPA definition and the DOT definition found at 49 CFR 195.2.

Single oil or gas field, single operator. One commenter asserted that the inclusion of the phrases "in a single oil or gas field" and "operated by a single operator" in the definition is confounding. The commenter urged that the producing segment of the industry needs to be able to combine facilities into one SPCC Plan with an identification of the wells to which that Plan applies. The commenter questioned whether the inclusion of the word "single" would preclude an operator's ability to do so.

Natural gas. Another commenter asked for clarification that natural gas processing facilities are not subject to rules for oil facilities.

Response to comments. Flowlines and gathering lines. Wells and separators. EPA disagrees that flowlines and gathering lines, as well as wells and separators, should be excluded from the definition. These structures or equipment are integral parts of production facilities and should therefore be included in the definition.

We also disagree with the argument that because the installation of structures and equipment to prevent discharges around gathering lines and flowlines may not be practicable, EPA will be flooded with contingency plans. First of all, secondary containment may be practicable. In § 112.7(c), we list sorbent materials, drainage systems, and other equipment as possible forms of secondary containment systems. We realize that in many cases, secondary containment may not be practicable. If secondary containment is not practicable, you must provide in your SPCC Plan a contingency plan following the provisions of part 109, and otherwise comply with § 112.7(d). We have deleted the proposed 1993 provision that would have required you to provide contingency plans as a matter of course to the Regional Administrator. Therefore, you will rarely have to submit a contingency plan to EPA. The contingency plan you do provide in your SPCC Plan when secondary containment is not practicable for flowlines and gathering lines should rely on strong maintenance, corrosion protection, testing, recordkeeping, and inspection procedures to prevent and quickly detect discharges from such lines. It should also provide for the

quick availability of response equipment.

DOT definition. We changed the proposed definition to be more consistent with the DOT definition, found at 49 CFR 195.2, in response to a commenter who urged consistency in EPA and DOT definitions. We added the uses of the piping and equipment detailed in DOT rule to our proposal, for example, "production, extraction, recovery, lifting, stabilization, separation, or treating" of oil. The terms "separation equipment," used in the proposed definition of "oil production facilities (onshore)", and "workover equipment," used in the proposed definition of "oil drilling, production, or workover facilities (offshore)", were combined into a generic "equipment." However, we also modified the proposed definition to reflect EPA jurisdiction. We added the word "structure," which was not in the DOT definition, to cover necessary parts of a production facility. We also added examples of types of piping, structures, and equipment. These examples are not an exclusive list of the possible piping, structures, or equipment covered under the definition. The new definition encompasses all those facilities that would have been covered under both former proposed definitions. As we proposed in 1991, and as in the current rule, we have retained geographic and ownership limitations.

Single oil or gas field, single operator. "A single geographical oil or gas field" may consist of one or more natural formations containing oil. The determination of its boundaries is area-specific. Such formation may underlie one or many facilities, regardless of whether any natural or man-made physical geographical barriers on the surface intervene such as a mountain range, river, or road. We disagree that the term "a single operator" is confusing. An "owner" or "operator" is defined in § 112.2 as any "person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to abandonment." A "person" is not restricted to a single natural person. "Person" is a defined term in the rule (at § 112.2) which includes an individual, firm, corporation, association, or partnership.

Nothing in the definition would preclude an owner or operator from combining elements of a production facility into one SPCC Plan with an identification of the wells to which that Plan applies.

Natural gas. Because natural gas is not oil, natural gas facilities that do not store or use oil are not covered by this rule. However, you should note, that drip or condensate from natural gas production is an oil. The storage of such drip or condensate must be included in the calculation of oil stored or used at the facility.

Editorial changes and clarifications. One commenter suggested that the definitions proposed were ambiguous because of the use of the words "may include." We have eliminated the potential ambiguity caused by the words "may include" by revising the definition with the words "Production facility means."

Regional Administrator

Background. In 1991, we proposed a definition of "Regional Administrator" that was substantively unchanged from the current rule. In the final rule, we have deleted language concerning the "designee" of the EPA Regional Administrator because the language is unnecessary. Since the Regional Administrator has authority to delegate most functions, the term "designee" is almost always implied. When he does not have authority to delegate a function, the term "designee" is likewise unnecessary. We received no substantive comments.

Repair

Background. In 1993, we proposed a definition of "repair" in conjunction with the proposed rule for brittle fracture evaluation.

Comments. Ordinary maintenance. Two commenters asked for clarification of the term "repair," so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank. Another asked that the infinitive "to maintain" be deleted from the definition of repair so that evaluation for brittle fracture would not be required after ordinary, day-to-day maintenance.

Related equipment. Another commenter suggested that we conform the proposed definition of "repair" with the API 653 definition, specifically deleting the phrase "or related equipment."

Response to comments. Ordinary maintenance. Some repairs in the nature of ordinary maintenance that do not weaken the integrity of the container might not necessitate brittle fracture evaluation. "Repair" means any work necessary to maintain or restore a container or related equipment to a condition suitable for safe operation. Typical examples of a repair that would

trigger a brittle fracture evaluation include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain tank integrity; the re-leveling or jacking of a tank shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. The definition of "repair" also includes reconstruction. Reconstruction means the work necessary to reassemble a container that has been dismantled and relocated to a new site. We have amended the definition to reflect that ordinary, day-to-day maintenance that does not weaken the integrity of the container will not trigger the brittle fracture evaluation requirement.

Related equipment. We agree with the commenter and will not include the term "or related equipment" in the definition to conform with API Standard 653, which does not include repairs of related equipment as a criterion for a brittle fracture evaluation.

Industry standards. Industry standards that may be helpful in understanding the definition of repair (and reconstruction) include API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Editorial changes and clarifications. "Tank" becomes "container."

Spill Event

Background. In 1991, we proposed to modify the definition of "spill event" to correspond to the changes described in the applicability section of this rule (i.e., § 112.1(b)) relating to the expanded scope of CWA jurisdiction.

Comments. One commenter opposed the definition without explaining why. Several commenters argued that the definition should apply only to discharges to navigable waters.

Response to comments. We have withdrawn the proposed definition of "spill event," and have also deleted the term from the rule. We take this action because the term is not mentioned in the CWA and is unnecessary. The term is unnecessary because the word "discharge" is adequate. "Discharge" is the term used in the CWA. A discharge as described in § 112.1(b) is the same as a spill event. As to the comment on EPA jurisdiction, we disagree that our jurisdiction should apply only to discharges to navigable waters because the CWA establishes our jurisdiction beyond navigable waters (see the discussion under § 112.1(b)), and we have the responsibility to protect the environment within the scope of our statutory jurisdiction.

Spill Prevention, Control, and Countermeasure Plan, SPCC Plan or Plan

Background. In 1997, we repropoed the definition of "SPCC Plan" and withdrew the 1991 proposal. The 1997 proposal would broaden the acceptable formats of SPCC Plans, eliminating the requirement that the Plan meet the format or sequence formerly specified in the rule.

Comments. Editorial changes and clarifications. One commenter suggested that the last two sentences in the proposed definition should be deleted because they contain substantive requirements, and relocated to § 112.7. Another commenter thought that the SPCC definition should be revised to say that the Plan documents spill prevention measures and not compliance with the rule, because compliance is determined by comparing the contents of the Plan with the rules.

Response Plan. A few commenters opposed the definition on the theory that it constitutes a type of response plan. Those commenters argued that the thrust of the definition should be on spill containment, not paperwork.

Acceptable formats. Many commenters favored the proposal. Several suggested various formats that might qualify such as Integrated Contingency Plans, State Plans, Electrical Equipment Area Response Plans, Stormwater Pollution Prevention Plans, and others. One commenter thought that EPA should specify acceptable formats. Several commenters suggested that various formats such as Integrated Contingency Plans and State Plans are presumptively acceptable.

Response to comments. Response Plan. We disagree that the proposed definition constitutes a "response plan." The definition results in no substantive changes in response planning requirements.

Acceptable formats. We agree that any equivalent prevention plan acceptable to the Regional Administrator qualifies as an SPCC Plan as long as it meets all Federal requirements (including certification by a Professional Engineer), and is cross-referenced from the requirement in part 112 to the page of the equivalent plan. We do not agree that we should specify acceptable formats. We will give examples of those acceptable formats, but those examples are not meant to be exhaustive.

Examples of an "equivalent prevention plan" might be, for instance, an Integrated Contingency Plan (ICP), a State plan, a Best Management Practice Plan (which is a component of the Stormwater Pollution Prevention Plan),

or other plan that meets all the requirements of part 112 and is supplemented by a cross-reference section identifying the location of elements in part 112 to the equivalent requirement in the other plan. We repeat EPA's commitment to the ICP format, and encourage owners or operators to use it. If the equivalent prevention plan has no requirement that a Professional Engineer certify it, it will be necessary to secure proper certification from the Professional Engineer to comply with the SPCC rule.

An equivalent Plan might be a Plan following the SPCC sequence in effect before this final rule became effective. If you choose to use the sequence of the rule currently in effect, you may do so, but you must cross-reference the requirements in the revised rule to the sequence used in your Plan. We have provided a table in section IV.A of today's preamble to help you cross-reference the requirements more easily. If the only change you make is the addition of cross-referencing, you need not have a Professional Engineer certify that change.

Another example of an equivalent plan might include a multi-facility plan for operating equipment. This type of plan is intended for electrical utility transmission systems, electrical cable systems, and similar facilities which might aggregate equipment located in diverse areas into one plan. Examples of operating equipment containing oil include electrical equipment such as substations, transformers, capacitors, buried cable equipment, and oil circuit breakers.

A general, multi-facility plan for operational equipment used in various manufacturing processes containing over the threshold amount of oil might also be acceptable as an SPCC Plan. Examples of operating equipment used in manufacturing that contains oil include small lube oil systems, fat traps, hydraulic power presses, hydraulic pumps, injection molding machines, auto boosters, certain metalworking machinery and associated fluid transfer systems, and oil based heaters. Whenever you add or remove operating equipment in your Plan that materially affects the potential for a discharge as described in § 112.1(b), you must amend your Plan. 40 CFR 112.5(a).

Multi-facility plans would include all elements required for individual plans. Site-specific information would be required for all equipment included in each plan. However, the site-specific information might be maintained in a separate location, such as a central office, or an electronic data base, as long as such information was immediately

accessible to responders and inspectors. If you keep the information in an electronic data base, you must also keep a paper or other backup that is immediately accessible for emergency response purposes, or for EPA inspectors, in case the computer is not functioning. Where you place that site-specific information would be a question of allowable formatting, as is the question of what is an "equivalent" plan; an issue subject to RA discretion.

Still another example of an equivalent plan might be a Best Management Practice Plan (BMP) plan prepared under an NPDES permit, if the plan provides protections equivalent to SPCC Plans. Not all BMP plans will qualify, as some BMP plans might not provide equivalent protection. NPDES permits without BMP plans would not qualify.

BMP plans are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMP plans may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. See 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMP plans as effluent limitations guidelines. NPDES rules provide for BMP plans when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA.

Any format that contains all the required elements of an SPCC Plan and provides equivalent environmental protection would be presumptively acceptable. The final decision on what is an "equivalent" plan, however, would be at the discretion of the Regional Administrator. "Equivalence" would not mean that an alternate format would be the mirror image of an SPCC Plan, but it would have to contain all the required elements of an SPCC Plan. Required elements include, but are not limited to, provisions for a written plan, secondary containment or a contingency plan following 40 CFR part 109, equivalent inspections and tests, security, personnel training, and certification of the plan by a Professional Engineer. Acceptance of an equivalent plan does not, however, imply any type of approval or submission process. As before, SPCC Plans are generally not submitted to the Regional Administrator. The Regional Administrator could accept an equivalent prevention plan if it: (1) meets all regulatory requirements in the

SPCC rule; and (2) is supplemented by a cross-reference section identifying requirements listed in part 112 to the equivalent requirements in the other prevention plan. Partial use of other equivalent prevention plans is also acceptable, if the plan is supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

Written Plans. We agree that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

Editorial changes and clarifications. The word "guidelines" was replaced with "requirements," as proposed in 1991. EPA agrees with the relocation of the last two sentences of the definition. Therefore, we have transferred those sentences to the introduction of § 112.7, in order to maintain the principle that definitions should not contain substantive requirements. We have also changed the last sentence which was proposed as "* * * provide adequate countermeasures to an oil spill" to read "* * * provide adequate countermeasures to a discharge." We agree that the Plan does not document compliance, but merely spill prevention measures and have deleted the sentence noting that the Plan documents compliance with the rules. Compliance is determined by comparing the contents of the Plan with the regulations.

Storage capacity

Background. In 1991, we proposed a definition of "storage capacity" to clarify that it includes the total capacity of a container capable of storing oil or oil mixtures. We explained that because the percentage of oil in a mixture is determined by the operator and can be changed at will, the total capacity of a container is considered in determining applicability under this part, regardless of whether the container is filled with

oil or a mixture of oil and another substance, as long as a discharge from such container could violate the harmful quantity standards in 40 CFR part 110.

Comments. In general. One commenter strongly favored the proposal.

Standard of measurement. One commenter asserted that volume was the proper measure of storage capacity, not total capacity. Another commenter suggested a "working capacity" standard. Other commenters argued that the definition should apply only to containers meeting the definition of a bulk storage tank, and that only the oil storage capacity of the container be considered. Similarly, a commenter asserted that the "design capacity" of a container is what should count as storage capacity because electrical equipment or other interior components might reduce the volume of oil capable of being stored.

Exclusions—small containers; waste treatment facilities, secondary containment containers. Small containers. Most commenters were opposed to the proposed definition because they either wanted an exclusion for small containers or because they wanted an exclusion for containers containing de minimis amounts of oil. These commenters argued that small containers would not present a significant threat of discharge.

Waste treatment facilities. The rationale of commenters supporting an exemption for waste treatment containers was that some containers had non-usable space at the top of the container; also some containers contain only trace amounts of oil. Therefore, for example, storage tanks used to store or treat wastewaters are likely to have to be considered when determining storage capacity since many wastewaters have incidental oil content prior to treatment. They also argued that the definition would subject publicly owned treatment works (POTWs) to the rule because tanks used to control stormwater surges might contain small amounts of oil from runoff from parking lots and city streets.

Secondary containment containers. Some commenters argued that the definition would apply to tanks used to provide secondary containment when determining the storage capacity of a facility.

Response to comments. Standard of measurement. In most instances the shell capacity of a container will define its storage capacity. The shell capacity (or nominal or gross capacity) is the amount of oil that a container is designed to hold. If a certain portion of a container is incapable of storing oil

because of its integral design, for example electrical equipment or other interior component might take up space, then the shell capacity of the container is reduced to the volume the container might hold. When the integral design of a container has been altered by actions such as drilling a hole in the side of the container so that it cannot hold oil above that point, shell capacity remains the measure of storage capacity because such alteration can be altered again at will to restore the former storage capacity. When the alteration is an action such as the installation of a double bottom or new floor to the container, the integral design of the container has changed, and may result in a reduction in shell capacity. We disagree that operating volume should be the measurement, because the operating volume of a tank can be changed at will to below its shell capacity.

The keys to the definition are the availability of the container for drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil, and whether it is available for one of those uses or whether it is permanently closed. Containers available for one of the above described uses count towards storage capacity, those not used for these activities do not. Types of containers counted as storage capacity would include some flow-through separators, tanks used for "emergency" storage, transformers, and other oil-filled equipment.

Exclusions—small containers; waste treatment facilities. Small containers. This definition is applicable to both large and small storage and use capacity. Owners or operators of small facilities above the regulatory threshold are subject to the rule, and need to know how to calculate their storage or use capacity.

However, in the applicability section of the rule, we have excluded containers of less than 55 gallons from the scope of the SPCC rule, addressing the comments of those commenters who argued for a minimum container size. See § 112.1(d)(5). A container above that size that is available for use or storage containing even small volumes of oil must be counted in storage capacity.

Waste treatment facilities. We agree with the commenter that a facility or part thereof (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment system and not to meet any part 112 requirement should not be considered storage capacity because wastewater treatment is neither use nor storage of oil. Therefore, we have

exempted such facilities or parts thereof from the rule. However, note that certain parts of such facilities may continue to be subject to the rule. See the discussion under § 112.1(d)(6).

Secondary containment containers. Containers which are used for secondary containment and not storage or use, are not counted as storage capacity.

Editorial changes and clarifications. We use the word "container" instead of "tank or container," because a tank is a type of container. We have clarified the definition to provide that the storage capacity of a container is the volume of oil that the container could hold, and have therefore substituted the words "shell capacity" of the container for "total capacity." This is merely a clarification, and not a substantive change. We also deleted the words "for purposes of determining applicability of this part," because the words were unnecessary. We also deleted the last phrase of the proposed definition, "whether the tank or container is filled with oil or a mixture of oil and other substances," because the contents of the container do not affect the definition of its shell capacity.

Transportation-related and non-transportation-related

Background. In 1991, we repropoed the current definition of "transportation-related and non-transportation-related." We received no comments on the proposal. Therefore, we have promulgated the definition as proposed.

United States

Background. In 1991, we proposed to revise the definition of "United States" to conform to the definition enacted in the 1978 amendments to the CWA. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed.

Vessel

Background. In 1991, we repropoed the current definition of vessel. We received no comments on this proposal. Therefore, we have promulgated the definition as proposed. We note that a barge or other watercraft that has been determined by the Coast Guard to be permanently moored to the shore, and used for storage, is no longer being used as a vessel, and does not fit within the definition of vessel. Rather, it becomes a bulk storage container counted as storage capacity. The same concept is found in the rules for mobile facilities at § 112.3(c), which provides that SPCC Plans apply to mobile facilities only

“while the facility is in a fixed (non-transportation) operating mode.”

Wetlands

Background. In 1991, we proposed a definition of “wetlands” to define the term as used in the definition of “navigable waters.” The definition of wetlands conforms to the definition in 40 CFR part 110 relating to the discharge of oil.

Comments. Several commenters opposed the definition because they believe that it includes a series of examples which may or may not be correct. They also alleged that the definition fails to implement the 1987 U.S. Army Corps of Engineers Wetlands Manual or the documents implementing that Manual. Another commenter asked for EPA clarification of what is a wetland, given the “vague and arguable notion of a wetland.”

Response to comments. The examples listed in the definition are intended to help the reader with guidelines to identify wetlands. While the examples generally represent types of wetlands, they are not intended to be a categorical listing of such wetlands. There may be examples listed that under some circumstances do not constitute wetlands. We believe that the 1987 Wetlands Manual is a useful source material for wetlands guidance. It would be impossible to specify in a rule every type of situation where wetlands occur. The examples listed in the definition are not exclusive, but provide help in clarifying what may be a wetland.

Section 112.3 Introduction

Background. We have added an introduction to § 112.3 as an editorial device to simplify the language in the paragraphs of this section.

Section 112.3(a)—Time Line for Preparation and Implementation of Plans for Existing Facilities

Background. In 1991, we proposed to require owners or operators of onshore and offshore facilities in operation 60 days after the effective date of this final rule to “maintain a prepared and fully implemented facility SPCC Plan. . . .” We proposed giving these owners or operators 60 days from the date the final rule was published to revise their existing Plans and implement the revisions. The proposed rule also reflected the expanded geographic scope of the rule provided by CWA amendments.

Comments. *Time period to prepare and implement a Plan.* A number of commenters favored the proposal. Many more favored a “phase-in” period, or a longer period within which to comply

and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so, and the penalties would accrue from the time the original deadlines passed before the effective date of this rule. The owner or operator of a facility which became operational four years before the effective date of the rule, and who prepared and fully implemented his Plan in compliance with current § 112.3(b), must amend his Plan within 6 months of the effective date of this rule to meet the requirements of the revised rule, and fully implement the amended Plan as soon as possible, but no later than one year after the effective date of the rule.

Extensions. Several commenters asked that extensions of time to prepare and implement Plans be automatic if Plans must be in effect prior to the commencement of operations. Another suggested that extension requests be considered “routine.”

Acquired facilities. One commenter asked how we would treat acquired facilities, whether as new or continuing operation facilities.

Start of operations. One commenter asked when operations start, stating that is not always a clearly defined time. The commenter suggested that instead of requiring a prepared and implemented Plan, we should allow that a response team be in place.

Small facilities. One commenter asserted that the time line for Plan preparation and implementation was unreasonable for small facilities, and asked that facilities with under 10,000-gallon capacity be allowed to operate while developing and implementing a Plan.

Response to comments. Time period to prepare and implement a Plan. We have been persuaded by commenters that a longer phase-in period than 60 days is required for facilities currently in operation or about to become operational within one year after the effective date of this rule.

Facilities currently in operation. For a facility in operation on the effective date of this rule, we changed the dates in the proposed rule for preparation and implementation of plans from 60 days to a maximum of one year to accord with the time frames in the current rule. The owner or operator of a facility in operation on the effective date of this rule will have 6 months to amend his Plan and must fully implement any amendment as soon as possible, but within one year of the effective date of the rule at the latest. The owner or operator of a facility which has had a discharge as described in § 112.1(b), or reasonably could be expected to have one, already has an obligation to prepare and implement a Plan.

For example, an owner or operator whose facility became operational four years before the effective date of this rule is the owner or operator of a facility currently in operation on the effective date of this rule. He is therefore subject to current § 112.3(b), and should have prepared his Plan no later than three

and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so, and the penalties would accrue from the time the original deadlines passed before the effective date of this rule. The owner or operator of a facility which became operational four years before the effective date of the rule, and who prepared and fully implemented his Plan in compliance with current § 112.3(b), must amend his Plan within 6 months of the effective date of this rule to meet the requirements of the revised rule, and fully implement the amended Plan as soon as possible, but no later than one year after the effective date of the rule.

An owner or operator whose facility became operational 7 months before the effective date of the rule is an owner or operator of a facility currently in operation and is therefore subject to current § 112.3(b). He should have prepared his Plan one month before the effective date of this rule. If he did, he will have 6 months from the effective date of this rule to amend that Plan to meet the requirements of the revised rule, and must fully implement the amended Plan as soon as possible, but within one year of the effective date of this rule. If he has not prepared a Plan by the effective date of the current rule as required, then he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current § 112.3(b) until he does so.

An owner or operator whose facility became operational 4 months before the effective date of this rule is also an owner or operator of a facility currently in operation on the effective date of this rule and therefore subject to the current rule. However, in this case, the 6-month deadline to prepare a Plan under the current § 112.3(b) has not yet passed. Therefore, the owner or operator is subject to the Plan preparation and implementation deadlines in § 112.3(a) of the revised rule. He now has 6 months from the effective date of this rule to prepare a Plan that meets the requirements of this rule. If he had already prepared a Plan under current § 112.3(b), he has 6 months from the effective date of this rule to amend that Plan. In either case, he must fully implement the Plan (or amended Plan)

as soon as possible after the 6-month Plan preparation deadline of this rule, but no later than one year after the effective date of this rule.

The owner or operator of a facility in operation on the effective date of this rule who is required to have prepared or implemented an SPCC Plan, but has not, remains subject to penalties for violation of current SPCC regulations. Such owner or operator is consequently subject to civil penalties for a violation of current § 112.3 if the time has expired for preparation or implementation of his Plan.

Facilities becoming operational within one year after the effective date of the rule August 13, 2003. If you begin operations after the effective date of the rule through one year after the effective date of this rule August 16, 2002, you will have until one year from the effective date of this rule to prepare and implement your Plan. In other words, if the rule becomes effective on January 1, and you begin operations on January 2, you must prepare and implement your Plan by January 1 of the following year. If you begin operations on June 30, you still have until January 1 of the following year to prepare and implement your plan. If you begin operations on December 31, you still have until January 1 (the next day) of the following year to prepare and implement your Plan. The rationale for the time frame in the rule is that you will have had notice of the Plan preparation and implementation requirements from the publication date of the rule, a period of 30 days plus one year. In addition, you would already have had notice of the general requirement for preparation of an SPCC Plan from the current part 112 regulations. Therefore, the owner or operator of a facility planning to become operational within one year after the effective date of this rule should start working on his Plan in time to have it fully implemented within the year.

New facilities. The owner or operator of a facility that becomes operational more than one year after the effective date of this rule must prepare and implement a Plan before beginning operations.

A year phase-in period is in line with legitimate business and investment expectations. It allows a reasonable period of time for facilities to undertake necessary constructions, purchases of equipment, or to effect changes of procedures. And again, the general requirement for preparation of a Plan already exists in part 112, so new facilities should already have been aware of the need for a Plan.

Extensions. While we have extended the time period for compliance, we understand that some facilities may still need extensions of time to comply. Extensions may be necessary to secure necessary manpower or equipment, or to construct necessary structures. If you are an owner or operator and an extension is necessary, you may seek one under § 112.3(f). If no Plan amendments are necessary after you review today's rule, you must maintain your current Plan and cross-reference its elements to the redesignated requirements.

Acquired facilities. For SPCC purposes, we consider acquired facilities as facilities that are already operating rather than new facilities because these facilities must already have SPCC Plans if they exceed applicable thresholds.

Start of operations. Start of operations is when you begin to store or use oil at a facility. Often this may be a testing or calibration period prior to start up of normal operations. With the extended time line we have provided, no response team is required, but such a team may be a good engineering practice. At a minimum, you must prepare and implement a Plan as required by this rule.

Small facilities. With the extended time line we have provided, all facilities, large or small, have adequate notice and time in which to prepare and implement a Plan.

Editorial changes and clarifications. We deleted the first sentence of the proposed rule from the final rule because it is unnecessary. It is unnecessary because the obligation to have prepared a Plan is incurred under current section § 112.3(b) for the owner or operator of a facility in operation before the effective date of this rule. For the owner or operator of a facility that becomes operational on or after the effective date of this rule, revised § 112.3 provides the time period within which he must prepare and implement a Plan. The deleted sentence read, "Owners or operators of onshore facilities that become operational after September 16, 2002, and could be reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall prepare a facility SPCC Plan in accordance with § 112.7, and in accordance with any of the following sections that apply to the facility: §§ 112.8, 112.9, 112.10, and 112.11."

Section 112.3(b)—Time Line for Preparation and Implementation of Plans for New Facilities

Background. In 1991, we proposed that new facilities contemplating the

start of operations be required to prepare and fully implement Plans before beginning operations. Our rationale was that our experience showed that many types of failures occur during or shortly following facility startup and virtually all prevention, containment, and countermeasure practices are a part of the facility design or construction.

Comments. Many commenters suggested various phase-in periods, as discussed above.

Response to comments. We believe that our original rationale is still correct. Experience with the implementation of this regulation shows that many types of failures occur during or shortly following startup and that virtually all prevention, containment, and countermeasure practices are part of the facility design or construction.

Therefore, it can be beneficial to the environment and carries out the intent of the statute if a facility Plan is prepared and implemented before startup. However, to provide sufficient notice to new facilities that a Plan must be prepared and implemented before beginning operations, we have delayed implementation of this section until one year after the effective date this rule. If you begin operations within one year of the effective date of this rule, you must comply with the requirements in § 112.3(a). However, if you begin operations more than one year after the effective date of this rule, your facility would be "new" and you would have to prepare and implement an SPCC Plan before you begin operations. If you need an extension to comply, you may seek one under § 112.3(f).

Editorial changes and clarifications. The phrase " * * * could reasonably be expected to discharge oil, as described in § 112.1(b) of this part * * *" becomes "could reasonably be expected to have a discharge as described in § 112.1(b)."

Section 112.3(c)—Time Line for Preparation and Implementation of Plans for Mobile Facilities

Background. In 1991, we proposed that owners or operators of onshore and offshore mobile facilities be required to have a prepared and implemented Plan before beginning operations. Since existing mobile facilities are a subset of existing facilities, we generally assume that these facilities already have a Plan in place, as the rule now requires. 40 CFR 112.3(c). Both new and existing mobile facilities would therefore have to comply with the rule requiring a fully prepared and implemented Plan before beginning operations.

Comments. In general, One commenter believed that requiring Plans

for mobile facilities is unworkable because their physical surroundings are subject to change. Another commenter supported our proposal to allow general Plans for mobile facilities.

Multi-well drilling programs. One commenter asked if Plan updates would be required in a field where a multi-well drilling program is underway. The commenter suggested that updates should be required only after the drilling program is complete.

Response to comments. In general. We agree that the physical surroundings of mobile facilities are subject to change. However, we disagree that changing physical surroundings should exempt mobile facilities from the rule. Mobile facilities may have "general" Plans and need not prepare a new Plan each time the facility is moved to a new site. When a mobile facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility.

Mobile facilities currently in operation are assumed to have implemented Plans already, because they are currently legally required to do so. Both new and existing mobile facilities must have Plans prepared and fully implemented before operations may begin. If after your review of today's rule, you decide that no amendment to your Plan is necessary, except for cross-referencing, you may continue to operate under your existing Plan, but you must promptly cross-reference the provisions in the Plan to the new format. Extension requests under § 112.3(f) are also available for mobile facilities under the proper conditions.

Multi-well drilling programs. It is not necessary to amend the Plan every time you drill a well in a field containing multiple wells. A general Plan will suffice.

Editorial changes and clarifications. We deleted the phrase "using good engineering practice," in the third sentence of the paragraph because good engineering practice is required of all Plans. See the introduction to § 112.7. Therefore, the phrase was unnecessary.

Section 112.3(d)—Certification by Professional Engineers

Background. The current rule only requires that the Professional Engineer (PE), having examined the facility and being familiar with the provisions of part 112, attest by means of his certification that the Plan has been prepared in accordance with good engineering practices. In 1991, we proposed to add specificity to the meaning of the certification requirements for a PE. We proposed that

the PE attest that he is familiar with the requirements of part 112, that he has visited the facility, that the Plan has been prepared in accordance with good engineering practice and the requirements of part 112, that required testing has been completed, and that the Plan is adequate for the facility.

Comments. Certification requirement. Most commenters supported a certification requirement for PEs. Some opposed it on grounds that if all the components of the Plan were specified by rule, then certification is unnecessary. One U.S. territory, U.S. Samoa, noted that it doesn't register PEs, arguably making compliance with the rule difficult for owners or operators of facilities in Samoa.

Other commenters thought a PE certification requirement was unnecessarily burdensome and costly for small facilities, but did not provide cost estimates. One commenter asserted that PE certification should not be required for small facilities, due mainly to the prohibitive cost. The commenter also maintained that most small facilities have tanks that are required by State or local law to have the Underwriters Laboratory Seal of Approval and to have submitted a detailed plan for review and approval to the fire marshal prior to installation.

Certification by other environmental professionals. Several commenters suggested that certification could be effected by another environmental professional, rather than a PE, or by another environmental professional with PE oversight.

Good engineering practice. One commenter noted that EPA specified in the 1991 preamble that the application of good engineering practice will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility. 56 FR 54617–18. The commenter added, however, that we do not define "good engineering practice" for this program, and urged EPA to specify in more detail as to its understanding of the term.

Testing. Some commenters wrote that it would be better for the PE to enumerate all the inspections and tests that have been completed, plus those that should be completed before the facility commences operations and those that should be undertaken periodically after it commences operations. A few commenters objected to the proposed requirement that the PE attest that required testing has been completed, suggesting instead that the operator is responsible for completion of testing. Another commenter suggested that the PE be allowed to attest to the

presence of those written procedures which require testing.

Non-technical changes. Most supported the idea that non-technical changes to a Plan (for example, the emergency contact list, phone numbers, or names) need not have PE certification.

Time limit for PE certification. One commenter suggested a time limit of three years or less on PE certification, suggesting that the PE should be required to reinspect the premises periodically, preferably annually, to ascertain that the Plan continues to be implemented.

PE costs. Some commenters argued that requiring an independent or outside PE for Plan certification would be extremely expensive for facilities located in remote areas. These commenters were principally concerned that we did not fully account for the cost to a facility owner or operator for a PE to visit each facility before certifying a Plan. Requiring the use of an independent or outside PE could be burdensome to facility owners or operators.

Response to Comments. Certification requirement. PE certification of all facilities, both large and small, is necessary because a discharge as described in § 112.1(b) from any size facility may be harmful, and PE review and certification of a Plan may help prevent that discharge. We disagree that PE certification is prohibitively costly for small facilities. A Plan certified by a PE may well save the owner or operator money due to improved facility operations and decreased likelihood of discharge, thus averting potentially costly cleanups. Because a Plan for a smaller facility is likely to be less complicated than a Plan for a larger facility, PE certification costs should likewise be lower for a smaller facility. In our Information Collection Request, estimated total costs for a new facility to prepare and begin implementation of a Plan, including PE certification costs, are \$2,201 for a small facility, \$2,164 for a medium facility, and \$2,540 for a large facility. This cost is incurred only in the year that the facility first becomes subject to the rule. This one-time cost incurred by a small facility is less than 1.5 percent of the average annual revenue for small facilities in all industry categories. The cost for the PE certification alone would represent even less than that. As shown in Chapter 5 of the Economic Analysis for this rulemaking, the average annual revenue for the smallest regulated facilities (under the current rule) ranges from \$150,000 to \$6,833,000, depending on the industry category. For example,

farms with annual revenue between \$100,000 and \$249,999 have an average annual revenue per farm of \$161,430, and \$2,201 (the one-time cost to prepare and implement a Plan) represents only 1.36 percent of that annual revenue. Of course, under the revised rule many of these small facilities will not be regulated by the SPCC program at all.

A PE's certification of a Plan means that the PE is certifying that the facility's equipment, design, construction, and maintenance procedures used to implement the Plan are in accordance with good engineering practices. And this is important because good engineering practices are likely to prevent discharges. PE certification, to be effective for SPCC purposes, must be completed in accordance with the law of the State in which the PE is working. For example, some States require a PE to apply his seal to effectuate a certification. Others do not.

We also disagree that small facilities need not have PE certification for SPCC Plans when the tanks are certified by the Underwriters Laboratory. A Plan consists of more than a certified tank. It contains provisions for secondary containment, integrity testing, and other measures to prevent discharges. Those provisions require PE certification to ensure that they meet the requirements of the rule and that the Plan is effective to prevent discharges.

Finally, by modifying the applicability provision in § 112.1(d)(2), we are today exempting many small facilities from the requirement to prepare and implement a Plan at all, thus saving all prospective PE costs.

In response to the commenter from Samoa, who noted that territory does not register PEs, the rule would allow an SPCC facility there to hire a PE licensed in some other State or U.S. territory.

Certification by other environmental professionals. Certification by a PE, rather than by another environmental professional is necessary to ensure the application of good engineering judgment. A PE must obtain a Bachelor of Engineering degree from an accredited engineering program, pass two comprehensive national examinations, and demonstrate an acceptable level (usually four additional years) of engineering experience. A licensed engineer is also required to practice engineering solely within his areas of competence and to protect the public health, safety, and welfare. All licensed PEs, no matter who their employer, are required by State laws and codes of ethics to discharge their engineering responsibilities accurately and honestly. Furthermore, State governments have and do exercise the

authority to discipline licensed PEs who fail to comply with State laws and requirements. Other environmental professionals may not have similar expertise nor be held to similar standards as the licensed PE.

It is not always necessary for a PE to visit the facility. Therefore, we have revised § 112.3(d) to allow site visit by either the PE or his agent. Often it will be sufficient if the PE reviews the work of other engineering professionals who have visited the facility. Someone would have to visit the facility, but not necessarily the PE. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

Good engineering practice. As we noted in the 1991 preamble (at 56 FR 54617-18), good engineering practice "will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility." We agree with the commenter that the rule needs more specificity in this regard. Therefore, we have amended § 112.3(d)(1)(iii) to specifically include consideration of applicable industry standards as an element of the PE's attestation that the Plan has been prepared in accordance with good engineering practice. We reiterate today, as we did in 1991, that consideration of applicable industry standards is an essential element of good engineering practice. Industry standards include industry regulations, standards, codes, specifications, recommendations, recommended practices, publications, bulletins, and other materials. (See § 112.7(a)(1) and (j).) The owner or operator must specifically document any industry standard used in a Plan to comply with this section. The documentation should include the name of the industry standard, and the year or edition of that standard. However, as discussed above, we have chosen not to incorporate specific industry standards into the rule.

Testing. The proposed rule would have required the PE to certify that required testing was completed. We have been persuaded by comments that the requirement should be that procedures for inspections and tests have been established, not necessarily completed, because the PE is not normally present at time of completion. Nor do we believe it is necessary to impose a requirement that the PE oversee all testing because the PE only shares responsibility with the owner or operator for establishing procedures, not

for their implementation, which is the sole responsibility of the owner or operator. However, the PE may include in the Plan a schedule for testing, with specific time frames for the completion of that testing. See also the discussion in today's preamble (at section IV.D.3) on "Completion of Testing."

Non-technical changes. PE certification is not required for items that do not require engineering judgment, such as telephone numbers; names on lists; some, but not all, product changes (see the response to comments of § 112.5(a)); ownership changes; or, any other changes not requiring engineering judgment.

Time limit for PE certification. We disagree that there should be a time limit on PE certification because the rule ensures that the PE reviews the Plan at appropriate times. Thus, current PE certifications remain valid. But new certifications after the effective date of this rule must include the required attestations. If you are an owner or operator you must review your Plan at least every five years (under revisions made in today's rule), and amend it if new technology is warranted. Also, you must amend your Plan to conform with any applicable rule requirements, or at any time you make any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). All material amendments require PE certification. Therefore, because a Plan will likely require one or more amendments requiring PE review and certification, a time limit on PE certifications is unnecessary. See § 112.5(c).

Other PE issues. As to other PE issues, as noted above (see section IV.D.2 of this preamble), the PE need not be independent of the facility. Nor is there a requirement that he not have a financial interest in it. We believe the professional integrity of a PE and the professional oversight of boards licensing PEs are sufficient to prevent any abuses.

It is not necessary that the PE be licensed in the same State as the facility because the SPCC program is national in scope and therefore State expertise is unnecessary. While States may prescribe more stringent requirements than EPA, a PE may familiarize himself with any particular requirements a State may impose and address them in the Plan. See § 112.7(j). Furthermore, violations of PE ethics may be handled by the licensing board of the PE's state no matter where the work is done.

EPA maintains that a site visit is necessary, but the visit may be by either the PE or his agent, so long as a visit by

an agent is consistent with good engineering practice. A visit by the PE's agent can generally be sufficient given that the PE will oversee and be responsible for his agent's work.

PE costs. We note that we did not propose a requirement for an independent PE, but requested comments on it. In the final rule, we require either the PE or the PE's agent to visit and examine the facility before the PE certifies the Plan. An agent might include an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. The PE, after reviewing the agent's work, could then legitimately certify the Plan. Also, in the final rule, we allow the PE to be an employee of the facility as well as registered in a different State than the facility is located, in order to approve a Plan. The rationale is that SPCC work is national in scope and therefore State expertise is unnecessary.

Editorial changes and clarifications. "Registered Professional Engineer" becomes "licensed Professional Engineer." The first sentence of the paragraph was proposed as, "No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer." We revised it to read, "A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part." This revision is due to the fact that PEs are licensed by States.

Section 112.3(e)—Location and Availability of Plan

Background. In 1991, we proposed that the Plan be available at the facility if the facility is normally manned at least four hours a day, in lieu of the current requirement that the Plan be available if the facility is manned eight hours a day. If the facility is not attended at least four hours a day, the Plan would have to be available at the nearest field office.

The rationale for the change is that some facilities interpreted the eight hour requirement not to apply to a facility that is only operating seven and one-half hours per day, with a half an hour deducted for lunch. The availability of a Plan can be extremely useful in preventing and mitigating discharges, therefore it must be available most of the time at attended facilities.

Comments. Editorial changes and clarifications. Several commenters questioned the meaning of "normal working hours," asking whose hours that meant, those of EPA or those of the

facility. Several commenters questioned the meaning of "nearest field office."

Plan availability. Several commenters favored the proposal. One commenter suggested that we amend the rule to provide that the Plan be available "without advance notice," so that it would be fully implemented at all times, not just when an inspection is impending. One commenter thought that the Plan should always be located at the facility, whether manned or not, perhaps protected by a laminated cover, and at "appropriate control centers."

State and local agencies. Another commenter suggested that the Plan be filed with the local fire department and LEPC (Local Emergency Planning Committee) to facilitate public review. One State suggested there be a Federal requirement that the Plan also be filed with the State.

Response to comments. Nearest field office, normal working hours. The term "nearest field office" in paragraph (e)(1) means the office with operational responsibility for the facility, or the emergency response center for the facility, because those locations ensure accessibility for personnel who need to respond in case of a discharge. The term "normal working hours" in paragraph (e)(2) refers to the working hours of the facility or the field office, not EPA.

Plan availability. Today we have finalized the 1991 proposal that the Plan must be available at the facility if it is normally attended at least four hours per day, or at the nearest field office if it is not so attended. A Plan must always be available without advance notice, because an inspection might not be scheduled. You are not required to locate a Plan at an unattended facility because of the difficulty that might ensue when emergency personnel try to find the Plan. However, you may keep a Plan at an unattended facility. If you do not locate the Plan at the facility, you must locate it at the nearest field office.

State and local agencies. You are not required to file or locate a Plan with a State Emergency Response Commission or Local Emergency Planning Committee or other State or local agency because the distribution would unjustifiably increase the information collection burden of the rule, and not all committees or agencies may want copies of SPCC Plans. Should a State wish to require filing of a Federal SPCC Plan with a State or local committee or agency, it may do so. No Federal requirement is necessary.

Editorial changes and clarifications. In paragraph (e)(2), we deleted the term "or authorized representative" after "Regional Administrator," because the Regional Administrator may delegate

his duties. Therefore, the term is unnecessary.

Section 112.3(f)—Extension of Time

Background. In 1991, we proposed to allow only new facilities to apply for extensions of time to comply with the requirements of part 112. The current rule allows any facility to apply for an extension, including existing fixed and mobile facilities. The rationale for limiting extension requests to new facilities was that existing fixed and mobile facilities have had since 1974 to comply with the rule.

Comments. Automatic extensions. Several commenters suggested that we automatically grant extension requests if we are to require a Plan to be in effect prior to commencement of operations.

Existing Plan requirements. Another commenter criticized the proposed requirement to submit the existing Plan with each extension request, because EPA's review of the Plan cannot practically be an element of the extension granting process. Another commenter suggested that the language in paragraph (f)(3) would be better if it said that the existing Plan's provisions remain in effect until they are superseded by changes proposed by the facility, because these words better reflect the intention of the rule.

Amendments. Several commenters urged EPA to allow extensions for preparation and implementation of Plan amendments.

Response to comments. Automatic extensions. Automatic extension requests are not justifiable because we have extended the time within which most facilities have to prepare and implement Plans. See § 112.3(a), (b), and (c). Also, under the revised rule, you may request an extension for the preparation and implementation of any Plan, or amendment to any Plan. See § 112.3(f).

Existing Plan requirements. We have broadened the scope of extension requests to any facility that can justify the request, because for every type of facility there may be cases in which an extension can be justified. Existing fixed and mobile facilities may experience delays in construction or equipment delivery or may lack qualified personnel, and these circumstances may be beyond the control of, and without the fault of, the owner or operator. We also agree with the commenter that the submission of the entire Plan as a matter of course is unnecessary to evaluate each extension request. Therefore, we have amended the rule to provide that the Regional Administrator may request your Plan if he deems it appropriate. But we do not believe that he will

always do so. It may be necessary under some circumstances. The Regional Administrator also retains discretion to request the Plan after on-site review, or after certain discharges. See § 112.4(a)(9) and (d). We disagree with the commenter's proposed rewrite of the owner or operator's obligations while the request is pending because the better policy is to require compliance with the rest of the rule that is not affected by the extension request, rather than saying that the existing Plan continues in effect.

Amendments. We have also added a provision for an extension of time to prepare and implement an amendment to the Plan, as well as an entire Plan. We believe that there may be cases in which an extension can be justified for a Plan amendment because the same extenuating circumstances may apply.

Editorial changes and clarifications. In paragraph (f)(3), "letter of request" becomes "written extension request." In the last sentence of that paragraph, "with respect to" becomes "related to."

Section 112.4(a)—Reporting Certain Discharges to EPA

Background. In 1991, we proposed to require more information than is currently required in the rule for reporting certain discharges. If your facility discharged more than 1,000 gallons in a discharge as described in § 112.1(b), or discharged oil in quantities that may be harmful in more than two discharges as described in § 112.1(b) within any consecutive twelve month period, you would have been required to submit certain information to the Regional Administrator.

In 1993, we proposed a modification to § 112.4(d)(1) which would allow the Regional Administrator to require the submission of the listed information in § 112.4(a)(1) at any time, whether or not there had been a discharge as described in § 112.1(b).

In 1997, we proposed a reduction of the amount of information currently required by § 112.4(a). We proposed to eliminate the following information, unless the Regional Administrator specifically requested it: (1) The date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments.

Comments. In general. Most commenters favored the 1997 proposal. Several commenters opposed the proposal.

Information submission at any time. One commenter argued that the 1993 proposal allowing EPA to require

submission of the information required in § 112.4(a)(1) and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community.

Submission of entire Plan. One commenter thought that meaningful review of the information submitted was impossible without the entire Plan. Two commenters believed that EPA would always request the information it proposed to eliminate.

Discharge threshold. Other commenters proposed a higher threshold for having to report a discharge than is currently required by § 112.4(a). Those thresholds ranged from 25–55 gallons. One commenter suggested that we relax the reporting requirement for very minor releases of petroleum products. Another suggested that if the discharge causes a sheen that dissipates within 24 hours, there should be no obligation to report.

Maps, flow diagrams, and charts. Several commenters suggested that we eliminate the requirement to submit maps, flow diagrams, and charts because those documents "add nothing useful to the inquiry."

Off-site category. Another commenter suggested that we create an "off-site" category of spill reports for discharges reported by a facility that are in a water body adjacent to the reporter's facility, or for discharges that originate off-site, but migrate to the facility.

Calculation of time for discharge reports required by § 112.4(a). Several commenters suggested that we calculate the time for the submission of discharge reports required by § 112.4(a) on a "block" basis, rather than a "rolling" basis.

Response to Comments

Information submission at any time. We agree with the commenter that the 1993 proposal to give the Regional Administrator authority to require submission of the requested information in this section at any time is vague, and have therefore withdrawn that part of the proposal. We will only require such information after the discharges specified in this section.

Submission of entire Plan. CWA section 311(m) provides EPA with the authority to require an owner or operator of a facility subject to section 311 to make reports and provide information to carry out the objectives of section 311; and CWA section 308(a) provides us with authority to require the owner or operator of any "point source" to make such reports as the Administrator may reasonably require. Therefore, we disagree that submission of the entire Plan is always necessary

when reporting discharges under § 112.4(a). We believe the information now required to be submitted is adequate to assess the cause of discharge and the ability of the facility to prevent future discharges. If the RA believes that the entire Plan has utility, he can request it. However, we disagree that RAs will always require submission of the Plan, or other information not required, as a matter of course. RAs may use their administrative discretion not to require the submission of Plan information or other additional information.

Discharge threshold. 42 gallons. We agree that a higher threshold of reporting discharges is justifiable because we believe that only larger discharges should trigger an EPA obligation to review a facility's prevention efforts. We also agree that a higher threshold should trigger a facility's obligation to submit information and possibly have to take further prevention measures. Therefore, we have changed the threshold for reporting after two discharges as described in § 112.1(b). Under the revised rule, if you are the owner or operator of a facility subject to this part, you must only submit the required information when in any twelve month period there have been two discharges as described in § 112.1(b), in each of which more than 42 U.S. gallons, or one barrel, has been discharged. We adopted the 42 gallon threshold on a commenter's suggestion. We believe that a 42 gallon threshold is the appropriate one to trigger a facility's information and possibly to have to take further prevention measures. When multiple discharges occur at a facility subject to the SPCC program, such as a generating station, they often involve the discharge of very small amounts of oil, and these discharges tend to come randomly from a lube pipe, an oil level sight glass crack, or some other apparatus, and do not normally indicate a recurring problem with the container. Having two or more of these small discharges does not indicate that the facility's SPCC Plan requires revision. The other reporting threshold of 1,000 gallons in any a single discharge as described in § 112.1(b) remains the same.

We disagree that a sheen caused by a discharge as described in § 112.1(b) over the threshold amount that disappears within 24 hours should not require submission of information. The discharge itself may indicate a serious problem at the facility which needs to be corrected. The discharge report may give us the information necessary to require specific correction measures.

“Sheen” rule. The duty imposed by the CWA to report to the National Response Center all discharges that may be harmful, further described by 40 CFR 110.3, is unchanged. Those discharges include discharges that violate applicable water quality standards; or, 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.

Maps, flow diagrams, and charts. In response to comments which questioned the usefulness of such information, we have modified the provision regarding maps, flow diagrams, topographical maps (now required by paragraph (a)(6) of the current rule) to clarify that only the information necessary to adequately describe the facility and discharge, such as maps, flow diagrams, or topographical maps is necessary—not necessarily all of the information listed in the paragraph. To effect this change, we added the words “as necessary” after “topographical maps.” “As necessary” means as determined by the owner or operator, subject to the obligations of this rule, unless the RA requests more information. There might be circumstances in which the owner or operator would submit only a brief description of the facility or a map, for example, because flow diagrams and topographical maps were unnecessary to describe the discharge, and would not help the RA to determine whether any amendment to the Plan was necessary to prevent future discharges as described in § 112.1(b).

Off-site category. There is no necessity for an “off-site” category of discharges as described in § 112.1(b) because only a discharge as described in § 112.1(b) that originates in a facility subject to this part counts for purposes of § 112.4(a).

Calculation of time for discharge reports required by § 112.4(a). We believe a “rolling” basis is the appropriate method to calculate a discharge as described in § 112.1(b) for purposes of the rule because discharges as described in § 112.1(b) that are closer in time are more likely to be related in cause. Discharges that are more proximate in time may indicate a problem that needs to be remedied. A “rolling basis” means that each discharge as described in § 112.1(b) triggers the start of a new twelve month period. For example, if discharge #1 occurred on January 1, and if discharge #2 occurred on June 2, discharge #2 would trigger the regulatory submission and would start a new twelve month

period. If discharge #3 occurred on the following February 3, it would again trigger a submission, because discharge #3 would be within 12 months of discharge #2. While the “rolling basis” would trigger more regulatory submissions than the “block basis,” we believe that it would enhance environmental protection because it would call potential problems to the attention of the Regional Administrator sooner, and allow them to be remedied sooner by a Plan amendment where necessary.

“Block” basis. The other approach would be to use a “block” period. Under this type of calculation, each third discharge as described in § 112.1(b) would not trigger a submission if it occurred within 12 months of discharge #2, but it would start the beginning of a new 12 month period. For example, if discharge #1 occurred on January 1, and discharge #2 on June 2, discharge #2 would trigger a submission. Discharge #3 on the following February 3 would not trigger a submission, but would start a new 12 month period. The principal justification for block reporting is also that discharges more closely related in time are more likely to be related. Our concern with this method is that if the February 3 discharge (i.e., discharge #3) is within twelve months of discharge #2, this situation could indicate that there is a problem that has not been remedied, so the February 3 discharge should trigger a reporting submission.

Maximum storage or handling capacity. In 1997, we proposed deletion of current paragraph (5) (renumbered as paragraph (4) in today’s final rule), concerning the maximum storage or handling capacity of the facility and normal daily throughput. We have reconsidered this proposal and decided to withdraw it because the referenced information is necessary information. We have therefore retained the language in the rule. Storage capacity and normal daily throughput are important indicators of the impact of a potential discharge as described in § 112.1(b).

Additional information. If the Regional Administrator requires other information, for example, concerning the spill pathway, or any response measures taken, this request is authorized under renumbered § 112.4(a)(9), current § 112.4(a)(11).

Adjoining shorelines, natural resources, affected natural resources. Discharges into navigable waters are not the only discharges reportable for purposes of this section. We note that any discharge as described in § 112.1(b) is also within the scope of this section’s reportable discharges.

Editorial changes and clarifications. If a particular information request is inapplicable, you may omit it, but must explain why it is inapplicable. Several plural nouns like “names” and “causes” become singular. Wherever the phrase “and/or” appears, we have revised the phrase to read “and.” In 1997’s proposed § 112.4(a)(6), redesignated as § 112.4(a)(7), “spill” becomes “discharge as described in § 112.1(b).” In 1997’s proposed § 112.4(a)(8), redesignated as § 112.4(a)(9), “spill event” becomes “discharge.”

Section 112.4(b)—Applicability of § 112.4

Background. Under current § 112.4(b), the § 112.4 requirements for spill reporting do not apply until the expiration of the time permitted for the preparation and implementation of a Plan pursuant to § 112.3(a), (b), (c), and (f). In 1991, we proposed that § 112.4 would not apply until the expiration of the time permitted for the preparation and implementation of a Plan under § 112.3(f) only. Section 112.3(f) is the time period in which you are permitted to prepare and implement a Plan under an extension request.

We proposed to delete the references to § 112.3(a), (b) and (c) because the current time periods allowed in these paragraphs for the preparation and implementation of the Plan (before commencement of operation for new facilities or mobile facilities, or after the effective date of the rule for other existing facilities) were proposed for deletion. Because future facilities would generally have a Plan prepared and implemented before beginning operations, there was no longer a need to temporarily relieve facilities of spill reporting obligations under § 112.4(a), unless the Regional Administrator granted an extension under § 112.3(f) to prepare and implement a Plan. We received no comments on this proposal.

In today’s rule, however, we have revised § 112.3 to extend the time lines for certain facilities to prepare and implement Plans. To accord with this change, we are maintaining the approach under current § 112.4(b) to provide that the § 112.4 spill reporting requirements will not apply until the expiration of the time permitted for the initial preparation and implementation of a Plan under § 112.3(a), (b), (c), and (f). Today, we have also revised § 112.3(a) to provide an extended time line for preparing a Plan amendment and § 112.3(f) to provide for an extension request for an amendment to a Plan. Therefore, we have also revised § 112.4(b) to provide that the obligation to submit information as required by

§ 112.4(a) does not arise until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not for any amendments to the Plan. We did not previously propose to relieve facilities of § 112.4 reporting requirements during Plan amendments or extensions for Plan amendments. An amendment may or may not be directly related to the cause of the discharge as described in § 112.1(b), and therefore may have little relevance to the duty to submit discharge reports to EPA.

Section 112.4(c)—Supplying Discharge Information to the States

Background. In 1991, we proposed that you must provide the same discharge information that you submit to the Regional Administrator under § 112.4(a) to the State agency in charge of oil pollution control activities. The current rules require that you provide that information to the State agency in charge of water pollution control activities.

Comments. Legal authority. One commenter suggested that we have no legal authority for the proposal. Another commenter asserted that EPA could only implement State agency recommendations if those recommendations fell within the scope of the SPCC rule.

In general. Several commenters suggested the proposal was redundant and unnecessary, because only EPA regulates the SPCC program, not the States.

State agency review. One commenter, a State, favored the proposal and noted that more than one State agency has statutory jurisdiction over oil pollution control in that State. That State and another suggested that all relevant State agencies receive the information. One commenter suggested that EPA should identify the appropriate State agency to which notice is due. One commenter thought the proposed change was misleading. Another commenter, a State, suggested that EPA provide the States money to review the submitted discharge information.

Response to comments. Legal authority. We have ample legal authority to finalize this rule. A similar rule has been in effect since 1974. Section 311(j)(1) of the CWA authorizes the Federal government (and EPA through delegation) to establish “procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. * * *” Section 112.4(c) of this rule is a procedure to help prevent discharges that fall within the scope of that statutory provision. It enables States to

learn of discharges reported to EPA and to make recommendations as to further procedures, methods, equipment, and other requirements that might prevent such discharges at the reporting facility.

We can only implement State agency suggestions that are within the scope of our authority under section 311 of the CWA.

In general. The commenter is correct that the SPCC program is a Federal program, but we believe that in working with the States, we can improve the Federal program through coordination with State oil pollution prevention programs. Therefore, we believe that the information provided to States is neither redundant nor unnecessary. Nor is the section misleading; it clearly states the obligation of the owner or operator.

State agency review. We modified the 1991 proposal on the commenters’ suggestion to include notice to any appropriate State agency in charge of oil pollution control activities, since there may be more than one such agency in some States and all may have need for the information. We do not list such agencies in the rule, as a commenter suggested, because the names and jurisdiction of the State agencies are subject to change. It is the reporter’s obligation to learn which State agencies receive the discharge reports. Most States publish documents on an ongoing basis, similar to the **Federal Register**, which publicize relevant regulatory information.

We do not provide State agencies funds to review these discharge reports due to budgetary constraints. While we assume that many States review these reports carefully, we cannot require them to do so. Thus, this action is not an unfunded mandate from the Federal government to the States. But if States do review the reports, they do so at their own expense.

Editorial changes and clarifications. In the last sentence of the paragraph, “discharges of oil” becomes “discharges.”

Section 112.4(d)—Amendment of Plans Required by the Regional Administrator

Background. In 1991, we proposed that after review of materials under 112.4(a), the Regional Administrator (RA) might require amendment of the SPCC Plan. We also proposed that the RA might require Plan amendment after reviewing contingency plan materials submitted for approval. See proposed § 112.7(d), 1991.

In 1993, we proposed that the RA would also have authority to require Plan amendment after on-site review of the Plan. In addition, we proposed a

clause empowering the RA to approve the Plan or require amendment.

We also proposed in 1993 allowing the RA to require submission of the information listed in § 112.4(a) at any time. The rationale to get this information was to prevent discharges from happening, in addition to seeking to correct the conditions that may have caused the discharge. See the background and response to comments under § 112.4(a) for a discussion of this proposal.

Comments. Regional Administrator approval of Plans. Several commenters criticized the idea of RA approval of the Plan on the theory that it is an unwarranted intrusion into the manner in which operators do business. Another urged an appeal process if EPA approval of Plans is required.

Plan information and amendments. One commenter argued that allowing EPA to require submission of the information required in § 112.4(a) at any time and to require Plan amendments at any time is vague and does not provide adequate notice to the regulated community. Several commenters were concerned that EPA would inconsistently require overly stringent measures in some Plans or might require amendments unrelated to discharge potential or which were financially unreasonable. Two commenters urged a time limit on EPA decision making following submission of required information. Another commenter was concerned that no provision required PE certification of amendments required by EPA.

Response to comments. Regional Administrator approval of Plans. We have deleted the provision that would have allowed RA approval of Plans. We have decided not to create a new class of SPCC Plans which require EPA approval, either Plans submitted following certain discharges as required by § 112.4(a) or Plans with contingency plans, because we do not believe such approval is necessary in order to ensure effective Plans.

Plan information and amendments. We agree that allowing EPA to require submission of the information required in § 112.4(a) at any time, and thereafter to require Plan amendments, is vague, and therefore we have withdrawn that part of the proposal. Furthermore, it is unnecessary because sections 308 and 311(m) of the CWA already provides us with adequate authority to request necessary Plan information.

While the RA will not have authority under this section to approve Plans, he has authority to require Plan amendment. We will strive to be as timely as possible in reviewing the

information when submitted, and making decisions on any required amendments. A time limit on the RA's decision making authority would be unnecessary because a facility may continue to operate under its existing Plan while the RA's decision is pending. While we will consider cost in our decision making, amendments may be required on a case-specific basis to help prevent discharges. Any technical amendment required would require PE certification. See § 112.5(c).

Editorial changes and clarifications. We have deleted reference to the RA's approval of the submitted Plan in proposed paragraph (d)(2), because the RA will not have authority to approve a Plan. He does, however, have authority to require Plan amendment under today's revision of § 112.4(d).

Section 112.4(e)—Notification and Implementation of Required Amendments

Background. In 1991, we repropoed the current notification provision concerning required Plan amendments, and the time lines for implementation of those amendments.

Comments. Who receives notice. One commenter wanted EPA to notify railroads directly, instead of their registered agents, because of the time lag that might occur between the time the agent received notice and the owner or operator of the facility received notice. Another commenter urged that we also provide notice to the facility operator, the facility improvement owner, and the facility landowner. His rationale for such expanded notice was that a major problem may be addressed by the operator or EPA, without the knowledge and/or consent of the facility improvements owner and the facility landowner.

Appeals procedure. One commenter suggested that we include a reference to the appeal procedure for amendments in this section.

Response to comments. Who receives notice. In reply to the railroad commenter, the rule requires notice only to the owner or operator of the facility, and the registered agent, if any and if known. Notice from EPA to the facility improvements owner and landowner is unnecessary because these matters can and should be handled between the facility owner or operator and the owner or operator of the improvements or the landowner.

Appeals procedure. We have not included a reference to the appeals procedures for required amendments in this section because the appeals procedures follow immediately in the

next paragraph, making such reference redundant.

Editorial changes and clarifications. We have changed the proposed requirement to mail a copy of the notice to the registered agent of a corporation to a requirement that such notice be effected only if the registered agent is known to EPA. The notification requirement for registered agents now tracks the notification requirement for registered agents in § 112.1(f). Because we have withdrawn the proposed requirement that a corporation submit that agent's name or address in the submission of information required by § 112.4(a), such agent may not be known to EPA. In the last sentence of the final rule, "amendment of the Plan" becomes "amended Plan."

Section 112.4(f)—Appeals of Required Amendments

Background. In 1991, we repropoed the current appeals procedures for required Plan amendments. We received no substantive comments. Therefore, we have promulgated the procedures as proposed.

Editorial changes and clarifications. We deleted language concerning the "designee" of the EPA Administrator because it is unnecessary. Current delegations allow the Administrator to delegate this function.

Section 112.5(a)—Plan Amendment by an Owner or Operator

Background. In 1991, we proposed to require that an owner or operator amend the Plan before making any change in facility design, construction, operation, or maintenance materially affecting the facility's potential for the discharge of oil into the waters of the United States unless the RA granted an extension. We also listed some examples of facility changes which would require Plan amendment, noting that these examples were not an exclusive list.

Comments. When amendment is necessary. Several commenters favored the proposal. Others provided differing standards for amending Plans. A number of commenters suggested that no amendments should be necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill. Another suggested a standard that amendments should be made "when there are indicia of problems." A commenter suggested a standard that no amendments would be required except for those changes which would cause the spill potential to exceed the Plan's capabilities because day-to-day changes do not affect the worst case spill and the Plan should not have to be amended on

a day-to-day basis. One commenter suggested that small facilities with less than 5,000 gallon-capacity should be exempted from the need to amend their Plans for the listed acts. Another commenter asserted that instead of being required to amend their Plans before changes are made, operators should be encouraged to incorporate new procedures into their SPCC Plans to prevent and contain potential discharges which might result from performing needed repairs and replacements. The rationale for the suggestion was that operators will then not "save up" potential amendments due to the burden of preparing an amendment.

Material changes. Many commenters offered opinions on the examples of material changes listed in the rule for which amendments would be required. Some suggested that the rule should read that these are only examples of changes that may trigger amendment. Several commenters suggested that decommissioning a tank should not trigger an amendment because "as a tank is removed, so is the requirement for an SPCC Plan." Another commenter noted that changing a product in a tank or cleaning a tank should not be considered commissioning or decommissioning a tank. One commenter suggested that an amendment to the Plan should be required when there is a change of product stored within the tank.

Documenting no change or certain activities. Another commenter suggested that a log book might be used instead of a Plan amendment to document "routine activities" and measures taken to maintain the spill prevention and response integrity of the facility. Several commenters suggested that an identical replacement of tanks or other equipment should not be considered a material change and therefore amendment should not be required. A utility commenter asked that facilities be allowed to accumulate minor modifications for a period of 6 months, then update the Plan.

EPA approval. Another commenter suggested that we clarify that EPA approval of an amendment made under this section is not required.

Time line for amendment implementation. Numerous commenters opposed the proposed requirement that a Plan be amended before any material changes are made. Commenters suggested various alternative amendment time lines ranging from 90 days to six months following such changes, with a cluster of commenters around the six months alternative. Others suggested that the Plan be

amended at fixed time points such as before a design is physically implemented, before startup of operations, after modifications, before new or modified equipment is in operation, or when changes are made. One commenter said that rule language should be clarified to note that the RA may specify a time period longer than six months to implement an amendment.

Response to comments. When amendment is necessary. We agree with the commenter who suggested that we maintain the current standard for amendments, i.e., when there is a change that materially affects the facility's potential to discharge oil. This position accords with our stance on when Plans should be prepared and implemented. See § 112.3. The other suggested standards too narrowly limit the changes which would trigger Plan amendment. We believe that an amendment is necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill because EPA needs this information to determine compliance with the rule. For example, the amount of secondary containment required depends on the storage capacity of a container. Decreases might also affect the way a facility plans emergency response measures and training procedures. A lesser capacity might require different response measures than a larger capacity. The training of employees might be affected because the operation and maintenance of the facility might be affected by a lesser storage capacity.

Likewise, a standard requiring amendment "when there are indicia of problems" is too vague and leaves problems unaddressed which may result in a discharge as described in § 112.1(b). A standard requiring an amendment only when the change would cause the spill potential to exceed the Plan's capabilities (because day-to-day changes do not affect the worst case spill) would have the effect of leaving no documentation of amendments which might affect discharges which do not reach the standard of "worst case spill." While we encourage facilities to incorporate new procedures into Plans which would help to prevent discharges, amendments are still necessary when material changes are made to document those new procedures, and thus facilitate the enforcement of the rule's requirements. We disagree that a small facility should be exempt from making amendments for material changes. Amendments may be necessary at large or small facilities

alike to prevent discharges after material changes.

Material changes. A material change is one that may either increase or decrease the potential for a discharge. We agree with the commenter that the rule should be worded to indicate that the examples are for illustration only, because the items in the list may not always trigger amendments, and because the list is not exclusive. Only changes which materially affect operations trigger the amendment requirement. Ordinary maintenance or non-material changes which do not affect the potential for the discharge of oil do not.

We disagree that decommissioning of a container that results in permanent closure of that container is not a material amendment. Decommissioning a container could materially decrease the potential for a discharge and require Plan amendment, unless such decommissioning brings the facility below the regulatory threshold, making the preparation and implementation of a Plan no longer a requirement. We also believe that the oversight of a Professional Engineer is necessary to ensure that the container is in fact properly closed.

We agree that replacement of tanks, containers, or equipment may not be a material change if the replacements are identical in quality, capacity, and number. However, a replacement of one tank with more than one identical tank resulting in greater storage capacity is a material change because the storage capacity of the facility, and its consequent discharge potential, have increased.

Changes of product. We have added to the list of examples, on a commenter's suggestion, "changes of product." We added "changes of product" because such change may materially affect facility operations and therefore be a material change. An example of a change of product that would be a material change would be a change from storage of asphalt to storage of gasoline. Storage of gasoline instead of asphalt presents an increased fire and explosion hazard. A switch from storage of gasoline to storage of asphalt might result in increased stress on the container leading to its failure. Changes of product involving different grades of gasoline might not be a material change and thus not require amendment of the Plan if the differing grades of gasoline do not substantially change the conditions of storage and potential for discharge.

A change in service may also be a material change if it affects the potential for a discharge. A "change in service"

is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. Therefore, we have amended the rule to add "or service" after the phrase "changes of product."

Documenting no change or certain activities. We agree that a log book may be used to document non-material, routine activities. However, this is not an appropriate substitute for amendment when you make material changes at the facility.

EPA approval. We agree with the commenter's suggestion that EPA approval of an amendment is not required. However, if the RA is not satisfied that your amendment satisfies the requirements of these rules, he may require further amendment of your Plan.

Time line for amendment implementation. We agree with commenters that we should not require Plan amendment before material changes are made. Therefore, we have revised the proposed rule to provide a maximum of six months for Plan amendment, and a maximum of six more months for amendment implementation. This is the current standard. We note that § 112.3(f) allows the RA to authorize an extension of time to prepare and implement an amendment under certain circumstances.

Editorial changes and clarifications. The phrase in the first sentence which read, "potential to discharge oil as described in § 112.1(b) of this part," becomes "potential for a discharge as described in § 112.1(b). "Tanks" becomes "containers." "Commission or decommission" becomes "commissioning or decommissioning."

Section 112.5(b)—Periodic Review of Plans

Background. In 1991, we repropose the current rule, which requires that the owner or operator review the Plan at least every three years, and amend it if more effective control and prevention technology would significantly reduce the likelihood of a spill, and if the technology had been field-proven at the time of the review.

In 1997, we withdrew the 1991 proposal, and instead proposed a five-year review time frame, with the same technological conditions. In 1997, we also proposed that the owner or operator certify that he had performed the review.

Comments. Five-year review. Most commenters favored the change from three-to five-year review. Some

commenters noted that a five-year review period would make it easier to coordinate reviews of related plans, such as facility response plans required by part 112. A few opposed it, preferring the current three-year review period. They believed that five-year review might lead to reduced maintenance and consequent environmental harm, especially in the absence of any requirements for a facility to ensure that personnel are familiar with planning goals and proposed response actions, including personnel who are rotated. One commenter suggested that the longevity of a tank warranty should be the determining factor in the length of review time. Another suggested that there should be no particular time period prescribed because the requirement for an amendment whenever a material change is made is sufficient.

Completion of review. Commenters split almost evenly on the proposed requirement for certification of completion of the review. Opponents of the certification proposal believed generally that it is unnecessary paperwork that will not benefit the environment. One commenter suggested that instead of documenting completion of review, a facility might instead date the Plan to show review and date each amendment. One commenter thought that the certifications should have to be forwarded to the Regional Administrator. Others asked whether the certification could be documented in a log book, instead of in the Plan. Another commenter asked at what management level certification should be required. One commenter believed that Plans amended due to five-year reviews should not require owner or operator certification because any amendments to the Plan have to be reviewed and certified by a PE. Another commenter noted that no specific language was provided for the certification. One commenter urged that the PE should be allowed to document that no change is necessary after reviewing planned changes, or that further study is required, or that an amendment is necessary.

Response to comments. Five-year review. We agree that a five-year review period will make coordination of review of related plans, such as facility response plans required by part 112, easier. We disagree that a five-year review period will lead to reduced maintenance or increased environmental harm. Amendment of a Plan will still be necessary when a material change is made affecting the facility's potential to discharge oil, perhaps after certain discharges as

required by the RA under § 112.4(a), and perhaps after on-site review of a Plan (see § 112.4(d)). Plus the Plan must be implemented at all times. These opportunities ensure that Plans will be current. We also disagree that the length of the tank warranty should be the determining factor for a technological review. Technology changes enough within a five-year period to warrant required review within such time period whether or not other changes occur. Amendments other than the five-year review amendments may not be based on the need to learn of improved technology. Those amendments might result from deficiencies in the Plan, on the need to make repairs, or to remedy the cause of a discharge.

Calculation of time between reviews. The change in the rule from three-year to five-year reviews requires some explanation as to when a review must be conducted. For example, a facility became subject to the rule on January 1, 1990. The first three-year review should have been conducted by January 1, 1993, the second by January 1, 1996, and the third by January 1, 1999. The next review must be conducted by January 1, 2004, due to the rule change. In other words, an existing facility must complete the review within 5 years of the date the last review must have been completed. A facility becoming operable on or after the effective date of the rule will begin a five-year cycle at the date it becomes subject to part 112.

Completion of review. We disagree that documentation of completion of review has no environmental benefit. Its benefit lies in the fact that it shows that someone reviewed the Plan to determine if better technology would benefit the facility and the Plan is current. Documentation of completion of review is necessary whether or not any amendments are necessary in order to clearly show that the review was done. Mere dating of the Plan or of an amendment does not show that you performed the required review. Documentation of completion of review is a function of the owner or operator, whereas certification of any resulting technical amendment is a function of the PE. We disagree that documentation of completion should be forwarded to the Regional Administrator because it would increase the information collection burden without an environmental benefit. It is sufficient that the review be done. When the Regional Administrator wishes to verify completion of review, he may do so during an on-site inspection.

How to document completion of review. You must add documentation of completion of review either at the

beginning or the end of the Plan, or maintain such documentation in a log book appended to the Plan or other appendix to the Plan. You may document completion in one of two ways. If amendment of the Plan is necessary, then you must state as much, and that review is complete. This statement is necessary because Plan amendments may result either from five-year review or from material changes at the facility affecting its potential for discharge, or from on-site review of the Plan. There is no way to know which circumstance causes the amendment without some explanation. If no amendments are necessary, you must document completion of review by merely signing a statement that you have completed the review and no amendments are necessary. You may use the words suggested in the rule to document completion, or make any similar statement to the same effect.

Who documents review. The owner or operator of the facility, or a person at a management level with sufficient authority to commit the necessary resources, must document completion of review.

Time line for amendment implementation. We agree with commenters (see comments on proposed § 112.5(a)) that the preparation and implementation of Plan amendments require more time than proposed. The same rationale applies to the preparation and implementation of amendments required due to five-year reviews. Therefore, we will require adherence to the time lines laid down in § 112.5(b) for amendments. Currently, § 112.5(b) requires that Plan amendments be prepared within six months. It is silent as to time lines for implementation. Therefore, we have revised the rule to clarify that amendments must be implemented as soon as possible, but within the next six months. This is the current standard for implementation of certain other amendments. See, for example, §§ 112.3(a) and 112.4(e). We note that § 112.3(f) allows you to request an extension of time to prepare and implement an amendment.

Editorial changes and clarifications. We have changed the word "certification" to a requirement to document completion of the review to avoid the legal effect a certification may have. The intent of the certification proposal was merely to show that an owner or operator performed a review of the Plan every five years. 62 FR 63814, December 2, 1997. A false documentation of completion of review of the Plan is a deficiency in the Plan and may be cited as a violation of these

rules. "Spill event," in the second sentence, becomes "discharge as described in § 112.1(b).

Section 112.5(c)—PE Certification of Technical Amendments

Background. In 1991, we proposed that all amendments to the Plan must be certified by a PE with the exception of changes to the contact list. The current rule requires certification of all amendments.

Comments. A few commenters suggested that the value of PE certification for amendments does not justify the cost. Another commenter questioned when recertification of the entire Plan was required, rather than just the amendment in question. Several commenters suggested that the recertification requirement be limited to those changes that materially affect the facility's potential to discharge oil.

Response to comments. It is the responsibility of the owner or operator to document completion of review, but completion of review and Plan amendment are two different processes. PE certification is not necessary unless the Plan is amended.

We believe that PE certification is necessary for any technical amendment that requires the application of good engineering practice. We believe that the value of such certification justifies the cost, in that good engineering practice is essential to help prevent discharges. Therefore, we have amended the rule to require PE certification for technical changes only. Non-technical changes not requiring the exercise of good engineering practice do not require PE certification. Such non-technical changes include but are not limited to such items as: changes to the contact list; more stringent requirements for stormwater discharges to comply with NPDES rules; phone numbers; product changes if the new product is compatible with conditions in the existing tank and secondary containment; and, any other changes which do not materially affect the facility's potential to discharge oil. If the owner or operator is not sure whether the change is technical or non-technical, he should have it certified.

Former Section 112.7(a)(1)—Certain pre-1974 Discharges

Background. In 1991, we proposed to delete § 112.7(a), which required a description of certain discharges to navigable waters or adjoining shorelines which occurred prior to the effective date of the rule in 1974, because that information was no longer relevant. 56 FR 54620. We received several comments supporting the proposed

deletion of this provision, and have deleted it.

Section 112.7 Introduction and (a)(1)—General Requirements

Background. In 1991, we repropoed the introduction to § 112.7 to clarify that the rule requires mandatory action, and that it is not just a guideline. In 1997, we repropoed a definition of SPCC Plan that included some substantive requirements. As noted above (see the "SPCC Plan" definition in § 112.2), those substantive requirements have been transferred from the definition of "SPCC Plan" in § 112.2 to this section.

Section 112.7(a)(1) requires a discussion of the facility's conformance with the listed requirements in the rule.

Comments. For a discussion of the "should to shall to must" comments and response to those comments, see the discussion above under that topic in section IV.C of this preamble.

Cross-referencing. Several commenters criticized the requirement for sequential cross-referencing set forth in the 1997 proposed definition of "SPCC Plan," alleging that it is confusing and provides no benefit. Another commenter asked how detailed the cross-referencing must be.

Written Plans. Another commenter proposed that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed.

Response to comments. Cross-referencing. We agree that the term "sequential" cross-referencing may be confusing, and have therefore deleted it in favor of a requirement to provide cross-referencing. We disagree that cross-referencing provides no benefit. With the wide variation now allowed in differing formats, we need cross-referencing so that an inspector can tell whether the Plan meets Federal requirements, and whether it is complete. In addition, in order for an owner or operator to do his own check to ensure that his facility meets all SPCC requirements, he must go through the exercise of comparing his Plan to each SPCC requirement. Cross-referencing in the context of the rule means indicating the relationship of a requirement in the new format to an SPCC requirement. The cross-referencing must identify the Federal section and paragraph for each section of the new format it fulfills, for example, § 112.8(c)(3). Note the cross-referencing table we have provided for your convenience in section II.A of this preamble.

Written Plans. We agree that a "written" Plan might also include texts, graphs, charts, maps, photos, and tables, on whatever media, including floppy disk, CD, hard drive, and tape storage, that allows the document to be easily accessed, comprehended, distributed, viewed, updated, and printed. Whatever medium you use, however, must be readily accessible to response personnel in an emergency. If it is produced in a medium that is not readily accessible in an emergency, it must be also available in a medium that is. For example, a Plan might be electronically produced, but computers fail and may not be operable in an emergency. For an electronic Plan or Plan produced in some other medium, therefore, a backup copy must be readily available on paper. At least one version of the Plan should be written in English so that it will be readily understood by an EPA inspector.

Editorial changes and clarifications. We have transferred all of the proposed substantive requirements in the 1997 proposed definition of "SPCC Plan" to the introduction of this section. We did this because we agree with commenters (see the comments on the definition of "SPCC Plan" in § 112.2) that definitions should not contain substantive requirements.

We have revised the introduction to § 112.7 to facilitate use of the active voice and to clearly note that the owner or operator, except as specifically noted, is responsible for implementing the rule.

We also deleted language requiring a "carefully thought-out" SPCC Plan. Such language is unnecessary because the Plan must be prepared in accordance with good engineering practices. Another editorial revision in the introduction is the change from "level with authority" in the last sentence of proposed § 112.7(a) to "level of authority." A third revision is a change from "format" to "sequence." We have transferred the part of the sentence proposed in 1991 dealing with the sequence of the Plan in § 112.7(a)(1) to the introduction of § 112.7.

For consistency with response plan language in § 112.20(h), the language in the introduction referring to alternative SPCC formats has been revised to read "equivalent Plan acceptable to the Regional Administrator." The response plan language in § 112.20(h) on "equivalent response plans" has also been revised to include the "acceptable to the Regional Administrator" language included in the introduction to § 112.7. For a discussion of possible SPCC formats, see the discussion under the definition of "SPCC Plan," above.

We deleted the term “sequentially cross-referenced” because we agree that it may be misunderstood, and instead use the term “cross-referencing” in the revised rule. As noted above, cross-referencing means identifying the requirement in the new format to the section and paragraph of the SPCC requirement. We have also substituted the word “part” for “section” where “cross-referencing” and meeting “equivalent requirements” are mentioned. We make this change because the rule requires compliance with any applicable provision in the part, not merely § 112.7. We also clarify that the discussion of your facility’s conformance with the requirements listed (see § 112.7(a)(1)) means the requirements listed in part 112, not merely the requirements listed in § 112.7.

We also note that if the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss these items in separate paragraphs, and must explain separately the details of installation and operational start-up. The discussion must include a schedule for the installation and start-up of these items.

Section 112.7(a)(2)—Deviations from Plan Requirements

Background. In 1991, we proposed to allow deviations from the requirements listed in § 112.7(c) and in §§ 112.8, 112.9, 112.10, and 112.11, as long as the owner or operator explained the reason for nonconformance and provided equivalent environmental protection by another means. The proposal was intended to implement the requirement for “good engineering practice” which is a cornerstone of the rule, and to provide flexibility in meeting the rule’s requirements. We clearly noted in the rule that the Regional Administrator would have the authority to overrule any deviation.

In 1993, we repropoed the section, eliminating language referring to the Regional Administrator’s (RA’s) authority to overrule deviations. Instead, we proposed that whenever you proposed a deviation, you would have to submit the entire Plan to the RA with a letter explaining how your Plan contained equivalent environmental protection measures in lieu of those explicitly required in the rule. The RA would have authority under the 1993 proposal to require amendment of the Plan if he determined that the measures described in the deviation did not provide equivalent protection.

Comments. Some commenters supported the 1991 proposal. But others had concerns.

Applicability—1991. Some commenters suggested that the Agency should add language to the rule making clear that a facility may deviate from the express requirements of the rule and may substitute alternatives based on good engineering practice. The commenters added that we should make clear that the equivalency provision in § 112.7(a)(2) does not require mathematical equivalency of every requirement, but merely the achievement of substantially the same level of overall protection from the risk of discharge at the facility as the specific requirement seeks to achieve. Another commenter was concerned that proving the equivalence of measures to the satisfaction of Regional officials may be difficult. One commenter urged us to expressly state that PEs may substitute alternatives based on good engineering practice.

RA oversight—1991. One commenter opposed the provision allowing the RA to overrule waivers/equivalent measures. As noted above, we withdrew the proposal to allow the RA to explicitly overrule waivers. Instead we substituted a proposed procedure whereby the RA could require you to amend your Plan. One commenter feared that PEs would be reluctant to certify alternate technologies due to the threat of potential liability.

Deviation submission. One commenter opposed the proposed requirement to submit a Plan deviation and urged its deletion to make it consistent with the rest of the SPCC rule. The commenter argued that the deviation and Plan have already been certified by a PE, and there is no reason for EPA to be asked to second guess that certification in every case. The commenter also asserted that it is unduly burdensome to require regulated facilities to prepare a justification and submit a Plan to EPA for every waiver of the technical requirements. Another commenter questioned why the entire Plan should be submitted to the RA for review. The commenter suggested that only the portion or portions of the Plan that do not conform to the standard requirements should be submitted, adding that this step would help EPA to minimize the resources needed to review such waivers. One commenter suggested that the choice of preventive systems in the design and implementation of spill prevention measures should be left to the facility owner or operator. The commenter opposed giving the RA authority to require equivalent protection because he

questioned how the RA will determine if the deviation will cause harm to the environment, and therefore lack equivalency. If such a provision is included, the commenter asked for an appeals process similar to the one suggested in § 112.20(c).

RA oversight—1993. One commenter favored the 1993 proposal. Opposing commenters believed that submission of deviations to the RA is unnecessary because PE certification ensures the application of good engineering practice.

Secondary containment. Several commenters suggested that we explicitly say that equivalent protection should be defined to allow a compacted earthen floor and compacted earthen dike to provide secondary containment. The rationale for the comment was that other methods of secondary containment may be prohibitively expensive and unnecessary to protect against spills in primarily rural areas. One commenter suggested that we should clarify that the language of § 112.7(c) applies only to oil storage areas.

Response to comments. Applicability. We generally agree with the commenter that an owner or operator should have flexibility to substitute alternate measures providing equivalent environmental protection in place of express requirements. Therefore, we have expanded the proposal to allow deviations from the requirements in § 112.7(g), (h)(2) and (3), or (i), as well as subparts B, and C, except for the listed secondary containment provisions in § 112.7 and subparts B and C. The proposed rule already included possible deviations for any of the requirements listed in §§ 112.7(c), 112.8, 112.9, 112.10, and 112.11. We have expanded this possibility of deviation to include the new subparts we have added for various classes of oils. We take this step because we believe that the application of good engineering practice requires the flexibility to use alternative measures when such measures offer equivalent environmental protection. This provision may be especially important in differentiating between requirements for facilities storing, processing, or otherwise using various types of oil.

A deviation may be used whenever an owner or operator can explain his reasons for nonconformance, and provide equivalent environmental protection. Possible rationales for a deviation include when the owner or operator can show that the particular requirement is inappropriate for the facility because of good engineering practice considerations or other reasons, and that he can achieve equivalent

environmental protection in an alternate manner. For example, a requirement that may be essential for a facility storing gasoline may be inappropriate for a facility storing asphalt; or, the owner or operator may be able to implement equivalent environmental protection through an alternate technology. An owner or operator may consider cost as one of the factors in deciding whether to deviate from a particular requirement, but the alternate provided must achieve environmental protection equivalent to the required measure. The owner or operator must ensure that the design of any alternate device used as a deviation is adequate for the facility, and that the alternate device is adequately maintained. In all cases, the owner or operator must explain in the Plan his reason for nonconformance. We wish to be clear that we do not intend this deviation provision to be used as a means to avoid compliance with the rule or simply as an excuse for not meeting requirements the owner or operator believes are too costly. The alternate measure chosen must represent good engineering practice and must achieve environmental protection equivalent to the rule requirement. Technical deviations, like other substantive technical portions of the Plan requiring the application of engineering judgment, are subject to PE certification.

In the preamble to the 1991 proposal (at 56 FR 54614), we noted that “* * * aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. The Phase One modifications would retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific oil spill contingency plans in lieu of the prevention systems.” In keeping with this position, we have deleted the proposed deviation in § 112.7(a)(2) for the secondary containment requirements in §§ 112.7(c) and (h)(1); and for proposed §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c); as well as for the new sections which are the counterparts of the proposed sections, *i.e.*, §§ 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), because a more appropriate deviation provision already exists in § 112.7(d). Section § 112.7(d) contains the measures which a facility owner or operator must undertake when the secondary containment required by § 112.7(c) or (h)(1), or the secondary containment provisions in the rule

found at §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), are not practicable. Those measures are expressly tailored to address the lack of secondary containment at a facility. They include requirements to: explain why secondary containment is not practicable; conduct periodic integrity testing of bulk storage containers; conduct periodic integrity and leak testing of valves and piping; provide in the Plan a contingency plan following the provisions of 40 CFR part 109; and, provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful. Therefore, when an owner or operator seeks to deviate from secondary containment requirements, § 112.7(d) will be the applicable “deviation” provision, not § 112.7(a)(2).

Deviation submission. We agree with the commenter that submission of a deviation to the Regional Administrator is not necessary and have deleted the proposed requirement. We take this step because we believe that the requirement for good engineering practice and current inspection and reporting procedures (for example, § 112.4(a)), followed by the possibility of required amendments, are adequate to review Plans and to detect the flaws in them. Upon submission of required information, or upon on-site review of a Plan, if the RA decides that any portion of a Plan is inadequate, he may require an amendment. See § 112.4(d). If you disagree with his determination regarding an amendment, you may appeal. See § 112.4(e).

RA oversight. Once an RA becomes aware of a facility’s SPCC Plan as a result of an on-site inspection or the submission of required information, he is to follow the principles of good engineering practice and not overrule a deviation unless it is clear that such deviation fails to afford equivalent environmental protection. This does not mean that the deviation must achieve “mathematical equivalency,” as one commenter pointed out. But it does mean equivalent protection of the environment. We encourage innovative techniques, but such techniques must also protect the environment. We also believe that in general PEs will seek to protect themselves from liability by only certifying measures that do provide equivalent environmental protection. But the RA must still retain the authority to require amendments for deviations, as he can with other parts of the Plan certified by a PE.

Not covered under the deviation rule. Deviations under § 112.7(a)(2) are not

allowed for the general and specific secondary containment provisions listed above because § 112.7(d) contains the necessary requirements when you find that secondary containment is not practicable. We have amended both this paragraph and § 112.7(d) to clarify this. Instead, the contingency planning and other requirements in § 112.7(d) apply. Deviations are also not available for the general recordkeeping and training provisions in § 112.7, as these requirements are meant to apply to all facilities, or for the provisions of § 112.7(f) and (j). We already provide flexibility in the manner of recordkeeping by allowing the use of ordinary and customary business records. Training and a discussion of compliance with more stringent State rules are essential for all facilities. Therefore, we do not allow deviations for these measures.

Secondary containment. Regarding the secondary containment requirements, the requirement in § 112.7(c) applies not only to oil storage areas, but also to operational areas of the facility where a discharge may occur. Section 112.7(c) may apply to any area of the facility where a discharge is possible. Other secondary containment provisions in this part have more particular applicability, *e.g.*, §§ 112.7(h)(1), 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), and their counterparts in subpart C. We decline to specify that a compacted earthen floor and compacted earthen dike will always satisfy the secondary containment requirements. Those methods may, however, be acceptable if there is no potential for oil to migrate through the compacted earthen floor or dike through groundwater to cause a discharge as described in § 112.1(b).

Editorial changes and clarifications. “Equivalent protection” becomes “equivalent environmental protection” throughout the paragraph.

Section 112.7(a)(3)—Facility Characteristics That Must be Described in the Plan

Background. In 1991, we proposed a new section that would require you to describe the essential characteristics of your facility in the Plan. Those characteristics are discussed below. In the description, you would also be required to provide a facility diagram that included the location and contents of all tanks, regardless of whether the tanks are subject to all the provisions of 40 CFR part 280 or a State program approved under 40 CFR part 281, or otherwise subject to part 112. The rationale for the diagram was that it would assist in response actions.

Responders would have a means to know where all containers are, to help ensure their safety in conducting a response action and aid in the protection of life and property.

Comments. General description of characteristics. Two commenters asked that the requirements proposed for Plan characteristics be listed on a facility basis rather than a tank basis because otherwise the proposal would be too resource intensive. The commenters did not provide cost estimates.

Facility diagram. Two commenters supported the proposal. Opposing commenters asserted that the diagram would be too costly and add little to the Plan. One commenter said that the requirement was redundant because many States require the same thing. Two commenters opposed marking the contents of the tanks because those contents may change frequently, requiring Plan amendment each time. One commenter suggested that instead the facility maintain a separate list of tank contents when changes occur frequently over a short span of time to eliminate the need to constantly amend the diagram. Other commenters requested a *de minimis* exemption for small containers for the diagram, suggesting levels of 660 gallons or less. Some of these commenters suggested that the diagram be discretionary for storage volumes of less than 10–15,000 gallons. Other commenters asked whether exempt materials would have to be marked as to content, for example, products which are not oil. Some believed that the inclusion of otherwise exempt containers in the diagram was unreasonable. One commenter suggested the diagram should include transfer stations and connecting pipes. Another commenter asked for clarification that underground tanks, whether subject to SPCC or not, need to be included in the diagram.

Unit-by-unit storage capacity. Several commenters asked for clarification of the meaning of the term “unit-by-unit storage capacity.” Many commenters asked for specification of a minimum size, and some suggested sizes, ranging from 660 gallons to 10,000 gallons.

Type and quantity of oil stored. We received one comment on this item. The commenter opposed the information requirement because “the way a tank is used changes often and the adequacy of response to an accidental discharge does not depend on the type of oil stored.”

Estimates of quantity of oils potentially discharged. The few comments we received opposed this information requirement. One commenter argued that the item requests a “prediction” of future events.

Another asserted that it would not be possible to give estimates of oil potentially discharged from flowlines or gathering systems. One commenter argued that mobile facilities should be exempt from this requirement because the exact site information changes with the movement of equipment.

Possible spill pathways. Two commenters wrote that the proposed requirement “could be an infinite number and serves no useful purpose.” One commenter asked that the requirement be replaced by a requirement to describe the most likely spill pathways to navigable water.

Spill prevention measures (including loading areas and transfers). One commenter suggested that the beginning of the paragraph be revised to read, “Secondary containment” instead of “Spill prevention measures. . . .” See also the discussion on loading areas under § 112.7(h).

Spill controls and secondary containment. One commenter thought that this paragraph should refer to “other drainage control features and the equipment they protect.”

Spill countermeasures. One commenter suggested that this paragraph be revised to read, “Prevention, control, or countermeasure features, other than secondary containment and drainage control, and the equipment which they protect.” Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible. One commenter suggested that the contingency planning requirements in this paragraph, as well as in § 112.7(b) and (d)(1), seem unnecessarily complex because the same basic information seems to be required in several different places in the proposed regulation. The commenter went on to suggest that EPA consolidate these requirements. Another commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Disposal of recovered materials. Two commenters supported the proposal in general, but one suggested that it is not feasible nor useful to discuss particular alternatives. One of the favorable commenters suggested that we should encourage recycling of spilled oil rather than mere disposal. Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement

because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible.

Some opposing commenters believed that the proposal would preclude bioremediation. Others believed that it was too costly. One commenter suggested that the “costs associated with off-site disposal of oil-saturated soil from a typical secondary containment facility after a contained spill event will cost an operator as much as \$4,700, calculated at the cost of \$90 per ton of removed soil for transportation and disposal fees and the associated leachate and waste analysis but *excluding* the internal costs associated with the actual excavation work.” Other commenters believed that we have no authority to ask the question because the subject matter is regulated either by State law or another Federal program, such as the solid waste program. One commenter asked for an exemption for mobile facilities from this requirement.

Contact list. Several commenters favored the proposal. One commenter suggested that the list name the cleanup contractor with whom the facility has a relationship, not merely the name of any cleanup contractor.

One commenter favored the inclusion of local emergency planning contacts in the required information. Another opposed it as duplicative of information in the HAZWOPER Plan. A commenter requested an exemption for mobile facilities. Another commenter believed we lack authority to request the information. One commenter suggested that the list be restricted to Federal or State agencies that must be notified in case of the accidental discharge of oil. Another commenter argued that mobile drilling and workover rigs either on or off shore should be exempt from this requirement because supplying site specific spill and clean-up information for a mobile source that will move from one site to another is not feasible. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Downstream water suppliers. Several commenters suggested that the proposed requirement to include information on downstream water suppliers who must be contacted in case of a discharge to navigable waters should be limited to those “who might reasonably be affected by a discharge.” Others asked that the downstream distance be specified. They added that private wells should be excluded from the notice. Several

commenters asked how they might identify such suppliers. Yet others believed that such notification was the responsibility of local emergency response agencies.

Response to comments. General description of characteristics. The following characteristics must be described on a per container basis: the storage capacity of the container, type of oil in each container, and secondary containment for each container. The other characteristics may be described on a facility basis. We disagree that these requirements are too resource intensive. The major new requirement in § 112.7(a)(3) is the facility diagram. Based on site inspections and professional judgment, we estimate unit costs for compliance with this section to be \$33 for a small facility, \$39 for a medium facility, and \$5 for a large facility. Large facilities are assumed to already have a diagram that may be attached to the SPCC Plan. The other items mentioned in § 112.7(a)(3)—storage capacity of each container, prevention measures, discharge controls, countermeasures, disposal methods, and the contact list—are already required under the current rule or required by good engineering practice. As described in the Information Collection Request for this rule, the cost of Plan preparation includes these items, e.g., field investigations to understand the facility design and to predict flow paths and potential harm, regulatory review, and spill prevention and control practices.

Providing information on a container-specific basis helps the facility to prioritize inspections and maintenance of containers based on characteristics such as age, capacity, or location. It also helps inspectors to prioritize inspections of higher-risk containers at a facility. Container-specific information helps an inspector verify the capacity calculation to determine whether a Plan is needed; and, helps to formulate contingency planning if such planning is necessary.

Facility diagram. The facility diagram is important because it is used for effective prevention, planning, management (for example, inspections), and response considerations and we therefore believe that it must be part of the Plan. The diagram will help the facility and emergency response personnel to plan for emergencies. For example, the identification of the type of oil in each container may help such personnel determine the risks when conducting a response action. Some oils present a higher risk of fire and explosion than other less flammable oils.

Inspectors and personnel new to the facility need to know the location of all containers subject to the rule. The facility diagram may also help first responders to determine the pathway of the flow of discharged oil. If responders know possible pathways, they may be able to take measures to control the flow of oil. Such control may avert damage to sensitive environmental areas; may protect drinking water sources; and may help responders to prevent discharges to other conduits leading to a treatment facility or navigable waters. Diagrams may assist Federal, State, or facility personnel to avoid certain hazards and to respond differently to others.

The facility diagram is necessary for all facilities, large or small, because the rationale is the same for both. While some States may require a diagram, others do not. SPCC is a Federal program specifying minimum requirements, which the States may supplement with their own more stringent requirements. We note that State plans may be used as SPCC Plans if they meet all Federal requirements, thus avoiding any duplication of effort if the State facility diagram meets the requirements of the Federal one.

Facility diagram—container contents. The facility diagram must include all fixed (*i.e.*, not mobile or portable) containers which store 55 gallons or more of oil and must include information marking the contents of those containers. If you store mobile containers in a certain area, you must mark that area on the diagram. You may mark the contents of each container either on the diagram of the facility, or on a separate sheet or log if those contents change on a frequent basis. Marking containers makes for more effective prevention, planning, management, and response. For example, a responder may take one type of emergency measure for one type of oil, and another measure for another type. As noted above, oils differ in their risk of fire and explosion. Gasoline is highly flammable and volatile. It presents the risk of fire and inhalation of vapors when discharged. On the other hand, motor oil is not highly flammable, and there is no inhalation of vapors hazard associated with its discharge.

In an emergency, the responder may not have container content information unless it is clearly marked on a diagram, log, or sheet. For emergency response purposes, we also encourage, but do not require you to mark on the facility diagram containers that store CWA hazardous substances and to label the contents of those containers. When the contents of an oil container change, this

may or may not be a material change. See the discussion on § 112.5(a).

Facility diagram—De minimis containers. We have established a de minimis container size of less than 55 gallons. You do not have to include containers less than 55 gallons on the facility diagram.

Facility diagram—Transfer stations, connecting pipes, and USTs. We agree that all facility transfer stations and connecting pipes that handle oil must be included in the diagram, and have amended the rule to that effect. This inclusion will help facilitate response by informing responders of the location of this equipment. The location of all containers and connecting pipes that store oil (other than de minimis containers) must be marked, including USTs and other containers not subject to SPCC rules which are present at SPCC facilities. Again, this is necessary to facilitate response by informing responders of the location of these containers.

Unit-by-unit storage capacity. For clarity, we have changed the term in § 112.7(a)(3)(i), “unit-by-unit” storage capacity, to “type of oil in each container and its storage capacity.” As noted earlier, this requirement applies only to containers of 55 gallons or greater.

Type and quantity of oil stored. We have eliminated proposed § 112.7(a)(3)(ii) because it repeats information requested in revised § 112.7(a)(3)(i). We ask for information concerning storage capacity and type of oil stored in each container in that paragraph.

Estimates of quantity of oils potentially discharged. We have eliminated proposed § 112.7(a)(3)(iii) because it repeats information sought in § 112.7(b) regarding “a prediction of the direction, rate of flow, and total quantity of oil which could be discharged* * *.” We will address the substantive comments under the discussion of that paragraph.

Possible spill pathways. We have eliminated proposed § 112.7(a)(3)(iv) because the proposal repeats information sought in § 112.7(b) regarding “a prediction of the direction, rate of flow, and total quantity of oil which could be discharged.* * *” Again, we will address the substantive comments under the discussion of that paragraph.

Spill prevention measures. We have revised this paragraph to read “discharge prevention measures.” We disagree with the commenter that the paragraph should be labeled “secondary containment.” The term “discharge prevention measures” is better because

it encompasses both secondary containment and other discharge prevention measures.

Spill controls and secondary containment. We have revised this paragraph to refer to “discharge” controls. In response to a commenter, we have also included a reference to drainage controls in the paragraph because drainage systems or diversionary ponds might be an alternative means of secondary containment. See § 112.7(c)(1)(iii) and (v).

Spill countermeasures. We disagree that the paragraph should be revised to read, “Prevention, control, or countermeasure features, other than secondary containment and drainage control, and the equipment which they protect,” because we believe that the language we proposed, as revised, better captures the information we are seeking. Our revised language refers to discovery, response, and cleanup, which are features that are absent from the commenter’s suggestion, and for which a discussion in the Plan is necessary in order to be prepared for any discharges.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

We also disagree that the information required in this paragraph is redundant of information required in §§ 112.7(b) and 112.7(d)(1). Each of the sections mentioned requires discrete and different information. Section 112.7(a)(3)(iv) requires information concerning a facility’s and a contractor’s capabilities for discharge discovery, response, and cleanup. Section 112.7(b) requires information concerning the potential consequences of equipment failure. Section 112.7(d)(1) requires a contingency plan following the provisions of part 109, which includes coordination requirements with governmental oil spill response organizations.

We disagree that the information should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for discharge discovery, response, and cleanup.

Disposal of recovered materials. This provision applies to all facilities, including mobile facilities, because proper disposal of recovered materials helps prevent a discharge as described in § 112.1(b) by ensuring that the

materials are managed in an environmentally sound manner. Proper disposal also assists response efforts. If a facility lacks adequate resources to dispose of recovered oil and oil-contaminated material during a response, it limits how much and how quickly oil and oil-contaminated material is recovered, thereby increasing the risk and damage to the environment.

We disagree that this paragraph would preclude bioremediation efforts, as some commenters suggested. Bioremediation may be a method of proper disposal. The paragraph merely requires that you discuss the methods employed to dispose of recovered materials; it does not require that materials recovered be “disposed” of in any particular manner nor is it an independent requirement to properly dispose of materials. Thus, there is no infringement on or duplication of any other State or Federal program or regulatory authority. Because it does nothing more than require that you explain the method of disposal of recovered materials, we also disagree that this provision is too costly. Also, we assume that good engineering practice will in many cases include a discussion of such disposal already. By describing those methods in the Plan, you help ensure that the facility has done the appropriate planning to be able to dispose of recovered materials, should a discharge occur. We support the recycling of spilled oil to the extent possible, rather than its disposal. For purposes of this rule, disposal of recovered materials includes recycling of those materials.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

Contact list. In response to a comment, we have amended the rule to require that the cleanup contractor listed must be the one with whom the facility has an agreement for response that ensures the availability of the necessary personnel and equipment within appropriate response times. An agreement to respond may include a contract or some less formal relationship with a cleanup contractor. No formal written agreement to respond is required by the SPCC rule, but if you do have one, you must discuss it in the Plan.

We have ample authority to ask for information concerning emergency contacts under the CWA because it is relevant to the statute’s prevention,

preparedness, and response purposes. Furthermore, it is an appropriate question for all facilities, including mobile facilities, because it is necessary to prepare for discharges and to aid in prompt cleanup when they occur. Having a Plan which contains a contact list of response organizations is a procedure and method to contain a discharge of oil as specified in CWA section 311(j)(1)(C). However, we have eliminated references to specific State and local agencies in the event of discharges in favor of a reference to “all appropriate State and local agencies.” “Appropriate” means those State and local agencies that must be contacted due to Federal or State requirements, or pursuant to good engineering practice. You may not always be required to notify fire departments, local emergency planning committees (LEPCs), and State emergency response commissions (SERCs), nor as an engineering practice do they always need to receive direct notice from the facility in the event of a discharge as described in § 112.1(b). At times they might, but they might also receive notice from other sources, such as the National Response Center. Other State and local agencies might also need notice from you.

We have added the word “Federal” to the list of all appropriate contact agencies because there are times when you must notify EPA of certain discharges. See § 112.4(a). There might also be requirements under Federal statutes other than the CWA, for notice in such emergencies.

We disagree that either onshore or offshore mobile drilling and workover rigs should be exempted from this requirement because the information necessary to this requirement is not always site specific, and may be included in a general plan for a mobile facility.

We disagree that the information should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency.

Downstream water suppliers. We have deleted the reference to “downstream water suppliers” (i.e., intakes for drinking and other waters) because facilities may have no way to identify such suppliers. We agree with commenters that identifying such suppliers is more a function of State and local emergency response agencies. We note, however, that facilities that must prepare response plans under § 112.20 must discuss in those plans the vulnerability of water intakes (drinking, cooling, or other).

Editorial changes and clarifications. In the introduction to paragraph (a)(3), “physical plant” becomes “physical layout.” “Tanks” becomes “containers.” In proposed paragraph (a)(3)(vi), redesignated as paragraph (a)(3)(iii), “spill controls” becomes “discharge or drainage controls.” In proposed paragraph (a)(3)(vii), redesignated as paragraph (a)(3)(iv), “spill countermeasures for spill discovery” becomes “countermeasures for discharge discovery.” In proposed paragraph (a)(3)(ix), redesignated as paragraph (a)(3)(vi), “discharge to navigable waters” becomes “discharge as described in § 112.1(b).”

Section 112.7(a)(4)—Spill Reporting Information in the Plan

Background. In 1991, we proposed that documentation in this paragraph be sufficient to enable a person reporting a spill to provide essential information to organizations on the contact list.

Comments. Several commenters had editorial comments, suggesting the rule refer to “information” rather than “documentation” on the theory that documentation refers to a past event, whereas the rule contemplates a future event. One commenter suggested that the section be qualified to indicate that a form for collecting spill report information be included in the Plan, or for “small size facilities” in the HAZWOPER reporting matrix. Another commenter suggested that a properly prepared SPCC Plan would assist the person reporting the spill to provide the requested information. One commenter asserted the proposed rule was duplicative of State requirements. Several commenters suggested that not all of the information will be available or applicable for a person reporting a discharge. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Response to comments.

Documentation. We agree with commenters that the word “documentation” is inappropriate because it refers to a past event. Accordingly, as suggested by commenters, we have revised the rule to provide for “information and procedures” that would assist the reporting of discharges as described in § 112.1(b). “Information” refers to the facts which you must report, and “procedures” refers to the method of reporting those facts. Such procedures must address whom the person relating the information should call, in what order the caller should call potential

responders and others, and any other instructions necessary to facilitate notification of a discharge as described in § 112.1(b). If properly noted, the information and procedures in the Plan should enable a person reporting a discharge to accurately describe information concerning that occurrence to the proper persons in an emergency. Any information or procedure not applicable will not have to be used. Available information on a discharge must be reported. Applicable procedures must be followed. And of course, any information that is not available cannot be reported.

State requirements. While it is possible that this information may be duplicative of State requirements, the duplication is eliminated to the extent that you use your State SPCC Plan for Federal SPCC purposes. Where there is no State requirement, there is no duplication.

Response plan exemption. We disagree that this paragraph should be placed in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency. However, if your facility has prepared and submitted a response plan to us under § 112.20, there is no need to document this information in your SPCC Plan, because it is already contained in the response plan. See § 112.20(h)(1)(i)-(viii). Therefore, we have amended the rule to exempt those facilities with response plans from the requirements of this paragraph.

Editorial changes and clarifications. We changed “address” to “address or location” because some facilities do not have an exact address. “Spill” and “spilled” becomes “discharge as described in § 112.1(b)” or “discharged” as appropriate in the context, “discharge” being a defined term. “Spill” or “spilled” are not defined terms. “The affected medium” becomes “all affected media.”

Section 112.7(a)(5)—Emergency Procedures

Background. In 1991, we proposed this paragraph to ensure that portions of the Plan describing procedures to be used in emergency circumstances are organized in a manner to make them readily usable in an emergency.

Comments. One commenter suggested that this paragraph should be deleted and removed to a response plan section which he suggested, because the information called for requires response information.

Response to comments. We disagree this paragraph should be deleted

because most SPCC facilities are not required to have a response plan, and the procedures to be used when a discharge occurs are necessary to prepare for an emergency. Because this information would repeat information contained in a response plan submitted under § 112.20, we have excluded from the requirements of this paragraph those facilities which have submitted response plans. See § 112.20(h)(3)(i)-(ix).

Section 112.7(b)—Fault Analysis

Background. In 1991, we proposed only editorial changes to this paragraph dealing with fault analysis. The proposal would require an analysis of the major types of failures possible in a facility, including a prediction of the direction, rate of flow, and total quantity of oil that could be discharged as a result of each such failure.

Comments. Applicability. One commenter wrote that the language in the first sentence of the proposed rule is less clear than current regulations. The commenter asserted that the proposed revision, perhaps inadvertently, does not specify the sections to which the certain “situations” apply. The commenter suggested that current language is clearer and specifically focuses limited resources on situations for which there is a reasonable potential for discharge. The commenter argued that limited resources should not be consumed in developing flow rate, direction and quantity predictions in the SPCC Plan for situations without a reasonable potential for discharge to navigable waters.

Several commenters asserted that the fault analysis required by this paragraph is “too involved for small operators.” They suggested that only development of responses to obvious scenarios, such as tank rupture, should be required. Commenters from the utility industry suggested that electrical equipment facilities should be exempt from the requirements in this paragraph. One commenter believed that mobile facilities should be exempt from the requirements in the paragraph because the exact site information changes with the movement of equipment.

Failure factors. One commenter suggested that the rule should also focus on small discharges, not just “major” discharges. Another commenter asked for clarification as to what is a “major failure” and to what degree of sophistication the pathway prediction must be made. Another commenter suggested that the rule should adequately describe how detailed the analysis of potential spill pathways

should be. Another suggested that it would be impossible to give estimates of oil potentially discharged from flowlines or gathering systems.

Response to comments. Applicability. We agree with the commenter that current language is clearer and will retain it. We therefore modified the first sentence contained in the proposed rule. We agree that the Plan must only discuss potential failure situations that might result in a discharge from the facility, not any failure situation. The rule requires that when experience indicates a reasonable potential for failure of equipment, the Plan must contain certain information relevant to those failures. "Experience" includes the experience of the facility and the industry in general.

We disagree that the requirement is too difficult for owners or operators of small or mobile facilities, or of flowlines or gathering lines, or of electrical equipment facilities, or other users of oil. We believe that a Professional Engineer may evaluate the potential risk of failure for the aforementioned facilities and equipment and predict with a certain degree of accuracy the result of a failure from each. We note that since we have raised the regulatory threshold, this requirement will not be applicable to many smaller facilities.

Failure factors. To comply with this section, you need only address "major equipment" failures. A major equipment failure is one which could cause a discharge as described in § 112.1(b), not a minor failure possibility. To help clarify the type of equipment failures the rule contemplates, we have added examples of other types of failures that would trigger the requirements of this paragraph. Such other equipment failures include failures of loading/unloading equipment, or of any other equipment known to be a source of a discharge. The analysis required will depend on the experience of the facility and how sophisticated the facility equipment is. If your facility has simpler equipment, you will have less to detail. If you have more sophisticated equipment, you will have to conduct a more detailed analysis. If your facility's experience or industry experience in general indicates a higher risk of failure associated with the use of that equipment, your analysis will also have to be more detailed. This rationale and analytic detail are also applicable to electrical equipment facilities and other facilities that do not store oil, but contain it for operational use. Again, the required explanation will be tailored to the type of equipment used and the experience with that equipment.

Spill pathways. The level of analysis concerning spill pathways will depend on the geographic characteristics of the facility's site and the possibility of a discharge as described in § 112.1(b) that equipment failure might cause. However, the Professional Engineer should focus on the most obvious spill pathways.

Because this information is facility specific, the owner or operator of a mobile facility will not be able to detail spill pathways in the general Plan for the facility each time the facility moves. However, the owner or operator must provide management practices in the general Plan that provide for containment of discharges in spill pathways in a variety of geographic conditions likely to be encountered. In case of a discharge at a particular facility, the owner or operator would then take appropriate action to contain or remove the discharge. For example, the Plan may provide that a rig must be positioned to minimize or prevent discharges as described in § 112.1(b); or it may provide for the use of spill pans, drip trays, excavations, or trenching to augment discharge prevention.

Editorial changes and clarifications. We made minor editorial changes in the proposal's second sentence that reflect a plain language format. We revised the phrase in the proposed second sentence of the paragraph from "each major type of failure" to "each type of major equipment failure."

Section 112.7(c)—Secondary Containment.

Background. The SPCC Task force concluded that aboveground storage tanks without secondary containment could pose a particularly significant threat to the environment. We noted in the 1991 preamble that the proposed rule modifications would "retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific contingency plans in lieu of prevention systems." 56 FR 54614.

In 1991, we proposed to modify the current standard that dikes, berms, or retaining walls must be "sufficiently impervious." We proposed that the current "sufficiently impervious" standard for secondary containment be replaced with a standard requiring that the entire containment system, including walls and floor, must be impervious to oil for 72 hours. The rationale was that a containment system that is impervious to oil for 72 hours would allow time for discovery and

removal of an oil discharge in most cases.

We also noted that for some facilities such as electrical substations, compliance with this section might not be practicable. We said that since their purpose was not the storage of oil in bulk, they did not need to comply with the secondary containment requirements designed for bulk storage tanks in §§ 112.8(c) and 112.9(d), but only the secondary containment requirements in § 112.7(c), and that the § 112.7(c) requirement for secondary containment might be satisfied by various means including drainage systems, spill diversion ponds, etc. We added that the alternative requirements contained in proposed § 112.7(d) would fulfill the intent of the CWA when a facility could not provide secondary containment due to the impracticability of installation. 56 FR 54621.

Comments. Editorial changes and clarifications. Several commenters suggested that the reference to prevention of discharges to "surface waters" be changed to prevention of discharges to "navigable waters."

Contingency planning. One commenter suggested revising the rules to allow the use of the contingency plan contemplated in § 112.7(d) instead of secondary containment measures. Another commenter asserted that a contingency plan is not an acceptable substitute for secondary containment and advocated that all facilities be required to have secondary containment.

Applicability of requirement. Numerous electric utility commenters suggested that secondary containment was impractical for their facilities because it might cause a safety hazard. Instead, they argued for the use of contingency planning. One commenter asserted that secondary containment at sites used for the maintenance and operation of the air traffic control system was also impracticable because those sites are often very small, isolated, unmanned, and visited only on a quarterly basis. Another commenter asked that wastewater treatment tanks be exempted from the secondary containment requirement because their use is not to store oil, but to treat water. Other containers not used for storage, but other purposes might include stormwater surge tanks, activated sludge aeration tanks, equalization basins, dissolved and induced air floatation tanks, oil/water separators, sludge digesters, etc. Another commenter urged that all oil-filled equipment located in a 25-year floodplain be required to have secondary containment.

One commenter asked that we clarify that the secondary containment requirement in this section does not apply to the following equipment at onshore production facilities: flowlines because of the prohibitive cost of construction for miles of lines; fired vessels because of the danger of pooling spilled oil around an ignition source; and, pressurized vessels because a leak from such vessel might be sprayed beyond the area that a reasonable dike might enclose. One commenter suggested that all in-use hydraulic equipment such as cranes, jacks, elevators, forklifts, etc., be exempted from the secondary containment requirement because it would be impractical to provide structures for such equipment. Others suggested that mobile facilities should be exempt from the secondary containment requirement because it would be infeasible to provide it. Similarly, one commenter suggested that the requirement was infeasible for production facilities due to their sometimes remote locations or difficult terrain and soil conditions. Yet another commenter wanted us to clarify that underground piping is not subject to the rule's secondary containment provisions.

One commenter asserted that mining sites should be exempted from the secondary containment requirement because the containment requirements would be "excessive" for such sites and result in "little resultant net environmental benefit." A commenter representing various small facilities asked for exemption from the requirement on the basis that the risk is lower for those facilities.

Methods of secondary containment. As to methods of secondary containment, several commenters urged that the existence of "natural" structures and/or drainage could meet this requirement. Other commenters suggested that vaulted tanks or double-walled tanks in themselves meet the secondary containment requirement. One commenter suggested that we remove sorbent materials or booms from the list of acceptable secondary containment structures because they are not a substitute for impervious dikes and impoundment floors.

72-hour impermeability standard. We received numerous comments on the proposed 72-hour impermeability standard. Several commenters favored the standard. Many were opposed. Of the opponents, some favored the current standard that the dikes, berms or retaining walls be "sufficiently impervious" to contain spilled oil. Other commenters thought that the proposed requirement to prevent escape

of oil to surface waters should be replaced with a standard of preventing the escape of oil to "the environment" or to "navigable waters." Others asked for clarification of the term "impervious," asserting that it is a qualitative term that requires definition by engineering standards. One commenter requested that if an impervious containment system cannot be provided, that facilities be required to assure that conduits that may cause substantial migration of free products are appropriately monitored for discharges. Another commenter asked us to specify acceptable liner materials, in lieu of a total imperviousness requirement.

Costs. One commenter suggested that our industry cost estimate for the proposed 1991 regulations—of \$441 million in the first year and \$71.8 million each subsequent year—was erroneously low, but did not provide his own cost estimates. The commenter came to this conclusion by calculating compliance cost estimates for the following requirements: 72-hour impermeability for secondary containment and diked areas, and installation of containment systems at all truck loading locations. The commenter estimated the cost of the effects of two proposed items for New York oil and gas producers, not all us producers, at in excess of \$78 million; he estimated the cost of the proposed 72 hour oil impermeability requirement at \$48 million, and if earthen dikes and diked areas cannot meet the secondary containment standards at truck loading areas, at least \$30 million.

Alternate impermeability standards. Commenters suggested a number of alternate impermeability standards. One commenter suggested a standard that the containment system be impervious to oil and water for 72 hours. Another commenter suggested that the standard apply only in environmentally sensitive areas. Some suggested that the standard should be inapplicable at facilities that are staffed around the clock, seven days a week. One commenter suggested a phase-in of the requirement. Some thought that the impermeability standard should not apply to heavier oils, particularly number 5 and 6 oils.

Alternate time frames. Others suggested differing time standards in lieu of 72 hours such as 24 hours at manned facilities, 36 hours or increased inspections, "as soon as practicable," "for the duration of the response," or no time limit at all. One commenter asked when the 72 hours begins to run, whether it begins at the time of the discovery of the discharge or the time of occurrence.

Containment or impermeability. Other commenters asserted that the rule should address containment rather than impermeability because they assert that the point of a containment structure is "to keep the discharge from reaching the waters of the United States." In the same vein, two commenters asked EPA to clarify that the leaching of small amounts of oil that does not reach the water table or surface waters meets the impermeability requirement, while a third asked that we clarify that we are concerned only with horizontal rather than vertical discharges of oil.

Sufficient freeboard. See the comments to § 112.8(c)(2) under this topic.

Response to comments. Contingency planning. A contingency plan should not be used routinely as a substitute for secondary containment because we believe it is normally environmentally better to contain oil than to clean it up after it has been discharged. Secondary containment is intended to contain discharged oil so that it does not leave the facility and contaminate the environment. The proper method of secondary containment is a matter of good engineering practice, and so we do not prescribe here any particular method. Under part 112, where secondary containment is not practicable, you may deviate from the requirement, provide a contingency plan following the provisions of 40 CFR part 109, and comply with the other requirements of § 112.7(d). For bulk storage containers, those requirements include both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping. You must also provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful.

Applicability of requirement. Secondary containment is best for most facilities storing or using oil because it is the most effective method to stop oil from migrating beyond that containment. We believe that secondary containment is preferable to a contingency plan at manned and unmanned facilities because it prevents discharges as described in § 112.1(b). At unmanned facilities, it may be even more important because of the lag in time before a discharge may be discovered. Notwithstanding what may be difficult terrain, we believe that some form of secondary containment is practicable at most facilities, including remote production facilities. In fact, it may often be more feasible in remote or rural areas because there are fewer space limitations in such areas. For example,

at some remote mobile or production facilities, owners or operators dig trenches and line them for containment or retention of drilling fluids. Technologies used at offshore facilities to catch or contain oil may also sometimes be used onshore.

While some types of secondary containment (for example, dikes or berms) may not be appropriate at certain facilities, other types (for example, diversionary systems or remote impounding) might. However, we recognize and repeat, as we noted in the 1991 preamble, that some or perhaps all types of secondary containment for certain facilities with equipment that contain oil, such as electrical equipment, may be contrary to safety factors or other good engineering practice considerations. There might be other equipment, like fired or pressurized vessels, for which safety considerations also preclude some or all types of secondary containment.

Some facilities or equipment that use but do not store oil may or may not, as a matter of good engineering practice, employ secondary containment. Such facilities might include wastewater treatment facilities, whose purpose is not to store oil, but to treat water. Other facilities that may not find the requirement practicable are those that use oil in equipment such as hydraulic equipment. Similarly, flowlines must have a program of maintenance to prevent discharges. See § 112.9(d)(3). The maintenance program may or may not include secondary containment. Owners or operators of underground piping must have some form of corrosion protection, but do not necessarily have to use secondary containment for that purpose.

As stated above, for a facility where secondary containment is not practicable, the owner or operator is not exempt from the requirement, but may instead provide a contingency plan and take other measures required under § 112.7(d). For most facilities, however, including small facilities, mobile facilities, production facilities, mining sites, and any other facilities that store or use oil, we believe that secondary containment is generally necessary and appropriate to prevent a discharge as described in § 112.1(b). Without secondary containment, discharges from containers would often reach navigable waters or adjoining shorelines, or affect natural resources.

Methods of secondary containment. The appropriate method of secondary containment is an engineering question. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in § 112.1(b),

including containment that prevents discharge of oil to groundwater that is connected to navigable water. What is practical for one facility, however, might not work for another. If secondary containment is not practicable, then the facility must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Double-walled or vaulted tanks. The term "vaulted tank" has been used to describe both double-walled tanks (especially those with a concrete outer shell) and tanks inside underground vaults, rooms, or crawl spaces. While double-walled or vaulted tanks are subject to secondary containment requirements, shop-fabricated double-walled aboveground storage tanks equipped with adequate technical spill and leak prevention options might provide sufficient equivalent secondary containment as that required under § 112.7(c). Such options include overflow alarms, flow shutoff or restrictor devices, and constant monitoring of product transfers. In the case of vaulted tanks, the Professional Engineer must determine whether the vault meets the requirements for secondary containment in § 112.7(c). This determination should include an evaluation of drainage systems and of sumps or pumps which could cause a discharge of oil outside the vault. Industry standards for vaulted tanks often require the vaults to be liquid tight, which if sized correctly, may meet the secondary containment requirement.

There might also be other examples of such alternative systems.

Completely buried tanks. Completely buried tanks, other than those exempted from this rule because they are subject to all technical Federal or State UST requirements, are subject to the secondary containment requirement. We realize that the concept of freeboard for precipitation is inapplicable to secondary containment for completely buried tanks. The requirement for secondary containment may be satisfied in any of the ways listed in the rule or their equivalent.

72-hour impermeability standard. We are withdrawing the proposal for the 72-hour impermeability standard and will retain the current standard that dikes, berms, or retaining walls must be sufficiently impervious to contain oil. We agree with commenters that the purpose of secondary containment is to contain oil from escaping the facility and reaching the environment. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. An owner or operator of a facility should have

flexibility in how he prevents a discharge as described in § 112.1(b), and any method of containment that achieves that end is sufficient. Should such containment fail, the owner or operator must immediately clean up any discharged oil.

Similarly, because the purpose of the "sufficiently impervious" standard is to prevent discharges as described in § 112.1(b), dikes, berms, or retaining walls must be capable of containing oil and preventing such discharges. Discharges as described in § 112.1(b) may result from direct discharges from containers, or from discharges from containers to groundwater that travel through the groundwater to navigable waters. Effective containment means that the dike, berm, or retaining wall must be capable of containing oil and sufficiently impervious to prevent discharges from the containment system until it is cleaned up. The same holds true for container floors or bottoms; they must be able to contain oil to prevent a discharge as described in § 112.1(b). However, "effective containment" does not mean that liners are required for secondary containment areas. Liners are an option for meeting the secondary containment requirements, but are not required by the rule.

If you are the owner or operator of a facility subject to this part, you must prepare a Plan in accordance with good engineering practice. A complete description of how secondary containment is designed, implemented, and maintained to meet the standard of sufficiently impervious is necessary. In order to document that secondary containment is sufficiently impervious and sufficiently strong to contain oil until it is cleaned up, the Plan must describe how the secondary containment is designed to meet that standard. A written description of the sufficiently impervious standard is not only necessary for design and implementation, but will aid owners or operators of facilities in determining which practices will be necessary to maintain the standard of sufficiently impervious. Control and/or removal of vegetation may be necessary to maintain the impervious integrity of the secondary containment. Repairs of excavations or other penetrations through secondary containment will need to be conducted in accordance with good engineering practices in order to maintain the standard of sufficiently impervious. The owner or operator should monitor such imperviousness for effectiveness, in order to be sure that the method chosen remains impervious to contain oil.

Costs. We note that we have withdrawn the proposed 72 hour standard, and afford various secondary containment options, including earthen dikes and diked areas, if they contain and prevent discharges as described in § 112.1(b). Therefore, there are no new costs. We disagree with the commenters who asserted that we underestimated the cost to comply with the secondary containment and truck loading and unloading area requirements. The revised rule, like the current rule, does not require a specific impermeability for dikes and does not require a specific method of secondary containment at loading and unloading areas, and this flexibility is reflected in our cost estimates. We noted in our 1991 Supplemental Cost/Benefit Analysis that secondary containment for bulk storage tanks is estimated to cost \$1,000 for small facilities; \$6,400 for medium facilities; and \$63,000 for large facilities. Unit cost estimates were developed for a broad mix of facilities (e.g., farms, bulk petroleum terminals) in each size category by experienced engineers with firsthand knowledge of the Oil Pollution Prevention Regulation and the operations of onshore SPCC-regulated facilities. Because our cost estimates must be representative of the many types of facilities that are regulated, they will underestimate the costs for some facility types and overestimate the costs for others. Facilities were assumed to construct secondary containment systems of impervious soil capable of holding 110 percent of the largest tank. In that analysis, we estimated that 78 percent and 88 percent of the regulated community were already in compliance with these requirements, respectively, and would not be affected by the proposed rule change.

Since we last performed these analyses, API has issued several industry standards, including API 653 and 2610, which address many of the provisions in the SPCC rule. As a result, the final rule relies on current industry standards and practices, where feasible. In the final rule, we withdrew the proposed 72-hour impermeability standard for secondary containment and maintained the current requirement that dikes, berms, and oil retaining walls must be sufficiently impervious to contain oil. As a result, the final rule reflects current industry standards and we assume poses no additional requirements on industry.

Sufficient freeboard. See the Response to Comments in § 112.8(c)(2) for a discussion of this topic.

Industry standards. Industry standards that may assist an owner or operator with secondary containment

include: (1) NFPA 30; (2) BOCA, National Fire Prevention Code; and, (3) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Editorial changes and clarifications. In the introduction to paragraph (c), "structures or equipment to prevent discharged oil from reaching a navigable water course" becomes "structures or equipment to prevent a discharge as described in § 112.1(b)." This wording change reflects the expanded scope of the CWA as reflected in § 112.1(b) and is clearer than the proposed language. In the second sentence of the paragraph, we deleted the words "permeate, drain, infiltrate, or otherwise" from the sentence because they were unnecessary. The word "escape" in that sentence is sufficient. Also in that sentence, the reference to "escape to surface waters" becomes "escape from the containment system." This language more clearly reflects the intent of the rule that secondary containment should keep oil from escaping from the facility and reaching navigable waters or adjoining shorelines. In paragraph (c)(2)(i), "curbing, drip pans" becomes "curbing or drip pans."

In response to the commenter's question, we note that a primary containment system is the container or equipment which holds oil or in which oil is used.

Section 112.7(d)—Contingency Planning

Background. 1991 proposal. In 1991, we proposed to add several new requirements to the contingency planning requirement in § 112.7(d). First, we proposed that a facility without secondary containment be required to test a tank for integrity every five years. In contrast, our 1991 proposal for § 112.8(c)(6) provided for testing at least every 10 years for a tank with secondary containment. In addition, we proposed to require a facility without secondary containment to conduct integrity and leak testing of valves and piping at least annually. We also proposed that the contingency plan be submitted to the Regional Administrator for approval.

Instead of referring to 40 CFR part 109 for contingency plan requirements as the current rule does, the 1991 proposal added specific requirements including a description of response plans; personnel needs; methods of mechanical containment; removal of spilled oil; and, access to and availability of sorbents, booms, and other equipment. Additionally, the proposal would have required that the Plan not rely on dispersants and other chemicals for

response to oil spills without approval by the Regional Administrator. The owner or operator of a facility would also have been required to provide a written commitment of manpower, equipment, and materials required to quickly control and remove any quantity of oil that may be discharged.

1993 proposal. In 1993, we modified the 1991 proposal for a facility that lacks secondary containment to require a facility response plan as described in § 112.20, instead of the specific requirements proposed in 1991. The response plan would not be submitted to the Regional Administrator for his review, unless otherwise required, but would be maintained at the facility with the SPCC Plan.

Comments. 1991 comments. Many commenters supported the 1991 proposal. Opposing commenters suggested that such planning should be discretionary because not all facilities need such planning, or that facilities be allowed to use contingency plans prepared for other purposes. Others thought the proposal was premature as we had not at the time finalized response planning requirements in § 112.20. One commenter argued that we should delete all of the contingency planning requirements in § 112.7(d) at the point when we require an owner or operator to prepare a response plan. Some said that contingency planning was not practicable because the costs are too high, but commenters did not provide cost estimates. Several commenters criticized the proposed requirement that the contingency plan be submitted to the Regional Administrator, calling it duplicative, time-consuming, and unnecessary. Two commenters suggested that the Contingency Plan prepared under RCRA rules would suffice. Representatives of small facilities asked for a small facility exemption. Others asked for clarification of what a "written commitment" of manpower, equipment, and materials meant. Several commenters asked if PE certification of the contingency plan was necessary. One commenter opposed any requirement to provide contingency planning for buried tanks, piping, or valves for which secondary containment cannot be provided.

Integrity and leak testing. Several commenters supported the proposed integrity and leak testing requirements. Others opposed them, some on the basis that facilities already inspect their tanks regularly. Various commenters suggested exemptions for small containers or containers that are entirely within buildings. Electrical utilities argued that the requirement was

inapplicable for them because they do not store oil and that such testing would cause disruption in electrical service. Mining interests likewise asked for an exemption on the basis that they only store small amounts of oil and the requirements would be very expensive, but did not provide specific cost estimates. Various commenters asked for clarification of the term "integrity testing," and its applicability. Others asked for clarification as to methods of testing. Some argued that testing of valves and gathering lines would be expensive and result in shut-downs of operations. None of these commenters provided specific cost estimates.

1993 proposal. One commenter argued that the response plan proposal was beyond our statutory authority. Others argued that the proposal was expensive and lacking in environmental benefit. One commenter said that the installation of structures or measures achieving equivalent protection should be sufficient to avert the need for a response plan. Another suggested that the current rule, which specifies use of a strong oil spill contingency plan following 40 CFR part 109, is adequate. One commenter asked for an exemption for facilities in areas historically not subject to natural disasters. Electrical utility commenters asked for an exemption because they argued that a response plan was unnecessary for facilities that use, but do not store, oil.

Response to comments. Planning requirements. We note that we did not finalize the 1991 or 1993 contingency planning proposals. Thus there are no new costs for such planning.

Under the current rule, contingency planning is necessary whenever you determine that a secondary containment system for any part of the facility that might be the cause of a discharge as described in § 112.1(b) is not practicable. This requirement applies whether the facility is manned or unmanned, urban or rural, and for large and small facilities. In response to comment, we have revised the rule to exempt from the contingency planning requirement any facility which has submitted a response plan under § 112.20 because such a response plan is more comprehensive than a contingency plan following part 109.

We believe that it may be appropriate for an owner or operator to consider costs or economic impacts in determining whether he can meet a specific requirement that falls within the general deviation provision of § 112.7(a)(2). We believe so because under this section, the owner or operator will still have to utilize good engineering practices and come up with

an alternative that provides "equivalent environmental protection." However, we believe that the secondary containment requirement in § 112.7(d) is an important component in preventing discharges as described in § 112.1(b) and is environmentally preferable to a contingency plan prepared under 40 CFR part 109. Thus, we do not believe it is appropriate to allow an owner or operator to consider costs or economic impacts in any determination as to whether he can satisfy the secondary containment requirement. Instead, the owner or operator may only provide a contingency Plan in his SPCC Plan and otherwise comply with § 112.7(d). Therefore, the purpose of a determination of impracticability is to examine whether space or other geographic limitations of the facility would accommodate secondary containment; or, if local zoning ordinances or fire prevention standards or safety considerations would not allow secondary containment; or, if installing secondary containment would defeat the overall goal of the regulation to prevent discharges as described in § 112.1(b).

We disagree that facility response planning is beyond our statutory authority, it is a procedure or method to remove discharged oil. See section 311(j)(1)(A) of the CWA. However, while we disagree that such planning is expensive and lacking in environmental benefit, we agree that the current contingency plan arrangements which reference 40 CFR part 109 should be sufficient to protect the environment, and that a facility response plan as described in § 112.20 is therefore unnecessary for a facility that is not otherwise subject to § 112.20. We agree with the commenter that structures or equipment might achieve the same or equivalent protection as response planning for some SPCC facilities. Therefore, we are withdrawing that part of the 1993 proposal related to response planning in proposed § 112.7(d)(1), but are retaining the current contingency planning provisions, which require a contingency plan following the provisions of 40 CFR part 109. We also believe that response plans should be reserved for higher risk facilities, as provided in § 112.20.

In following the provisions of part 109, you must address the oil removal contingency planning criteria listed in 40 CFR 109.5 and ensure that all response actions are coordinated with governmental oil spill response organizations. The absence of secondary containment will place extreme importance on the early detection of an

oil discharge and rapid response by the facility to prevent that discharge. Part 109 was originally promulgated to assist State and local government oil spill response agencies to prepare oil removal contingency plans in the inland response zone, where EPA provides the On-Scene Coordinator. The basic criteria for contingency planning listed in § 109.5 apply to any SPCC regulated facility that has adequately justified the impracticability of installing secondary containment, irrespective of whether it is a government agency or the facility is located in the coastal (U.S. Coast Guard) or inland (EPA) response zone. Because the contingency plan involves good engineering practice and is technically a material part of the Plan, PE certification is required.

A contingency plan prepared under RCRA rules might suffice for purposes of the rule if the plan fulfills the requirements of part 109, and the PE certifies that such plan is adequate for the facility. If the RCRA contingency plan satisfies some but not all SPCC requirements, you must supplement it so that it does.

We note that the preamble to the 1993 proposed rule (at 58 FR 8841) suggested that response plans would not have to be submitted to the Regional Administrator unless "otherwise required by the rest of today's proposed rule." However, proposed § 112.7(a)(2) would have required that the owner or operator submit to the Regional Administrator any Plan containing a proposed deviation, including a deviation for the general secondary containment requirements in § 112.7(c). In any case, we agree with commenters that the contingency plan (or any other deviation) should not have to be submitted to the Regional Administrator for his review and approval because we believe that it is sufficient that the contingency plan (or other deviation) be available for on-site inspection. We have therefore withdrawn that part of the proposal. See also the discussion on § 112.7(a)(2).

Integrity and leak testing. In response to a commenter who asked for a clarification of integrity testing, "integrity testing" is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. Facility components that might cause a discharge as described in § 112.1(b) include containers, piping, valves, or other equipment or devices. Integrity testing includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the

inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Such testing is also applicable to valves and piping. See API Standard 653 for further information on this term.

Leak testing for purposes of the rule is testing to determine the liquid tightness of valves and piping and whether they may discharge oil. Facilities that store oil, whether they are mines or other businesses, are required to employ integrity testing for their bulk storage containers, and integrity and leak testing for their valves and piping, to help prevent discharges. Containers that do not store oil, but merely use oil, are not subject to the requirement.

We reaffirm the applicability of integrity and leak testing to both large and small facilities, because we believe such testing requirements help prevent discharges as described in § 112.1(b) at those facilities. However, we have modified our proposal in response to comments to only require such testing on a periodic basis instead of at a prescribed frequency. Integrity and leak testing requirements are also applicable for containers and valves and piping that are entirely within buildings, or within mines, because in either case, such containers, or valves and piping may become the source of a discharge as described in § 112.1(b). We have revised the rule to reflect that the requirement applies only to onshore and offshore bulk storage facilities. Therefore, a facility with only oil-filled electrical, operating, or manufacturing equipment need not conduct such testing nor incur any costs for such testing. For other types of facilities, we disagree that testing of valves and gathering lines would be prohibitively costly. In 1991, we estimated tank integrity testing and leak testing costs of buried piping. We estimated the costs as \$465 per tank, \$155 for equipment, and \$310 for installation. Small facilities were assumed to have no buried piping. Medium sized facilities were assumed to bear first year costs for tank installation and testing of \$4,704 and subsequent year costs of \$1,449. Large facilities were assumed to incur a first year cost of \$11,313, and subsequent year costs of \$3,519. We assume that this provision represents a negligible additional burden because most facilities are already testing such valves and gathering lines according to industry standards as a matter of good engineering practice. We believe that if such testing is done in accordance with industry standards, costs will be minimized.

We have eliminated the proposed frequency of the testing, both for containers and for valves and piping, in favor of testing according to industry standards. Instead, we require "periodic" integrity testing of containers, and "periodic" integrity and leak testing of valves and piping. "Periodic" testing means testing according to a regular schedule consistent with accepted industry standards. We believe that use of industry standards, which change over time, will prove more feasible than providing a specific and unchanging regulatory requirement. As required by § 112.8(c)(6), integrity testing of containers must be accomplished by a combination of visual testing and some other technique.

Written commitment. A "written commitment" of manpower, equipment, and materials means either a written contract or other written documentation showing that you have made provision for those items for response purposes. Such commitment must be shown by: the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally; an estimate of the equipment, materials, and supplies which would be required to remove the maximum oil discharge to be anticipated; and, development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials, and supplies to be used in responding to such a discharge. 40 CFR 109.5(c).

The commitment also involves making provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including: specification of an oil discharge response operating team consisting of trained, prepared, and available operating personnel; predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under current national and regional contingency plans; a preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response actions; provisions for varying degrees of response effort depending on the severity of the oil discharge; and, specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response

operations may not be adequate to protect all uses. 40 CFR 109.5(d).

Industry standards. Industry standards that may assist an owner or operator with the integrity testing of containers, and the integrity and leak testing of piping and valves include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; (2) API Recommended Practice 575, "Inspection of Atmospheric and Low-Pressure Tanks"; (3) API Standard 570, "Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems)"; (4) American Society of Mechanical Engineers (ASME) B31.3, "Process Piping"; (5) ASME 31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols"; (6) Steel Tank Institute Standard SP001-00, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids"; and, (7) Underwriters Laboratory (UL) Standard 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids."

Editorial changes and clarifications. In the introductory paragraph, "tanks" becomes "containers." We revised the first sentence of the introduction which now reads, "When it is determined * * *," to read, "If you determine * * *." Later in that sentence we change the words "demonstrate such impracticability" to "explain why such measures are not practicable," in referencing the impracticability of secondary containment. Also, in the first sentence of the introduction, we clarify that the requirement for contingency planning and other measures is applicable when secondary containment is not practicable under §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), as well as § 112.7(c) and (h)(1). Additionally in that sentence, the reference to "prevent discharged oil from reaching navigable waters" becomes "to prevent a discharge as described in § 112.1(b)," conforming the geographic scope of the rule to the CWA. At the end of the paragraph we clarify that when secondary containment is not practicable, the contingency plan and written commitment must be provided in the Plan, rather than to the Regional Administrator. We also clarify that if you have submitted a facility response plan under § 112.20 for a facility, you need not provide for that facility either a contingency plan following the provisions of part 109, nor a written commitment of manpower, equipment, and materials required to expeditiously

control and remove any quantity of oil discharged that may be harmful.

In paragraph (d)(1), "A strong oil spill contingency plan following the provision of 40 CFR part 109 * * *." becomes "An oil spill contingency plan following the provisions of part 109 * * *." The word "strong" is unnecessary because in any case the contingency plan must follow the provisions of part 109.

In paragraph (d)(2), we did not finalize the proposed recommendation for the operator to consider financial capability in making his written commitment of manpower, equipment, and materials because we do not wish to confuse the regulated community with discretionary requirements in a mandatory rule. Finally, we changed the reference in paragraph (d)(2) from "to expeditiously control and remove any harmful quantity of oil discharged" to read "to expeditiously control and remove any quantity of oil discharged that may be harmful." We made this change to refer to the statutory standard referring to a quantity of oil "that may be harmful."

Section 112.7(e)—Inspections, Tests, and Records

Background. In 1991, we proposed that records and inspections and test results be kept for a period of five years. Current rules require record, inspection, and test results be maintained for three years. We also proposed that such records might be maintained with the Plan, instead of being part of the Plan.

In 1997, we returned to the three-year record maintenance period in our new proposal. In 1997, we also proposed that usual and customary business records, such as records maintained under API Standards 653 and 2610, would suffice to meet the requirements of this section. Finally we proposed that such records be made a part of the Plan.

Comments. 1991 comments. Maintenance with Plan. Most commenters favored the proposal that records might be maintained with the Plan, rather than as part of it. Two commenters thought the requirements should apply generally only to large facilities.

Form of records. One commenter urged use of electronic records.

Records required. Still another asked that we list all inspections and tests required by part 112. One commenter asked for a requirement to keep records and tests of all major repairs and of employee training.

Time period. Most commenters favored retaining the current three-year time period to maintain records, believing it is adequate. Some

commenters objected to the cost of a five-year record retention requirement. One commenter favored a two-year record maintenance period. Several favored a phase-in period if five years were to be required so that three-year records could be brought into compliance with the rule. One commenter favored a requirement that records be maintained in accordance with other State and Federal agency requirements to avoid additional and unnecessary costs.

1997 comments. Maintenance with Plan. A number of commenters criticized the proposal that records must be maintained as part of the Plan, rather than maintained with the Plan, considering that proposal burdensome and providing no benefit to the environment.

Form of records. Several commenters asked that we clarify that use of records maintained under the API standards cited is not required. Another commenter noted that many smaller companies do not use API standards, and that use of such records should be allowed "when available." Several commenters urged that we state that records kept under the NPDES program might suffice for the SPCC program. Other commenters asked whether records in other formats might be acceptable, such as under a facility's QS-9000 or ISO-14000 system, or under standards promulgated by the Underwriters' Laboratories. Other commenters discussed use of NPDES stormwater bypass records. We will talk about those records under the discussion of § 112.8(c)(3)(iv).

Time period. Most commenters favored the proposal to retain the current three-year time period for maintenance of records.

Response to comments. Maintenance with Plan. We agree with commenters that it is not necessary to maintain records as part of the Plan. Therefore, today's rule allows "keeping" of the records "with" the Plan, but not as part of it. In the current rule, such records "should be made part of the SPCC Plan * * *." 40 CFR 112.7(e)(8). Because you continually update these records, this change will eliminate the need to amend your Plan each time you remove old records and add new ones. You still retain the option of making these records a part of the Plan if you choose.

Records required. The rule permits use of usual and customary business records, and covers all of the inspections and tests required by this part as well as any ancillary records. "Inspections and tests" include not only inspections and tests, but schedules, evaluations, examinations, descriptions,

and similar activities required by this part. After publication of this rule, we will list all of the inspections and tests required by part 112 on our website (www.epa.gov/oilspill). The applicability of each inspection and test will depend on the exercise of good engineering practice, because not every one will be applicable to every facility.

Form of records. Records of inspections and tests required by this rule may be maintained in electronic or any other format which is readily accessible to the facility and to EPA personnel. Usual and customary business records may be those ordinarily used in the industry, including those made under API standards, Underwriters' Laboratories standards, NPDES permits, a facility's QS-9000 or ISO-14000 system, or any other format acceptable to the Regional Administrator. If you choose to use records associated with compliance with industry standards, such as Underwriters' Laboratories standards, you must closely review the inspection, testing, and recordkeeping requirements of this rule to ensure that any records kept in accordance with industry standards meets the intent of the rule. Some standards have limited recordkeeping requirements and may only address a particular aspect of container fabrication, installation, inspection, and operation and maintenance. The intent of the rule is that you will not have to maintain duplicate sets of records when one set has already been prepared under industry or regulatory purposes that also fully suffices for SPCC purposes. The use of these alternative record formats is optional; you are not required to use them, but you may use them.

Time period. We agree with commenters that maintenance of records for three years is sufficient for SPCC purposes, since that period will allow for meaningful comparisons of inspections and tests taken. Therefore, there will be no new costs. We note, however, that certain industry standards, for example API Standards 570 and 653, may specify record maintenance for more than three years.

Editorial changes and clarifications. As proposed in 1991, we affirm that the certifying engineer, as well as the owner or operator, may be a person who develops inspection procedures. We also affirm that the provision applies to both "inspections" and "tests" undertaken. The tests are usually integral parts of the inspections.

Section 112.7(f)—Employee Training and Discharge Prevention Procedures

Background. In 1991, we proposed that you conduct training exercises and that you train new employees within their first week of work. The rationale for these provisions was that a high percentage of discharges are caused by operator error; therefore, training and briefings might help prevent many discharges and promote a safer facility. This rationale was based on program experience and studies EPA undertook. The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called "Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study" presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., "How API Viewed the Needs for Aboveground Storage Tanks," Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, "The Technical Background Document to Support the Implementation of OPA Response Plan Requirements," Emergency Response Division, Office of Solid Waste and Emergency Response, February 1993, p.4-19.

In 1993, we proposed to qualify the applicability of the training requirements to only those facilities that transfer or receive greater than or equal to 10,000 gallons of oil in a single operation more than twice per month on average, or greater than or equal to 50,000 gallons in a single operation more than once a month on the average. We further proposed that you require that employees involved in "oil-handling activities," such as the operation or maintenance of oil storage tanks or the operation of equipment related to storage tanks, receive eight hours of facility specific training within one year of the effective date of the rule or at the date that your facility becomes subject to the requirement. In subsequent years, each employee would be required to undergo four hours of refresher training.

Our 1993 proposal would require training for new employees within one week of employment. We also proposed to specify the areas in which you would be required to train employees to include: training in correct equipment operation and maintenance, general

facility operations, discharge prevention laws and regulations, and the contents of the facility's SPCC Plan. Finally, the proposal would require that you conduct unannounced drills, at least annually, in which oil-handling personnel would participate.

Comments. 1991 comments. Applicability of training requirements. Numerous commenters suggested that the training requirements should apply only to personnel involved in the operation or maintenance of equipment. They argued that the training requirements need not apply to clerks, secretaries, and similar employees who are not involved in the physical operations of the facility. They also argued that we failed to sufficiently account for training costs in our economic analysis. Another commenter asked for a small facility exemption from training requirements.

Another commenter asked that facilities be allowed to incorporate SPCC training requirements into already existing training programs required by other Federal or State law. One commenter suggested that the rule include a requirement that owners or operators document each training session and spill response drill conducted, and to maintain those records for five years.

Timing of employee training. Some commenters favored the proposed provision for yearly training exercises and suggested that the training be coordinated with local oil spill response organizations or Local Emergency Planning Committees (LEPCs) whenever possible. One commenter cautioned that the annual training should not be considered a full scale SPCC drill.

Opposing commenters suggested no time period for such exercises, or alternative periods, such as every two or three years.

Likewise, many commenters opposed the provision relating to the training of new employees within one week of employment. Opposing commenters argued generally that such a recommendation is impractical, and called for employer discretion in scheduling training. Others suggested varying time periods in lieu of one week. Those suggestions ranged from one month to one year, with alternatives suggested such as "as soon as practical," "prior to operation but before one year," "within one week of job assignment," "a more reasonable time period," "after training," and "until the next annual training for all employees." One commenter asked that we define the term "new employee."

Discharge prevention briefings. Many commenters criticized the proposal for

annual spill prevention briefings, as opposed to the current requirement to hold such briefings "at intervals frequent enough to assure adequate understanding of the SPCC Plan." They argued that the current standard is adequate. Some commenters suggested that we require additional training in these briefings such as emergency response training, or training concerning Plan changes.

1993 comments. Applicability of training requirements. In 1993, many commenters asked for clarification of what "oil-handling" personnel meant. Some thought the requirements for training should be limited to those employees engaged in response activities. Others questioned what "on average" meant in determining the threshold applicability of the rule. Still others asked what "a single operation" meant. Some asked that the requirements be limited to facilities with potential to cause "substantial harm" to the environment. Others asked that the requirements be relaxed for facilities with equipment that reduce the potential for discharges. Some suggested differing gallon thresholds for the applicability of the training requirements. One commenter suggested that training be limited to those employees involved in emergency response or countermeasure activities. One commenter asked for an exemption from this requirement for small facilities. Another commenter asked for an exemption for extraction facilities, because, he argued, they have few spills. Another commenter suggested that the 1991 proposal was adequate.

Timing of employee training. Some commenters favored the proposed requirement for eight-hour annual training, with four-hour refresher training in subsequent years. Others opposed it, arguing that employer discretion in this matter will ensure a better result.

Likewise many commenters opposed the requirement that new employees be trained within one week of employment, arguing instead for employer discretion. Some commenters suggested alternate frequencies other than one week, ranging from "prior to assuming duties" to up to six months after hiring.

Content of training. A few commenters supported the specification of training subjects. Some commenters suggested that we require training in the proper operation and maintenance of facility equipment and knowledge of spill procedure protocols. A utility commenter objected to the proposal that its employees be trained in maintenance of oil storage tanks, because its

maintenance activities do not involve the transfer or handling of oil and therefore fall outside the scope of the rule. Alternatively, the commenter suggested, those employees should be given a lower level of "awareness" training. One commenter suggested inclusion of response training.

Unannounced drills. Some commenters favored the proposal and suggested that actual discharge experience should be given credit as a drill. One commenter suggested a frequency schedule for various types of drills.

Some commenters criticized the proposal for at least yearly unannounced drills. One commenter suggested that the frequency of the drills should be at the operator's discretion. Commenters argued that, if required at all, drills should only be applicable to operational or response personnel. Two commenters said that a requirement for unannounced drills for all employees would require them to conduct at least eight or more drills a year. Another commenter suggested training instead of drills, because of the potential for drills to cause expensive shutdowns.

Response to comments. Applicability of training requirements. We believe that training requirements should apply to all facilities, large or small, including all those that store or use oil, regardless of the amount of oil transferred in any particular time. Training may help avert human error, which is a principal cause of oil discharges. "Spills from ASTs may occur as a result of operator error, for example, during loading operations (e.g., vessel or tank truck—AST transfer operation), or as a result of structural failure (e.g., brittle fracture) because of inadequate maintenance of the AST." EPA Liner Study, at 14. The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called "Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study" presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., "How API Viewed the Needs for Aboveground Storage Tanks," Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, "The Technical Background Document to Support the Implementation of OPA Response Plan Requirements," Emergency Response

Division, Office of Solid Waste and Emergency Response, February 1993, p.4–19. We have therefore retained the applicability of training to all facilities. The 1993 proposal would have limited training requirements to only certain facilities which received or transferred over the proposed amount of oil. Facilities which receive or transfer less than the proposed amount might also have discharges which could have been averted through required training. Also the proposed rule would have exempted many facilities that use rather than store oil from its scope. Therefore, we have provided in the rule that all facilities, whether bulk storage facilities or facilities that merely use oil, must train oil-handling employees because all facilities have the potential for a discharge as described in § 112.1(b), and training is necessary to avert such a discharge.

We agree with the commenter that training is only necessary for personnel who will use it to carry out the requirements of this rule. Therefore revised paragraph (f)(1) provides that only oil-handling personnel are subject to training requirements, as we proposed in 1993. Thus there are no new training costs because we have always required such training of oil-handling personnel. "Oil-handling personnel" is to be interpreted according to industry standards, but includes employees engaged in the operation and maintenance of oil storage containers or the operation of equipment related to storage containers and emergency response personnel. We do not interpret the term to include secretaries, clerks, and other personnel who are never involved in operation or maintenance activities related to oil storage or equipment, oil transfer operations, emergency response, countermeasure functions, or similar activities.

You may incorporate SPCC training requirements into already existing training programs required by other Federal or State law at your option or may conduct SPCC training separately.

You must document that you have conducted required training courses. Such documentation must be maintained with the Plan for three years.

Timing of employee training. We agree with commenters who thought it desirable to leave the timing and number of hours of training of oil-handling employees, including new employees, to the employer's discretion. "Proper instruction" of oil-handling employees, as required in the rule, means in accordance with industry standards or at a frequency sufficient to

prevent a discharge as described in § 112.1(b). This standard will allow facilities more flexibility to develop training programs better suited to the particular facility. While the rule requires annual discharge prevention briefings, we also agree that the annual briefings required are not drills. In any case, the SPCC rules do not require drills, as explained below.

For purposes of the rule, it is not necessary to define a "new employee" because all oil-handling personnel are subject to training requirements, whether new or not. You do, however, have discretion as to the timing of that training, so long as the timing meets the requirements of good engineering practice.

Discharge prevention briefings. Annual discharge prevention briefings are necessary, but there should be more frequent briefings where appropriate. Such briefings are necessary to refresh employees' memories on facility Plan provisions and to update employees on the latest prevention and response techniques. Training must include the contents of the facility Plan. Although it is desirable, we disagree that we should require SPCC briefings to include emergency response training. That training is already required for those facilities which must prepare response plans.

Content of training. Specifying a minimum list of training subjects is necessary to ensure that facility employees are aware of discharge prevention procedures and regulations. As suggested by a commenter, we have added knowledge of discharge procedure protocols to the list of training subjects because such training will help avert discharges. Therefore, we have specified that training must include, at a minimum: the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. As noted above, we require response training for facilities that must submit response plans, but such training is not necessary for all SPCC facilities.

In response to the utility commenter who asserted that utility employees do not need to be trained in the maintenance of oil storage tanks because such maintenance does not involve the transfer and handling of oil, we note that training must address relevant maintenance activities at the facility. If there is no transfer and handling of oil, such topic need not be covered in training.

Unannounced drills. The proposed yearly frequency for unannounced drills is also unnecessary because such drills are already required at FRP facilities, which are higher risk facilities. We do not believe that the risk at all SPCC facilities approaches the same level as at FRP facilities. Therefore, we are not finalizing this proposal, and there are no new costs.

Editorial changes and clarifications. We changed the title from "Personnel, training, and spill prevention procedures," to "Personnel, training, and discharge prevention procedures." In paragraph (f)(1), "discharges of oil" becomes "discharges." In paragraph (f)(2), "line management" becomes "facility management," and "oil spill prevention" becomes "discharge prevention." In paragraph (f)(3), "spill prevention briefings" becomes "discharge prevention briefings." Also in paragraph (f)(3); "operating personnel" becomes "oil-handling personnel," to be consistent with language in paragraph (f)(1); and, "spill events" becomes "discharges as described in § 112.1(b)."

Section 112.7(g)—Security (Excluding oil Production Facilities)

Background. In 1991, we proposed to turn into a recommendation the current requirement that a facility should be fully fenced, and gates locked and/or guarded when the facility is not in production or is unattended. We proposed to require that the master flow and drain valves (or other valves that will permit direct outward flow of the tanks' contents) have adequate security to ensure that they remain in a closed position when in non-operating or non-standby status. Thus, the proposal would allow more flexibility in the method of securing the valves than the current rule, which requires that such valves be "securely locked."

The current rule requires that loading/unloading connections be securely capped or blank-flanged when not in service or standby-service "for an extended time." We proposed in 1991 to clarify that "an extended time" means six months or more, based on our Regional experience.

Comments. Editorial changes and clarifications. One commenter asked for the meaning of "plant" as used in proposed § 112.7(g)(1).

Applicability of requirement. One commenter urged an exemption from all security provisions for mobile facilities, because such facilities are manned 24 hours a day while in operation.

Fences. One commenter argued that fences should not be required for all facilities, because it is not practicable in

some places. Another argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism.

Starter controls on pumps. Several commenters argued that the requirements to lock starter controls on all pumps and to locate them at a site accessible only to authorized personnel are duplicative and do not deter vandals or other unauthorized personnel.

Another commenter urged us to exclude large facilities from the locking requirement because the potential for losing keys or having the locks become inoperative due to freezing conditions is great. A third commenter suggested that the requirement should apply to facilities, and not to pumps.

Loading/unloading connections. One commenter urged that the blank-flanging requirement apply to facilities that are not in service for six months or more, rather than to connections of oil piping. The rationale was that larger facilities have seasonal or contractual variations in use of lines, pumps, racks, and connections. Therefore, it would be costly and impractical to blank off lines only to reopen them in the seventh month. Accordingly, the rule should, per the commenter, recognize normal operating procedures at such facilities and allow flexibility. Another commenter requested that "quick disconnect" fittings qualify as a method of secure capping.

Response to comments. Applicability of requirements. We asked in the 1991 preamble (at 56 FR 54616) for comments as to whether provisions proposed as discretionary measures or recommendations should be made requirements. We were concerned whether these proposed measures represented good engineering practice for all facilities. Specific comments are discussed below. In the case of proposed § 112.7(g)(1) and (5) as requirements, we have decided to retain the requirements as requirements rather than convert those paragraphs into recommendations as proposed. We have done this because we believe that fencing, facility lighting, and the other measures prescribed in the rule to prevent vandalism are elements of good engineering practice in most facilities, including mobile facilities. Where they are not a part of good engineering practice, we have amended the proposed provision allowing deviations, § 112.7(a)(2), to include the provisions in § 112.7(g).

Fences. Fencing helps to deter vandals and thus prevent the discharges that they might cause. In response to the commenter who argued that fences should be topped with barbed wire, or otherwise designed to deter vandalism,

we agree. When you use a fence to protect a facility, the design of the fence should deter vandalism. Methods of deterring vandals might include barbed wire or other devices. If any type of fence is impractical, you may, under § 112.7(a)(2), explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

Valves. Revised § 112.7(g)(2) requires you to ensure that the master flow and drain valves and other valves permitting outward flow of the container's contents have adequate security measures. The current rule requires that such valves be securely locked in the closed position when in non-operating or non-standby status. Today's revised rule allows security measures other than locking drain valves or other valves permitting outflow to the surface. Manual locks may be preferable for valves that are not electronically or automatically controlled. Such locks may be the only practical way to ensure that valves stay in the closed position. For electronically controlled or automated systems, no manual lock may be necessary. The rule gives you discretion in the method of securing valves. We believe that this flexibility is necessary due to changes in technology and in the use of manual and electronic valving.

Starter controls on pumps. We disagree that the requirements to have the starter control locked in the off position and be accessible only to authorized personnel are redundant. Restricting access to such pumps prevents unauthorized personnel from accidentally opening the starter control. These measures are necessary to prevent discharges at small as well as large facilities because the threat of discharge is the same regardless of the size of the container, and a small discharge may be harmful to the environment. If the potential for losing keys, weather conditions such as frequent freezing, or other engineering factors render such a measure infeasible, you may use the deviation provisions in § 112.7(a)(2) if you can explain your reasons for nonconformance and provide equivalent environmental protection by some other means.

Loading/unloading connections. In response to comment, we have decided to retain the current time line in § 112.7(g)(4), *i.e.*, "an extended time," instead of specifying a six-month time line, due to the need for operational flexibility at facilities. We define "an extended time" in reference to industry standards or, in the absence of such standards, at a frequency sufficient to prevent any discharge. The appropriate method of securing or blank flanging of

these connections is a matter of good engineering practice, and might include "quick disconnect fittings" as a possible deviation under § 112.7(a)(2). In any case, a secure cap is one equipped with some kind of lock or secure closure device to prevent vandalism. We disagree that the requirements of this paragraph should apply to the owner or operator of a facility instead of the owner or operator of the piping because a facility might place only some piping out of service for a period of time, and let other piping remain in service. Therefore, the owners or operators of some piping might escape the requirements of the rule and be more likely to discharge oil.

Industry standards. Industry standards that may assist an owner or operator with security purposes include: (1) API Standard 2610, Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities; and, (2) NFPA 30A, Automotive and Marine Service Station Code, Flammable and Combustible Liquids Code.

Editorial changes and clarifications. We agree that the term "plant" has no clear meaning. Therefore, in paragraph (g)(1), we have substituted the term "facility" in its place, which is a defined term in these rules. Also in that paragraph, the phrase "handling, processing and storing oil" becomes "handling, processing or storing oil." In paragraph (g)(2), "tank" becomes "container." In paragraph (g)(3), "pumps" becomes "pump." In paragraph (g)(5), the phrase "Consideration should be given to:" is deleted. We revise the sentence to read, "Provide facility lighting commensurate with the type and location of the facility that will assist in the: * * *"

Section 112.7(h)—Loading/Unloading (Excluding Offshore Facilities)

Background. In 1991, we repropounded the current discharge prevention requirements for loading/unloading racks.

Comments. In general. Several commenters opposed the proposal on the basis that a requirement for a strong contingency plan would be a preferable and more effective alternative. Another commenter asked that we clarify that only facilities routinely used for loading or unloading of tanker trucks from or into aboveground bulk storage tanks are subject to this provision. One commenter believed that the proposed rule regulates items which "should be covered" by DOT rules governing loading, unloading, and vehicle inspection.

Editorial changes and clarifications. One commenter asked for a clarification of the term "quick drainage system."

Another commenter recommended that instead of mandatory containment requirements, a facility be allowed to show that procedures are in place to ensure that personnel are present at all times to supervise tank truck loading and unloading. Additionally, that commenter recommended that all new or renovated loading/unloading areas provide, at a minimum, curbing, sloped concrete, trenching, tanks, or basins which could contain at least five percent by volume of the largest compartment of the tank car or truck. For existing facilities, that commenter suggested that containment might contain a lesser volume, provided that the entire area is constructed of impervious material, no reported releases have occurred, and that loading/unloading activities are supervised.

Alarm or warning systems. One commenter asked whether the requirement to provide a warning light or physical barrier system, or warning signs, applied to tank batteries or just plants. Another suggested that a vehicle brake interlock system or similar system might work just as well. Still another suggested the use of wheel chocks during tank truck transfers.

Vehicle drain closure. Two commenters opposed the proposed requirement that vehicle drains and outlets be examined for leakage and if necessary repaired to prevent liquid leaks during transit. They argued that the facility owner had little or no control over trucks that were owned by others which loaded or unloaded at a facility and could not ensure their compliance with the rules.

Response to comments. In general. This section is applicable to any non-transportation-related or terminal facility where oil is loaded or unloaded from or to a tank car or tank truck. It applies to containers which are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule), and to all facilities, large or small. All of these facilities have a risk of discharge from transfers. Our Survey of Oil Storage Facilities (published in July 1996) showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup. Throughput increases are often associated with transfers of oil.

The requirements contained in this section, including those for secondary containment, warning systems, and

inspection of trucks or cars for discharges are necessary to help prevent discharges. If you can justify a deviation for secondary containment requirement in paragraph (h)(1) on the basis that it is not practicable from an engineering standpoint, you must provide a contingency plan and take other actions to comply with § 112.7(d). If you seek to deviate from any of the requirements in paragraphs (h)(2) or (3), you must explain your reasons for nonconformance, as provided in § 112.7(a)(2), and provide measures affording equivalent environmental protection.

We disagree that a contingency plan (whether labeled "strong" or otherwise) is a preferable alternative to secondary containment. Secondary containment is preferable because it may prevent a discharge that may be harmful as described in § 112.1(b). A contingency plan is a plan for action when such discharge has already occurred. However, as noted earlier, if secondary containment is not practicable, you must provide a contingency plan and take other actions as required by § 112.7(d). EPA will continue to evaluate the issue of whether the provisions for secondary containment found in § 112.7(h)(1) should be modified or revised. We intend to publish a notice asking for additional data and comment on this issue.

We disagree that the section regulates activities already under the purview of the U.S. Department of Transportation. We regulate the environmental aspects of loading/unloading transfers at non-transportation-related facilities, which are legitimately part of a prevention plan. DOT regulates other aspects of those transfers, such as safety measures.

Other State or Federal law. We have withdrawn, as unnecessary, proposed § 112.7(h)(1), which would have required that facilities meet the minimum requirements of Federal and State law. Those requirements apply whether they are mentioned or not.

Secondary containment. As noted above, the requirement for secondary containment applies to all facilities, whether with aboveground or completely buried containers. This includes production facilities and small facilities. The method of secondary containment must be one of those listed in the rule (see § 112.7(c)), or some similar system that provides equivalent environmental protection. The choice of method is one of good engineering practice. However, in response to comments, we note that sumps and drip pans are a listed method of secondary containment for offshore facilities. A catchment basin might be an acceptable

form of retention pond for an onshore facility. Whatever method is implemented, it must be capable of containing the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the facility. A discharge from the maximum capacity of any single compartment of a tank car or tank truck includes a discharge from the tank car or tank truck piping and hoses. This is the largest amount likely to be discharged from the oil storage vehicle. A requirement that secondary containment be able to hold only five percent of a potential discharge when procedures are in place to prevent discharges fails to protect the environment if there is human error in one of those procedures. In case of discharge, the secondary containment system must be capable of preventing a discharge from that maximum capacity compartment to the environment. As mentioned above, if secondary containment is not practicable, you may be able to deviate from the requirement if you provide a contingency plan and otherwise comply with § 112.7(d).

Alarm or warning systems. The requirement to provide a warning light or other physical barrier system applies to the loading/unloading areas of facilities. We have amended the rule on the suggestion of a commenter to include "vehicle brake interlock system" and "wheel chocks." The examples listed in the rule of potential warning systems are merely illustrative. Any other alarm or warning system which serves the same purpose and performs effectively will also suffice to meet this requirement.

Vehicle drain closure. We believe that the requirement to check vehicles for discharge is important to help prevent discharges. If the check were not done, the entire contents of the vehicle might be discharged. We further believe that the responsibility for compliance with proposed § 112.7(h)(3), as well as with all provisions of the rule, continues to rest with the owner or operator of the facility when those vehicles are loading or unloading oil at the facility.

Industry standards. Industry standards that may assist an owner or operator with loading and unloading areas include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; and, (2) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Editorial changes and clarifications. In paragraph (h)(1), for clarity, "plant" is changed to "facility." The phrase "to handle spills" becomes "to handle discharges." A "quick drainage system" is a device which drains oil away from

the loading/unloading area to some means of secondary containment or returns the oil to the facility. For § 112.7(h)(1), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d). Also, in paragraph (h)(1), "tank truck" becomes "tank car or tank truck." In paragraph (h)(2), "prevent vehicular departure," becomes "prevent vehicles from departing." In paragraph (h)(3), "leakage" becomes "discharge." "Discharge" is a broader term, of which "leakage" is a subset. Also in that paragraph, "examine" becomes "inspect."

Section 112.7(i)—Brittle Fracture Evaluation

Background. In 1993, we proposed to require that you evaluate your field-constructed tanks for brittle fracture if those tanks undergo repair, alteration, or a change in service. You would have been required to evaluate those tanks by adherence to industry standards contained in American Petroleum Institute (API) Standard 653, entitled "Tank Inspection, Repair, Alteration, and Reconstruction." The rationale was to help prevent the failure of field-constructed tanks due to brittle fracture, such as the four million gallon aboveground Ashland Oil tank failure which occurred in January 1988.

Comments. Applicability. Several commenters favored the proposal. One suggested that we incorporate API Standard 653 into our rules to accommodate the possibility of tank failures other than through brittle fracture. One commenter opposed the proposal on the basis that the evaluation was unnecessary for small volume tanks and tanks with secondary containment. Other commenters argued that such testing was unnecessary for steel-bolted tanks because such tanks are too thin to be subject to brittle fracture since material properties are uniform through the thickness. One commenter asked that small facilities be exempted from the proposed requirement.

Editorial changes and clarifications. Two commenters asked what the term "change in service" means. Others asked for clarification of the term "field-erected tank." Another asked for clarification of the term "repair," so that it would exclude ordinary day-to-day maintenance activities which are conducted to maintain the functional integrity of the tank and do not weaken the tank.

Alternatives to brittle fracture evaluation. One commenter suggested

that we allow testing by acoustic emission testing.

Response to comments. Applicability. The requirement to evaluate field-constructed tanks for brittle fracture whenever a field-constructed aboveground container undergoes repair, alteration, reconstruction, or change in service is necessary because brittle fracture may cause sudden and catastrophic tank failure, resulting in potentially serious damage to the environment and loss of oil. The requirement must be applicable to large and small facilities alike, because all the field-constructed aboveground containers have a risk of failure. The presence or absence of secondary containment does not eliminate the need for brittle fracture evaluation because the intent of the rule is to prevent a discharge whether or not it will be contained. While the requirement applies to all field-constructed aboveground containers, if you can show that the evaluation is unnecessary for your steel-bolted tanks, you may deviate from the requirement under § 112.7(a)(2) if you can explain your reasons for nonconformance and provide equivalent environmental protection. We note that portions of steel-bolted tanks, such as the bottom or roof, may be welded, and therefore subject to brittle fracture.

The requirement for evaluation of a field-constructed aboveground container must be undertaken when the container undergoes a repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to brittle fracture, or when a discharge or failure has already occurred due to brittle fracture or other catastrophe. Catastrophic failures are failures which may result from events such as lightning strikes, dangerous seismic activity, etc. As a result of a catastrophic failure, the entire contents of a container may be discharged to the environment in the same way as if brittle fracture had occurred.

"Repair" means any work necessary to maintain or restore a container to a condition suitable for safe operation. Typical examples include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain container integrity; the re-leveling or jacking of a container shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. We understand that some repairs (such as repair of tank seals), alterations, or changes in service will not cause a risk of failure due to brittle

fracture; therefore, we have amended the rule to refer to those repairs, alterations, reconstruction, or changes in service that affect the risk of a discharge or failure due to brittle fracture.

“Alteration” means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configurations of the container. Typical examples include the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height.

Alternatives to brittle fracture evaluation. We have eliminated the incorporation by reference to API Standard 653 from the rule. We have also therefore withdrawn proposed Appendix H, the API Standard 653 brittle fracture flowchart. We believe that API Standard 653 is an acceptable standard to test for brittle fracture. However, an incorporation by reference of any standard might cause the rule to be instantly obsolete should that standard change or should a newer, better method emerge. A potential standard might also apply only to a certain subset of facilities or equipment. Therefore, as with most other requirements in this part, if you explain your reasons for nonconformance, alternative methods which afford equivalent environmental protection may be acceptable under § 112.7(a)(2). If acoustic emission testing provides equivalent environmental protection it may be acceptable as an alternative. That decision, in the first instance, is one for the Professional Engineer and owner or operator.

Industry standards. Industry standards that may assist an owner or operator with brittle fracture evaluation include: (1) API Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction”; and, (2) API Recommended Practice 920, “Prevention of Brittle Fracture of Pressure Vessels.”

Editorial changes and clarifications. A “field-constructed aboveground container” is one that is assembled or reassembled outside the factory at the location of its intended use. A “change in service” is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. The word “reconstruction” was added in the first sentence to conform with the text in API Standard 653. The words “discharge or” were added prior to “failure” and “brittle fracture failure” to make clear that evaluation is necessary when there

has been a discharge from the container, whether or not there has been a complete failure of the container due to brittle fracture or catastrophe. When a container has failed completely and will be replaced, no brittle fracture or catastrophe evaluation is necessary. The evaluation is only applicable when the original container remains, but the physical condition of the container has changed due to repair, alteration, or change in service.

Section 112.7(j)—State Rules

Background. In the introduction to § 112.7(e) of the current rule, an owner or operator is required to discuss in the Plan his conformance with § 112.7(c), plus other applicable parts of § 112.7, other effective spill prevention and containment procedures or, if more stringent, with State rules, regulations, and guidelines. In our 1991 proposal, we limited the required discussion of “other effective spill prevention and containment procedures” to those listed in §§ 112.8, 112.9, 112.10, and 112.11, or if more stringent, with State rules, regulations, and guidelines.

Comments. Cross-referencing of requirements. One commenter argued that the proposed requirements should be more clearly limited to those sections which are applicable to the facility in question. For example, the commenter asserted, “requirements in § 112.8 ‘* * * onshore facilities (excluding production facilities)’ should not (by the requirement in § 112.7(i)) be applied to any portion of any production facility.”

Consistency in rules. Two States urged that our rules be as consistent as possible with rules in the States. Another State urged that we grant reciprocity to State-approved Plans which have been reviewed under equal or greater adequacy criteria. One commenter complained that EPA rules are in some cases more stringent than some State rules.

Federal and State regulation. Two commenters argued against any State regulation in the SPCC area to avoid duplication. Conversely, another commenter argued against any Federal regulation because the States are better qualified to regulate in the SPCC arena.

Preemption. Another State requested that EPA strive to have similar programs as the States, or at the least not to preempt the States in the regulation of SPCC matters.

Response to comments. Cross-referencing of requirements. In response to the commenter who believed that proposed § 112.7(i) (redesignated in today’s rule as § 112.7(j)) might require him to discuss inapplicable requirements, we note that you must

address all SPCC requirements in your Plan. You must include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in part 112 or any applicable more stringent State rule, regulation, or guideline. If a requirement is not applicable to a particular type of facility, we believe that it is important for an owner or operator to explain why.

Consistency in rules. As noted above, you may now use a State plan as a substitute for an SPCC Plan when the State plan meets all Federal requirements and is cross-referenced. When you use a State plan that does not meet all Federal requirements, it must be supplemented by sections that do meet all Federal requirements. At times EPA will have rules that are more stringent than States rules, and some States may have rules that are more stringent than those of EPA. If you follow more stringent State rules in your Plan, you must explain that is what you are doing.

Federal and State regulation. Both the States and EPA have authority to regulate containers storing or using oil. We believe State authority to regulate in this area and establish spill prevention programs is supported by section 311(o) of the CWA. Some States have exercised their authority to regulate while others have not. We believe that State SPCC programs are a valuable supplement to our SPCC program.

Preemption. We do not preempt State rules, and defer to State rules, regulations, and guidelines that are more stringent than part 112.

Editorial changes and clarifications. To simplify the rule language, we have amended the proposed rule to state that you must discuss all applicable requirements in the Plan instead of listing all of the sections individually. The phrase “sections of the Plan shall include* * *” becomes “include in your Plan* * * .” “Spill” becomes “discharge.”

Subpart B—Requirements for Petroleum Oils or Other Non-petroleum Oils, Except Animal Fats and Vegetable Oils

Background. As noted above, we have reformatted the rule to differentiate between various classes of oil as mandated by EORRA. Subpart B prescribes particular requirements for an owner or operator of a facility that stores or uses petroleum oils or non-petroleum oils, except for animal fats and vegetable oils.

Introduction to Section 112.8

Background. We have inserted an introduction to § 112.8 so that we could list the requirements of that section in the active voice. Those requirements, except as specifically noted, apply to the owner or operator of an onshore facility (except a production facility). The introduction does not result in any substantive change in requirements.

Section 112.8(a)—General Requirements—Onshore Facilities (Excluding Production Facilities)

Background. This is a new provision that merely references the general requirements which all facilities subject to this part must meet and the specific requirements that facilities subject to this section must meet. It does not result in any change to substantive requirements.

Editorial changes and clarifications. “Spill prevention” in the 1991 proposal becomes “discharge prevention.” We also deleted from the titles of each paragraph the words “onshore” and “excluding production facilities” because the entire section applies to onshore facilities and excludes production facilities from its scope. Finally, the proposed requirement to “address” general and specific requirements and procedures becomes “meet” those requirements and procedures.

Section 112.8(b)(1)—Diked Storage Area Drainage

Background. In 1991, we repropoed the current rule (§ 112.7(e)(1)(i)) on facility drainage from diked areas.

Comments. Applicability. One commenter asked that we limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Another commenter said that for facilities with site-wide containment, or that have substantial stormwater draining onto and across the site, the requirement is not practical and may justify reliance on contingency plans instead of containment. That commenter, and another, suggested that certain devices may reduce the potential of a significant spill of floating or other products that can be separated by gravity, such as oil/water separators, underflow uncontrolled discharge devices, and other apparatus.

De minimis amounts of oil. One commenter thought it would be impossible to ensure no oil would be discharged into water from diked areas. The rationale was that oil can be present in water in an amount below the perception threshold of the human eye.

Response to comments. Applicability. We disagree that we should limit the scope of this section to facilities having areas with the potential to receive discharges greater than 660 gallons or areas with tanks regulated under these rules. Small discharges (that is, of 660 gallons or less) as described in § 112.1(b) from diked storage areas can cause great environmental harm. See section IV. F of this preamble for a discussion of the effects of small discharges. We disagree that this section should apply only to areas with tanks regulated under these rules because this rule applies to regulated facilities, not merely areas with regulated tanks or other containers. A facility may contain operating equipment within a diked storage area which could cause a discharge as described in § 112.1(b).

We disagree that the requirement is not practical for facilities with site-wide containment, or that have substantial stormwater draining onto and across the site. Where oil/water separators, underflow uncontrolled discharge devices, or other positive means provide equivalent environmental protection as the discharge restraints required by this section, you may use them, if you explain your reasons for nonconformance. See § 112.7(a)(2). However, you must still ensure that no oil will be discharged when using alternate devices.

De minimis amounts of oil. This rule is concerned with a discharge of oil that would become a discharge as described in § 112.1(b). When oil is present in water in an amount that cannot be perceived by the human eye, the discharge might not meet the description provided in 40 CFR 110.3. Therefore, such a discharge might not be a discharge in a quantity that may be harmful, and therefore not a reportable discharge under part 110. However, a discharge which is invisible to the human eye might also contain components (for example, dissolved petroleum components) which would violate applicable water quality standards, making it a reportable discharge. Therefore, we are keeping the language as proposed, other than making some editorial changes.

Industry standards. Industry standards that may assist an owner or operator with facility drainage include: (1) NFPA 30, “Flammable and Combustible Liquids Code”; and (2), API Standard 2610, “Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities.”

Editorial changes and clarifications. “Spill or other excessive leakage of oil” and “leakage” become “discharge.” The

phrase “handle such leakage” becomes “control such discharge.” We deleted the phrase “or other positive means,” because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you have the flexibility to use alternate measures ensuring equivalent environmental protection. The word “examine” becomes “inspect.”

Section 112.8(b)(2)—Diked Storage Areas—Valves Used; Inspection of Retained Stormwater

Background. In 1991, we repropoed the current rule on the type of valves that must be used to drain diked storage areas. The rule also addresses inspection of retained stormwater.

Comments. Innovative devices. Two commenters believed that the rule would apparently preclude the use of innovative containment devices to control discharges from containment dikes, such as imbiber beads. These beads are inside a small cylinder that filters releases from a containment area. The beads are inserted where a valve would be placed and allow water to pass, but prevent release of oil by closing on contact. Another commenter asked that the rule allow oil-water gravity separation systems instead of valves.

PE certification. One commenter suggested that a section should be added to the rule requiring that Professional Engineers be required to certify the design and construction of the stormwater drainage system and the sanitary sewer system, because the Professional Engineer is in the best position to prepare the spill containment parts of the SPCC Plan.

Response to comments. Innovative devices. This rule does not preclude innovative devices that achieve the same environmental protection as manual open-and-closed design valves. If you do not use such valves, you must explain why. The provision for deviations in § 112.7(a)(2) allows alternatives if the owner or operator states his reasons for nonconformance, and if he can provide equivalent environmental protection by some other means. However, you may not use flapper-type drain valves to drain diked areas. And if you use alternate devices to substitute for manual, open-and-closed design valves, you must inspect and may drain retained stormwater, as provided in § 112.8(c)(3)(ii), (iii), and (iv), if your facility drainage drains directly into a watercourse, lake, or pond bypassing the facility treatment system.

PE certification. PE certification is already required for the design of

stormwater drainage and sanitary sewer systems by current rules because those systems are a technical element of the Plan. Therefore, we are keeping the language as proposed.

Editorial changes and clarifications. In the first sentence, we deleted the phrase “as far as practical” because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if the requirement is not practical, you have the flexibility to use measures ensuring equivalent environmental protection. In the second sentence, we clarify that the wastewater treatment plant mentioned therein is an “on-site wastewater treatment plant.” Also in that sentence, we clarify that you must inspect and “may drain” retained stormwater, as provided in § 112.8(c)(3)(ii), (iii), and (iv). Finally, in the last sentence, we clarify that drained retained stormwater must be “uncontaminated.”

Section 112.8(b)(3)—Drainage Into Secondary Containment; Areas Subject to Flooding

Background. In 1991, we proposed to clarify that only undiked areas that are located such that they have a reasonable potential to be contaminated by an oil discharge are required to drain into a pond, lagoon, or catchment basin. We explained that a good Plan should seek to separate reasonably foreseeable sources of contamination and non-contamination.

We also proposed to make a recommendation of the current requirement that catchment basins not be located in areas subject to periodic flooding.

Comments. One commenter supported the proposal.

Editorial changes and clarifications. One commenter suggested that the rule should be worded to refer to systems “with a potential for discharge,” rather than with a “potential for contamination.”

Applicability. Two commenters argued that the secondary containment provisions of this paragraph should “remain a recommendation as opposed to a regulation,” because a requirement is impracticable for drainage systems from pipelines that move product throughout the facility.

Alternatives. One commenter said that the rule should not be limited to drainage trenches, and that the owners and operators of facilities should have a free choice of design. Another commenter suggested that if areas under aboveground piping and loading/unloading areas are regulated under this section, the operation should have the option of providing spill control by committing to the regular inspection of,

and immediate clean-up of spills within such areas. Another commenter urged that we clarify that oil/water separators meet the requirement for drainage control and secondary containment because such units, when properly sized and operated, meet the requirements of good engineering practice for preventing discharges of oil. One commenter suggested that in rural areas where electrical equipment is widely spaced, it may be more practical to provide for individual secondary containment rather than site-wide diversion facilities. Other commenters suggested that the drainage requirements in urban areas would be impossible to meet for transformers located in vaults in large office and apartment buildings, and underneath urban streets because there is no space at such sites to construct the sort of drainage control structures required by the rule.

Areas subject to periodic flooding. One commenter argued that the proposed recommendation should be retained as a requirement because it is highly unlikely that catchment basins would operate effectively during a flood event, and that these facilities could cause significant harm to the environment. Another commenter suggested that drainage systems for existing facilities be engineered (even if it requires pumping of contaminated water to a higher level for storage prior to treatment) so that minimal amounts of contaminated water are retained in areas subject to periodic flooding.

Response to comments. Applicability. We disagree that the rule language should become a recommendation because we believe that it is important to control the potential discharges the rule addresses. Where a drainage system is infeasible, if you explain your reasons for nonconformance, you may provide equivalent environmental protection by an alternate means.

In response to the commenter who questioned the applicability of this paragraph to areas under aboveground piping and loading/unloading areas, we note that both areas are subject to the rule’s requirements if they are undiked.

Alternatives. The rule does not limit you to the use of drainage trenches for undiked areas. Other forms of secondary containment may be acceptable. The rule only prescribes requirements for the drainage of diked areas, but does not mandate the use of diked areas. However, if you do use diked areas, the rule prescribes minimum requirements for drainage of those areas. Also, if the requirement is not practical, you may explain your reasons for nonconformance and provide equivalent

environmental protection under § 112.7(a)(2).

Areas subject to periodic flooding. We agree with the commenter that the current requirement should remain a requirement and not be converted into a recommendation. We are convinced by the argument that catchment basins will not work during flood events and may cause significant environmental damage. We also agree with the commenter that any drainage system should be engineered so that minimal amounts of contaminated water are retained in areas subject to periodic flooding. Therefore, we have retained the current requirement. We also recommend, but do not require that ponds, lagoons, or other facility drainage systems with the potential for discharge not be located in areas subject to periodic flooding.

Editorial changes and clarifications. We agree that the wording “potential for discharge” meets the intent of the rule better than “potential for contamination” and have made that change.

Section 112.8(b)(4)—Diversion Systems

Background. In 1991, we proposed that diversion systems must retain oil in the facility, rather than return it to the facility after it has been discharged.

Comments. One commenter asked for a clarification that oil “retained” in a facility does not leave the facility boundaries. A second commenter suggested that oil be either retained within the facility or returned to the facility, whichever is applicable. The commenter further suggested that the diversion system apply only to the petroleum areas of the facility such as tanks, pipes, racks, and diked areas because drainage from the rest of the facility should not be contaminated and thus should not have to be diverted.

Response to comments. The rule accomplishes the aim of retaining within the facility minimal amounts of contaminated water in undiked areas subject to periodic flooding. It is better that a diversion system retain rather than allow oil to leave the facility, thus enhancing the prevention goals of the rule. Furthermore, it should be easier to retain discharged oil rather than retrieve oil that has been discharged from the facility. Therefore, we agree with the commenter that “retained” oil is oil that never leaves the facility. We also agree that the rule applies only to drainage from the “petroleum” (or other oil) areas of the facility such as tanks, pipes, racks, and diked areas, because the purpose of the SPCC rule is to prevent discharges of oil, not of all runoff contaminants. Amendment of the rule

language is unnecessary because all of the rule applies only to “petroleum” or “oil” areas of the facility. Therefore, we have promulgated the rule language as proposed with a minor editorial change.

Editorial changes and clarifications.

We clarify that the reference to the engineering of facility drainage is a reference to paragraph (b)(3).

Section 112.8(b)(5)—Natural Hydraulic Flow, Pumps

Background. In 1991, we repropoed substantively the current rule (see § 112.7(e)(1)(v)) concerning hydraulic flow and pump transfer for drainage waters.

Comments. We received one editorial comment regarding a grammatical error in the proposal. The commenter suggested that the second sentence of the proposal read, “If pump transfer is needed, two “lift” pumps shall be provided, and at least one of the pumps shall be permanently installed when such treatment is continuous.” We received no substantive comments.

Editorial changes and clarifications.

We deleted the first sentence from the proposed rule because it is a recommendation. We are not including recommendations in this rule so as to avoid confusion in the regulated community as to what is required and what is not. We agree with the commenter’s editorial suggestion regarding the second sentence, and have amended the rule accordingly. In the last sentence of the proposal, the phrase “oil will be prevented from reaching navigable waters of the United States, adjoining shorelines, or other waters that would be affected by discharging oil as described in § 112.1(b)(1) of this part” becomes “to prevent a discharge as described in § 112.1(b). * * *”

Response to comments. We have corrected the grammatical error.

Proposed Section 112.8(b)(6)—Additional Requirements for Events that Occur During a Period of Flooding

Background. In 1991, we proposed a new recommendation that facilities should address the need to comply with Federal, State, and local governmental requirements in areas subject to flooding. We noted that this recommendation was consistent with Federal Emergency Management Agency (FEMA) rules found at 44 CFR part 60 for aboveground storage tanks located in flood hazard areas.

Comments. One commenter suggested that exploration and production tanks located in flood plain areas should be adequately secured through proper mechanical or engineering methods to reduce the chance of loss of product.

Another commenter argued that the proposed rule should be eliminated because it is duplicative of stormwater regulations. One commenter urged that the rule require that no facilities for oil or hazardous substances be sited in floodplains. Another commenter requested that the rule require that: (1) A facility should identify whether it is in a floodplain in the SPCC Plan; (2) if it is in a floodplain, the Plan should address minimum FEMA standards; and, (3) if a facility does not meet minimum FEMA standards, the Plan should address appropriate precautionary and mitigation measures for potential flood-related discharges. The commenter also suggested that we consider requiring facilities in areas subject to 500-year events to address minimum FEMA standards. A second commenter supported a requirement for special considerations in the Plan for facilities in areas subject to flooding. That commenter also suggested that we define “areas subject to flooding,” and noted that other Federal rules (i.e., RCRA) define this as the 25-year floodplain. Another commenter thought the term “areas subject to flooding” should be explained in terms of a 100-year flood event. A final comment noted that the preamble spoke to a recommendation that facilities address precautionary measures if they are located in areas subject to flooding, while the recommendation text spoke to requirements for events that occur during a period of flooding. The commenter urged reconciliation of the differing language.

Response to comments. We deleted this recommendation because it is more appropriately addressed in FEMA rules and guidance, including the definitions the commenters referenced. We disagree that the proposed recommendation should be made a requirement because flood control plans and design capabilities for discharge systems are provided for under the stormwater regulations, and further Federal regulations would be duplicative.

Other Federal rules also apply, making further SPCC rules unnecessary. Oil storage facilities are considered structures under the National Flood Insurance Program (NFIP), and therefore such structures are subject to the Regulations for Floodplain Management at 44 CFR 60.3. Some of the specific NFIP standards that may apply for aboveground storage tanks include the following: (1) tanks must be designed so that they are elevated to or above the base flood level (100-year flood) or be designed so that the portion of the tank below the base flood level is watertight with walls substantially impermeable to

the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads, and with the capability to resist effects of buoyancy (44 CFR 60.3(a)(3)); (2) tanks must be adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads and the effects of buoyancy (40 CFR 60.3(c)(3)); for structures that are intended to be made watertight below the base flood level, a Registered Professional Engineer must develop and/or review the structural design, specifications, and plans for construction, and certify that they have been prepared in accordance with accepted standards and practice (40 CFR 60.3(c)(4)); and, tanks must not encroach within the adopted regulatory floodway unless it has been demonstrated that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge (40 CFR 60.3(d)). Additionally, the NFIP has specific standards for coastal high hazard areas. See 40 CFR 60.3(e)(4).

Section 112.8(c)(1)—Construction of and Materials Used for Containers

Background. In 1991, we repropoed without substantive change current § 112.7(e)(2)(i), which requires that no tank be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage such as pressure and temperature. The only changes we proposed were editorial. We also proposed a new recommendation that the construction, materials, installation, and use of tanks conform with relevant industry standards such as API, NFPA, UL, or ASME standards, which are required in the application of good engineering practice for the construction and operation of the tank.

Comments. Several commenters asked that the proposal be recast as a recommendation rather than a rule, arguing that the words of the proposal, when taken in conjunction with § 112.7(a) language requiring the use of good engineering practice in the preparation of Plans, were contradictory. A commenter noted that § 112.8(c)(1) *recommends* that materials, construction, and installation of tanks adhere to industry standards “*which are required in the application of good engineering practice* for the construction and operation of the tank.” The commenter asserted that since it is clear in the preamble that the Agency’s intent is to make the use of industry standards a recommendation rather than a

requirement, the rule should be modified to reflect that. Another commenter supported the proposal as a requirement on the theory that all tanks should be required to meet industry standards. A third commenter asked for clarification as to whether we intended a recommendation or a requirement.

One commenter asked that we specifically reference steel storage tank systems standards in the rule.

Response to comments. Requirement v. recommendation. The first sentence of the proposed rule indeed contemplated a requirement, i.e., that no container may be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage, such as pressure or temperature. The second sentence, which was clearly a recommendation, has been deleted from the rule because we have decided to remove all recommendations from the rule language. Rules are mandates, and we do not wish to confuse the regulated community as to what actions are mandatory and what actions are discretionary. The Professional Engineer must, pursuant to § 112.3(d)(1)(iii), certify that he has considered applicable industry standards in the preparation of the Plan. While he must consider such standards, use of any particular standards is a matter of good engineering practice.

Industry standards. Industry standards that may assist an owner or operator with the material and construction of containers include: (1) API Standard 620, "Design and Construction of Large Welded Low-Pressure Storage Tanks"; (2) API Standard 650, "Welded Steel Tanks for Oil Storage"; (3) Steel Tank Institute (STI) F911, "Standard for Diked Aboveground Steel Tanks"; (4) STI Publication R931, "Double Wall Aboveground Storage Tank Installation and Testing Instruction"; (5) UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; (6) UL Standard 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids"; (7) UL Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; and, (8) Petroleum Equipment Institute (PEI) Recommended Practice 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling."

Editorial changes and clarifications. "Bulk storage tanks" becomes "bulk storage containers." We deleted the abbreviation "etc." from the end of the paragraph because it is unnecessary.

The use of the phrase "such as pressure and temperature" already indicates that these are only some examples of such conditions.

Section 112.8(c)(2)—Secondary Containment—Bulk Storage Containers

Background. In 1991, we repropoed current secondary containment requirements with several significant additions. We gave notice in the preamble (at 56 FR 54622–23) that "sufficient freeboard" is freeboard sufficient to contain precipitation from a 25-year storm event. We also proposed in rule language that diked areas must be sufficiently impervious to contain spilled oil for at least 72 hours. The current standard is that such diked areas must be "sufficiently impervious" to contain spilled oil.

Comments. Secondary containment, in general. One commenter asked for clarification of what "primary containment system" means. One commenter opposed the requirement for secondary containment on the grounds that impervious containment of a volume greater than the largest single tank may not be necessary for all tanks, and that existing facilities may find it difficult to retrofit. In this vein, another commenter asked for a phase-in of the requirements, and a third asked for variance provisions so that a facility would not have to make small additions to its secondary containment for minimum environmental benefit. Another commenter argued that the requirement should be applied to large facilities only. One commenter believed that the proposal duplicates NPDES stormwater rules. Two commenters believed the requirement should apply only to unmanned facilities. See also the comments and response to comments concerning secondary containment in the discussion of § 112.7(c), above.

Sufficient freeboard. Several commenters said that the standard of a 25-year storm event might be difficult to determine without extensive meteorological studies. Other commenters asked for clarification of the terms "sufficient" and "freeboard," or of the phrase "sufficient freeboard." Likewise, several commenters asked for clarification of the Agency's position that sufficient freeboard would be that which would withstand a 25-year storm event. Two commenters suggested a standard of 110% of tank capacity. Other commenters suggested alternatives for the 25-year storm event, such as a 24-hour, 10 year rain; or a 24-hour, 25-year storm. Another commenter suggested the adequacy of freeboard should be left flexible on a facility-specific basis.

Seventy-two-hour impermeability standard. Similar to the comments directed toward the proposed requirements for secondary containment in § 112.7(c), some commenters objected to the proposed 72-hour impermeability standard. See the comments and response to comments for § 112.7(c) above.

Response to comments. Secondary containment, in general. A primary containment system is the container or equipment in which oil is stored or used. Secondary containment is a requirement for all bulk storage facilities, large or small, manned or unmanned; and for facilities that use oil-filled equipment; whenever practicable. Such containment must at least provide for the capacity of the largest single tank with sufficient freeboard for precipitation. A discharge as described in § 112.1(b) from a small facility may be as environmentally devastating as such a discharge from a large facility, depending on the surrounding environment. Likewise, a discharge from a manned facility needs to be contained just as a discharge from an unmanned one. A phase-in of these requirements is not appropriate because secondary containment is already required under current rules. When secondary containment is not practicable, the owner or operator of a facility may deviate from the requirement under § 112.7(d), explain the rationale in the Plan, provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Because a pit used as a form of secondary containment may pose a threat to birds and wildlife, we encourage an owner or operator who uses a pit to take measures to mitigate the effect of the pit on birds and wildlife. Such measures may include netting, fences, or other means to keep birds or animals away. In some cases, pits may also cause a discharge as described in § 112.1(b). The discharge may occur when oil spills over the top of the pit or when oil seeps through the ground into groundwater, and thence to navigable waters or adjoining shorelines. Therefore, we recommend that an owner or operator not use pits in an area where such pit may prove a source of such discharges. Should the oil reach navigable waters or adjoining shorelines, it is a reportable discharge under 40 CFR 110.6.

We disagree that the rule is duplicative of NPDES rules. Forseeable or chronic point source discharges that are permitted under CWA 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 treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of CWA section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402. 52 FR 10712, 10714. Therefore, the typical bulk storage facility with no permitted discharge or treatment facility would not be under the NPDES rules.

The secondary containment requirements of the rule apply to bulk storage containers and their purpose is to help prevent discharges as described in § 112.1(b) by containing discharged oil. NPDES rules, on the other hand, may at times require secondary containment, but do not always. Furthermore, NPDES rules may not always apply to bulk storage facilities. Therefore, the rule is not always duplicative of NPDES rules. Where it is duplicative, an owner or operator of a facility subject to NPDES rules may use that portion of his Best Management Practice Plan as part of his SPCC Plan.

Sufficient freeboard. An essential part of secondary containment is sufficient freeboard to contain precipitation. Whatever method you use to calculate the amount of freeboard that is "sufficient" must be documented in the Plan. We believe that the proper standard of "sufficient freeboard" to contain precipitation is that amount necessary to contain precipitation from a 25-year, 24-hour storm event. That standard allows flexibility for varying climatic conditions. It is also the standard required for certain tank systems storing or treating hazardous waste. See, for example, 40 CFR 265.1(e)(1)(ii) and (e)(2)(ii). While we believe that 25-year, 24-hour storm event standard is appropriate for most facilities and protective of the environment, we are not making it a rule standard because of the difficulty and expense for some facilities of securing recent information concerning such storm events at this time. Recent data does not exist for all areas of the United States. Furthermore, available data may be costly for small operators to secure. Should recent and inexpensive information concerning a 25-year, 24-hour storm event for any part of the United States become easily accessible, we will reconsider proposing such a standard.

Seventy-two-hour impermeability standard. As noted above, we have decided to withdraw the proposal for the 72-hour impermeability standard

and retain the current standard that diked areas must be sufficiently impervious to contain oil. We take this step because we agree with commenters that the purpose of secondary containment is to contain oil from reaching waters of the United States. The rationale for the 72-hour standard was to allow time for the discovery and removal of an oil spill. We believe that an owner or operator of a facility should have flexibility in how to prevent discharges as described in § 112.1(b), and that any method of containment that achieves that end is sufficient. Should such containment fail, an owner or operator must immediately clean up any discharged oil. Similarly, we intend that the purpose of the "sufficiently impervious" standard is to prevent discharges as described in § 112.1(b) by ensuring that diked areas can contain oil and are sufficiently impervious to prevent such discharges.

Industry standards. Industry standards that may assist an owner or operator with secondary containment for bulk storage containers include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; (2) BOCA, National Fire Prevention Code; (3) API Standard 2610, "Design Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities"; and, (4) Petroleum Equipment Institute Recommended Practice 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling."

Editorial changes and clarifications. In the first sentence, "spill" becomes "discharge." Also in that sentence, "contents of the largest single tank" becomes "capacity of the largest single container." This is merely a clarification and has always been the intent of the rule. The contents of a container may vary from day to day, but the capacity remains the same. In discussing capacity, we noted in the 1991 preamble that "the oil storage capacity (emphasis added) of the equipment, however, must be included in determining the total storage capacity of the facility, which determines whether a facility is subject to the Oil Pollution Prevention regulation." 56 FR 54623. We discuss this capacity in the context of the general requirements for secondary containment. Thus, it is clear that we have always intended capacity to be the determinative factor in both subjecting a facility to the rule and in determining the need for secondary containment.

We also deleted the phrase "but they may not always be appropriate" from the third sentence of the paragraph because it is confusing when compared to the text of § 112.7(d). Under

§ 112.7(d), if secondary containment is not practicable, you may provide a contingency plan in your SPCC Plan and otherwise comply with that section. In the last sentence, "plant" becomes "facility." Also in that sentence, the phrase "so that a spill could terminate * * *" becomes "so that any discharge will terminate. * * *"

Section 112.8(c)(3)—Drainage of Rainwater

Background. In 1991, we repropoed the current rule on drainage of rainwater, incorporating the CWA standard, *i.e.*, "that may be harmful," into the proposal.

In 1997, we proposed that records required under NPDES §§ 122.41(j)(2) and 122.41(m)(3) would suffice for purposes of this section, so that you would not have to prepare duplicate records specifically for SPCC purposes. The proposed change would also apply to records maintained regarding inspection of diked areas in onshore oil production facilities prior to drainage. See 112.9(b)(1).

Comments. 1991 comments. One commenter in 1991 suggested that we allow use of NPDES records for purposes of this section. Another commenter suggested that records of discharges that do not violate water quality standards are unnecessary.

1997 comments. Many commenters favored the 1997 proposal. One commenter opposed the proposal if the records were not to be required by NPDES. Specifically, the commenter sought an exemption for discharges of rainwater containing animal fats and vegetable oils if such discharges are not regulated under NPDES rules. The commenter believed that an exception should be created for reporting and recording dike bypasses of § 112.7(e)(2)(iii)(D) relating to animal fats and vegetable oil storage, only requiring such reporting and recording if required by an NPDES stormwater permit, because in all cases discharge of contaminated stormwater is not permitted. Asking why EPA should regulate stormwater bypass events if the stormwater is not contaminated, the commenter argued that if stormwater permits do not require reporting and recording of dike bypass events, then EPA should not require an added tier of regulation under SPCC Plans. Other commenters thought that EPA was adopting by reference the NPDES rules and sought clarification on the issue.

Response to comments. We agree with the first 1991 commenter mentioned above and proposed that change in 1997. We disagree with the second 1991 commenter that records of discharges

that do not violate water quality standards are unnecessary. Such records show that the facility has complied with the rule.

We are not adopting the NPDES rules for SPCC purposes, but are only offering an alternative for recordkeeping. The intent of the rule is that you may, if you choose, use the NPDES stormwater discharge records in lieu of records specifically created for SPCC purposes. We are not incorporating the NPDES requirements into our rules by reference.

This paragraph applies to discharges of rainwater from diked areas that may contain any type of oil, including animal fats and vegetable oils. The only purpose of this paragraph is to offer a recordkeeping option so that you do not have to create a duplicate set of records for SPCC purposes, when adequate records created for NPDES purposes already exist.

Editorial changes and clarifications. In the introduction to the paragraph (c)(3), "drainage of rainwater" becomes "drainage of uncontaminated rainwater." In paragraph (c)(3)(ii), which read, "* * * run-off rainwater ensures compliance with applicable water quality standards and will not cause a discharge as described in 40 CFR part 110" becomes "* * * retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b)." Also in that paragraph, we deleted the phrase "applicable water quality standards" because such standards are encompassed within the phrase "a discharge as described in § 112.1(b)."

Section 112.8(c)(4)—Completely Buried Tanks; Corrosion Protection

Background. In 1991, we repropoed the current rule requiring that new completely buried metallic storage tank installations (*i.e.*, installed on or after January 10, 1974) must be protected from corrosion by coatings, cathodic protection, or effective methods compatible with local soil conditions. We recommended that such buried tanks be subjected to regular leak testing. The rationale for the recommendation was that testing technology was rapidly advancing and we wanted more information on such technology before making the recommendation a requirement. We also stated a desire to be consistent with many State rules.

Comments. Corrosion protection. One commenter supported the proposal for corrosion protection. Another thought a requirement for corrosion protection "if soil conditions warrant" would be unenforceable. A third commenter

complained that the proposal included no discussion of cathodic protection for tank bottoms in contact with soil or fill materials. Others thought facilities with underground tanks subject to part 112 should be required to develop a corrosion protection plan consistent with 40 CFR part 280, the rules for the Underground Storage Tanks Program.

Leak testing. Several commenters opposed the proposed recommendation for leak testing, arguing that owner/operator discretion should be retained. One commenter suggested that practices for annual integrity testing and for the installation of pipes under 40 CFR part 280 should be changed from recommended practices to required practices because recommendations with standards are not usually followed.

Response to comments. Corrosion protection. We agree in principle that all completely buried tanks should have some type of corrosion protection, but as proposed, we will only extend that requirement to new completely buried metallic storage tanks. Because corrosion protection is a feature of the current rule (see § 112.7(e)(2)(iv)), the requirement applies to completely buried metallic tanks installed on or after January 10, 1974. The requirement is enforceable because it is a procedure or method to prevent the discharge of oil. See section 311(j)(1)(C) of the CWA. Most owners or operators of completely buried storage tanks will be exempted from part 112 under this rule because such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. Those tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 will follow the corrosion protection provisions of that rule, which provides comparable environmental protection. Those that remain subject to the SPCC regulation must comply with this paragraph.

The rule requires corrosion protection for completely buried metallic tanks by a method compatible with local soil conditions. Local soil conditions might include fill material. The method of such corrosion protection is a question of good engineering practice which will vary from facility to facility. You should monitor such corrosion protection for effectiveness, in order to be sure that the method of protection you choose remains protective. See § 112.8(d)(1) for a discussion of corrosion protection for buried piping.

Leak testing. The current SPCC rule contains a provision calling for the "regular pressure testing" of buried metallic storage tanks. 40 CFR 112.7(e)(2)(iv). We proposed in 1991 a

recommendation that such buried tanks be subject to regular "leak testing." Proposed § 112.8(c)(4). Leak testing for purposes of this paragraph is testing to ensure liquid tightness of a container and whether it may discharge oil. We specified leak testing in the proposal, instead of pressure testing, in order to be consistent with many State regulations and because the technology on such testing was rapidly evolving. 56 FR at 54623.

We are modifying the leak testing recommendation to make it a requirement. We agree with the commenter who argued that such testing should be mandatory because recommendations may not often be followed. Appropriate methods of testing should be selected based on good engineering practice. Whatever method and schedule for testing the PE selects must be described in the Plan. Testing under the standards set out in 40 CFR part 280 or a State program approved under 40 CFR part 281 is certainly acceptable (as we suggested in the proposed rule). "Regular testing" means testing in accordance with industry standards or at a frequency sufficient to prevent leaks.

Editorial changes and clarifications. The first sentence of the proposed rule was deleted because it was surplus, and contained no mandatory requirements. It merely noted that completely buried metallic storage tanks represent a potential for undetected spills. "Buried installation" becomes "completely buried metallic storage tank," to accord with the definition in § 112.2. We clarify that a "new" installation is one installed on or after January 10, 1974, the effective date of the SPCC rule, by deleting the word "new" and substituting the date. We deleted the phrase "or other effective methods," because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if you explain your reasons for nonconformance, you may use alternate methods providing equivalent environmental protection.

Section 112.8(c)(5)—Partially Buried or Bunkered Tanks; Corrosion Protection

Background. In 1991, we proposed changing the current requirement to avoid using partially buried metallic tanks into a recommendation. We proposed that if you do use such tanks, that you must protect them from corrosion.

Comments. One commenter argued that the rule should only apply to new tanks.

Response to comments. Requirement v. recommendation. Due to the risk of discharge caused by corrosion, we

decided to keep the current requirement to not use partially buried metallic tanks, unless the buried section of such tanks are protected from corrosion. The requirement to not use such tanks, unless they are protected from corrosion, applies to all partially buried metallic tanks, installed at any time.

Editorial changes and clarifications. Bunkered tanks are a subset of partially buried tanks, and are included within the rule to clarify that it applies to all partially buried tanks. We did not finalize the proposed phrase “or other effective methods,” because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), if you explain your reasons for nonconformance, you may use alternate methods providing equivalent environmental protection. The proposed recommendation that “partially buried or bunkered metallic tanks be avoided, since partial burial at the earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface” becomes a requirement to “not use partially buried or bunkered metallic tanks for the storage of oil unless you protect the buried section of the tank from corrosion.”

Section 112.8(c)(6)—Integrity Testing

Background. In 1991, we proposed that integrity testing for bulk storage tanks be conducted at least every ten years and when material repairs are conducted. We gave several examples of “material repairs” in the preamble. The current requirement for such testing is that it be “periodic.” We also proposed that visual inspection, as a method of testing, must be combined with some other method, because visual testing alone is insufficient for an integrity test. 56 FR at 54623.

In 1997, we added a proposed sentence to the rule which would allow the use of usual and customary business records for integrity testing. We suggested that records maintained under API Standards 653 and 2610 would suffice for this purpose.

Comments. 10-year integrity testing in general. One commenter asked for a clarification of the term “integrity testing.” Several commenters favored the proposal for ten-year integrity testing. Other commenters opposed the requirement or favored turning it into a recommendation. Several commenters proposed testing according to accepted industry standards, such as American Petroleum Institute (API), National Fire Protection Association (NFPA), Underwriters Laboratory (UL), or American Society of Mechanical Engineers (ASME).

Applicability of integrity testing. Some asked for an exemption for tanks inside buildings. Others asked for an exemption for number 5 and 6 fuel oils, and asphalt, because such oils are heavy and would not flow very far. Some commenters believed the requirement should not apply to small facilities because it is “not standard industry practice” to conduct these tests at small facilities. Another commenter stated that while most large corporations perform testing at some frequency, most smaller businesses do not. The commenter suggested that exemptions because of size or quantity of oil stored should not be granted because the smaller facilities generally are more in need of testing.

Several commenters suggested that integrity testing should be waived for tanks which can be visually inspected on the bottom and all sides, such as tanks located off the ground on crates, and which have secondary containment. One commenter asked that the requirement apply only when the tank is used to store corrosive materials or where the tank has failed within the last five years. Other commenters asked for a phase-in of the requirement. Utilities asked that the requirement not apply to electrical equipment because no methods exist for integrity testing of such equipment, and because the primary reason for failure of such equipment is not corrosion, but mechanical failure.

Material repairs. Several commenters asked for clarification as to the meaning of “material repairs.”

Method of testing. Some commenters favored visual inspection only because it might be used more frequently than any other method of testing. Another commenter asked for clarification if visual inspection meant inspection of both the interior and exterior of a tank. Another commenter suggested that we augment integrity testing procedures with procedures to test the tank bottom for settlement and corrosion, and to test roof supports.

Business records. Most commenters favored the proposal to allow use of usual and customary business records for integrity testing and other purposes. Some commenters argued that the suggested API Standards were unfamiliar to many owners and operators.

Response to comments. 10-year integrity testing in general. Integrity testing is a necessary component of any good prevention plan. A number of commenters supported a requirement for such testing. It will help to prevent discharges by testing the strength and imperviousness of the container. We

agree with commenters that testing according to industry standards is preferable, and thus will maintain the current standard of regularly scheduled testing instead of prescribing a particular period for testing. Industry standards may at times be more specific and more stringent than our proposed rule. For example, API Standard 653 provides specific criteria for internal inspection frequencies based on the calculated corrosion rate, rather than an arbitrary time period. API Standard 653 allows the aboveground storage tank (AST) owner or operator the flexibility to implement a number of options to identify and prevent problems which ultimately lead to a loss of tank integrity. It establishes a minimum and maximum interval between internal inspections. It requires an internal AST inspection when the estimated corrosion rate indicates the bottom will have corroded to 0.1 inches. Certain prevention measures taken to prevent a discharge from the tank bottom may affect this action level (thickness). Once this point has been reached, the owner or operator has to make a decision, depending on the future service and operating environment of the tank, to either replace the whole tank, line the bottom, add cathodic protection, replace the tank bottom with a new bottom, add a release prevention barrier, or some combination of the above.

Another benefit from the use of industry standards is that they specify when and where specific tests may and may not be used. For example, API Standard 653 is very specific as to when radiographic tests may be used and when a full hydrostatic test is required after shell repairs. Depending on shell material toughness and thickness a full hydrotest is required for certain shell repairs. Allowing a visual inspection in these cases risks a tank failure similar to the 1988 Floreffe, Pennsylvania event. Testing on a “regular schedule” means testing per industry standards or at a frequency sufficient to prevent discharges. Whatever schedule the PE selects must be documented in the Plan.

Applicability of integrity testing. Integrity testing is essential for all aboveground containers to help prevent discharges. Testing will show whether corrosion has reached a point where repairs or replacement of the container is needed. Prevention of discharges is preferable to cleaning them up afterwards. Therefore, it must apply to large and small containers, containers on and off the ground wherever located, and to containers storing any type of oil. From all of these containers there exists the possibility of discharge. Because electrical, operating, and manufacturing

equipment are not bulk storage containers, the requirement is inapplicable to those devices or equipment. 56 FR 54623. Also, as noted by commenters, methods may not exist for integrity testing of such devices or equipment.

Material repairs. The rationale for testing at the time material repairs are conducted is that such repairs could materially increase the potential for oil to be discharged from the tank. Examples of such repairs include removing or replacing the annular plate ring; replacement of the container bottom; jacking of a container shell; installation of a 12-inch or larger nozzle in the shell; a door sheet, tombstone replacement in the shell, or other shell repair; or, such repairs that might materially change the potential for oil to be discharged from the container.

Method of testing. The rule requires visual testing in conjunction with another method of testing, because visual testing alone is normally insufficient to measure the integrity of a container. Visual testing alone might not detect problems which could lead to container failure. For example, studies of the 1988 Ashland oil spill suggest that the tank collapse resulted from a brittle fracture in the shell of the tank. Adequate fracture toughness of the base metal of existing tanks is an important consideration in discharge prevention, especially in cold weather. Although no definitive non-destructive test exists for testing fracture toughness, had the tank been evaluated for brittle fracture, for example under API standard 653, and had the evaluation shown that the tank was at risk for brittle fracture, the owner or operator could have taken measures to repair or modify the tank's operation to prevent failure.

For certain smaller shop-built containers in which internal corrosion poses minimal risk of failure; which are inspected at least monthly; and, for which all sides are visible (*i.e.*, the container has no contact with the ground), visual inspection alone might suffice, subject to good engineering practice. In such case the owner or operator must explain in the Plan why visual integrity testing alone is sufficient, and provide equivalent environmental protection. 40 CFR 112.7(a)(2). However, containers which are in contact with the ground must be evaluated for integrity in accordance with industry standards and good engineering practice.

Business records. You may use usual and customary business records, at your option, for purposes of integrity testing recordkeeping. Specifically, you may use records maintained under API

Standards 653 and 2610 for purposes of this section, if you choose. Other usual and customary business records either existing or to be developed in the future may also suffice. Or, you may elect to keep separate records for SPCC purposes. This section requires you to keep comparison records. Section 112.7(e) requires retention of these records for three years. You should note, however, that certain industry standards (for example, API Standards 570 and 653) may specify that an owner or operator maintain records for longer than three years.

Industry standards. Industry standards that may assist an owner or operator with integrity testing include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; (2) API Recommended Practice 575, "Inspection of Atmospheric and Low-Pressure Tanks;" and, (3) Steel Tank Institute Standard SP001-00, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids."

Editorial changes and clarifications. In the first sentence, "Aboveground tanks shall be subject to integrity testing * * *" becomes "Test each container for integrity * * *" Also in that sentence, the phrase "or a system of non-destructive shell testing" becomes "or another system of non-destructive shell testing." The last sentence which read, "* * * the outside of the container must be frequently observed by operating personnel for signs of deterioration, leaks, * * *" becomes "* * * you must frequently inspect the outside of the container for signs of deterioration, leaks, * * *" We made that change because the requirements of this paragraph are the responsibility of the owner or operator, not of "operating personnel."

"Integrity testing" is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. It includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas.

Section 112.8(c)(7)—Leakage; Internal Heating Coils

Background. In 1991, we proposed that the current rule on controlling leakage through defective internal heating coils should be modified to

include a recommendation that retention systems be designed to hold the contents of an entire tank. We also proposed to change the current requirement to consider the feasibility of installing external heating systems into a recommendation.

Comments. One commenter proposed that instead of requiring a retention system which would hold the entire contents of a tank, that an oil/water separator might work just as well. Another commenter opposed requiring the use of oil/water separators. As to the proposed recommendation to consider use of external heating systems, one commenter objected to the cost which might be incurred. One commenter opposed the proposed recommendation due to the belief that leaks in the aboveground piping can be mitigated through daily inspections and they are often placed within secondary containment. Another commenter asserted that with drainage routed to oil/water separators or holding ponds, leak proof galleys under aboveground piping were redundant and economically unjustified.

Response to comments. The rule does not mandate the use of any specific separation or retention system. Any system that achieves the purpose of the rule is acceptable. That purpose is to prevent discharges as described in § 112.1(b) by controlling leakage.

Editorial changes and clarifications. We deleted the proposed recommendations from the rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. We have included only requirements in the rule.

Section 112.8(c)(8)—Good Engineering Practice—Alarm Systems

Background. In 1991, we repropoed the current rule on "fail-safe" engineering. We added a proposal to allow alternate technologies. We recommended that sensing devices be tested in accordance with industry standards.

Comments. Editorial changes and clarifications. Several commenters objected to the term "fail-safe" engineering because they believe that nothing is ever fail-safe. They suggested using the term "in accordance with good engineering practice," or "consistent with accepted industry practices" instead.

Applicability. One commenter thought the proposed requirement should apply to large facilities only or facilities that were the cause of a reportable spill within the preceding three years. One commenter suggested a phase-in of the requirement.

Monitoring. One commenter suggested that a person must be present to monitor gauges when a fast response system is used to prevent container overfilling. Another suggested that the requirement for alarm devices not apply to containers where an operator is present.

Alternatives. One commenter suggested that certain "procedures" might suffice instead of alarm devices. Another commenter suggested that we need to be specific as to methods of testing.

Response to comments. Applicability. Alarm system devices are necessary for all facilities, large or small, to prevent discharges. Such systems alert the owner or operator to potential container overfills, which are a common cause of discharges. Because this is a requirement in the current rule, no phase-in is necessary.

Monitoring. We agree with the commenter that a person must be present to monitor a fast response system to prevent overfills and have amended the rule accordingly. We disagree that the requirement for alarm devices should not apply when a person is present, because human error, negligence, or inattention may still occur in those cases, necessitating some kind of alarm device.

Alternatives. Under the deviation rule at § 112.7(a)(2), you may substitute "procedures" or other measures that provide equivalent environmental protection as any of the alarm systems mandated in the rule if you can explain your reasons for nonconformance.

Industry standards. Industry standards that may assist an owner or operator with alarm systems, discharge prevention systems, and inventory control include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; (2) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"; and, (3) API, "Manual of Petroleum Measurement Standards."

Editorial changes and clarifications. Throughout, "tank" becomes "container." In the introductory paragraph, we deleted the words "as far as practical" from the rule text because they are confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you may deviate from a requirement if you explain your reasons for nonconformance and provide equivalent environmental protection. "Spills" becomes "discharges." We agree with the commenter that "fail-safe" engineering is inappropriate and have substituted "in accordance with good engineering practice." The change in terminology does not imply any

substantive change in the level of environmental protection required, it is merely editorial. Finally, in the introductory paragraph the phrase "one or more of the following devices" becomes "at least one of the following." Not all of the items listed under this paragraph are devices. For example, regular testing of liquid sensing devices is a procedure. Therefore, the word "devices" was incomplete. In paragraph (i), "manned operation" becomes "attended operation," and "plants" becomes "facilities." In paragraph (iv), the phrase "or their equivalent," was deleted because it is confusing when compared with the text of § 112.7(a)(2). Under § 112.7(a)(2), you may deviate from a requirement if you explain your reasons for nonconformance, and provide equivalent environmental protection. Proposed paragraph (v), relating to alternative technologies, was deleted because alternative devices are allowed under § 112.7(a)(2).

Section 112.8(c)(9)—Effluent Disposal Facilities

Background. In 1991, we repropose the current rule on observation of effluent disposal facilities.

Comments. We received only one comment which asked us to clarify that "effluents" mean oil-contaminated water collected within secondary containment areas, and that "disposal facilities" means "treatment facilities."

Editorial changes and clarifications. "Oil spill event" becomes "discharge as described in § 112.1(b)." "System upset" refers to an event involving a discharge of oil-contaminated water. "Effluent" means oil-contaminated water. "Disposal facilities" becomes "effluent treatment facilities."

Section 112.8(c)(10)—Visible Oil Leaks

Background. In 1991, we repropose the current requirement that visible oil leaks must be promptly corrected. Additionally, we proposed that accumulated oil or oil-contaminated materials must be removed within 72 hours. The 72-hour proposal in this paragraph was consistent with the proposal in § 112.7(c). The rationale was that a 72-hour time period would allow time for discovery and removal of an oil discharge in most cases. We suggested in the preamble to the 1991 proposal that most facilities are attended at some time within a 72-hour time period. 56 FR 54621.

Comments. Editorial changes and clarifications. One commenter asked for clarification of the meaning of "accumulation" of oil. Others asked for clarification of the meaning of "oil contaminated materials." Another

commenter noted that reference to a spill event within a diked area is inconsistent with its definition.

Applicability. Some commenters thought the requirement should not apply to small facilities because of the likelihood that the discharge would be smaller.

Extent and methods of cleanup. One commenter suggested that covering soil with plastic film may be an acceptable method to prevent stormwater contamination during remediation. Some commenters suggested that where a spill creates a risk of fire or explosion, the first priority should be to eliminate such threats before undertaking cleanup. Several commenters asked whether removal of accumulations of oil means complete removal. Some commenters feared that a requirement to remove oil-contaminated materials would be interpreted to mean that cleanup of portions of the dike that are oil-stained is required. The commenters were concerned that such a cleanup would undermine the stability of the dike and would be unnecessary. One commenter argued that complete removal would compound landfill disposal problems. Another commenter asked whether the rule contemplates cleanup of soil contaminated by past practices. Some commenters argued that the 72-hour requirement would preclude bioremediation.

72-hour cleanup standard. Some commenters asked how a 72-hour time limit would be calculated. Those commenters suggested that the clock begin to run from the time of the discharge itself, or of its discovery. Others suggested different time periods from "immediately," "as soon as possible," "within 72 hours," "within 96 hours," or "expeditiously." One commenter suggested no time limit. Some commenters noted that a containment system might be designed to contain oil for more than 72 hours before it begins to leak.

One commenter suggested that, depending on site conditions, a 72-hour time limit might jeopardize worker health and safety. Another sought clarification on the need to clean up small discharges as opposed to larger ones within the proposed time limit.

Numerous commenters opposed this requirement because it might preclude bioremediation. Some thought it would be impossible to meet.

Response to comments. Applicability. The requirement to clean up an accumulation of oil is applicable to all facilities, large and small. The damage to the environment may be the same, depending on the amount discharged.

Extent of and methods of cleanup. Prevention of contamination is always the preferred alternative. If you choose, you may spread plastic film over the diked area if it will prevent the occurrence of an accumulation of oil. Of course, you must then dispose of the film properly. We agree with commenters that where a discharge creates a risk of fire or explosion, the first priority should be to eliminate such threat before undertaking cleanup. But once that threat is removed, correction of the source of the discharge and cleanup must begin promptly.

No matter what method of cleanup you choose, you must completely remove the accumulation of oil. Any method that works and complies with all other applicable laws and regulations is acceptable. Bioremediation may be one acceptable method of cleanup. Acceptable methods will depend on weather and other environmental conditions. We do not mean to limit cleanup methods, which will depend on good engineering practice. If the cleanup method you choose would undermine the stability of the dike, you must repair the dike to its previous condition.

72-hour cleanup standard. We have deleted the 72-hour cleanup standard because it would preclude bioremediation. We also agree that under certain circumstances, such a limit might jeopardize worker health and safety. Therefore, we have maintained the current standard that visible discharges must be promptly removed. "Prompt" removal means beginning the cleanup of any accumulation of oil immediately after discovery of the discharge, or immediately after any actions to prevent fire or explosion or other threats to worker health and safety, but such actions may not be used to unreasonably delay such efforts. The size of the accumulation is irrelevant, as any accumulation may migrate to navigable waters or adjoining shorelines.

Editorial changes and clarifications. "Leaks" becomes "discharges." "Tank" becomes "container." "Accumulation of oil" means a discharge that causes a "film or sheen" in a diked area, or causes a sludge or emulsion there. See 40 CFR 110.3(b). The reference to violation of applicable water quality standards in 40 CFR 110.3(b) does not apply here because the rule assumes that the oil will not have reached any waters of the United States or adjoining shorelines, but stays entirely within the diked area of the facility. The term "oil-contaminated materials" is not used in the rule. We eliminate the term "oil-contaminated materials" that was used

in the proposed rule because oil must accumulate on something such as materials or soil. Therefore, the term is redundant. Instead we refer to an accumulation of oil, which includes anything on which the oil gathers or amasses within the diked area. Such accumulation may include oil-contaminated soil or any other oil-contaminated material within the diked area impairing the secondary containment system. See also the discussion of "accumulation of oil" included with the response to comments of § 112.9(b)(2). We have removed the term "spill event" from the proposed paragraph and note that we agree with the commenter who noted that reference to a "spill event," or "a discharge as described in § 112.1(b)," within a diked area is inconsistent with that concept.

Section 112.8(c)(11)—Mobile Containers

Background. In 1991, we proposed to require that mobile tanks be positioned or located to prevent oil discharges. We recommended secondary containment for the largest single compartment or tank of any mobile container. We also recommended that these containers not be located where they will be subject to periodic flooding or washout.

Comments. Scope of discharge prevention. One commenter asked that the rule be amended to refer to discharges to navigable waters, instead of discharges.

Time limits. One commenter asked that a mobile or portable container be defined as a container which is in place on a contiguous property for 10 days or less.

Secondary containment. Two commenters supported the secondary containment proposals, but favored making them requirements instead of recommendations. One commenter asked that the secondary containment recommendation for the largest single compartment or container be modified to include tanks which are manifolded together or otherwise have overflow capabilities. Another commenter suggested that secondary containment provide freeboard sufficient to contain precipitation from a 25-year storm event.

Floods. Other commenters asked for a requirement that mobile tanks not be located in areas subject to flooding.

Response to comments. Scope of discharge prevention. We agree that the purpose of the rule is to prevent discharges from becoming discharges as described in § 112.1(b). Therefore, in response to comment, we have modified the proposed rule to require positioning or locating mobile or portable containers

to prevent "a discharge as described in § 112.1(b)," rather than "oil discharges." "A discharge as described in § 112.1(b)" is a more inclusive term, tracking the expanded scope of the amended CWA.

Time limits. We decline to place a time limitation in a definition of mobile or portable containers. Mobile or portable containers may be in place for more than ten days and still be mobile. Mobile containers that are in place for less than 10 days may still experience a discharge as described in § 112.1(b).

Secondary containment. In response to comments, we have maintained the secondary containment requirement in the current rule because secondary containment is necessary for mobile containers for the same reason that it is necessary for fixed containers; to prevent discharges from becoming discharges as described in § 112.1(b). Secondary containment must also be designed so that there is ample freeboard for anticipated precipitation. We have therefore amended the rule on the suggestion of a commenter to provide for freeboard. We agree with the commenter that the amount of freeboard should be sufficient to contain a 25-year storm event, but are not adopting that standard because of the difficulty and expense for some facilities in securing recent information concerning 25-year, 24-hour storm events at this time. Should that situation change, we will reconsider proposing such a standard in rule text. Freeboard sufficient to contain precipitation is freeboard according to industry standards, or in an amount that will avert a discharge as described in § 112.1(b). Should secondary containment not be practicable, you may be able to deviate from the requirement under § 112.7(d).

We clarify that the secondary containment requirement relates to the capacity of the largest single compartment or container. Permanently manifolded tanks are tanks that are designed, installed, or operated in such a manner that the multiple containers function as a single storage unit. Containers that are permanently manifolded together may count as the "largest single compartment," as referenced in the rule.

Floods. We deleted the proposed recommendation on siting of mobile containers in this rule because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. These rules contain only mandatory requirements.

Industry standards. Industry standards that may assist an owner or operator with secondary containment for mobile containers include: (1) NFPA 30, "Flammable and Combustible

Liquids Code'; and, (2) BOCA, "National Fire Prevention Code."

Editorial changes and clarifications. "Spill event" becomes "a discharge as described in § 112.1(b)." "Tank" becomes "container." We deleted the word "onshore" because the whole section applies only to onshore facilities.

Section 112.8(d)(1)—Buried Piping—Facility Transfer Operations, Pumping, and Facility Process (Onshore) (Excluding Production Facilities)

Background. In 1991, we proposed a new recommendation that all piping installations should be placed aboveground wherever possible. We added a new proposed requirement that would require protective coating and cathodic protection for new or replaced buried piping. The current rule requires such coating and cathodic protection only if soil conditions warrant. We explained in the preamble that we believe that all soil conditions warrant protection of buried piping. We did not propose to make the requirement applicable to all existing piping because of the significant possibility that replacing all unprotected buried piping might cause more discharges than it would prevent. If soil conditions warrant such protection for existing piping, it is already required by the current rule. We also proposed a new recommendation that buried piping installation comply to the extent possible with all the relevant provisions of 40 CFR part 280.

Comments. Aboveground piping recommendation. Two commenters favored the recommendation. Others requested that it be modified to have all piping be aboveground only when appropriate, on the theory that some aboveground piping may become an obstacle to motorized traffic within a facility, or may be a hazard to worker safety because of the possibility of tripping over it.

Corrosion protection. Several commenters supported the proposal to require corrosion protection for all new or replaced buried piping. One commenter believed that corrosion protection should be required, as in the current rule, only where soil conditions warrant. One commenter asked for clarification that the requirement for replaced piping only applies to the section replaced, not necessarily to the entire line of piping. Another commenter believed that corrosion protection was inadequate to protect from discharges, and urged a requirement for double-walled piping or secondary containment and product sensitive leak detection for new

facilities. One commenter believed that the recommendation for buried piping installation to comply with 40 CFR part 280 should be a requirement, not a recommendation.

Response to comments. Aboveground piping recommendation. While we have deleted the proposed recommendation from the rule text because we do not wish to confuse the regulated public over what is mandatory and what is discretionary, we still believe that piping should be placed aboveground whenever possible because such placement makes it easier to detect discharges. The decision to place piping aboveground might include consideration of safety and traffic factors.

Corrosion protection. Based on EPA experience, we believe that all soil conditions warrant protection of new and replaced buried piping. EPA's cause of release study indicates that the operational piping portion of an underground storage tank system is twice as likely as the tank portion to be the source of a discharge. Piping failures are caused equally by poor workmanship and corrosion. Metal areas made active by threading have a high propensity to corrode if not coated and cathodically protected. See 53 FR 37082, 37127, September 23, 1988; and "Causes of Release from US Systems," September 1987, EPA 510-R-92-702. If you decide to deviate from the requirement, for example, to provide an alternate means of protection other than coating or cathodic protection, you may do so, but must explain your reasons for nonconformance, and demonstrate that you are providing equivalent environmental protection. A deviation which seeks to avoid coating or cathodic protection, or some alternate means of buried piping protection, on the grounds that the soil is somehow incompatible with such measure(s), will not be acceptable to EPA.

A "new" or "replaced" buried piping installation is one that is installed 30 days or more after the date of publication of this rule in the **Federal Register**. We have deleted the words "new" and "replaced" from the proposed language and substituted this specific date so the effective date is clearer to the regulated community. Under the current rule, you have an obligation to provide buried piping installations with protective wrapping and coating only if soil conditions warrant such measures. Under the revised rule, you must provide such wrapping and coating for new or replaced buried piping installations regardless of soil conditions.

You should consult a corrosion professional before design, installation, or repair of any corrosion protection system. Any corrosion protection you provide should be installed according to relevant industry standards. When piping is replaced, you must protect from corrosion only the replaced section, although protection of the entire line whenever possible is preferable. Equipping only a small portion of piping with corrosion protection may accelerate corrosion rates on connected unprotected piping. While we agree that corrosion protection might not prevent all discharges from buried piping, it is an important measure because it will help to prevent most discharges.

Double-walled piping or secondary containment or sensitive leak detection for buried piping may be acceptable as a deviation from the requirements of this paragraph under § 112.7(a)(2) if you explain your reasons for nonconformance with the requirement and show that the means you selected provides equivalent environmental protection to the requirement. However, we will not require such measures because we did not propose them.

We have deleted the recommendation from the proposed rule that all buried piping installations comply to the extent practicable with 40 CFR part 280, because we are excluding recommendations from this rule to avoid confusion with what is mandatory and what is discretionary. Also, some buried piping now subject to part 112 will be subject only to 40 CFR part 280 or a State program approved under 40 CFR part 281 under this rule. See § 112.1(d)(4).

Industry standards. Industry standards that may assist an owner or operator with corrosion protection for buried piping installations include: (1) National Association of Corrosion Engineers (NACE) Recommended Practice-0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; and, (2) STI Recommended Practice 892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

Editorial changes and clarifications. In the second sentence of paragraph (d)(1), we included a reference to "a State program approved under part 281 of this chapter." In the third sentence, "examine" and "examination" become "inspect" and "inspection."

Section 112.8(d)(2)—Terminal Connections

Background. In 1991, we proposed that when piping is not in service or is in standby service for 6 months or more, the terminal connection at the transfer point must be capped or blank-flanged and marked as to origin. The current rule requires such capping or blank-flanging when the piping is not in service or is in standby service “for an extended time.”

Comments. One commenter supported the six-month clarification of an “extended time.” Several commenters opposed the requirement to cap or blank-flange piping in standby service because such piping may be needed to be put into service quickly during an emergency to ensure safe operations at the facility. The commenter suggested that the rule be reworded to say “When piping is not in service or is not in standby service.”

Response to comments. We have decided to keep the current standard of requiring capping or blank-flanging terminal connections when such piping is not in service or is in standby for an extended time in order to maintain flexibility for variable facilities and engineering conditions. We define “an extended time” in reference to industry standards or at a frequency sufficient to prevent discharges. We disagree with commenters that the requirement should not apply to piping that is not in standby service because some discharges may be caused by loading or unloading oil through the wrong piping or turning the wrong valve when the piping in question was actually out-of-service. Typically, piping that is in standby service is only needed in emergency situations or when there is an operational problem. In the rare situations when such piping is needed immediately, the owner or operator may remove the cap or blank-flange to return the piping to service.

Editorial changes and clarifications. “Examine” becomes “inspect.”

Section 112.8(d)(3)—Pipe Supports

Background. In 1991, we repropoed without substantive change the current rule concerning pipe supports.

Comments. We received no comments on this proposal. Therefore, we have promulgated the provision as proposed.

Section 112.8(d)(4)—Inspection of Aboveground Valves and Piping

Background. In 1991, we proposed that you examine all aboveground valves, piping, and appurtenances on at least a monthly basis. This contrasts with the current requirement of

“regular” examinations. We also recommended that you conduct annual integrity and leak testing of buried piping, or that you monitor it on a monthly basis. Finally, we recommended that all valves, pipes, and appurtenances conform to relevant industry codes, such as ASME standards. We proposed deletion from the rule of the current requirement for periodic pressure testing for piping where facility drainage is such that a failure might lead to a spill event.

Comments. Monthly examination of aboveground valves, piping, and appurtenances. One commenter supported the visual monthly examination proposal, but suggested that we require a more sophisticated method of testing every three to four years, such as pressure testing. Most other commenters opposed monthly examinations, on grounds of impracticality. Most opposing commenters urged testing on a quarterly or semiannual basis, or per industry standards. Some thought the requirement should be a recommendation, both for large and small facilities. Electrical utility commenters asserted that the monthly testing of millions of pieces of equipment would be extremely burdensome. Several commenters urged that the examination requirement be limited to visual examination because of the cost of other methods.

Buried piping. Several commenters favored the proposed recommendation for annual integrity and leak testing of buried piping or monitoring of such piping on a monthly basis. One commenter was concerned that the recommendation made no concession for piping construction material, length of time in the ground, etc. Several commenters believed that the recommendation should be a requirement because piping often runs outside of secondary containment; buried piping cannot be inspected visually; discharges are common from this piping; and few owners or operators conduct integrity or leak testing of such piping. Some thought it should be a requirement for all facilities, others just for large facilities. One commenter thought that the requirement to inspect buried piping only when exposed is inadequate. The commenter suggested that the piping should be subject to pressure testing. The frequency of the testing would be based on aquifer use.

Opposing commenters believed annual testing or monthly monitoring was unnecessary, generally citing cost and practicability reasons. Some suggested differing time periods for testing, such as every three years, or

every ten years. One commenter believed that the recommendation should not apply to piping of less than ten feet. Others asked for clarification as to the type of testing contemplated. One commenter suggested that the recommendation be clarified to refer only to oil-handling piping and equipment, and not include buried piping unrelated to oil operations. Several commenters suggested that we add a requirement to the rule to conduct integrity and leak testing of protected piping at the time of installation, modification, construction, relocation, or replacement, and to conduct an engineering evaluation of in-service unprotected underground piping every five years. Another commenter suggested double-walled piping as an alternative. One commenter suggested that the recommendation was inappropriate for vaulted tanks because of the configuration of the tanks.

Response to comments. Monthly inspection of aboveground valves, piping, and appurtenances. Inspection of aboveground valves, piping, and appurtenances must be a requirement to help prevent discharges. Such valves, piping, and appurtenances often are located outside of secondary containment systems, and often do not have double-wall protection or some form of secondary containment themselves. Therefore, any discharge from such valves, piping, and appurtenances is more likely to become a discharge as described in § 112.1(b). Examination of discharge reports from the Emergency Response Notification System (ERNS) shows that discharges from such valves, piping, and appurtenances are much more common than catastrophic tank failure or discharges from tanks. The requirement must be applicable to large and small facilities covered by this section that store oil, because of the same threat of discharge.

The requirements of this paragraph do not apply to electrical utilities and other facilities with oil-filled equipment because they are not bulk storage facilities.

The final rule maintains the current standard of “regular” inspections, on the suggestion of commenters who noted that at some remote sites monthly inspections are impractical, especially in harsh weather conditions. Furthermore, we agree with commenters that “regular” inspections are inspections conducted “in accordance with accepted industry standards,” rather than the monthly proposed standard. You must include appurtenances in the inspection. Inspections may be either visual or by

other means, including pressure testing. However, we do not require pressure testing or any other specific method. We agree that, subject to good engineering practice, pressure testing every three or four years may be warranted in addition to regular inspection of aboveground valves, piping, and appurtenances.

However, we believe that regular inspection is sufficient to help prevent discharges and will not impose any additional requirements at this time.

Buried piping. We have deleted the text of the proposed recommendation to conduct annual integrity and leak testing of buried piping or monitor buried piping on a monthly basis from the rule because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. This rule contains only mandatory requirements. However, we continue to endorse the recommendation as a discretionary action, and suggest that you conduct such testing according to industry standards.

We agree with a commenter that the proposed recommendation would apply only to "oil-handling" piping and valves, not all such piping and valves, which may be unrelated to oil activities. However, no change in rule text is necessary because the entire rule applies only to procedures, methods, or equipment that are involved with the storage or use of oil. In response to the commenter who urged that the proposed recommendation not apply to buried piping of less than 10 feet in length, we believe that any buried piping, regardless of length, may cause a discharge, and therefore should be tested. Double-walled piping might be an acceptable alternative to integrity and leak testing or monthly monitoring. If you choose double-walled piping as an alternative, you must explain your nonconformance with the rule requirements, and explain how double-walled piping provides equivalent environmental protection. See 112.7(a)(2).

On the suggestion of commenters, we have modified the proposed recommendation for annual testing or monthly monitoring of buried piping into a requirement that you must only conduct integrity and leak testing of such piping at the time of installation, modification, construction, relocation, or replacement. We believe that when piping is exposed for any reason, integrity and leak testing of such exposed piping according to industry standards is appropriate because piping is visible at that point, and testing is easier because the piping is more accessible. The same commenters also recommended that unprotected

underground piping be subject to engineering evaluations every five years, but we recommend such evaluations be conducted in accordance with industry standards to preserve flexibility in case the time frame changes with changing technology.

If you have vaulted containers, the requirement for integrity and leak testing of buried piping might be the subject of a deviation under § 112.7(a)(2) if those pipes, valves, and fittings come out of the top of the container and are not buried, or are encased in a double-walled piping system and you thereby significantly reduce the potential for corrosion.

Likewise, we have deleted from rule text the recommendation that all valves, pipes, and appurtenances conform to industry standards, but we endorse its substance.

Industry standards. Industry standards that may assist an owner or operator with inspection and testing of valves, piping, and appurtenances include: (1) API Standard 570, "Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems"; (2) API Recommended Practice 574, "Inspection Practices for Piping System Components"; (3) American Society of Mechanical Engineers (ASME) B31.3, "Process Piping"; and, (4) ASME B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols."

Editorial changes and clarifications. "Examine" and "examination" become "inspect" and "inspection." We have deleted the reference to "operating personnel" in the first sentence because all of the requirements of this rule, except when specifically noted otherwise, are the responsibility of the owner or operator.

Section 112.8(d)(5)—Vehicular Traffic

Background. In 1991, we repropoed the current rule concerning warnings to vehicular traffic, because of vehicle size, to avoid endangering aboveground piping. We proposed to amend the rule to include avoidance of endangering "other transfer operations" within the scope of the warning. We added a recommendation that weight restrictions should be posted, as applicable, to prevent damage to underground piping.

Comments. Vehicular warnings. Several commenters supported the current requirement to warn vehicular traffic to avoid endangering aboveground piping or other transfer operations because of vehicle size. Others believed that any size or weight restrictions would unnecessarily burden facility operations. See the comments

below on weight restrictions. Some believed the proposed requirement should be a recommendation based on good engineering practices. One thought it made no difference. One commenter proposed as an alternative, marking such piping so it could be temporarily protected or avoided. One commenter suggested that it would be more prudent to require signs where piping is lower than 14 feet and located such that vehicles can traverse, and recommended that, in addition to signs, verbal warnings be provided.

Weight restriction posting. Several commenters supported making this recommendation a requirement because good engineering practice will exclude heavy equipment from crossing buried piping which does not have adequate cover to protect the pipe.

Others opposed it on the grounds it would restrict access to vehicles which "have driven over the same piping for a dozen or more years." One commenter thought the recommendation was unnecessary because local building codes or other standards already address the issue of buried piping protection. Some thought the recommendation should be a matter of PE discretion. Several commenters thought that the recommendation should apply to large facilities only because only large facilities will have the type of tanker trucks on site which would potentially damage underground piping. One commenter thought that small facilities should be exempt from the recommendation.

Another commenter believed that the recommendation should be restricted to situations where it is not certain that the underground piping can withstand all anticipated vehicular traffic. Another commenter suggested that if buried piping is placed across a thoroughfare, it should be installed with additional structural protection. The commenter asserted that proper installation is a preventative and is a better alternative than a sign because signs are not always heeded.

One commenter suggested that posting of weight restrictions at airports in open areas would be impractical and impact operations. The commenter argued that the proposal was unreasonable where some buried piping/hydrant systems run under ramp surfaces. A railroad commenter argued that the recommendation is overly broad because railroads have a large amount of piping under track that is built to withstand maximum loads from vehicular traffic, making the posting of signs unnecessary and costly. One commenter argued that the requirement was inapplicable to vaulted tanks

because the concrete vault reduced the risk of vehicular damage.

Response to comments. Vehicular warnings. The requirement to warn vehicular traffic so that no vehicle will endanger aboveground piping or other oil transfer operations applies to all facilities, large or small, because vehicular traffic may endanger aboveground piping or other transfer operations at all facilities. Warnings may include verbal warnings, signs, or marking and temporary protection of piping or equipment. No particular height restriction is incorporated into the rule. Rather, aboveground piping at any height must be protected from vehicular traffic unless the piping is so high that all vehicular traffic passes underneath the piping. In this case, or where the requirement is infeasible, you may be able to use the deviation provision in § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection. We have deleted the clause concerning the size of vehicles that may endanger piping or oil transfer operations because the owner or operator may not be able to determine precisely when the size or weight of a vehicle would cause such endangerment.

In response to commenters who suggested that the posting of signs is impractical and might impact operations, or would be very costly, we note that you may deviate from the requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Weight restriction posting. We deleted the proposed recommendation concerning weight restrictions as they relate to underground piping from rule text, but still support it when appropriate. We include only mandatory items in this rule because we do not wish to confuse the regulated public as to what is mandatory and what is discretionary. We decline to make the recommendation a requirement because we believe the appropriate posting of weight restrictions should be a matter of good engineering practice.

Editorial changes and clarifications. We deleted the references to verbal warning or appropriate signs in the rule. Instead, the rule contains an obligation to warn entering vehicular traffic. Warnings may be verbal, by signs, or by other appropriate methods.

Introduction to Section 112.9

Background. We have added an introduction to help rewrite the section in the active voice. Since the owner or

operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Section 112.9(a)—General Requirements—Onshore Oil Production Facilities

Background. This is a new provision that merely references the general requirements which all facilities must meet as well as the specific requirements that you must meet if you are an owner or operator of a facility in the category of onshore oil production facilities.

Editorial changes and clarifications. The obligation to “address” general SPCC requirements becomes the obligation to “meet” those requirements. “Spill prevention” becomes “discharge prevention.” We also deleted the word “onshore” from the titles of the paragraphs of this section because the entire section applies only to onshore production facilities.

Proposed Section 112.9(b)—Definition—Onshore Oil Production Facilities

Background. This proposed section was merely a reference to the old definition of onshore oil production facility (*see* current § 112.7(e)(5)(i)), which is today incorporated within the new definition of production facility. Therefore, the section is no longer necessary and we have deleted it.

Section 112.9(b)(1), Proposed as § 112.9(c)(1)—Dike Drains and Drainage

Background. In 1991, we repropoed the current rule concerning drainage of diked areas.

Comments. Editorial changes and clarifications. One commenter suggested an editorial change from discharges to “navigable waters,” to a discharge as referenced in § 112.1(b)(1).

Applicability. Another commenter urged a small facility exemption from this requirement because the recordkeeping involved was too burdensome.

Engineering methods. One commenter believed that the requirement to have all drains closed on dikes around storage containers might preclude engineering methods designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged.

Response to comments. Applicability. We believe that this requirement must be applicable to both large and small facilities to help prevent discharges as

described in § 112.1(b). The risk of such a discharge and the accompanying environmental damage may be devastating whether it comes from a large or small facility. We disagree that the recordkeeping is burdensome. If you are an NPDES permittee, you may use the stormwater drainage records required pursuant to 40 CFR 122.41(j)(2) and 122.41(m)(3) for SPCC purposes, thereby reducing the recordkeeping burden.

Engineering methods. “Equivalent” measures referenced in the rule might, depending on good engineering practice, include using structures such as stand pipes designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged. Any alternate measures must provide environmental protection equivalent to the rule requirement.

Industry standards. Industry standards that may assist an owner or operator with facility drainage include API Recommended Practice 51, “Onshore Oil and Gas Production Practices for Protection of the Environment.”

Editorial changes and clarifications. In response to the commenter’s suggestion, the reference to “navigable waters” becomes a reference to “a discharge as described in § 112.1(b).” “Central treating stations” becomes “separation and treating areas.” Such areas might be centrally located or located elsewhere at the facility and might include both separation and treatment devices and equipment. The reference to “rainwater is being drained” becomes “draining uncontaminated rainwater.” We clarify that accumulated oil on rainwater must be disposed of in accord with “legally approved methods,” not “approved methods.”

Section 112.9(b)(2)—Proposed as § 112.9(c)(2)—Drainage Ditches, Accumulations of Oil

Background. In 1991, we sought to clarify that oil as well as oil-contaminated soil must be removed from field drainage ditches, road ditches, and the like. The current rule only requires removal of an “accumulation of oil.” We also proposed that such accumulations be removed within 72 hours at the most.

Comments. Applicability. One commenter asserted that this section does not apply to crude oil transfers from production fields into tank trucks because any discharges in the transfer process would be caught in a small

sump or catchment basin. Another commenter asked if this section applied to cleanup of oil and oil-contaminated soil from diked areas.

Inspection schedule. Another commenter suggested that we require inspections of field drainage ditches, etc., at monthly intervals and within 24 hours of a 25-year storm event.

Accumulations of oil and oil-contaminated soil. Two commenters argued that EPA lacks authority to require cleanup of contaminated soil. Others asked for clarifications of the terms "accumulation" and "oil-contaminated soil." Another asked what cleanup standard EPA contemplated under this rule. The commenter elaborated, "is accumulated oil and contaminated soil to be removed from diked areas under this provision?"

72-hour cleanup standard. Several commenters argued that the 72-hour standard for cleanup would preclude bioremediation or other cleanup techniques allowed by State and local law. Several commenters suggested other time periods, including "as soon as practical," "within a timely manner." Some suggested no time standard is appropriate. Those commenters generally thought that a 72-hour period might be unrealistic in certain cases.

Response to comments. Applicability. Crude oil transfers from production fields into tank trucks or cars are covered by the general requirements contained in § 112.7(c) and (h), both of which require some form of secondary containment. Cleanup of oil, oil-contaminated soil, and oil-contaminated materials from field drainage ditches, road ditches, or other field drainage system is covered by this paragraph. In response to comment, we note that cleanup of oil from diked areas at onshore production facilities is not specifically covered by the rules. However, the presence of oil in diked areas may impair the quality of the dike or the capacity for secondary containment, and if so, the oil must be removed.

Inspection schedule. We have retained the "regularly scheduled intervals" standard for inspections. This standard means regular inspections according to industry standards or on a schedule sufficient to prevent a discharge as described in § 112.1(b). Whatever schedule for inspections is selected must be documented in the Plan. We decline to specify a specific interval because such an interval might become obsolete with changing technology.

Accumulations of oil and oil-contaminated soil. We have adequate authority to require cleanup of an

accumulation of oil, including on soil and other materials, because section 311(j)(1)(C) of the CWA provides EPA with the authority to establish procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. The broad definition of "oil" in CWA section 311(a)(1) covers "oil refuse" and "oil mixed with wastes other than dredged spoil." If field drainage systems allow the accumulation of oil on the soil or other materials at the onshore facility and that oil threatens navigable water or adjoining shorelines, then EPA has authority to establish a method or procedure, i.e., the removal of oil contaminated soil, to prevent that oil from becoming a discharge as described in § 112.1(b). The cleanup standard under this paragraph requires the complete removal of the contaminated oil, soil, or other materials, either by removal, or by bioremediation, or in any other effective, environmentally sound manner.

72-hour cleanup standard. We agree that the 72-hour cleanup standard might preclude bioremediation and have therefore deleted it. Instead we establish a standard of "prompt cleanup." "Prompt" cleanup means beginning the cleanup immediately after discovery of the discharge or immediately after any actions necessary to prevent fire or explosion or other imminent threats to worker health and safety.

Editorial changes and clarifications. "Escaped from small leaks" becomes "resulted from any small discharge." We eliminate the term "oil-contaminated soil" because oil must accumulate on something, such as materials or soil. We retain the term "accumulation of oil," but elaborate on its meaning. "Accumulation of oil" means a discharge that causes a "film or sheen" within the field drainage system, or causes a sludge or emulsion there (see 40 CFR 110.3(b)). An accumulation of oil includes anything on which the oil gathers or amasses within the field drainage system. An accumulation of oil may include oil-contaminated soil or any other oil-contaminated material within the field drainage system. See also the discussion of "accumulation of oil" included with the response to comments of § 112.8(c)(10).

*Proposed Section 112.9(c)(3)—
Additional Requirements for Flood
Events*

Background. In 1991, we proposed a new recommendation for oil production facilities in areas subject to flooding. We recommended that the Plan address additional precautionary measures related to flooding. In the discussion of

the proposal, we referenced FEMA requirements.

Comments. One commenter thought this provision should be a requirement rather than a recommendation. Another commenter suggested that exploration and production facilities located in flood plain areas should be adequately secured through proper mechanical/engineering methods to reduce the chance of loss of product. A third commenter suggested the following specific measures to be implemented: (1) Identify whether the facility is located in a floodplain in the Plan; (2) if the facility is located in a floodplain, the Plan should address to what extent it meets the minimum requirements of the National Flood Insurance Program (NFIP); and (3) if a facility does not meet the minimum requirements of the NFIP, the Plan should address appropriate precautionary and mitigation measures for potential flood-related discharges.

Response to comments. We have deleted the recommendation because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. These rules contain only mandatory requirements. However, we support the substance of the recommendation, and suggest that a facility in an area prone to flooding either follow the requirements of the NFIP or employ other methods based on good engineering practice to minimize damage to the facility from a flood.

*Section 112.9(c)(1)—Proposed as
§ 112.9(d)(1)—Materials and
Construction—Bulk Storage Containers*

Background. In 1991, we repropose the section on materials and construction of bulk storage containers with an added recommendation that containers conform to relevant industry standards.

Comments. One commenter thought that the recommendation for use of industry standards should be a requirement. The commenter asked that at a date certain, all existing tanks must be upgraded to current standards, and that all new and reconstructed tanks must be subject to applicable codes. Another commenter suggested that the recommendation should not apply to crude oil storage tanks because local industry standards are more appropriate.

Response to comments.
Recommendation v. requirement. We are retaining the mandatory requirement to use no container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage, as proposed. We have deleted the recommendation that materials, installation, and use of

new tanks conform with relevant portions of industry standards because we do not wish to confuse the regulated public over what is mandatory and what is discretionary. However, we endorse its substance. In most cases good engineering practice and liability concerns will prompt the use of industry standards. See § 112.3(d)(1)(iii). In addition, a requirement is not necessary or desirable because local governmental standards on construction, materials, and installation sometimes control industry standards on these matters.

Industry standards. Industry standards that may assist an owner or operator with materials for and construction of onshore bulk storage production facilities include: (1) API Specification 12B, "Bolted Tanks for Storage of Production Liquids"; (2) API Specification 12D, "Field Welded Tanks for Storage of Production Liquids"; (3) API Specification 12F, "Shop Welded Tanks for Storage of Production Liquids"; (4) API Specification 12J, "Oil Gas Separators"; (5) API Specification 12K, "Indirect-Type Oil Field Heaters"; and, (6) API Specification 12L, "Vertical and Horizontal Emulsion Treaters."

Editorial changes and clarifications. "Tank" becomes "container."

Section 112.9(c)(2)—Proposed as § 112.9(d)(2)—Secondary Containment, Drainage

Background. The SPCC Task force concluded that aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. We noted that the proposed rule modifications would "retain the current requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific contingency plans in lieu of prevention systems." 56 FR 54614. In 1991, we therefore repropose the secondary containment requirements for onshore oil production facilities with a clarification. We clarified that secondary containment must include sufficient freeboard to allow for precipitation. The current rule requires that drainage from undiked areas must be safely confined in a catchment basin or holding pond. The proposed rule had modified this requirement to apply only to drainage from undiked areas "showing a potential for contamination."

Comments. Secondary containment. See the discussion under § 112.7(c) of secondary containment in general. One commenter suggested that the requirement was too vague and

comprehensive to be applied to oil leases, which might cover hundreds of acres. Another asked how we would determine what is sufficient freeboard.

Drainage. One commenter thought the drainage requirement was duplicative of NPDES requirements.

Response to comments. Secondary containment. The requirement applies to oil leases of any size. Secondary containment is not required for the entire leased area, merely for the contents of the largest single container in the tank battery, separation, and treating facility installation, with sufficient freeboard to contain precipitation. In response to the comment as to how an owner or operator might determine how much freeboard is sufficient, we have revised the rule to provide that freeboard sufficient to contain precipitation is the standard. Freeboard sufficient to contain precipitation is freeboard installed according to industry standards, or in an amount sufficient to avert a discharge as described in § 112.1(b). This standard is consistent with the amount of freeboard required in § 112.8(c)(2).

Drainage. We deleted the proposed reference to undiked areas "showing a potential for contamination" because drainage from any undiked area poses a threat of contamination. When drainage from such areas is covered by stormwater discharge permits, that part of the BMP might be usable for SPCC purposes. There is no redundancy in recordkeeping requirements, because you can use your NPDES records for SPCC purposes.

Industry standards. Industry standards that may assist an owner or operator with secondary containment at onshore production facilities include: (1) API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment"; (2) NFPA 30, "Flammable and Combustible Liquids Code"; and, (3) BOCA, "National Fire Prevention Code."

Editorial changes and clarifications. "Tank battery and central treating plant installations" becomes "tank battery, separation, and treating facility installations." "Contents of the largest single tank" becomes "capacity of the largest single container." With this change, this paragraph agrees with general secondary containment requirements found in § 112.7(c). The reference to tanks "in use" was deleted because it is redundant. Containment for tanks or containers that are not permanently closed is already required. We deleted the phrase "if feasible, or alternate systems, such as those outlined in § 112.7(c)(1)," because it is

confusing when compared to the text of § 112.7(d). Under § 112.7(d), if secondary containment is not practicable, you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with the requirements of § 112.7(d). Furthermore, you are also free to provide alternate systems of secondary containment. We do not prescribe the method.

Section 112.9(c)(3)—Proposed as § 112.9(d)(3)—Container Inspection

Background. In 1991, we proposed that you must visually examine all containers of oil at onshore production facilities at least once a year. The current requirement is that you examine these containers "on a scheduled periodic basis." We also proposed that you would be required to maintain the schedule and records of those examinations for a period of five years, irrespective of changes in ownership.

Comments. Frequency of inspection. One commenter favored the proposal. One commenter suggested quarterly rather than annual inspections. Two commenters suggested triennial inspections. Other commenters suggested a frequency in accordance with API recommended standards.

Extent of inspection. Several commenters thought that the inspections should be external only, and should not necessarily include the foundations and supports (as proposed) because of the number of containers that would be taken out of service with that requirement. Another commenter asserted that inspection of foundations and supports might not be possible due to foundation settlement or lack of space to perform the inspection.

Response to comments. Frequency of inspection. We have maintained the current standard for frequency of inspection because we agree that inspections in accordance with industry standards are necessary. Those standards may change with changing technology, therefore, a frequency of "periodically and upon a regular schedule" preserves maximum flexibility and upholds statutory intent.

Extent of inspection. We disagree that the inspection of containers should be limited to external inspection. Internal inspection is also necessary to detect possible flaws that could cause a discharge. The inspection must also include foundations and supports that are on or above the surface of the ground. If for some reason it is not practicable to inspect the foundations and supports, you may deviate from the requirement under § 112.7(a)(2), if you explain your rationale for

nonconformance and provide equivalent environmental protection.

Record maintenance. We have deleted the proposed requirement to maintain records of these inspections for five years, irrespective of ownership, because it is redundant with the general requirement in § 112.7(e) to maintain Plan records. Section 112.7(e) requires record maintenance for three years. However, you should note that certain industry standards (for example, API Standard 653 or API Recommended Practice 12R1) may specify that an owner or operator maintain records for longer than three years.

Industry standards. Industry standards that may assist an owner or operator with inspection of containers at onshore production facilities include: (1) API Recommended Practice 12R1, "Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service"; and, (2) "API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Editorial changes and clarifications. "Visually examine" becomes "Visually inspect." "All tanks" becomes "each container." "Foundation and supports of tanks above the ground surface" becomes "Foundation and support of each container that is on or above the surface of the ground."

Section 112.9(c)(4)—Proposed as § 112.9(d)(4)—Good Engineering Practice

Background. In 1991, we proposed to convert the current requirement for "fail-safe" engineering (which includes vacuum protection and other measures) of new and old tank battery installations into a recommendation. We also proposed that you reference appropriate industry standards.

Comments. One commenter asserted that we should retain the original requirement to avoid confusion among the regulated community, help improve spill prevention, and because we proposed a similar requirement for bulk storage containers. Another commenter opposed the proposed recommendation because he believed the cost of such engineering would be prohibitive. Two commenters sought an exemption for small facilities on the same rationale. Similarly, some commenters opposed the proposed recommendation on vacuum protection because of the potential cost. None of the commenters provided their own cost estimates. Some commenters opposed the proposed recommendation relating to vacuum protection because of the potential cost, which they estimated as "in excess of \$100 per tank."

Response to comments. Good engineering practice. We agree with the commenter that we should retain this section as a requirement both to improve spill prevention and to avoid confusion among the regulated community because of the similar requirement for bulk storage containers at facilities other than production facilities. Therefore, there are no new costs. Nevertheless, you have flexibility as to which measures you use, and may choose the least expensive alternative listed in § 112.9(c)(4). For example, should vacuum protection be too costly, you are free to use another alternative. Furthermore, you may also deviate from the requirement under § 112.7(a)(2) if you can explain nonconformance and provide equivalent environmental protection by some other means. We revised the paragraph on vacuum protection to clarify that the rule addresses any type of transfer from the tank, not merely a pipeline run.

Industry standards. Industry standards that may assist an owner or operator with alarm systems include: (1) API, "Manual of Petroleum Measurement Standards"; (2) API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment"; (3) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"; and, (4) NFPA 30, "Flammable and Combustible Liquids Code."

Editorial changes and clarifications. "Fail-safe" engineering becomes "good engineering practice," because fail-safe engineering is a misnomer. The change in terminology does not imply any substantive change in the level of environmental protection required, it is merely editorial. See the comments, and the discussion under "Editorial changes and clarification," § 112.8(c)(8). The same reasoning applies to this paragraph. We deleted the phrase "as far as is practical," because it is confusing when compared to the text of § 112.7(a)(2). Under § 112.7(a)(2), you may explain your reasons for nonconformance, and provide equivalent environmental protection by some other means. We deleted the recommendation to reference appropriate industry standards because it was unnecessary. You must discuss actual standards used in the Plan. Section 112.3(d)(1)(iii) also requires the Professional Engineer to certify that he has considered applicable industry standards in the preparation of the Plan. Also in the introductory paragraph, the phrase "Consideration shall be given to providing.* * *" becomes, "You must provide.* * *" This change makes the

language consistent with a companion paragraph dealing with good engineering design, *i.e.*, § 112.8(c)(8). In paragraph (c)(4)(i), "regular rounds" becomes "regularly scheduled rounds." "Spills" becomes "discharges." In paragraph (c)(4)(iv), the phrase "where facilities are" becomes "where the facility is." Elsewhere "tank" becomes "container."

Section 112.9(d)(1)—Proposed as § 112.9(e)(1)—Inspection of Aboveground Valves and Piping

Background. In 1991, we proposed that you inspect monthly all aboveground valves and pipelines, and that you maintain records of such inspections for five years. The current requirement is that you examine such valves and pipelines "periodically on a scheduled basis," and maintain the records of such inspections for three years.

Comments. Editorial changes and clarifications. One commenter asked for clarifying language that the rule only applied to valves and piping associated with transfer operations.

Applicability. Two commenters asked for an exemption from the requirements of this paragraph for small facilities.

Frequency of inspections. Several commenters suggested alternate inspection intervals, such as every six months, or every year. Another commenter suggested that monthly inspections are meaningless because some unscrupulous operators might fill out inspection reports on dates when no problems are to be found. Other commenters suggested that we require a performance standard instead of a prescribed monthly inspection. One commenter suggested the proposed inspections standards for § 112.9(e) were excessive for many small facilities. The commenter suggested that a standard defined by the licensed Professional Engineer who certifies the SPCC Plan could reflect the differing requirements that may apply under different equipment configurations as well as differing geographical and meteorological conditions. The commenter added that a generalized performance standard should be included that includes a minimum inspection interval, such as annual inspection, which could be altered to meet specific facility conditions.

Recordkeeping. One commenter thought a five-year record retention period is excessive. Another commenter asked that we clarify that PE certification of these regular inspections and records is not required.

Response to comments. Applicability. The rule must apply equally to large and

small facilities because failure to inspect piping and valves at any facility might lead to a discharge as described in § 112.1(b).

Frequency of inspections. We have retained the current inspection frequency of periodic inspections, but editorially changed it to “upon a regular schedule.” Our decision accords with the comment which sought a performance standard instead of a prescribed monthly inspection. The standard of inspections “upon a regular schedule” means in accordance with industry standards or at a frequency sufficient to prevent discharges as described in § 112.1(b). Whatever frequency of inspections is selected must be documented in the Plan.

Recordkeeping. We agree that a five-year record retention period is longer than necessary and have deleted the proposed requirement in favor of the general requirement in § 112.7(e) to maintain records for three years. However, comparison records for compliance with certain industry standards may require an owner or operator to maintain records for longer than three years. PE certification of these inspections and records is not required.

Editorial changes and clarifications. “Examine” becomes “inspect.” We agree with the commenter who asked for clarification that the rule applies only to inspections related to transfer operations and have amended the rule to reflect that. A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

Section 112.9(d)(2)—Proposed as § 112.9(e)(2)—Salt Water Disposal Facilities

Background. In 1991, we repropoed without change the current requirements on the examination of salt water (oil field brine) disposal facilities. The current requirement is that you examine these facilities “often.” However, we have recommended weekly examination as an appropriate engineering standard for most facilities. 56 FR 54624. We noted that low temperature conditions, sudden temperature changes, or periods of low flow rates may require more frequent inspections.

Comments. Applicability. One commenter suggested that the requirement to examine these facilities should not apply to storage facilities with de minimis amounts of oil.

Sudden change in temperature.

Another commenter asked for clarification of what “a sudden change in temperature” means. The commenter assumed that it meant a sudden drop that could cause system upsets.

Response to comments. Applicability. The rule applies to any regulated facility with salt water disposal if the potential exists to discharge oil in amounts that may be harmful, as defined in 40 CFR 110.3. This standard is necessary to protect the environment.

Sudden change in temperature. A sudden change in temperature means any abrupt change in temperature, either up or down, which could cause system upsets.

Frequency of inspections. Inspections of these facilities must be conducted “often.” “Often” means in accordance with industry standards, or more frequently, if as noted, conditions warrant. Whatever frequency of inspections is chosen must be documented in the Plan.

Editorial changes and clarifications. “Examine” becomes “inspect.” “Oil discharge” becomes “discharge,” because the term “oil” is redundant in the definition of “discharge.”

Section 112.9(d)(3)—Proposed as § 112.9(e)(3)—Flowline Maintenance

Background. In 1991, we repropoed the current requirements for flowline maintenance. We proposed a recommendation, rather than a requirement, that the program include certain specifics, because of differences in the circumstances of locations, staffing, and design for production facilities. We suggested that monthly examinations are appropriate for most facilities.

Comments. Applicability. Two commenters asked for a small facility exemption for this recommendation.

Frequency of inspections. Several commenters suggested that the recommendation refer to periodic instead of monthly examinations. Others suggested annual or quarterly inspections. One commenter said that monthly inspection of gathering lines buried in the colder parts of the Appalachian basin is impossible.

Corrosion protection. Several commenters asserted that the provision for corrosion protection for the bare steel pipe used for gathering line systems in the Appalachians is impossible because the cost of coated lines and cathodic protection is prohibitive. None of the commenters provided their own cost estimates.

Transfer operation. One commenter asked for clarification of the term “oil production facility transfer operation.”

The commenter suggested that a definition of the term would improve compliance.

Response to comments. Applicability. A program of flowline maintenance is necessary to prevent discharges both at large and small facilities. However, we have deleted the proposed recommendation regarding the specifics of the program from the rule. We took this action because we are not including recommendations in the rule in order not to confuse the public over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

Frequency of inspections. In the proposed recommendation we suggested that you conduct monthly inspections for a flowline maintenance program. We now recommend that you conduct inspections either according to industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). Under § 112.3(d)(1)(iii), the Professional Engineer must certify that the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards.

Corrosion protection, flowline replacement. While we have deleted the recommendation from rule text due to reasons explained above and therefore, the rule imposes no new costs, we recommend corrosion protection, we recommend corrosion protection, and flowline replacement when necessary, because those measures help to prevent discharges as described in § 112.1(b).

Transfer operation. A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

Editorial changes and clarifications. “Spills” becomes “discharges.” The phrase “from this source” becomes “from each flowline.”

Section 112.10—Introduction—Onshore Oil Drilling and Workover Facilities

Background. This paragraph is a new one, not proposed in 1991, but editorially added to allow us to rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Section 112.10(a)—General and Specific Requirements

Background. This is a new paragraph that merely references the general

requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

Comments. One commenter asked for a definition of “onshore drilling and workover facilities.”

Editorial changes and clarifications. The new definition for “production facility” in § 112.2 includes the procedures, methods, and equipment referenced in this section, making a definition of “onshore drilling and workover facilities” unnecessary. “Spill prevention” becomes “discharge prevention.” To “address” requirements becomes to “meet” requirements.

Section 112.10(b)—Mobile Facilities

Background. In 1991, we repropose the current rule on the location of mobile facilities without substantive change.

Comments. Editorial changes and clarifications. One commenter asked that the requirement be limited to discharges to navigable waters.

Site location. One commenter opposed the requirement on the location of mobile facilities because the facility contractor has absolutely no control over the location of the rig unit. The commenter added that the contractor is instructed by the site owner/operator where to place the rig unit generally, and the sites are where oil and gas are expected to be located. The physical location of the well site is constructed by and maintained by the owner/operator of the lease. The contractor has no input as to site design nor responsibility for its maintenance.

Response to comments. Site location. We agree with the commenter that the contractor is not normally responsible for site location, nor site design or maintenance. Such decisions are the responsibility of the facility owner or operator. The owner or operator of the facility has the responsibility to locate equipment so as to prevent discharges as described in § 112.1(b).

Editorial changes and clarifications. The applicable limitation on discharges in the rule tracks the statute. The commenters requested that discharges be limited to discharges to “navigable waters.” However, the correct scope of discharge prevention is not merely navigable waters, but the entire range of protected resources described in § 112.1(b). We therefore use the phrase “a discharge as described in § 112.1(b).”

Section 112.10(c)—Secondary Containment—Catchment Basins or Diversion Structures

Background. In 1991, we repropose without substantive change the current

requirements for secondary containment. We received no comments on the proposal. Therefore, we have promulgated it as proposed, with minor editorial changes.

Industry standards. Industry standards that may assist an owner or operator with secondary containment at onshore oil drilling and workover facilities include: (1) API Recommended Practice 52, “Land Drilling Practices for Protection of the Environment”; (2) NFPA 30, “Flammable and Combustible Liquids Code”; and, (3) BOCA, “National Fire Prevention Code.”

Editorial changes and clarifications. “Spills” becomes “discharges.” The words “depending on the location” were deleted because they were confusing when compared with the text of § 112.7(d). If a catchment basin or diversion structure or other form of secondary containment is not practicable from the standpoint of good engineering practice, under § 112.7(d) you must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with § 112.7(d).

Section 112.10(d)—Blowout Prevention (BOP)

Background. In 1991, we proposed that blowout prevention (BOP) assembly would only be required “when necessary.” The rationale was that a BOP assembly is not necessary where pressure is not great enough to cause a blowout (gauge negative) and is not required in all cases. We noted that the necessity of BOP assembly hinges on the “history of the pressures encountered when drilling on the oil reservoir.” When that history is unknown, BOP assembly is required.

Comments. Several commenters urged modification of the rule to exclude well service jobs that may not need BOP assembly, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor.

Response to comments. Service jobs. Where BOP assembly is not necessary, as for certain routine service jobs, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor, you may deviate from the requirement under § 112.7(a)(2), and explain its absence in the Plan. When BOP assembly is unnecessary because pressures are not great enough to cause a blowout, it is likewise unnecessary to provide equivalent environmental protection.

Industry standards. Industry standards that may assist an owner or operator with blowout prevention assembly include: (1) API

Recommended Practice 16E, “Design of Control Systems for Drilling Well Control Equipment”; (2) API Recommended Practice 53, “Blowout Prevention Equipment Systems for Drilling Operations”; (3) API Specification 16A, “Drill Through Equipment”; and, (4) API Specification 16D, “Control Systems for Drilling Well Control Equipment.”

Editorial changes and clarifications. We deleted the phrase “as necessary” from the requirement, because it is confusing when compared to the text of § 112.7(a)(2). When BOP assembly is unnecessary and therefore no alternate measure is required, you may deviate from the requirement under § 112.7(a)(2) if you explain your reasons for nonconformance. We have deleted as surplus the last sentence of the rule requiring that casing and BOP installations must be in accordance with State regulatory requirements. Adherence to State regulatory requirements is mandatory under State law in any case. The phrase “is expected to be encountered” becomes “may be encountered.”

Section 112.11—Introduction—Offshore Oil Drilling, Production, or Workover Facilities

Background. We added an introduction as an editorial device to allow us to rewrite the section in the active voice. Because the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Section 112.11(a)—General and Specific Requirements—Offshore Oil Drilling, Production, or Workover Facilities

Background. This is a new paragraph that merely references the general requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

Comments. State rules. One commenter thought § 112.11 should be deleted because current State rules provide adequate spill protection in inland water areas such as lakes, rivers, and wetlands.

Response to comments. State rules. We disagree with the commenter that these rules are unnecessary because not every State has rules to protect offshore drilling, production, and workover facilities. While some States may have rules, some State rules may not be as stringent as the Federal rules. In any case, Congress has intended us to establish a nationwide Federal program to protect the environment from the

dangers of discharges as described in § 112.1(b) posed by this class of facilities. Therefore, we have retained the section, as modified. We note, however, that if you have a State SPCC plan or other regulatory document acceptable to the Regional Administrator that meets all Federal SPCC requirements, you may use it as an SPCC Plan if you cross reference the State or other requirements to the Federal requirement. If it meets only some, but not all Federal SPCC requirements, you must supplement it so that it meets all of the SPCC requirements.

Editorial changes and clarifications. “Spill prevention” becomes “discharge prevention.” The obligation to “address” requirements and procedures becomes the obligation to “meet” them.

Proposed Section 112.11(b)—Definition Reference; MMS Jurisdiction

Background. The proposed 1991 section referenced the definition of “offshore oil drilling, production, and workover facility,” which is now encompassed within the definition of “production facility” in § 112.2. A new sentence would have referenced the exemption of facilities subject to Minerals Management Service (MMS) Operating Orders, notices, and regulations from the SPCC rule. MMS jurisdiction is outlined in Appendix B to part 112.

Comments. One commenter suggested that we delete the reference to the proposed definition and to the applicability section.

Response to comments. We agree. Since none of the proposed language is mandatory, we have deleted it because we have included only mandates in this rule so as not to confuse the regulated public over what is required and what is discretionary.

Section 112.11(b)—Proposed as § 112.11(c)—Facility Drainage

Background. In 1991, we repropoed the current section on facility drainage with the modification to require removal of collected material at least once a year. The rationale was to prevent a buildup of accumulated oils. We noted that a protracted removal period could lead to an accidental excess buildup and resultant overflow.

Comments. Two commenters recommended deletion of the proposed requirement to remove collected oil as often as necessary, but at least once a year, because the current requirement is sufficient.

Response to comments. Removal of collected oil. EPA agrees with the commenter’s suggestion that the current

rule is sufficient to prevent discharges as described in § 112.1(b), and therefore we have deleted the “at least once a year” standard. You must remove collected oil as often as is necessary to prevent such discharges.

Editorial changes and clarifications. “Discharging oil as described in § 112.1(b)(1)” becomes “having a discharge as described in § 112.1(b).” In the second sentence, we deleted the phrase “or equivalent collection system sufficient,” because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance, and provide equivalent environmental protection.

Section 112.11(c)—Proposed as § 112.11(d)—Sump Systems

Background. In 1991, we proposed to clarify language in current rule that a regularly scheduled maintenance program is a monthly preventive maintenance program.

Comments. Frequency of inspections. One commenter recommended that a semi-annual inspection and testing program of the liquid removal system, instead of monthly inspection and testing would be preferable.

Response to comments. Frequency of inspections. We have retained the current rule language requiring a “regularly scheduled” preventive maintenance program because we believe that the frequency of maintenance should be in accordance with industry standards or frequently enough to prevent a discharge as described in § 112.1(b). Whatever schedule is chosen must be documented in the Plan.

Editorial changes and clarifications. We deleted the phrase “or equivalent method” from the first sentence because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(d)—Proposed as § 112.11(e)—Discharge Prevention Systems for Separators and Treaters

Background. In 1991, we repropoed without substantive change the current rule on discharge prevention systems for separators and treaters. We received no comments.

Editorial changes and clarifications. “Escape” of oil becomes “discharge” of oil. “Oil discharges” becomes “discharge of oil.” We deleted the phrase from the last sentence which allows “using other feasible alternatives

to prevent oil discharges,” because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(e)—Proposed as § 112.11(f)—Atmospheric Storage or Surge Containers; Alarms

Background. In 1991, we repropoed without substantive change the current paragraph on alarm systems for atmospheric storage or surge containers. We received no comments. Therefore, we have promulgated the rule as proposed, with only minor editorial changes.

Editorial changes and clarifications. “Oil discharges” becomes “discharges.” We added the words “that activate an alarm or control the flow” to clarify that these activities, along with “otherwise” controlling discharges, are the purpose of the sensing devices we reference in the paragraph. The phrase “to activate” becomes “that activate,” and we add the word “otherwise” before “prevent discharges.” We deleted the phrase “or other acceptable alternatives,” because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(f)—Proposed as § 112.11(g)—Pressure Containers; Alarm Systems

Background. In 1991, we repropoed the current rule concerning pressure tanks without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. “Tanks” becomes “containers.” “Oil discharges” becomes “discharges.” We deleted the phrase “or with other acceptable alternatives to prevent discharges,” because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(g)—Proposed as § 112.11(h)—Corrosion Protection

Background. In 1991, we repropoed the current paragraph requiring corrosion protection for containers at facilities subject to this section. We added a recommendation that you follow National Association of

Corrosion Engineers standards for corrosion protection.

Comments. Industry standards. One commenter suggested that we remove the last sentence, which is advisory, and addresses industry standards of the National Association of Corrosion Engineers, or make it a requirement (at least for new construction). Another commenter suggested that the rule be modified to incorporate other industry recommended practices relative to corrosion control, such as those of STI and API. The commenter specifically recommended STI Recommended Practice R892–89, “Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems,” and STI Recommended Practice 893–89, “Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors.”

Response to comments. Industry standards. In response to the comment, we have deleted the recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. These rules contain only mandatory requirements. We expect that facilities will follow industry standards for corrosion protection as well as other matters (see § 112.3(d)(iii)), but decline to prescribe particular standards in the rule text because those standards are subject to change, and we will not incorporate a potentially obsolescent standard into the rules.

Industry standards. Industry standards suggested by a commenter that may assist an owner or operator with corrosion include: (1) National Association of Corrosion Engineer standards; (2) STI Recommended Practice R892, “Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems,” and, (3) STI Recommended Practice 893, “Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors.”

Editorial changes and clarifications. “Tanks” becomes “containers.”

Section 112.11(h)—Proposed as § 112.11(i)—Pollution Prevention System Procedures

Background. In 1991, we repropoed without substantive change the current requirements concerning written procedures for inspecting and testing pollution prevention equipment and systems. We received no substantive comments. Therefore, we have

promulgated the rule as proposed with minor editorial changes.

Editorial changes and clarifications. “As part of the SPCC Plan” becomes “within the Plan.”

Section 112.11(i)—Proposed as § 112.11(j)—Pollution Prevention Systems; Testing and Inspection

Background. In 1991, we repropoed the current rule on testing and inspection of pollution prevention systems. Additionally, we proposed that simulated spill testing must be the preferred method to test and inspect oil spill prevention equipment and systems. We also proposed that pollution prevention systems must be tested at least monthly. The current standard calls for testing and inspection “on a scheduled periodic basis.”

Comments. Some commenters suggested that simulation testing on a monthly basis is excessive. Commenters suggested instead testing on a semi-annual or annual basis.

Response to comments. Frequency of testing. We have retained the current requirement for testing on a “scheduled periodic basis” commensurate with conditions at the facility because we believe that testing should follow industry standards or be conducted at a frequency sufficient enough to prevent a discharge as described in § 112.1(b) rather than any prescribed time frame. Whatever frequency is chosen must be documented in the Plan.

Editorial changes and clarifications. In the first sentence, “or other appropriate regulations” becomes “and any other appropriate regulations.” In the second sentence, “spill testing” becomes “simulated discharges for testing.” We have deleted from the last sentence the phrase “unless the owner or operator demonstrates that another method provides equivalent alternative protection” because it is confusing when compared to the text of § 112.7(a)(2). You may deviate from a requirement under § 112.7(a)(2) if you explain your reasons for nonconformance and provide equivalent environmental protection.

Section 112.11(j)—Proposed as § 112.11(k)—Surface and Subsurface Well Shut-in Valves and Devices

Background. In 1991, we repropoed the current section concerning surface and subsurface well shut-in valves and devices. We proposed an additional requirement that records for each well must be kept for five years. We received no substantive comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications.

In today’s rule, we kept the recordkeeping requirement, but deleted language requiring maintenance of those records for five years. The effect of the deletion is that records become subject to the general three-year recordkeeping requirement. See § 112.7(e). You may keep the records as part of the Plan or may keep them with the Plan.

Section 112.11(k)—Proposed as § 112.11(l)—Blowout Prevention

Background. In 1991, we repropoed the current rule concerning blowout prevention without substantive change.

Comments. One commenter suggested that there are occasions when blowout prevention is not warranted or impractical to implement and that there should be an exception for drilling below conductor casing.

Response to comments. Alternatives. The question of whether blowout prevention is warranted or impractical or not for drilling below conductor casing is one of good engineering practice. Acceptable alternatives may be permissible under the rule permitting deviations (§ 112.7(a)(2)) when the owner or operator states the reasons for nonconformance and provides equivalent environmental protection.

Industry standards. Industry standards that may assist an owner or operator with offshore blowout prevention assembly and well control systems include: (1) API Recommended Practice 16E, “Design of Control Systems for Drilling Well Control Equipment”; (2) API Recommended Practice 53, “Blowout Prevention Equipment Systems for Drilling Operations”; (3) API Specification 16A, “Drill Through Equipment”; (4) API Specification 16C, “Choke and Kill Systems”; and, (5) API Specification 16D, “Control Systems for Drilling Well Control Equipment.”

Editorial changes and clarifications. “BOP preventor assembly” becomes “BOP assembly.” We deleted the last sentence of the paragraph referring to adherence to State rules because we are not incorporating State rules into the SPCC rule and adherence to State rules is required under State law whether we state it or not. The phrase “expected to be encountered” becomes “may be encountered.”

Proposed § 112.11(m)—Extraordinary Well Control Measures

Background. In 1991, we proposed to change the current requirements on extraordinary well control measures for emergency conditions to recommendations. The rationale was

that we would review these measures in the context of response planning.

Comments. One commenter suggested that the paragraph should be deleted because it is advisory, or made a requirement.

Response to comments. In response to comment, we have deleted the text of the recommendations from the rules because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. However, we endorse its substance. This rule contains only mandatory requirements.

Section 112.11(l)—Proposed as § 112.11(n)—Manifolds

Background. In 1991, we repropoed the current requirements concerning manifolds without substantive change. We received no comments on the proposal. Therefore, we have promulgated the rule as proposed.

Section 112.11(m)—Proposed as § 112.11(o)—Flowlines, Pressure Sensing Devices

Background. In 1991, we repropoed the current requirements concerning pressure sensing devices and shut-in valves for flowlines without substantive change. We received no comments on the proposal. Therefore, we have promulgated the rule as proposed.

Section 112.11(n)—Proposed as § 112.11(p)—Piping; Corrosion Protection

Background. In 1991, we repropoed the current requirements concerning corrosion protection for piping appurtenant to the facility without substantive change. We also proposed to change into a recommendation the current requirement that the method used, such as protective coatings or cathodic protection, be discussed.

Comments. One commenter suggested that we remove the second sentence, which is advisory.

Response to comments. In response to comment, we have deleted the recommendation to discuss the method of corrosion protection, because it is surplus. In your SPCC Plan, you must discuss the method of corrosion protection you use. See 112.7(a)(1).

Section 112.11(o)—Proposed as § 112.11(q)—Sub-Marine Piping; Environmental Stresses

Background. In 1991, we repropoed the current requirements concerning environmental stress against sub-marine piping appurtenant to facilities without substantive change. We received no comments. Therefore, we have

promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. We have rewritten the rule in the active voice. We also deleted the proposed recommendation because this rule contains only mandatory items, and because the recommendation is redundant. Whatever manner of protection is chosen to protect sub-marine piping must be discussed in the Plan.

Section 112.11(p)—Proposed as § 112.11(r)—Inspections of Sub-Marine Piping

Background. In 1991, we repropoed the current requirements concerning the inspection of sub-marine piping appurtenant to facilities without substantive change. We received no comments. Therefore, we have promulgated the rule as proposed, with minor editorial changes.

Editorial changes and clarifications. The proposal to require maintenance of records for five years was deleted because under § 112.7(e) of today's rule, all records must be kept for three years. We clarify that you must inspect or test the piping. Because visual inspection of sub-marine piping may not always be possible, we allow testing as an alternative. We encourage inspection or testing pursuant to industry standards or at a frequency sufficient to prevent a discharge as described in § 112.1(b). Whatever inspection schedule you select must be documented in the Plan.

Proposed § 112.11(s)—Written Instructions for Contractors

Background. In 1991, we proposed to change into a recommendation the current requirement that you prepare written instructions for contractors and subcontractors whenever contract activities involve servicing a well, or systems appurtenant to a well or pressure vessel. The current rule requires that you keep the instructions at the facility. We note in the proposed rule that under certain circumstances, you may require the presence of your representative at the facility to intervene when necessary to prevent a discharge as described in § 112.1(b).

Comments. One commenter wrote that the proposal creates two serious problems. First, that since the contractor is hired to perform special services, he is able to do his work more safely if he is allowed to direct his own activities. Second, operators might expose themselves to various types of liability by virtue of the degree of control exercised over contractors. A second commenter suggested editorial revisions

to the recommendation, and subsequent sentences.

Response to comments. We have decided to delete the proposed recommendation because we do not wish to confuse the regulated community over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

Subparts C and D

Background. In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720. That statute mandates that most Federal agencies differentiate between and establish separate classes for various types of oils, specifically: animal fats and oils and greases, fish and marine mammal oils; oils of vegetable origin; and, other oils and greases, including petroleum and other non-petroleum oils. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

In 1991, EPA proposed to reorganize the SPCC rule based on facility type. The rationale for that reorganization is to clarify SPCC Plan requirements for different types of facilities. While we have reorganized the rule to provide requirements for different types of facilities, we also provide requirements for different types of oil in this rulemaking. To make this change, we have divided the rule into subparts. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

Therefore, as noted above, we have divided the requirements of the rule by subparts for the various classes of oils listed in EORRA. Because at the present time EPA has not proposed differentiated requirements for public notice and comment, the requirements for facilities storing or using all classes of oil will remain the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate requirements for facilities storing or using the various classes of oil. 64 FR

17227, April 8, 1999. After considering these comments, if there is adequate justification for differentiation, we will propose a rule.

Proposed § 112.20(f)(4)—Capacity of Facilities Storing Process Water/Wastewater for Response Plan Purposes

Background. In 1997, we proposed to add a new paragraph to § 112.20(f) to provide a method for facility response plan purposes to calculate the oil storage capacity of storage containers storing a mixture of process water/wastewater with 10% or less of oil. This proposal for certain systems that treat process water/wastewater would be applicable at certain facilities required to prepare a facility response plan. It would have no effect on facilities required to prepare response plans because they transfer oil over water and have a total oil storage capacity greater than or equal to 42,000 gallons. Likewise, the proposal would have no effect on the method of calculating capacity for purposes of SPCC Plans. Under the proposal, we would not count the entire capacity of process water/wastewater containers with 10% or less of oil in the capacity calculation to determine whether a facility must prepare a facility response plan. We only would count the oil portion of that process water/wastewater contained in § 112.20(f)(2), and therefore response planning is not necessary.

Today, we are withdrawing the proposal because it is no longer necessary. It is unnecessary because we have exempted from part 112 any facility or part thereof (except at oil production, oil recovery, and oil recycling facilities) used exclusively for wastewater treatment and not to satisfy any requirement of part 112. See the discussion under § 112.1(d)(6). The exemption in § 112.1(d)(6) applies to the types of facilities treating wastewater that would have been allowed to calculate a reduced storage capacity if the percentage of oil in the mixture were 10 percent or less.

Section 112.20(h)—Facility Response Plan Format

Background. In 1997, we proposed to amend the requirements for formatting of a facility response plan to clarify that an Integrated Contingency Plan (ICP) or other plan format acceptable to the Regional Administrator is allowable to serve as a facility response plan if it meets all facility response plan requirements. Our intent was to track language in the SPCC rule allowing the Regional Administrator similar authority to accept differing formats for SPCC Plans. However, the Regional

Administrator already has the authority to accept differing formats for response plans, and the existing facility response plan requirements already provide for cross-referencing. See § 112.20(h). Therefore, new rule language was unnecessary, and the proposal tracked current language. Today, we have made only a minor editorial change in rule language.

Comments. Acceptable formats. Most commenters favored the proposal. One commenter suggested that the rule should specifically mention the ICP. Another requested that State FRP equivalents be accepted. Several commenters criticized the proposal; one calling the ICP concept “over-rated.” One commenter thought that the rule makes the ICP mandatory. Another commenter noted that the proposed rule is identical to the current rule.

Partially acceptable formats. One commenter asked if an operator would have to integrate all parts of an ICP with a response plan or if he would have the option to integrate parts of the ICP with the SPCC Plan.

PE certification. One commenter asked how an ICP would work, i.e., whether the PE would be certifying the SPCC portion, the FRP portion, or both.

Response to comments. Acceptable formats. It is not necessary for the rule to mention the ICP or any other format specifically because the rule already allows the Regional Administrator flexibility to accept any format that meets all Federal requirements. See § 112.20(h). You may use the ICP, a State response plan, or other format acceptable to the Regional Administrator, at your option. We do not require use of any alternative format, but merely give you the option to do so.

The commenter is correct that the proposed rule is identical to the current rule. The current rule allows the submission of an “equivalent response plan that has been prepared to meet State or other Federal requirements.”

Partially acceptable formats. You have the option to integrate any or all parts of an ICP with your response plan. This gives you flexibility in formatting. Similar to SPCC Plans, the Regional Administrator may accept partial use of alternative formats.

PE certification. PE certification is only required for the SPCC portion of any ICP.

Editorial changes and clarifications. We added the words “acceptable to the Regional Administrator” in the first sentence after the words “response plan.”

Appendix C—Substantial Harm Criteria

Background. In 1997, we proposed changes to Appendix C which would track proposed amendments to § 112.20(f)(4) regarding calculating the oil storage capacity of aboveground storage containers storing a mixture of process water/wastewater within 10% or less of oil. Because we have withdrawn the proposed changes to § 112.20(f)(4), the proposed changes to Appendix C are also unnecessary. Therefore, we have withdrawn the proposed changes to Appendix C, and it remains unchanged.

Appendix C—Section 2.1—Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfer of Oil

Background. We have corrected the text of the first sentence in the section to correspond with the title, so that it reads “A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. We added the words “or equal to” to track rule language found at § 112.20(f)(1)(i).

Appendix C—Section 2.4—Proximity to Public Drinking Water Intakes at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons

Background. We have revised the title of this section by reversing the order of the words “Storage” and “Oil” in the heading. We have also added the word “oil” to the first sentence so that it reads, “A facility with a total oil storage capacity greater than * * *.”

Appendix D—Part A—Section A.2 (Footnote 2)

Background. We have revised footnote 2 to section A.2 of Part A, Appendix D, to reflect the new citation to the SPCC rule’s secondary containment requirements.

Appendix F—Section 1.2.7—NAICS Codes

Background. We have revised section 1.2.7 to delete the reference to Standard Industry Classification (SIC) codes, and replace it with a reference to North American Industry Classification System (NAICS) codes. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the SIC codes.

Appendix F—Section 1.4.3 Analysis of the Potential for an Oil Discharge

Background. We have revised the second and last sentences of this section by replacing the word “spill” with “discharge.”

Appendix F—Section 1.7.3 (7)—Containment and Drainage Planning

Background. We have revised paragraph (7) of section 1.7.3 of Appendix F to use the new citation to the SPCC rule’s inspection and monitoring requirements for drainage.

Appendix F—Section 1.8.1 Facility Self-Inspection

Background. We have revised section 1.8.1 of Appendix F to use the new citation to the SPCC rule’s recordkeeping requirements. The revision also reflects the three-year record maintenance periods for SPCC records and keeps the current five-year period for FRP records.

Editorial changes and clarifications. “Tanks” becomes “each container.”

Appendix F—Section 1.8.1.1—Tank Inspection

Background. We have revised section 1.8.1.1 of Appendix F to use the new citation to the SPCC rule’s tank inspection requirements.

Appendix F—Section 1.8.1.3 Secondary Containment Inspection

Background. We have revised section 1.8.1.1.4 of Appendix F to use the new citation to the SPCC rule’s secondary containment inspection requirements.

Appendix F—Section 1.10 Security

Background. We have revised section 1.10 of Appendix F to use the new citation to the SPCC rule’s security requirements.

Appendix F—Section 2.1(6) General Information

Background. We have revised paragraph 2.1(6) to refer to NAICS codes in place of SIC codes.

Appendix F—Section 3.0 Acronyms

Background. We have deleted the acronym for SIC and substituted the acronym for NAICS.

Appendix F—Attachment F-1 Response Plan Cover Sheet

Background. We have deleted the reference to SIC and substituted a reference to NAICS.

VI. Summary of Supporting Analyses

A. Executive Order 12866—OMB Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency

must determine whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is a “significant regulatory action” because it raises novel legal or policy issues. Such issues include proposed measures which would relieve facilities of regulatory mandates and could change the manner in which facilities comply with remaining mandates. Therefore, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The reduction in size of the regulated community due to final rule revisions will lead to a capital cost savings of approximately \$29.47 million per year. During the first year, regulated facilities will experience an increase in total paperwork cost burden of \$21.93 million due primarily to the need to read the rule. In addition, certain facilities will recalculate their storage capacity to exclude applicable wastewater treatment systems and, therefore, must amend and certify their plans if the storage capacity threshold is still met. In certain cases, however, the wastewater treatment system provision in section 112.1(b)(6) will result in a facility no longer being subject to the any Part 112 requirements. However, during the second year, total paperwork cost burden will decrease by about \$60.21 million and beginning in the third year following the rulemaking, the total paperwork cost burden to all regulated facilities will decrease by about \$45.03 million. The result is an aggregate cost savings of about \$7.56 million during the first year, \$89.69

million during the second year, and \$74.51 million during subsequent years.

B. Executive Order 12898—Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. EPA has determined that the regulatory changes in this rule will not have a disproportionate impact on minorities and low-income populations.

C. Executive Order 13045—Children’s Health

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency has no data that indicate that the types of risks resulting from oil discharges have a disproportionate effect on children, and does not have reason to believe that they do so.

D. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal

Consultation) as of that date. EPA developed this final rule, however, under the period when EO 13084 was in effect; thus, EPA addressed tribal considerations under EO 13084.

Today's rule does not significantly or uniquely affect communities of Indian tribal governments. Overall, the rule significantly reduces the regulatory burden, and the few burden increases in the rule do not uniquely affect Indian tribal governments.

Nevertheless, we consulted with a representative organization of tribal groups, the Tribal Association on Solid Waste and Emergency Response. That organization did not provide us with any comments.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. In proposing modifications to the SPCC rule, EPA encouraged States to supplement the federal SPCC program and recognized that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This rule does not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13211—Energy Effects

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the

supply, distribution, or use of energy. The overall effect of the rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

G. Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The R.F.A. generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will significantly reduce regulatory burden on all facilities, particularly small facilities. For example, the rule exempts approximately 55,000 facilities from its scope. Approximately 41,300 of those

facilities are small facilities, and of those, nearly 27,700 are small farms. This rulemaking will increase information collection burden for most facilities in the first year by approximately 0.75 million hours due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. However, the rule will also reduce the overall annual information collection burden by nearly 1.59 million hours a year in the second year and over 1.18 million hours a year in the third year of the information collection request, much of that for the small facilities that make up the large majority of our regulated universe. Further, the rule will reduce costs for both existing and new facilities.

Information collection and other provisions in the final rule that affect capital costs are expected to yield cost savings of about \$7.56 million during the first year, \$89.69 million during the second year and \$74.51 million during subsequent years. The rule also gives all facilities greater flexibility in recordkeeping and other paperwork requirements. Finally, § 112.7(a)(2) of the rule gives small businesses and all other facilities the flexibility to use alternative methods to comply with the requirements of the rule if the facility explains its rationale for nonconformance and provides equivalent environmental protection. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative

that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Overall, the rule reduces burden and costs on all facilities. After the first and second year, the rule is expected to reduce the information collection burden by over 1.3 million hours annually.

Approximately 55,000 facilities will no longer be subject to the SPCC rule. Of these facilities, EPA estimates that approximately 3,500 existing facilities will no longer be required to maintain SPCC plans, due to the exemption for certain wastewater treatment systems. Other revisions are expected to exempt approximately 51,400 additional facilities 39,623 small facilities (including 27,700 small farms). The exemption for completely buried containers will result in approximately 14,000 facilities no longer subject to the rule, and 37,000 more facilities with some partial information collection reduction. Further, EPA estimates Information collection and capital costs are expected to decrease by over \$74.25 million a year in the third year of the SPCC information collection request. In addition to these SPCC-related impacts, this rulemaking is estimated to result in cost savings for as many as 35 facilities that are expected to no longer require facility response plans due to the wastewater treatment system exemption. The result of the changes to the scope of the FRP information collection requirements is a cost savings of approximately \$0.23 million per year.

The rule also gives all facilities greater flexibility in recordkeeping and other paperwork requirements. Finally, § 112.7(a)(2) of the rule gives small businesses and all other facilities the flexibility to use alternate methods to comply with the requirements of the rule if the facility explains its rationale for nonconformance and describes its method of equivalent environmental protection. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In developing this rule, EPA nevertheless consulted with representative organizations of State, local, and tribal governments. The representative organizations were the Environmental Council of the States, the National Association of Counties, and the Tribal Association on Solid Waste and Emergency Response. None of those organizations provided us with any comments. However, numerous States and local governments did comment on the rule proposals in all three proposed rulemakings. Those commenters submitted a wide variety of comments. EPA responses to those comments may be found in this document and in the Comment Response Documents.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the overall effect of the rule will be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

I. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0021.

EPA does not collect the information required by SPCC regulation on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC Plan data to ensure that facilities comply with the regulation. This includes design and operation

specifications, and inspection requirements. EPA reviews SPCC Plans: (1) when it requests a facility to submit a Plan after certain oil discharges or to evaluate an extension request; and, (2) as part of EPA's inspection program. Note that the final rule eliminates the previous requirement to submit the entire Plan after certain discharges, and merely retains the requirement that it be maintained at the facility unless EPA requests a copy. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Act as implemented by 40 CFR part 112.

In the absence of this final rulemaking, EPA estimates that 469,274 facilities would have been subject to the rule in the first year and would have already prepared SPCC Plans. In addition, EPA estimates that approximately 4,700 new facilities would have become subject to the requirements of the rule annually. EPA also estimates that, in the absence of this rulemaking, the average annual public reporting and recordkeeping burden for this collection of information for existing and newly regulated facilities would have ranged between 4.9 to 13.8 hours and 39.4 to 100.4 hours, respectively, depending on facility characteristics (*e.g.*, storage capacity).

Through this rulemaking, we expect to reduce both the number of regulated facilities, as well as the average annual burden for facilities that remain regulated. The number of regulated facilities will be reduced by approximately 55,000. The average annual public reporting for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range between 8.6 and 12.2 hours, while the burden for newly regulated facilities is estimated to range between 35.1 and 65.2 hours as a result of this rulemaking. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including the frequency of oil discharges and facility modification, but exclude the anticipated burden facilities may incur in the first year to read and understand the changes we are making to the rule.

Under the final rule, an estimated 419,033 existing and newly regulated facilities will be subject to the SPCC information collection requirements of this rule during the first year of the information collection period. The net annualized capital and start-up costs for

the SPCC information collection portion of the rule average \$740,000 and net annualized labor and operation and maintenance costs are estimated to be \$93.00 million for all of these facilities combined.

The information collection burden of the SPCC rule prior to this rulemaking averaged 2,828,150 hours per year. Under this final rule, the annual average burden over the next three-year ICR period is estimated to be 2,208,701 hours, resulting in a 22 percent average reduction. This rulemaking will increase burden for most facilities in the first year (totaling approximately 3.6 million hours) due principally to the estimated burden each facility will incur to read and understand the changes that we are making to the rule. The first-year burden also includes the additional need for certain facilities to amend and certify their SPCC plans to exclude wastewater treatment volumes from their oil storage capacity. Second year burden is expected to total approximately 1.3 million hours. In subsequent years, we estimate that the overall burden will be approximately 1.7 million hours annually, representing a nearly 40 percent reduction versus the average annual burden from the previous information collection period. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

In addition to reducing the information collection burden of SPCC facilities, this final rule also affects the number of facilities that require an FRP. The FRP rule (40 CFR 112.20–21) requires that owners or operators of facilities that could cause “substantial harm” to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. All facilities subject to this

requirement must submit their plans to EPA. In turn, we review and approve plans submitted by facilities identified as “significant and substantial harm” to the environment from oil discharges. Other facilities are not required to prepare FRPs but are required to document their determination that they do not meet the “substantial harm” criteria.

Prior to this rulemaking, EPA estimated that it requires between 99 and 132 hours for facility personnel in a large facility (*i.e.*, total storage capacity greater than 1 million gallons) and between 26 and 46 hours for personnel in a medium facility (*i.e.*, total storage capacity greater than 42,000 gallons and less than or equal to 1 million gallons) to comply with the annual, subsequent-year reporting and recordkeeping requirements of the FRP rule. We have also estimated that prior to this rulemaking newly regulated large and medium facilities will require between 253 and 293 hours and 109 and 142 hours, respectively, to prepare a plan in the first year. In the absence of this rulemaking, EPA estimates that the total number FRP facilities affected in the first year would have been 6,000 existing and 70 new facilities. Through this rulemaking the estimated number of facilities required to maintain FRPs is reduced to 5,965 and the number of new facilities that will be required to prepare and submit FRP plans is reduced to 64 facilities. This reduction in the number of facilities required to prepare, submit, and/or maintain an FRP would result in an average annual information collection burden reduction of 8,513 hours a year (624,252 to 615,739 hours).

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

J. National Technology Transfer and Advancement Act

As noted in the December 7, 1997, proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”). Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary

consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Throughout today’s preamble, EPA has emphasized that owners or operators of facilities should use applicable industry standards in performing tests, inspections, and in monitoring. Section 112.3(d) provides that a Professional Engineer must certify that the SPCC Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards. We are providing examples of specific standards in today’s preamble. However, due to the wide variety of facilities the rule involves, few standards would be applicable to all regulated facilities. Also, those standards change over time. Therefore, we are not incorporating those standards into rule text.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective August 16, 2002.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: June 28, 2002.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40 CFR, chapter I, part

112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Part 112 is amended by designating §§ 112.1 through 112.7 as subpart A, adding a subpart heading and revising newly designated subpart A to read as follows:

Subpart A—Applicability, Definitions, and General Requirements For All Facilities and All Types of Oils

Sec.

- 112.1 General applicability.
- 112.2 Definitions.
- 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.
- 112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.
- 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.
- 112.6 [Reserved].
- 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

§ 112.1 General applicability.

(a)(1) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities 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).

(2) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

(b) Except as provided in paragraph (d) of this section, this part applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing,

processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, 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) that has oil in:

- (1) Any aboveground container;
- (2) Any completely buried tank as defined in § 112.2;
- (3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise “permanently closed” as defined in § 112.2;
- (4) Any “bunkered tank” or “partially buried tank” as defined in § 112.2, or any container in a vault, each of which is considered an aboveground storage container for purposes of this part.

(c) As provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to this part to the same extent as any person.

(d) Except as provided in paragraph (f) of this section, this part does not apply to:

(1) The owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section 311(j)(1)(C) of the CWA, as follows:

(i) Any onshore or offshore facility, that due to its location, could not reasonably be expected to have a discharge as described in paragraph (b) of this section. This determination must be based solely upon consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge as described in paragraph (b) of this section.

(ii) Any equipment, or operation of a vessel or transportation-related onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation, as defined in the Memorandum of

Understanding between the Secretary of Transportation and the Administrator of EPA, dated November 24, 1971 (Appendix A of this part).

(iii) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(2) Any facility which, although otherwise subject to the jurisdiction of EPA, meets both of the following requirements:

(i) The completely buried storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter. The completely buried storage capacity of a facility also excludes the capacity of a container that is “permanently closed,” as defined in § 112.2.

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For purposes of this exemption, only containers of oil with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is “permanently closed,” as defined in § 112.2.

(3) Any offshore oil drilling, production, or workover facility that is subject to the notices and regulations of the Minerals Management Service, as specified in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).

(4) Any completely buried storage tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, except that such a tank must be marked on the facility diagram as provided in § 112.7(a)(3), if

the facility is otherwise subject to this part.

(5) Any container with a storage capacity of less than 55 gallons of oil.

(6) Any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.

(e) This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

(f) Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject to the jurisdiction of EPA under section 311(j) of the CWA prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA.

(1) Following a preliminary determination, the Regional Administrator must provide a written notice to the owner or operator stating the reasons why he must prepare an SPCC Plan, or applicable part. The Regional Administrator must send such notice to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of such notice to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data and may consult with the Agency about the need to prepare an SPCC Plan, or applicable part.

(3) Within 30 days following the time under paragraph (b)(2) of this section within which the owner or operator may provide information and data and consult with the Agency about the need to prepare an SPCC Plan, or applicable part, the Regional Administrator must make a final determination regarding

whether the owner or operator is required to prepare and implement an SPCC Plan, or applicable part. The Regional Administrator must send the final determination to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of the final determination to the registered agent, if any and if known, of the corporation in the State where the facility is located.

(4) If the Regional Administrator makes a final determination that an SPCC Plan, or applicable part, is necessary, the owner or operator must prepare the Plan, or applicable part, within six months of that final determination and implement the Plan, or applicable part, as soon as possible, but not later than one year after the Regional Administrator has made a final determination.

(5) The owner or operator may appeal a final determination made by the Regional Administrator requiring preparation and implementation of an SPCC Plan, or applicable part, under this paragraph. The owner or operator must make the appeal to the Administrator of EPA within 30 days of receipt of the final determination under paragraph (b)(3) of this section from the Regional Administrator requiring preparation and/or implementation of an SPCC Plan, or applicable part. The owner or operator must send a complete copy of the appeal to the Regional Administrator at the time he makes the appeal to the Administrator. The appeal must contain a clear and concise statement of the issues and points of fact in the case. In the appeal, the owner or operator may also provide additional information. The additional information may be from any person. The Administrator may request additional information from the owner or operator. The Administrator must render a decision within 60 days of receiving the appeal or additional information submitted by the owner or operator and must serve the owner or operator with the decision made in the appeal in the manner described in paragraph (f)(1) of this section.

§112.2 Definitions.

For the purposes of this part:

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or remove spilled oil, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part

(as appropriate), ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment is intended to function.

Alteration means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of the container.

Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

Breakout tank means a container used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.

Bulk storage container means any container used to store oil. These containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce. Oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.

Bunkered tank means a container constructed or placed in the ground by cutting the earth and re-covering the container in a manner that breaks the surrounding natural grade, or that lies above grade, and is covered with earth, sand, gravel, asphalt, or other material. A bunkered tank is considered an aboveground storage container for purposes of this part.

Completely buried tank means any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the CWA.

Contiguous zone means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.

Contract or other approved means means:

(1) A written contractual agreement with an oil spill removal organization that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic area; and/or

(4) Any other specific arrangement approved by the Regional Administrator upon request of the owner or operator.

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of this part, the term discharge shall not include any discharge of oil that is authorized by a permit issued under section 13 of the River and Harbor Act of 1899 (33 U.S.C. 407).

Facility means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

Fish and wildlife and sensitive environments means areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine

reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions resulting from a discharge.

Maximum extent practicable means within the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It includes the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

Navigable waters means the waters of the United States, including the territorial seas.

(1) The term includes:

(i) 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 subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands;

(iii) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:

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

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

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

(iv) All impoundments of waters otherwise defined as waters of the United States under this section;

(v) Tributaries of waters identified in paragraphs (1)(i) through (iv) of this definition;

(vi) The territorial sea; and

(vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraph (1) of this definition.

(2) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds which also meet the criteria of this definition) are not waters of the United States. Navigable waters do not include prior converted cropland.

Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with EPA.

Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

Offshore facility means any facility of any kind (other than a vessel or public vessel) 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.

Oil means oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands.

Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained the facility immediately prior to such abandonment.

Partially buried tank means a storage container that is partially inserted or constructed in the ground, but not entirely below grade, and not

completely covered with earth, sand, gravel, asphalt, or other material. A partially buried tank is considered an aboveground storage container for purposes of this part.

Permanently closed means any container or facility for which:

(1) All liquid and sludge has been removed from each container and connecting line; and

(2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.

Person includes an individual, firm, corporation, association, or partnership.

Petroleum oil means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.

Regional Administrator means the Regional Administrator of the Environmental Protection Agency, in and for the Region in which the facility is located.

Repair means any work necessary to maintain or restore a container to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to maintain the functional integrity of the container and that does not weaken the container.

Spill Prevention, Control, and Countermeasure Plan; SPCC Plan, or Plan means the document required by § 112.3 that details the equipment, workforce, procedures, and steps to prevent, control, and provide adequate countermeasures to a discharge.

Storage capacity of a container means the shell capacity of the container.

Transportation-related and non-transportation-related, as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated

November 24, 1971, (Appendix A of this part).

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

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.

Wetlands means those areas that are inundated or saturated by surface or groundwater 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.

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

The owner or operator of an onshore or offshore facility subject to this section must prepare a Spill Prevention, Control, and Countermeasure Plan (hereafter "SPCC Plan" or "Plan)," in writing, and in accordance with § 112.7, and any other applicable section of this part.

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2003, and must implement the amended Plan as soon as possible, but not later than August 18, 2003. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2003, and fully implement it as soon as possible, but not later than August 18, 2003.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18,

2003, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. You may not operate a mobile or portable facility subject to this part unless you have implemented the Plan. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

(d) A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

(1) By means of this certification the Professional Engineer attests:

(i) That he is familiar with the requirements of this part ;

(ii) That he or his agent has visited and examined the facility;

(iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part;

(iv) That procedures for required inspections and testing have been established; and

(v) That the Plan is adequate for the facility.

(2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.

(e) If you are the owner or operator of a facility for which a Plan is required under this section, you must:

(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended, and

(2) Have the Plan available to the Regional Administrator for on-site review during normal working hours.

(f) *Extension of time.* (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan, or any amendment thereto, beyond the time permitted for the preparation, implementation, or amendment of a

Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees.

(2) If you are an owner or operator seeking an extension of time under paragraph (f)(1) of this section, you may submit a written extension request to the Regional Administrator. Your request must include:

(i) A full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(ii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay; and

(iii) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of your extension request.

(3) The submission of a written extension request under paragraph (f)(2) of this section does not relieve you of your obligation to comply with the requirements of this part. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an extension of time for particular equipment or other specific aspects of the Plan, such extension does not affect your obligation to comply with the requirements related to other equipment or other specific aspects of the Plan for which the Regional Administrator has not expressly authorized an extension.

§ 112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.

If you are the owner or operator of a facility subject to this part, you must:

(a) Notwithstanding compliance with § 112.3, whenever your facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period, submit the following information to the Regional Administrator within 60 days from the time the facility becomes subject to this section:

(1) Name of the facility;

(2) Your name;

(3) Location of the facility;

(4) Maximum storage or handling capacity of the facility and normal daily throughput;

(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;

(6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary;

(7) The cause of such discharge as described in § 112.1(b), including a failure analysis of the system or subsystem in which the failure occurred;

(8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence; and

(9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge.

(b) Take no action under this section until it applies to your facility. This section does not apply until the expiration of the time permitted for the initial preparation and implementation of the Plan under § 112.3, but not including any amendments to the Plan.

(c) Send to the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located a complete copy of all information you provided to the Regional Administrator under paragraph (a) of this section. Upon receipt of the information such State agency or agencies may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other requirements necessary to prevent and to contain discharges from your facility.

(d) Amend your Plan, if after review by the Regional Administrator of the information you submit under paragraph (a) of this section, or submission of information to EPA by the State agency under paragraph (c) of this section, or after on-site review of your Plan, the Regional Administrator requires that you do so. The Regional Administrator may require you to amend your Plan if he finds that it does not meet the requirements of this part or that amendment is necessary to prevent and contain discharges from your facility.

(e) Act in accordance with this paragraph when the Regional Administrator proposes by certified mail or by personal delivery that you amend your SPCC Plan. If the owner or operator is a corporation, he must also notify by mail the registered agent of such corporation, if any and if known,

in the State in which the facility is located. The Regional Administrator must specify the terms of such proposed amendment. Within 30 days from receipt of such notice, you may submit written information, views, and arguments on the proposed amendment. After considering all relevant material presented, the Regional Administrator must either notify you of any amendment required or rescind the notice. You must amend your Plan as required within 30 days after such notice, unless the Regional Administrator, for good cause, specifies another effective date. You must implement the amended Plan as soon as possible, but not later than six months after you amend your Plan, unless the Regional Administrator specifies another date.

(f) If you appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan, send the appeal to the EPA Administrator in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment under paragraph (e) of this section. You must send a complete copy of the appeal to the Regional Administrator at the time you make the appeal. The appeal must contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from you, or from any other person. The EPA Administrator may request additional information from you, or from any other person. The EPA Administrator must render a decision within 60 days of receiving the appeal and must notify you of his decision.

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

If you are the owner or operator of a facility subject to this part, you must:

(a) Amend the SPCC Plan for your facility in accordance with the general requirements in § 112.7, and with any specific section of this part applicable to your facility, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in § 112.1(b). Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at

a facility. An amendment made under this section must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment.

(b) Notwithstanding compliance with paragraph (a) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to this part; or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, "I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result."

(c) Have a Professional Engineer certify any technical amendment to your Plan in accordance with § 112.3(d).

§ 112.6 [Reserved]

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

If you are the owner or operator of a facility subject to this part you must prepare a Plan in accordance with good engineering practices. The Plan must have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan. You must prepare the Plan in writing. If you do not follow the sequence specified in this section for the Plan, you must prepare an equivalent Plan acceptable to the Regional Administrator that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan. If the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, you must discuss

these items in separate paragraphs, and must explain separately the details of installation and operational start-up. As detailed elsewhere in this section, you must also:

(a)(1) Include a discussion of your facility's conformance with the requirements listed in this part.

(2) Comply with all applicable requirements listed in this part. Your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes. You must also address in your Plan:

(i) The type of oil in each container and its storage capacity;

(ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, *etc.*);

(iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge;

(iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);

(v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and

(vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in § 112.1(b).

(4) Unless you have submitted a response plan under § 112.20, provide information and procedures in your Plan to enable a person reporting a discharge as described in § 112.1(b) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in § 112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.

(5) Unless you have submitted a response plan under § 112.20, organize portions of the Plan describing procedures you will use when a discharge occurs in a way that will make them readily usable in an emergency, and include appropriate supporting material as appendices.

(b) Where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge), include in your Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b). The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

(1) For onshore facilities:
 (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil;
 (ii) Curbing;
 (iii) Culverting, gutters, or other drainage systems;
 (iv) Weirs, booms, or other barriers;
 (v) Spill diversion ponds;
 (vi) Retention ponds; or
 (vii) Sorbent materials.
 (2) For offshore facilities:
 (i) Curbing or drip pans; or
 (ii) Sumps and collection systems.
 (d) If you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), 112.12(c)(11), 112.13(c)(2), and 112.14(c) to prevent a discharge as described in § 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:

(1) An oil spill contingency plan following the provisions of part 109 of this chapter.

(2) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

(e) *Inspections, tests, and records.* Conduct inspections and tests required by this part in accordance with written procedures that you or the certifying engineer develop for the facility. You must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(f) *Personnel, training, and discharge prevention procedures.* (1) At a minimum, train your oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan.

(2) Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management.

(3) Schedule and conduct discharge prevention briefings for your oil-

handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings must highlight and describe known discharges as described in § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

(g) *Security (excluding oil production facilities).* (1) Fully fence each facility handling, processing, or storing oil, and lock and/or guard entrance gates when the facility is not in production or is unattended.

(2) Ensure that the master flow and drain valves and any other valves permitting direct outward flow of the container's contents to the surface have adequate security measures so that they remain in the closed position when in non-operating or non-standby status.

(3) Lock the starter control on each oil pump in the "off" position and locate it at a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status.

(4) Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping when not in service or when in standby service for an extended time. This security practice also applies to piping that is emptied of liquid content either by draining or by inert gas pressure.

(5) Provide facility lighting commensurate with the type and location of the facility that will assist in the:

(i) Discovery of discharges occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and

(ii) Prevention of discharges occurring through acts of vandalism.

(h) *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).* (1) Where loading/unloading area drainage does not flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank truck loading and unloading areas. You must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

(2) Provide an interlocked warning light or physical barrier system, warning signs, wheel chocks, or vehicle break interlock system in loading/unloading areas to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines.

(3) Prior to filling and departure of any tank car or tank truck, closely inspect for discharges the lowermost drain and all outlets of such vehicles,

and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit.

(i) If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.

(j) In addition to the minimal prevention standards listed under this section, include in your Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.

3. Part 112 is amended adding subpart B consisting of §§ 112.8 through 112.11 to read as follows:

Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)

Sec.

112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.

112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

Subpart B—Requirements for Petroleum Oils and Non-Petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

If you are the owner or operator of an onshore facility (excluding a production facility), you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, as provided in paragraphs (c)(3)(ii), (iii), and (iv) of this section.

(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.

(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two "lift" pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.

(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(2) Construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose.

You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

(i) Normally keep the bypass valve sealed closed.

(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).

(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and

(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open

watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.

(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(iii) Direct audible or code signal communication between the container gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as

indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

§ 112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) Oil production facility drainage.

(1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.8(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) Oil production facility bulk storage containers. (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility

installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overflow if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) Facility transfer operations, oil production facility. (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

(2) Inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.

(3) Have a program of flowline maintenance to prevent discharges from each flowline.

§ 112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.

If you are the owner or operator of an onshore oil drilling and workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).

(c) Provide catchment basins or diversion structures to intercept and

contain discharges of fuel, crude oil, or oily drilling fluids.

(d) Install a blowout prevention (BOP) assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

§ 112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Use oil drainage collection equipment to prevent and control small oil discharges around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump system, provide adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. You must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(d) At facilities with areas where separators and treaters are equipped with dump valves which predominantly fail in the closed position and where pollution risk is high, specially equip the facility to prevent the discharge of oil. You must prevent the discharge of oil by:

(1) Extending the flare line to a diked area if the separator is near shore;

(2) Equipping the separator with a high liquid level sensor that will automatically shut in wells producing to the separator; or

(3) Installing parallel redundant dump valves.

(e) Equip atmospheric storage or surge containers with high liquid level

sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.

(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.

(g) Equip containers with suitable corrosion protection.

(h) Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.

(i) Conduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and any other appropriate regulations. You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

(j) Describe in detailed records surface and subsurface well shut-in valves and devices in use at the facility for each well sufficiently to determine their method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while the BOP assembly and well control system are on the well.

(l) Equip all manifolds (headers) with check valves on individual flowlines.

(m) Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.

(n) Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.

(o) Adequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities such as fishing operations.

(p) Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.

4. Part 112 is amended by adding subpart C consisting of §§ 112.12 through 112.15 to read as follows:

Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, Including Oils from Seeds, Nuts, Fruits and Kernels

Sec.

112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.

112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

Subpart C—Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits, and Kernels.

§ 112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities)

If you are the owner or operator of an onshore facility (excluding a production facility), you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed in this section.

(b) *Facility drainage.* (1) Restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. You may empty diked areas by pumps or ejectors; however, you must manually activate these pumps or ejectors and must inspect the condition of the accumulation before starting, to ensure no oil will be discharged.

(2) Use valves of manual, open-and-closed design, for the drainage of diked areas. You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, you must inspect and may drain uncontaminated retained stormwater, subject to the requirements of paragraphs (c)(3)(ii), (iii), and (iv) of this section.

(3) Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur

outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. You must not locate catchment basins in areas subject to periodic flooding.

(4) If facility drainage is not engineered as in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility with a diversion system that would, in the event of an uncontrolled discharge, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit and such treatment is continuous, and pump transfer is needed, provide two "lift" pumps and permanently install at least one of the pumps. Whatever techniques you use, you must engineer facility drainage systems to prevent a discharge as described in § 112.1(b) in case there is an equipment failure or human error at the facility.

(c) *Bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(2) Construct all bulk storage container installations so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

(3) Not allow drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, bypassing the facility treatment system unless you:

(i) Normally keep the bypass valve sealed closed.

(ii) Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b).

(iii) Open the bypass valve and reseal it following drainage under responsible supervision; and

(iv) Keep adequate records of such events, for example, any records required under permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

(4) Protect any completely buried metallic storage tank installed on or after January 10, 1974 from corrosion by

coatings or cathodic protection compatible with local soil conditions. You must regularly leak test such completely buried metallic storage tanks.

(5) Not use partially buried or bunkered metallic tanks for the storage of oil, unless you protect the buried section of the tank from corrosion. You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.

(6) Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.

(7) Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.

(8) Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least one of the following devices:

(i) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station. In smaller facilities an audible air vent may suffice.

(ii) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(iii) Direct audible or code signal communication between the container gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.

(v) You must regularly test liquid level sensing devices to ensure proper operation.

(9) Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in § 112.1(b).

(10) Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. You must promptly remove any accumulations of oil in diked areas.

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). You must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

(d) *Facility transfer operations, pumping, and facility process.* (1) Provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. You must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration. If you find corrosion damage, you must undertake additional examination and corrective action as indicated by the magnitude of the damage.

(2) Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.

(3) Properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

(4) Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.

(5) Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations.

§ 112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.

If you are the owner or operator of an onshore production facility, you must:

(a) Meet the general requirements for the Plan listed under § 112.7, and the specific discharge prevention and containment procedures listed under this section.

(b) *Oil production facility drainage.*

(1) At tank batteries and separation and treating areas where there is a reasonable possibility of a discharge as described in § 112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under § 112.7(c)(1), except when draining uncontaminated rainwater. Prior to drainage, you must inspect the diked area and take action as provided in § 112.12(c)(3)(ii), (iii), and (iv). You must remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods.

(2) Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.

(c) *Oil production facility bulk storage containers.* (1) Not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(2) Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.

(3) Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including the foundation and support of each container that is on or above the surface of the ground.

(4) Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following:

(i) Container capacity adequate to assure that a container will not overflow if a pumper/gauger is delayed in making regularly scheduled rounds.

(ii) Overflow equalizing lines between containers so that a full container can overflow to an adjacent container.

(iii) Vacuum protection adequate to prevent container collapse during a

pipeline run or other transfer of oil from the container.

(iv) High level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

(d) *Facility transfer operations, oil production facility.* (1) Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items.

(2) Inspect saltwater (oil field brine) disposal facilities often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing a discharge.

(3) Have a program of flowline maintenance to prevent discharges from each flowline.

§ 112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.

If you are the owner or operator of an onshore oil drilling and workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in § 112.1(b).

(c) Provide catchment basins or diversion structures to intercept and contain discharges of fuel, crude oil, or oily drilling fluids.

(d) Install a blowout prevention (BOP) assembly and well control system before drilling below any casing string or during workover operations. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

§ 112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must:

(a) Meet the general requirements listed under § 112.7, and also meet the specific discharge prevention and containment procedures listed under this section.

(b) Use oil drainage collection equipment to prevent and control small oil discharges around pumps, glands, valves, flanges, expansion joints, hoses,

drain lines, separators, treaters, tanks, and associated equipment. You must control and direct facility drains toward a central collection sump to prevent the facility from having a discharge as described in § 112.1(b). Where drains and sumps are not practicable, you must remove oil contained in collection equipment as often as necessary to prevent overflow.

(c) For facilities employing a sump system, provide adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. You must employ a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(d) At facilities with areas where separators and treaters are equipped with dump valves which predominantly fail in the closed position and where pollution risk is high, specially equip the facility to prevent the discharge of oil. You must prevent the discharge of oil by:

(1) Extending the flare line to a diked area if the separator is near shore;

(2) Equipping the separator with a high liquid level sensor that will automatically shut in wells producing to the separator; or

(3) Installing parallel redundant dump valves.

(e) Equip atmospheric storage or surge containers with high liquid level sensing devices that activate an alarm or control the flow, or otherwise prevent discharges.

(f) Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow.

(g) Equip containers with suitable corrosion protection.

(h) Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.

(i) Conduct testing and inspection of the pollution prevention equipment and systems at the facility on a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and any other appropriate regulations. You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.

(j) Describe in detailed records surface and subsurface well shut-in valves and devices in use at the facility for each well sufficiently to determine their

method of activation or control, such as pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms.

(k) Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable of controlling any well-head pressure that may be encountered while that BOP assembly and well control system are on the well.

(l) Equip all manifolds (headers) with check valves on individual flowlines.

(m) Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.

(n) Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.

(o) Adequately protect sub-marine piping appurtenant to the facility against environmental stresses and other activities such as fishing operations.

(p) Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.

5. Part 112 is amended by designating §§ 112.20 and 112.21 as subpart D, and adding a subpart heading as follows:

Subpart D—Response Requirements

Sec.

112.20 Facility response plans.

112.21 Facility response training and drills/exercises.

Subpart D—Response Requirements

6. Section 112.20 is amended by revising the first sentence of paragraph (h) to read as follows:

§ 112.20 Facility response plans.

* * * * *

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless you have prepared an equivalent response plan acceptable to the Regional Administrator to meet State or other Federal requirements. * *

* * * * *

Appendix C—[Amended]

7. Appendix C of part 112 is amended by:

- a. Revising the first sentence of section 2.1; and
b. Revising the title and first sentence of section 2.4.

Appendix C to Part 112—Substantial Harm Criteria

* * * * *

2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil

A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. * * *

* * * * *

2.4 Proximity to Public Drinking Water Intakes at Facilities with a Total Oil Storage Capacity Greater than or Equal to 1 Million Gallons

A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). * * *

* * * * *

Appendix D—[Amended]

8. Appendix D of part 112 is amended by revising footnote 2 to section A.2 of Part A to read as follows:

Appendix D to Part 112—Determination of a Worst Case Discharge Planning Volume

* * * * *

Part A * * *

* * * * *

A.2 Secondary Containment—Multiple-Tank Facilities

* * * * *

Secondary containment is described in 40 CFR part 112, subparts A through C. Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).

* * * * *

Appendix F—[Amended]

9. Appendix F of part 112 is amended by:

- a. Revising section 1.2.7;
b. Revising the second and last sentences of section 1.4.3;

c. Revising paragraph (7) and the undesignated paragraph and NOTE following paragraph (7) in section 1.7.3;

d. Revising section 1.8.1;

e. Revising the first two sentences of section 1.8.1.1. introductory text;

f. Revising the next to the last sentence of section 1.8.1.3;

g. Revising the next to last sentence of section 1.10.;

h. Revising paragraph (6) of section 2.1;

i. Remove the acronym "SIC" in section 3.0, and add in alphabetical order the acronym "NAICS"; and.

j. Remove the reference to "Standard Industrial Classification (SIC) Code" in Attachment F-1, General Information, and add in in alphabetical order a reference to "North American Industrial Classification System (NAICS) Code."

The revisions read as follows:

Appendix F to Part 112—Facility-Specific Response Plan

* * * * *

1.2.7 Current Operation

Briefly describe the facility's operations and include the North American Industrial Classification System (NAICS) code.

* * * * *

1.4.3 Analysis of the Potential for an Oil Discharge

* * * This analysis shall incorporate factors such as oil discharge history, horizontal range of a potential discharge, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. * * * The owner or operator may need to research the age of the tanks the oil discharge history at the facility.

* * * * *

1.7.3 Containment and Drainage Planning

* * * * *

(7) Other cleanup materials.

In addition, a facility owner or operator must meet the inspection and monitoring requirements for drainage contained in 40 CFR part 112, subparts A through C. A copy of the containment and drainage plans that are required in 40 CFR part 112, subparts A through C may be inserted in this section, including any diagrams in those plans.

Note: The general permit for stormwater drainage may contain additional requirements.

* * * * *

1.8.1 Facility Self-Inspection

Under 40 CFR 112.7(e), you must include the written procedures and records of inspections for each facility in the SPCC

Plan. You must include the inspection records for each container, secondary containment, and item of response equipment at the facility. You must cross-reference the records of inspections of each container and secondary containment required by 40 CFR 112.7(e) in the facility response plan. The inspection record of response equipment is a new requirement in this plan. Facility self-inspection requires two-steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. You must note the date of each inspection. You must keep facility response plan records for five years. You must keep SPCC records for three years.

* * * * *

1.8.1.1 Tank Inspection

The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR part 112, subparts A through C. * * *

* * * * *

1.8.1.3 Secondary Containment Inspection

* * * * *

* * * Similar requirements exist in 40

CFR part 112, subparts A through C. * * *

* * * * *

1.10 Security

According to 40 CFR 112.7(g) facilities are required to maintain a certain level of security, as appropriate. * * *

* * * * *

2.1 General Information

* * * * *

(6) North American Industrial Classification System (NAICS) Code: Enter the facility's NAICS code as determined by the Office of Management and Budget (this information may be obtained from public library resources.)

* * * * *

3.0 Acronyms

* * * * *

NAICS: North American Industrial Classification System

* * * * *

Attachments to Appendix F

Attachment F-1—Response Plan Cover Sheet

* * * * *

General Information

* * * * *

North American Industrial Classification System (NAICS) Code:

* * * * *

[FR Doc. 02-16852 Filed 7-16-02; 8:45 am]

BILLING CODE 6560-50-P

CALIFORNIA—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Imperial County: Imperial Valley planning area	November 15, 1990	Nonattainment	9/8/04	Serious.

* * * * *
 [FR Doc. 04-18378 Filed 8-10-04; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112
[OPA-2004-0003; FRL-7800-2]
RIN 2050-AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is today extending by eighteen months certain upcoming compliance dates for the July 2002 Spill Prevention Control and Countermeasure (SPCC or Plan) amendments. The dates affected by today's final rule are the date for a facility to amend its Plan and the date for a facility to implement that amended Plan in a manner that complies with the newly amended requirements (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are also amending the compliance deadline for onshore and offshore mobile facilities. In light of a recent partial settlement of litigation involving the July 2002 amendments, we are extending the compliance dates to, among other things, provide sufficient time for the regulated community to undertake the actions necessary to update (or prepare) their Plans. The final rule is also intended to alleviate the need for individual extension requests.

DATES: This final rule is effective August 11, 2004.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B-102, Washington, DC 20460. The docket number for the final rule is OPA-2004-0003. The docket is

contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202-566-0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you \$0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this final rule, contact Hugo Paul Fleischman at 703-603-8769 (fleischman.hugo@epa.gov); or Mark W. Howard at 703-603-8715 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This final rule concerns an eighteen-month extension of the current deadlines contained in 40 CFR 112.3(a) and (b), and an amendment of the compliance dates for 40 CFR 112.3(c). The contents of this preamble are as follows:

- I. General Information
- II. Entities Affected by This Final Rule
- III. Statutory Authority
- IV. Background
- V. Today's Action
- VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in Section V of this notice, the Environmental Protection Agency (EPA or we) is today extending by eighteen months the dates in 40 CFR 112.3(a) and (b) for a facility to amend and implement its Plan that complies with the newly amended requirements (or, in the case of a facility becoming

operational after August 16, 2002, prepare and implement a Plan in a manner that complies with the newly amended requirements). Today's rule extends these deadlines for eighteen months from the dates promulgated in the April 17, 2003, SPCC rule amendment. See 68 FR 18890. Since today's action extends the compliance dates, it is not necessary to file a request for an extension of time pursuant to § 112.3(f) beyond the existing compliance dates. If a facility owner or operator has already filed for an extension, such a request is invalidated by today's action. If an extension beyond the additional eighteen months is necessary, a request for an extension of time pursuant to § 112.3(f) must be submitted.

We are also amending the compliance deadlines in 40 CFR 112.3(c) for mobile facilities.

How Can I Get Copies Of The Background Materials Supporting Today's Final Rule or Other Related Information?

1. EPA has established an official public docket for this final rule under Docket ID No. OPA-2004-0003. The official public docket consists of the documents specifically referenced in this final rule and other information related to this final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave., NW., EPA West Building, Room B-102, Washington, DC 20004.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in

the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's

policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the

system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111-112
Crude Petroleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31-33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482-486/488112-48819/4883/48849/492-493/71393
Elementary and Secondary Schools, Colleges	6111-6113
Hospitals/Nursing and Residential Care Facilities	622-623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the SPCC rule. The rule was effective August 16, 2002. The rule included compliance dates in § 112.3(a) and (b); however, the original compliance dates were extended for eighteen months on April 17, 2003 (68 FR 18890).

V. Today's Action

EPA is extending by an additional eighteen months the compliance dates in § 112.3(a) and (b), and amending the compliance deadline in § 112.3(c). Thus, an onshore or offshore facility that: (1) Was in operation on or before August 16, 2002, must maintain its Plan, but must amend it, if necessary to ensure compliance, on or before February 17, 2006, and must implement the amended Plan as soon as possible, but not later than August 18, 2006; (2) becomes

operational after August 16, 2002, through August 18, 2006, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare a Plan on or before August 18, 2006, and fully implement it as soon as possible, but not later than August 18, 2006; and (3) becomes operational after August 18, 2006, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare and implement a Plan before it begins operations. An onshore or offshore mobile facility must amend its Plan, if necessary, and implement such amendments by August 18, 2006. Today's rule is immediately effective; EPA is invoking the exception to the 30-day notice requirement in the Administrative Procedure Act because the purpose of the rulemaking is to relieve a restriction (5 U.S.C. 553(d)(1)). Furthermore, the existing compliance date for amending a Plan is August 17, 2004, and a 30-day notice requirement will extend past that date.

After the publication of the July 17, 2002, final rule amending the SPCC regulation (67 FR 47042), several members of the regulated community filed legal challenges to certain aspects of the rule. *See, American Petroleum Institute v. Leavitt et al.*, No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed November 14, 2002).¹ Settlement discussions between EPA

and the plaintiffs have led to an agreement on all issues except one. In a separate notice, EPA recently published clarifications developed by the Agency during the course of settlement proceedings (and which provided the basis for the settlement agreement) regarding the SPCC regulation. *See* 69 FR 29728, May 25, 2004.

We believe it is appropriate to provide members of the regulated community with sufficient time to understand these clarifications and be able to incorporate them, as appropriate, in preparing and updating their SPCC Plans in accordance with the 2002 amendments. Therefore, we believe that the current compliance dates are insufficient for this purpose, and that it would be inefficient to use scarce Agency resources to address this problem by processing individual extension requests.

*A. Comments*²

Extension of Time. On June 17, 2004, EPA proposed to extend certain upcoming SPCC compliance dates by 12 months. The majority of commenters³ supported this one-year compliance deadline extension to allow the

¹Lead plaintiffs in the cases were American Petroleum Institute (API), Marathon Oil Co., and the Petroleum Marketers Association of America (PMAA).

²This section, and Section B below, contain a summary of the comments received on the proposal, and the Agency's responses to such comments. For more detailed and additional information, see the response-to-comments document in the docket for today's rule.

³Commenters mainly represented oil industry interests, as well as a number of other industrial sectors (agriculture, paints and coatings, electrical, construction materials, transportation, etc.) and professional engineers.

regulated community sufficient time to understand and incorporate recent clarifications of the SPCC rule. However, several commenters suggested extension time frames longer than one year, one commenter believed that no extension was necessary, and still another commenter suggested that EPA withdraw the SPCC rule altogether.

Commenters who recommended extending compliance deadlines confirmed the Agency's view at the time of proposal that an extension is appropriate to provide the regulated community with sufficient time to understand and incorporate, as appropriate, the clarifications to the SPCC rule when preparing and updating their SPCC Plans in accordance with the 2002 amendments. Commenters also agreed that an extension is appropriate to eliminate the need for individual extension requests during this time. In addition, commenters also supported the extension of the compliance deadlines in order to provide more time to the regulated community to perform implementation-related activities such as staff training; fiscal budgeting; obtaining professional engineer certification; and to prevent a shortage of materials, equipment, and technical expertise to implement the Plans. Numerous commenters stated that the additional time would also be useful in order to receive and incorporate additional clarification and guidance on the SPCC rule from EPA.

As noted above, several commenters suggested extensions longer than the proposed one-year extension. These suggestions ranged from 18 months to two years to "a much greater time" for facilities to amend and/or implement their Plan. Some commenters cited a variety of reasons for a longer extension, including issues cited above, as well as weather-related concerns for a February implementation deadline, a preference for longer-term budgetary planning, time to develop industry-specific best management practices, and a need for an additional construction season. Some commenters requested that compliance dates be extended until after the completion of a further rule revision. Finally, a number of commenters suggested a longer time extension for further clarification and resolution of issues outside the scope of the litigation settlement discussions; that is, commenters were concerned about the number and scope of technical issues that EPA plans to clarify, and suggested that more than 12 months would be necessary for EPA to develop guidance and for facilities to make appropriate changes to their Plans.

Scope of the Extension. A few commenters requested that an extension of the compliance deadlines also apply to the facilities described in § 112.3(c), mobile facilities. Another commenter requested that EPA reaffirm the statement that the Agency made in the preamble to the April 17, 2003, final rule, which clarified that the extension granted at that time applied only to "new or more stringent compliance obligations" imposed by the July 2002 amendments and not to provisions in the amendments that provide regulatory relief.

Some commenters expressed concern that EPA would not be able to publish the final rule extending the deadlines by July 17, 2004, in which case they requested that the Agency issue an interim final rule by that date, extending the deadlines as long as necessary to finalize this proposed rule.

B. Response to Comments

Extension of Time in General. In reviewing the comments, we have been persuaded that more than one year is appropriate for facilities to come into compliance with the SPCC amendments. This is due to the need to provide sufficient time for the regulated community to take actions necessary to update (or prepare) their Plans in light of the partial settlement of litigation involving the July 2002 amendments.

However, two commenters did not support any extension. One commenter expressed a concern that political interests motivated the Agency's decision to extend the compliance deadlines. Accordingly, the commenter did not support an extension and instead stated that the compliance deadline should be, at the latest, January 1, 2005, although no rationale for this date was given. The Agency reiterates that the compliance date extension is intended to give members of the regulated community sufficient time to understand and incorporate recent clarifications to the SPCC rule.

Another commenter opposed promulgating the extension of the compliance deadline and instead suggested that EPA withdraw the revised final SPCC rule (67 FR 47042) entirely. The commenter suggested that EPA repropose the SPCC rule employing full notice and comment rulemaking procedures, and until then rely on the 1973 version of the SPCC rule (38 FR 34164). The commenter suggested the proposed rule be withdrawn because he felt: (1) EPA failed to use a single notice and single comment rulemaking procedure on the SPCC rule, (2) the proposed rule is necessitated by an incorrect economic analysis of the

impact of the 2002 amendments, and (3) the proposed rule is flawed by lack of closure regarding the definition of "navigable waters." EPA does not believe that any of these issues provide a legitimate justification for withdrawing the revised SPCC rule. Moreover, these issues are not within the scope of today's rulemaking. The Agency confirms its belief that extending the compliance dates is necessary.

Extension of Time. Although the majority of commenters indicated that a one-year extension was warranted, several commenters made a compelling case for a time frame different than the proposed one-year extension. With respect to comments requesting additional guidance, the Agency notes that in an effort separate from this rulemaking, EPA has been working to assess the need for guidance on implementing various areas relating to the 2002 SPCC amendments and will continue this process, as appropriate.

In situations where the extension does not provide sufficient relief for an individual facility, that facility may seek an extension under 40 CFR 112.3(f), where applicable. It is EPA's belief, however, that the eighteen-month extension will provide enough relief to prevent the Agency from again being faced with the prospect of an overwhelming number of requests for individual extensions under § 112.3(f).

Scope of the Extension. With regard to the comments asking for a revised compliance date for the requirements in § 112.3(c), we are persuaded that the compliance deadlines for onshore and offshore mobile facilities should also be amended because such facilities face the same challenges to amend and implement their Plans in light of the partial settlement of litigation.

In response to the commenter asking EPA to reaffirm the statement that the Agency made in the preamble to the April 17, 2003, final rule, EPA restates that to the extent that the July 2002 rule imposes new or more stringent compliance obligations than in the 1973 SPCC rule, the deadlines in 40 CFR 112.3(a) and (b) for the fulfillment of those obligations are again extended under today's final rule, as well as the deadline in 40 CFR 112.3(c). A provision that provides regulatory relief in the revised rule is not affected by today's compliance deadline extensions because such provisions are not addressed by 40 CFR 112.3(a), (b), or (c), and these are not provisions for which it would be "necessary" to amend existing Plans "to ensure compliance with" the July 2002 amendments.

In response to the commenter who recommended that EPA either publish this final rule by July 17, 2004, or issue an interim final rule to extend the deadlines as long as necessary to finalize this rule, EPA states that it is aware of the scheduling concerns regarding the extension of compliance deadlines and believes it has issued the final rule such that the regulated community will not be burdened with preparing individual extension requests.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a “significant regulatory action” because it (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket for today's final rule.

B. Paperwork Reduction Act

This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (R.F.A.) generally requires an agency to

prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this final rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action does not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule will temporarily reduce regulatory burden on facilities by extending for eighteen months the compliance dates in § 112.3(a) and (b), as well as amend the compliance deadlines in § 112.3(c). We have therefore concluded that today's final rule would relieve regulatory burden for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule will reduce burden and costs on all facilities.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the final rule is to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This final rule will not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, “Protection of Children from Environmental Health

Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, NTTA is inapplicable.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 840(2). This rule will be effective August 11, 2004.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable and combustible materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Piping, Reporting and recordkeeping requirements, Tanks, Transfer operations, Water pollution control, Water resources.

Dated: August 5, 2004.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

■ 2. Section 112.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill, Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2006, and must implement the amended Plan as soon as possible,

but not later than August 18, 2006. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2006, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2006, and fully implement it as soon as possible, but not later than August 18, 2006.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2006, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before August 18, 2006. If your onshore or offshore mobile facility becomes operational after August 18, 2006, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

* * * * *

[FR Doc. 04-18370 Filed 8-10-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2004-0145; FRL-7362-1]

Forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea in or on

almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh). Siemer and Associates Incorporated, agent for KIM-C1, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 31, 2006.

DATES: This regulation is effective August 11, 2004. Objections and requests for hearings must be received on or before October 12, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP-2004-0145. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food Manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

II. Background and Statutory Findings

In the **Federal Register** of April 7, 2004 (69 FR 18375)(FRL-7349-9), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7G4906) by KIM-C1, LLC, c/o Siemer and Associates, Inc., 4672 West Jennifer Street, Suite 103, Fresno, CA 93722. This notice included a summary of the petition prepared by KIM-C1, the registrant.

The petition requested that 40 CFR 180.569 be amended by establishing an extension of a time-limited tolerance for residues of the fungicide forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea, in or on the raw agricultural commodities almonds, apples, blueberries, figs, grapes, kiwi fruit, pears, and plums at 0.01 parts per million (ppm). The tolerance will expire on May 31, 2006.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 18, 2006. Filing a petition for reconsideration by the Administrator of these final rules do not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 24, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(334) (i)(B)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(334) * * *

(i) * * *

(B) * * *

(2) Rules 8011, 8021, 8031, 8041, 8051, and 8061, amended on August 19, 2004 and Rules 8071 and 8081, amended on September 16, 2004.

* * * * *

[FR Doc. 06-1413 Filed 2-16-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2005-0003; FRL-8033-9]

RIN 2050-AG28

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today extending the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. This action allows the Agency time to take final action on proposed revisions to the July 17, 2002 SPCC rule before owners and operators of facilities are required to meet requirements of that rule when preparing or amending their SPCC Plans.

DATES: This final rule is effective February 17, 2006.

ADDRESSES: The public docket for this final rule, Docket ID No. EPA-HQ-OPA-2005-0003, contains the information related to this rulemaking,

including the response to comment document. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202-566-1744, and the telephone number to make an appointment to view the docket is 202-566-0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 421-9810 or TDD (703) 421-3323. For more detailed information on specific aspects of this final rule, contact either Vanessa Rodriguez at (202) 564-7913 (rodriguez.vanessa@epa.gov), or Mark W. Howard at (202) 564-1964 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460-0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

II. Background

On July 17, 2002, the Agency published a final rule that amended the SPCC regulations (*see* 67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for preparing, amending, and implementing SPCC Plans. The original compliance dates were amended on January 9, 2003 (*see* 68 FR 1348), again on April 17, 2003 (*see* 68 FR 18890), and a third time on August 11, 2004 (*see* 69 FR 48794).

Under the regulations in effect prior to this final rule, § 112.3(a) and (b) required a facility that was in operation on or before August 16, 2002 to make any necessary amendments to its SPCC

Plan by February 17, 2006, and to fully implement its SPCC Plan by August 18, 2006. A facility that came into operation after August 16, 2002, but before August 18, 2006, was required to prepare and fully implement an SPCC Plan on or before August 18, 2006. Thus, for facilities in operation on or before August 16, 2002, the regulations provided a six-month period between the compliance date for Plan amendment and the compliance date for Plan implementation. In addition, § 112.3(c) required onshore and offshore mobile facilities to prepare or amend and implement SPCC Plans on or before August 18, 2006.

On December 12, 2005, the Agency published in the **Federal Register** a proposed rule that would amend the SPCC requirements in several areas (*see* 70 FR 73524). Specifically, the proposal would allow owners and operators of facilities with an oil storage capacity of 10,000 gallons or less, that also meet other qualifying criteria, the option of self-certification of their SPCC Plans (in lieu of review and certification by a Professional Engineer); it would provide facilities with certain types of oil-filled operational equipment an alternative to the secondary containment requirement that would not require a determination of impracticability; it would define airport mobile refuelers, and exempt such vehicles meeting the definition from the specifically sized secondary containment requirements for bulk storage containers; it would amend the requirements for animal fats and vegetable oils (AFVOs) by removing certain sections of the regulations in Subpart C of Part 112 that do not apply to facilities that handle, store, or transport AFVOs; and it would define farms, and would provide a separate extension of the compliance dates for certain farms.¹

On the same day, but in a separate notice in the **Federal Register** (*see* 70 FR 73518), the Agency also proposed to extend the dates in § 112.3(a), (b), and (c) by which a facility must prepare or amend and implement its SPCC Plan. Under the proposed extension rule, a facility that was in operation on or before August 16, 2002 would have to make any necessary amendments to its SPCC Plan, and implement that Plan, on or before October 31, 2007. Likewise, a facility that came into operation after August 16, 2002 would have to prepare and implement an SPCC Plan on or before October 31, 2007. Finally, a

mobile facility would have to prepare or amend and implement an SPCC Plan on or before October 31, 2007.

The Agency's proposal to extend the compliance dates in § 112.3 (which is made final in today's notice) was designed to allow the Agency time to take final action on the proposed amendments to the SPCC requirements before owners and operators are required to prepare, amend, and implement their SPCC Plans. The Agency believed that the extension was appropriate to allow owners and operators to take advantage of any modifications that would be provided by a final SPCC amendment rule. In addition, the Agency believed that the extension would allow the regulated community the opportunity to understand the material presented in its newly released guidance "SPCC Guidance for Regional Inspectors"² before preparing or amending their SPCC Plans. Finally, the Agency believed that the proposed extension was necessary for facilities that might have difficulty meeting the upcoming compliance dates because they were adversely affected by the recent hurricanes.

III. Summary of This Final Rule

This final rule extends the dates in § 112.3 by which owners and operators of facilities must prepare or amend their SPCC Plans as proposed. Under the new § 112.3(a), a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan, and implement that Plan, on or before October 31, 2007. Under the new § 112.3(b), a facility that came into operation after August 16, 2002 must also prepare and implement an SPCC Plan on or before October 31, 2007. Finally, under the new § 112.3(c), a mobile facility must prepare or amend and implement an SPCC Plan on or before October 31, 2007.

This rule is effective immediately. Section 553(d) of the Administrative Procedures Act requires 30-days notice before the effective date of a final rule. However, section 553(d)(1) allows an exception to the 30-day notice where a rule relieves a restriction. Since this final rule relieves a restriction, the

Agency invokes section 553(d)(1) to allow an immediate effective date.

It should be noted that today's compliance date extension affects only requirements of the July 2002 final SPCC rule that impose new or more stringent compliance obligations than did the 1973 SPCC rule. Any provision in the July 2002 rule that provides regulatory relief is not affected by these compliance date extensions because such provisions are not ones for which it would be "necessary" to amend existing Plans "to ensure compliance with" the July 2002 amendments (*see* § 112.3). This issue was discussed by the Agency in two previous extension notices on April 17, 2003 (*see* 68 FR 18890, at 18892-3), and on August 11, 2004 (*see* 69 FR 48794, at 48796).

IV. Response to Comment

The Agency received approximately 80 comments on the proposed rule. The discussion below summarizes and responds to the major comments received. A more complete response to comments can be found in the docket for this rulemaking, EPA-HQ-OPA-2005-0003.

The majority of commenters supported the Agency's proposal to extend the compliance dates in § 112.3. They agreed with the Agency that the extension was necessary to allow owners and operators the opportunity to take advantage of any modifications that might be provided by an amendment to the SPCC rule (*see* discussion in section II). Of those who supported an extension of the compliance dates, some commenters agreed with extending the compliance dates as proposed, and others opposed the proposed length of the extension.

A number of commenters requested that the Agency incorporate flexibility into the compliance dates in § 112.3, by extending them until October 31, 2007, or until a date no less than one year following implementation of the final SPCC amendment rule, whichever is later. Commenters believed that, since the date for a final SPCC amendment rule is uncertain, setting a compliance date of October 31, 2007 does not guarantee owners and operators a full year between promulgation of a final rule and the compliance dates in § 112.3. These commenters believe it is important to coordinate the compliance dates in § 112.3 with a final SPCC amendment rule.

The Agency is reluctant to proceed as these commenters suggested and set uncertain compliance dates in § 112.3. At the same time, the Agency recognizes that the regulated community needs adequate time after EPA takes final

¹ Comments and our response to them regarding the separate extension of the compliance dates for farms will be addressed in the rulemaking that addresses the substantive modifications that were proposed for the SPCC rule on December 12, 2005.

² This guidance is intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule. The document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is available on the Agency's Web site at <http://www.epa.gov/oilspill>.

action on the proposed amendments to the SPCC Plan requirements to amend or prepare their SPCC Plans and to implement them. The Agency agrees that one year is a reasonable period of time to allow for preparing, amending, and implementing SPCC Plans following final Agency action on the proposed amendments to the SPCC rule. The Agency plans to develop and publish a **Federal Register** notice taking final action on the December 12, 2005 proposal as soon as possible. At this time, based on the information at hand, the Agency believes that extending the compliance dates in § 112.3 until October 31, 2007 will allow owners and operators an adequate interval to comply with the SPCC rule. Regarding modifications of the SPCC regulations, to the extent practicable, EPA will establish deadlines for compliance implementation that commence one year after promulgating the regulatory revisions.

Other commenters objected to the Agency's proposal to eliminate the six-month interim period in § 112.3(a) between the compliance dates for Plan amendment and implementation. Those commenters requested that the date for implementing amended SPCC Plans be revised to include a six-month period after the October 31, 2007 date for Plan amendment.

The Agency disagrees with these commenters. For the reasons discussed above, the Agency believes the October 31, 2007 date for Plan implementation is adequate. The effect of the Agency's decision to eliminate the gap between Plan preparation or amendment and implementation was to allow additional time for Plan preparation or amendment. The Agency believes that this approach, which allows owners and operators flexibility, makes sense given that owners and operators are not required to submit their SPCC Plans to the Agency.

Several commenters conditioned their support of the proposed compliance date extensions on the Agency's timely resolution of issues related to regulation of animal fats and vegetable oils (AFVOs). These commenters were concerned that the Agency has not yet developed differentiated requirements for AFVOs, and some suggested that the Agency develop a timeframe to do so.

In the December 12, 2005 SPCC amendment proposed rule, the Agency requested information that would support differentiated SPCC requirements for AFVOs (see 70 FR 73542, at 73541). The Agency is not prepared, at this time, to determine whether that request for comment will produce information that is appropriate

or adequate for development of differentiated requirements for AFVOs. Thus, the Agency believes it would be inappropriate to condition the compliance dates in § 112.3 on such uncertain factors. Further, issues specific to the regulation of AFVOs are outside the scope of this extension. The Agency will review and give full consideration to all comments it receives related to AFVOs, and address those comments when it has had a chance to assess them and any data provided.

Finally, some commenters objected to extending the compliance dates in § 112.3. Generally, those commenters believed that extension of the dates would delay development and implementation of SPCC Plans, which are necessary for protection of human health and the environment. Further, they raised concerns that extending the compliance dates only encourages non-compliance.

For example, one commenter argued that it is unnecessary and absurd to extend the compliance dates a third time. The commenter pointed out that this rule would extend compliance to a time four years after the 2002 SPCC rule should have first been effective, and almost 35 years after the SPCC rules were first promulgated. The commenter believed that facilities should already be in compliance with the 1973 rules, and consequently should be in compliance with the rule changes proposed by the Agency because they primarily reduce the requirements for regulated facilities. The commenter also believed that most regulated facilities already have developed and implemented SPCC plans to comply with the earlier compliance dates that were subsequently extended. The commenter believed that these facilities are ready to meet their obligations to prevent oil spills and other releases, and that it is entirely unnecessary to extend the compliance dates when most facilities have developed and implemented Plans. Finally, the commenter anticipated that extending the compliance dates will extend the Agency's practice of reduced inspections and enforcement at SPCC regulated facilities, continuing the increased likelihood of oil releases and endangerment of facility personnel and neighboring communities. By extending the compliance dates, the commenter was concerned that the Agency would allow noncompliant facilities that have not put SPCC Plans in place to continue to operate and endanger human health and the environment.

The Agency believes that it is in the best interest of both the regulated community and the environment to

address areas of confusion that arose after promulgation of the 2002 amendments. By promulgating a proposal intended to clarify requirements and reduce burdens, particularly on small businesses, and by making the SPCC Inspectors Guidance available to the regulated community, the Agency believes that a more effective and complete implementation of the SPCC regulation and improved environmental protection will ultimately result. The Agency also believes that the regulated community needs the additional time allowed by the extension in order to better take advantage of the guidance and any further amendments that are promulgated and that the benefits of this extension outweighs the concerns raised by commentors of increased administrative burdens.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, this action has been judged as not a "significant regulatory action" because it extends the compliance dates in § 112.3, but has no other substantive effect. However, because of its interconnection with the rulemaking proposed on December 12, 2005 (see discussion in section II), which is a significant action under the terms of Executive Order 12866, this action was

nonetheless submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because this action does not change the requirements of the rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a

small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule relieves the regulatory burden for small entities by extending the compliance dates in § 112.3. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other

than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule would reduce burden and costs for all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As was explained above, the effect of the rule is to reduce burden and costs for all facilities, including small governments that are subject to the rule by extending the compliance dates.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable

waters. EPA encourages States to supplement the Federal SPCC regulation and recognizes that some States have more stringent requirements (56 FR 54612, October 22, 1991). This rule does not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, the Agency has not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risk

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTAA does not apply.

J. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Prior to publication of the final rule in the **Federal Register**, we will submit all necessary information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. Under the CRA, a major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective upon publication in the **Federal Register**.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: February 10, 2006.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

■ 2. Section 112.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, by October 31, 2007, and implement the Plan no later than October 31, 2007. If your onshore or offshore facility becomes operational after August 16, 2002, through October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before October 31, 2007.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before October 31, 2007. If your onshore or offshore mobile facility becomes operational after October 31, 2007, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only

while the facility is in a fixed (non-transportation) operating mode.

* * * * *

[FR Doc. 06-1502 Filed 2-16-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA-HQ-OPPT-2006-0025; FRL-7760-7]

RIN 2070-AC61

TSCA Inventory Update Reporting Partially Exempted Chemicals List; Addition of Certain Vegetable-based Oils, Soybean Meal, and Xylitol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations by adding the following four chemical substances to the list of chemical substances in § 710.46(b)(2)(iv) which are exempt from reporting processing and use information required by § 710.52(c)(4): Two vegetable-based oils (fats and glyceridic oils, vegetable (CASRN 68956-68-3) and canola oil (CASRN 120962-03-0)), soybean meal (CASRN 68308-36-1), and xylitol (CASRN 87-99-0). EPA has determined that the IUR processing and use information for these chemicals is of low current interest. Manufacturers and importers of the chemicals listed in § 710.46(b)(2)(iv) must continue to report manufacturing information.

DATES: This direct final rule is effective on April 18, 2006 without further notice, unless EPA receives adverse comment by March 20, 2006. If, however, EPA receives adverse comment, EPA will publish a **Federal Register** document to withdraw the direct final rule before the effective date.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2006-0025, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg.,

Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA-HQ-OPPT-2006-0025.

The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2006-0025. EPA's policy is that all comments received will be included in the public docket without change and may be made available in the on-line docket at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index at <http://www.regulations.gov/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the online docket at <http://www.regulations.gov/> or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington,

DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566-0280.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-8789; e-mail address: sharkey.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710. Any use of the term "manufacture" in this document will encompass import, unless otherwise stated.

Potentially affected persons may include, but are not limited to: Chemical manufacturers and importers subject to IUR reporting, including chemical manufacturers and importers of inorganic chemical substances (The North American Industrial Classification System (NAICS) codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. Other types of persons not listed in this unit could also be affected. NAICS codes have been provided to assist you and others in determining whether this action might apply to certain persons. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular person, consult the technical

paragraph (a)(1)(iii) of this section shall be the following:

* * * * *

■ **Par. 10.** Section 1.964-1T is amended by revising the first sentence of paragraph (c)(2) and the last sentence of paragraph (c)(5)(i) to read as follows:

§ 1.964-1T Determination of the earnings and profits of a foreign corporation (temporary).

* * * * *

(c) * * *
 (2) * * * For the first taxable year of a foreign corporation beginning after April 25, 2006, in which such foreign corporation first qualifies as a controlled foreign corporation (as defined in section 957 or 953) or a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)), any method of accounting or taxable year allowable under this section may be adopted, and any election allowable under this section may be made, by such foreign corporation or on its behalf notwithstanding that, in previous years, its books or financial statements were prepared on a different basis, and notwithstanding that such election is required by the Internal Revenue Code or regulations to be made in a prior taxable year. * * *

* * * * *

(5) * * * (i) * * * In the event that the United States shareholders of the controlled foreign corporation do not, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of such foreign corporation entitled to vote, the controlling United States shareholders of the controlled foreign corporation shall be all those United States shareholders who own (within the meaning of section 958(a)) stock of such corporation.

* * * * *

Cynthia Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6-22024 Filed 12-22-06; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Regulation of Fuels and Fuel Additives

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 72 to 80, revised as of

July 1, 2006, on page 695, § 80.75 is corrected by reinstating paragraphs (a)(2)(ix) and (a)(2)(x) to read as follows:

§ 80.75 Reporting requirements.

* * * * *

(a) * * *
 (2) * * *
 (ix) In the case of butane blended with reformulated gasoline or RBOB under § 80.82:

- (A) Identification of the butane batch as complying with the provisions of § 80.82;
- (B) Identification of the butane batch as commercial or non-commercial grade butane;
- (C) The batch number of the butane;
- (D) The date of production of the gasoline produced using the butane batch;
- (E) The volume of the butane batch;
- (F) The properties of the butane batch specified by the butane supplier, or the properties specified in § 80.82(c) or (d), as appropriate;
- (G) The volume of the gasoline batch subsequent to the butane blending; and
- (x) In the case of any imported GTAB, identification of the gasoline as GTAB.

* * * * *

[FR Doc. 06-55532 Filed 12-22-06; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2005-0001; FRL-8258-3]

RIN 2050-AG23

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan Requirements—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements by: first, providing the option for owners and operators of facilities that store 10,000 gallons of oil or less and meet other qualifying criteria to self-certify their SPCC Plans in lieu of review and certification by a Professional Engineer; second, providing an alternative to the general secondary containment requirement without requiring a determination of impracticability for facilities that have particular types of oil-filled equipment; third, defining and exempting particular

vehicle fuel tanks and other on-board bulk oil storage containers used for motive power; and fourth, exempting mobile refuelers from the sized secondary containment requirements for bulk storage containers. The Agency also is removing and reserving the SPCC requirements for animal fats and vegetable oils that are specific to onshore oil production facilities, onshore oil drilling and workover facilities, and offshore oil drilling, production, or workover facilities. Finally, the Agency is extending the SPCC compliance dates for farms. These changes significantly reduce the burden imposed on the regulated community for complying with the SPCC requirements, while maintaining protection of human health and the environment. In a separate document in this **Federal Register**, the Agency is proposing to extend the compliance dates for all facilities.

DATES: This final rule is effective February 26, 2007.

ADDRESSES: The public docket for this final rule, Docket ID No. EPA-HQ-OPA-2005-0001, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202-566-1744, and the telephone number to make an appointment to view the docket is 202-566-0276. The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for

current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this rule, contact Vanessa E. Rodriguez at 202-564-7913

(rodriguez.vanessa@epa.gov), or Mark W. Howard at 202-564-1964 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

- I. General Information
- II. Entities Potentially Affected by This Rule
- III. Statutory Authority and Delegation of Authority
- IV. Background
- V. Today's Action
 - A. Qualified Facilities
 - 1. Overview of the Qualified Facilities Proposal
 - 2. Summary of This Final Rule for Qualified Facilities
 - 3. Eligibility Criteria
 - a. Total Facility Oil Storage Capacity Threshold
 - b. Reportable Discharge History
 - 4. Requirements for Qualified Facilities
 - a. Self-Certification of Plan and Plan Amendment
 - b. Elements of Self-Certification and Plan Amendments for Owners and Operators of Qualified Facilities
 - c. Environmental Equivalence and Impracticability Determinations
 - B. Qualified Oil-Filled Operational Equipment

- 1. Oil-Filled Operational Equipment Definition
- 2. Oil-Filled Manufacturing Equipment
- 3. Eligibility Criteria
 - a. Reportable Discharge History
 - b. Consideration of Alternative Qualification Criteria
- 4. Requirements for Qualified Oil-Filled Operational Equipment in Lieu of Secondary Containment
 - a. Contingency Plans and Written Commitment of Manpower, Equipment and Materials
 - b. Inspections or Monitoring Program
 - c. Alternative Options Considered
- 5. Qualified Oil-Filled Operational Equipment and Qualified Facilities Overlap
- C. Motive Power
 - 1. Definition of Motive Power
 - 2. Exemption
- D. Mobile Refuelers
 - 1. Definition of Mobile Refueler
 - 2. Amended Requirements
- E. Animal Fats and Vegetable Oils
- F. Extension of Compliance Dates for Farms
 - 1. Eligibility Criteria
 - 2. Compliance Date Extension for Farms
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866—Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132—Federalism
 - F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks
 - H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Congressional Review Act

I. General Information

The Environmental Protection Agency (EPA or the Agency) is amending the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements of the Oil Pollution Prevention regulation at 40 CFR part 112 to streamline the regulatory requirements for owners and operators of a subset of facilities by: (1) Providing an option to allow the owners or operators of facilities with an oil storage capacity of 10,000 gallons or less and who meet other qualifying criteria to self-certify their SPCC Plans in lieu of review and certification by a Professional Engineer; (2) allowing owners and operators of facilities that have particular types of oil-filled operational equipment to use an oil spill contingency plan along with an inspection or monitoring program as an alternative to secondary containment for qualified equipment without requiring a determination of impracticability; (3) providing an exemption for newly defined "motive power containers"; and (4) exempting mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers. In addition, the Agency is removing and reserving certain SPCC requirements for animal fats and vegetable oils; and is extending the compliance dates for farms. The purpose of this rulemaking is to provide streamlined, alternative approaches for compliance with oil spill prevention requirements for these entities, and to improve net welfare by reducing the costs of regulation and improving compliance, resulting in greater environmental protection.

II. Entities Potentially Affected by This Rule

Industry sector	NAICS code
Oil Production	21111
Farms	111, 112
Electric Utility Plants	2211
Petroleum Refining and Related Industries	324
Chemical Manufacturing	325
Food Manufacturing	311, 312
Manufacturing facilities using and storing animal fats and vegetable oils (AFVO)	311, 325
Metal Manufacturing	331, 332
Other Manufacturing	31-33
Real Estate Rental and Leasing	531-533
Retail Trade	441-446, 448, 451-454
Contract Construction	23
Wholesale Trade	42
Other Commercial	492, 541, 551, 561-562
Transportation	481-488
Arts Entertainment & Recreation	711-713
Other Services (Except Public Administration)	811-813
Petroleum Bulk Stations and Terminals	4247

Industry sector	NAICS code
Education	61
Hospitals & Other Health Care	621, 622
Accommodation and Food Services	721, 722
Fuel Oil Dealers	45431
Gasoline stations	4471
Information Finance and Insurance	51, 52
Mining	212
Warehousing and Storage	493
Religious Organizations	813110
Military Installations	928110
Pipelines	4861, 48691
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which has been replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation-related and non-transportation-related facilities. A MOU among EPA, the U.S. Department of the Interior (DOI), and DOT, effective February 3, 1994, has re-delegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

On July 17, 2002, EPA published a final rule amending the SPCC rule, formally known as the Oil Pollution Prevention regulation (40 CFR part 112), promulgated under the authority of section 311(j) of the CWA. (The SPCC rule was originally promulgated on December 11, 1973 (38 FR 34164).) This rule included revised requirements for

SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (67 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule. Most of the issues raised in the litigation have been settled, following which EPA published clarifications in the **Federal Register** to several aspects of the revised rule (69 FR 29728, May 25, 2004).¹ In addition, concerns were raised about the implementability of certain aspects of the 2002 rule.

EPA has extended the dates for compliance with the 2002 rule by extending the dates for amending and implementing revised SPCC Plans in 40 CFR 112.3(a), (b), and (c), most recently by notice dated February 17, 2006 (71 FR 8462). Please see the **Federal Register** notice for further discussion on the compliance extensions. EPA took the most recent action in order to allow time to finalize the revisions in today's final rule and to provide the regulated community time to review and understand the material presented in the *SPCC Guidance for Regional Inspectors*, which was made available in December of 2005. The Agency also was concerned that the effects of the September 2005 hurricanes on many industry sectors might adversely impact their ability to meet the compliance dates if no extension was provided.

October 31, 2007 is the current deadline for amending and implementing revised SPCC Plans for

facilities (including mobile facilities) that were in operation on or before August 16, 2002. Facilities that came into operation after August 16, 2002 also must prepare and implement an SPCC Plan on or before October 31, 2007. As discussed in Section V.F of this preamble, today's final rule provides an additional extension of the compliance date for farms. Today's rule, which is effective February 26, 2007, does not modify the compliance dates for owners and operators of facilities other than farms. Elsewhere in today's **Federal Register**, EPA is proposing to extend the compliance dates for owners and operators of facilities until July 1, 2009 based on further SPCC regulatory revisions that EPA is considering, and that it expects to propose in 2007.

On September 20, 2004, EPA published two Notices of Data Availability (NODAs). The first NODA solicited comments on submissions to EPA that suggested more focused requirements for owners and operators of facilities subject to the SPCC rule that handle oil below a certain threshold amount, referred to as "certain facilities" (69 FR 56182). Streamlined approaches for owners and operators of facilities with oil capacities below a certain threshold were discussed in the NODA-related documents. The second NODA solicited comments on whether alternate regulatory requirements would be appropriate for owners and operators of facilities with oil-filled and process equipment (69 FR 56184). EPA has reviewed the public comments and data submitted in response to the NODAs in developing today's final rule.

Additionally, on December 2, 2005, EPA issued the SPCC Guidance for Regional Inspectors. This guidance document is intended to assist regional inspectors in reviewing implementation of the SPCC rule at a regulated facility. The guidance document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of

¹ *American Petroleum Institute v. Leavitt*, No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed Nov. 14, 2002). The remaining issue to be decided concerns the definition of "navigable waters" in § 112.2.

the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is available to owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's Web site at <http://www.epa.gov/oilspill>. This guidance document is a living document and will be revised, as necessary, to reflect any relevant future regulatory amendments, including today's action.

Based on the comments received on the NODAs, as well as other information received, EPA proposed to amend the SPCC rule to address a number of issues raised, including those pertaining to qualified facilities, qualified oil-filled operational equipment, motive power containers, airport mobile refuelers, animal fats and vegetable oils, and the compliance date for farms. (See 70 FR 73524, December 12, 2005.) EPA discusses each of these issues in Section V of this preamble. The preamble generally discusses the comments received on the proposal, EPA's response, and any modifications made to the proposal. For a more detailed discussion of the comments received and EPA's response, see "Summary and Response to Comments," which is included in the docket for today's final rule.

The scope of today's final rule was intended to address only certain targeted areas of the SPCC requirements, and a number of issues and concerns raised by the regulated community. As highlighted in the EPA Regulatory Agenda and the 2005 OMB report on "Regulatory Reform of the U.S. Manufacturing Sector," EPA is considering further amendments to address other areas where regulatory reform may be appropriate. For these additional areas, the Agency expects to issue a proposed rule in 2007. Areas where regulatory reform may be appropriate include, and are not limited to, oil and natural gas exploration and production, farms, and Tier I facilities. EPA, in conjunction with DOE, has been conducting an energy impact analysis of the SPCC requirements, and, to the extent that the analysis is available, will consider it to inform the Agency's 2007 rulemaking.

Because it is highly unlikely that the Agency will be able to promulgate such regulatory amendments before the current October 31, 2007 compliance date for SPCC becomes effective, EPA believes it is appropriate to provide an extension of the compliance date. Such

an extension has been proposed elsewhere in today's **Federal Register**.

The Agency is not in a position, at this time, to indicate all the areas for possible regulatory reform that may be addressed as part of the 2007 SPCC proposal. Nevertheless, the Agency recognizes that owners and operators of facilities need time to determine which changes may be made to the rules that may impact the requirements they are subject to in order to determine when they need to comply with the new requirements.

This approach would allow those potentially affected in the regulated community an opportunity to make changes to their facilities and to their SPCC Plans necessary to comply with the revised requirements, rather than with the existing requirements. Regarding modifications of the SPCC regulations, EPA is proposing in a separate notice in today's **Federal Register** to extend the deadlines for compliance to July 1, 2009.

V. Today's Action

A. Qualified Facilities

1. Overview of the Qualified Facilities Proposal

On December 12, 2005 (70 FR 73524), EPA proposed to amend the SPCC rule to provide an option to allow the owner or operator of a facility that meets the qualifying criteria (hereafter referred to as a "qualified facility") to self-certify the facility's SPCC Plan in lieu of review and certification by a licensed Professional Engineer (PE). EPA proposed to amend § 112.3 to describe the SPCC eligibility criteria that a regulated facility must meet in order to be considered a qualified facility.

As proposed, the eligibility criteria for a qualified facility would be a facility subject to the SPCC rule that (1) has an aggregate oil storage capacity of 10,000 gallons or less; and (2) had no discharges as described in § 112.1(b) during the ten years prior to self-certification. Self-certified Plans could not include "environmentally equivalent" alternatives to required Plan elements as provided in § 112.7(a)(2) or contingency planning in lieu of secondary containment as provided in § 112.7(d) on the basis of "impracticability." However, the proposal included specified "environmentally equivalent" measures with respect to security and integrity testing that would be available to facility owners and operators that choose to self-certify. Self-certification would be optional for owners and operators of facilities meeting the eligibility criteria, so that those owners

and operators of qualified facilities that found the existing rules more cost-effective in achieving compliance with the SPCC requirements, would continue to have the option of complying with the streamlined approach or could choose to comply with the existing SPCC requirements (including the PE certification) to take advantage of the flexibility offered by PE-certified impracticability determinations and environmentally equivalent measures.

In general, the Agency agrees with the commenters who supported the qualified facilities proposal for self-certification and believe that this revision will relieve regulatory burden on small oil storage facilities. As one commenter noted, self-certification should result in greater compliance rates across the board. Therefore, today's rule finalizes the proposed provision with a few modifications.

As described in the preamble to the proposed rule, EPA also considered, but did not propose, a multi-tiered structure option based on an analysis prepared for the U.S. Small Business Administration's (SBA) Office of Advocacy that included a tiered system for facilities that have total oil storage capacities between 1,321 and 5,000 gallons, between 5,001 and 10,000 gallons, and greater than 10,000 gallons. Under this option, Tier I facilities (1,321 to 5,000 gallons oil storage capacity) would not need a written SPCC Plan (and therefore no PE certification), but would adhere to all other SPCC requirements. Tier II facilities (5,001 to 10,000 gallons oil storage capacity) would be required to have a written SPCC Plan, but no PE certification requirement. Tier III facilities (greater than 10,000 gallons oil storage capacity) would be required to have a written SPCC Plan, certified by a PE. A significant number of commenters on the proposed rule supported a multi-tiered approach.

The Agency continues to believe that a facility owner or operator cannot effectively implement an oil spill prevention program, or any other program (business or otherwise), without documentation of that program's action items. As a matter of practice, it would be extremely difficult for a facility owner or operator to be able to follow the regulatory requirements and to comply with all the recordkeeping components without the documentation that is the Plan itself. The Plan also serves as an important communication and training tool for both management and oil-handling personnel at the facility. The sole action of having to document compliance with all of the requirements can assist in

uncovering flaws in the program's implementation, and may serve as a tool to correct them. Additionally, the documentation of compliance with the rule's requirements in a written Plan serves as a facility-specific oil spill response and prevention planning exercise which is designed to improve oil spill prevention. Nevertheless, the Agency understands the concerns, particularly of owners and operators of facilities with a smaller oil storage capacity and likely more limited resources, of the potential effort needed to develop a complicated Plan. Thus, the Agency has been exploring the possibility of developing a further simplified Plan for facilities that handle between 1,320 and 5,000 gallons of oil. However, because the Agency is considering removing or changing some of the regulatory requirements and developing a standardized form/checklist for ease of implementation, the Agency chose not to finalize this option without taking further comment. Therefore, although EPA is not adopting a multi-tiered approach in today's final rule, the Agency intends to propose a simplified approach for facilities that handle between 1,320 and 5,000 gallons of oil within the near future. In that proposal, the Agency expects to discuss the implementation of the SPCC rule for these facilities.

The preamble to the proposed rule also described an approach whereby the Agency would require owners and operators of qualified facilities to make a one-time notification to EPA if they have been in operation or subject to the SPCC requirements for a period less than ten years from the time of Plan certification, and therefore could not show a ten-year clean spill history as a qualifier. The comments generally opposed a notification requirement, arguing that it would impose additional burden with no clear benefit for the regulated community. EPA is not adopting this one-time notification requirement, because the Agency does not believe it would offer any further environmental protection. The additional burden of a notification requirement was not considered necessary and would be contrary to the intent of today's rule.

2. Summary of This Final Rule for Qualified Facilities

Today's rule finalizes the proposed option with modifications to the reportable discharge history criterion and to the self-certification limitations for qualified facilities. The final rule also places the alternative self-certification provisions in § 112.6, rather than in § 112.3(g) as proposed. A facility

owner or operator may qualify to prepare a Plan that meets the alternative requirements in § 112.6 of today's final rule, in lieu of a Plan prepared in accordance with the general requirements contained in § 112.7 and the applicable requirements in subparts B and C of the rule. Finally, today's action allows a qualified facility owner or operator to use environmentally equivalent measures or an impracticability determination provided they are certified by a PE.

To qualify for this option, a facility must meet the following eligibility criteria: the facility had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years, and the facility has 10,000 gallons or less in aggregate aboveground oil storage capacity. Discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify a facility owner or operator from using the self-certification option.

An owner or operator of a qualified facility may prepare, self-certify and implement an SPCC Plan that complies with all of the applicable requirements of the rule in accordance with § 112.6 of today's final rule. No PE certification is required for qualified facilities' Plans. A qualified facility owner or operator also may choose to prepare a Plan in accordance with the general Plan requirements in § 112.7 and applicable requirements in subparts B and C, including having the Plan certified by a Professional Engineer as required under § 112.3(d). The qualified facility approach in today's final rule is optional; owners or operators of facilities that qualify may choose not to exercise this option.

In proposing this option for facilities handling smaller amounts of oil, the Agency sought to focus on those smaller operations that may be concerned about the impact of utilizing a PE on their limited budget. Some of the current noncompliance with the SPCC regulation may be attributed to those concerns. The Agency believes that providing a simpler, less costly option for owners and operators of these smaller, less complex facilities will improve the overall compliance for the SPCC regulation, ultimately resulting in greater environmental protection.

3. Eligibility Criteria

a. Total Facility Oil Storage Capacity Threshold

EPA proposed to limit the maximum aggregate oil storage capacity at a qualified facility to 10,000 gallons or less. EPA considered many different factors before selecting this maximum storage capacity. As explained in the preamble to the proposal (70 FR 73529), EPA has established 10,000 gallons as a threshold in several other rules relating to oil discharges. The National Oil and Hazardous Substances Pollution Contingency Plan size classes define an oil discharge to inland waters exceeding 10,000 gallons as a major discharge. An oil discharge of 10,000 gallons or more to waters of the U.S. and adjoining shorelines that could reasonably be expected to cause substantial harm to the environment also is one of the factors used in identifying facilities whose owners and operators must prepare and submit a Facility Response Plan (see 40 CFR 112.20(f)(1)(D)). A number of State regulations also differentiate regulatory requirements based on a facility's total storage capacity, with some States specifying a 10,000-gallon threshold (e.g., Maryland, Minnesota, Oregon, New York, Wisconsin). Finally, 10,000 gallons is a common storage container size.

More commenters supported than opposed the proposed threshold eligibility criterion of total oil storage capacity of 10,000 gallons or less, while others offered alternative thresholds. Many commenters supported the idea of establishing tiers for qualified facilities. (As noted earlier, the Agency intends to propose a more streamlined approach for owners and operators of facilities with a total oil storage capacity of 5,000 gallons or less.) Many supporters believed that the proposed 10,000-gallon threshold would reduce the financial burden on owners and operators of small facilities. Among commenters that opposed the threshold, at least one stated that the proposed 10,000-gallon threshold did not provide enough regulatory relief to owners and operators of small facilities, but others noted that smaller storage sizes do not necessarily correlate with lower spill risk.

Facilities handling smaller amounts of oil are typically simpler in layout and operation. Most facilities with an oil storage capacity of 10,000 gallons or less are in industrial sectors that are end-consumers of oil (i.e. farms, real estate, rental and leasing, retail trade, construction [see the Regulatory Impact Analysis for this action, found in the docket for today's final rule]). These

facilities are commonly not in an oil production or distribution business and tend to use oil on-site for heating purposes, or to fuel emergency power generators or heavy machinery. The configuration of the oil-related equipment tends to be relatively standard and simple. Oil is commonly stored in a few bulk storage containers which are often bought off-the-shelf from a tank manufacturer or installer (e.g., standard UL-142 tanks) and connected with few short lengths of piping in a standard configuration that changes relatively little from one facility to another.

Additionally, these facilities typically do not have significant transfers of oil because they do not further distribute the oil. A survey conducted by EPA of oil storage facilities (1995 SPCC Survey of Oil Storage Facilities) found that the larger the storage capacity at a facility, the greater the likelihood of larger spills, more spills, and more cleanup costs annually. Our regression analyses of the 1995 survey data (see "Analysis of the Relationship between Facility Characteristics and Oil Spill Risk," found in today's docket) confirmed similar linkages for facilities with a greater number of tanks and larger annual throughput. These analyses were performed because storage capacity, number of tanks, and throughput were identified as important individual factors in explaining the total annual spill volume, number of spills, and cleanup costs. Thus, these factors were used together in a multivariate regression model to ensure that these three variables continue to be statistically significant variables when assessing whether there is potential bias (i.e., an overstatement of the importance of the variable in explaining the variation in the dependent variable). After performing these analyses, storage capacity and number of tanks were found to be statistically significant in relation to all three measures of spill risk (i.e., total number, volume, and cleanup costs of oil spills). The Agency believes simple oil storage configuration, in conjunction with the smaller quantities of oil handled at qualified facilities, makes self-certification an appropriate alternative. Therefore, the Agency has decided to maintain the maximum aggregate oil storage capacity for qualified facilities at 10,000 gallons as proposed.

The development of streamlined requirements for owners and operators of those facilities with a smaller size or storage volume is not new; industry standards, engineering codes and practices, State regulations, local fire codes and local ordinances often

recognize the differences between sizes and complexity of their target facilities and/or equipment and as a result incorporate simplified requirements. The Agency believes that today's action provides an alternative compliance option for owners and operators of facilities handling smaller amounts of oil that will ultimately result in increased environmental protection by making it easier and less burdensome to comply.

EPA recognizes that an oil discharge of less than 10,000 gallons can be harmful (see 40 CFR part 110, where the Agency defines what constitutes a discharge of oil in quantities that may be harmful). Nevertheless, EPA believes that it is reasonable to allow owners and operators of facilities with a capacity of no more than 10,000 gallons the option to prepare and implement SPCC Plans without the involvement of a PE (except in those cases where environmental equivalence or an impracticability determination is requested by an owner or operator and that the owner or operator chooses to have a PE certify part or all of the facility SPCC Plan). Therefore, the Agency is adopting in today's rule a threshold capacity of 10,000 gallons as a criterion for those facilities that are qualified for self-certification.

Some commenters argued that the 10,000-gallon threshold would still preclude owners and operators of smaller facilities from taking advantage of the self-certification alternative. For example, a facility with two 5,000-gallon storage containers and a few totes just exceeds the 10,000-gallon threshold. Commenters argued that these kinds of facilities have low volumes of oil and simple operations, and that perhaps a slightly higher threshold would be more appropriate. The Agency recognizes that regardless of the threshold quantity selected, there are likely to be facilities just above that threshold that will be excluded. To the extent that facility owners or operators want to take advantage of the streamlined approach, they always have the option of reducing the storage capacity of oil at their facility by either removing containers from the facility inventory, or permanently closing containers in accordance with § 112.2.

Other commenters suggested higher threshold quantities, generally based upon the quantities of oil used or stored in their particular industry sector. EPA does not agree that this provides a rational basis for raising the threshold limit for qualified facilities. Higher thresholds would potentially allow owners and operators of facilities (in some cases unmanned) with more

complex operations or more complex oil system configurations, designs and layouts, and with the potential for an increased number of transfers, the option of foregoing the services of a PE. Thus, self-certification for owners and operators of more complex facilities would not be commensurate with their potential spill risks.

By limiting the self-certification option to owners and operators of facilities with a maximum aggregate oil storage capacity of 10,000 gallons, the Agency believes that an owner or operator of a qualified facility should be able to self-certify compliance the facility's SPCC Plan, and that offering this simpler and streamlined alternative will result in greater environmental protection by improving compliance with the SPCC rule. Owners and operators of facilities handling smaller amounts of oil would still be required to comply with the SPCC requirements and to prevent and prepare to respond to oil discharges to navigable waters and adjoining shorelines, but they would be able to do so in a less costly manner. We believe this alternative certification provision will prove to be an incentive for compliance.

b. Reportable Discharge History

Clean Water Act section 311(b)(3) prohibits "the discharge of oil * * * into or upon the navigable waters of the United States, the adjoining shorelines, or into or upon the waters of the contiguous zone" or in connection with specified activities in waters "in such quantities as may be harmful * * *." Section 311(b)(4) requires regulations to define the quantities of oil, "the discharge of which may be harmful to the public health or welfare or the environment of the United States, * * *." 33 U.S.C. 1321(b)(3), (4). In part 110, EPA defines a "discharge of oil in such quantities that may be harmful" as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or on adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines (40 CFR 110.3). The Agency refers to such discharges as reportable discharges or as "a discharge as described in § 112.1(b)" of the rule. Any person in charge of a facility must report any such discharge of oil to waters of the United States, adjoining shorelines, the contiguous zone or in connection with specified activities in waters from the facility to the National Response Center (NRC) at 1-800-424-8802 immediately. While EPA recognizes that past discharge

history does not necessarily translate into a predictor of future performance, the Agency believes that discharge history is a reasonable indicator of a facility owner or operator's ability to develop an SPCC Plan for his smaller oil storage capacity facility without the involvement of a PE.

EPA proposed that a qualified facility subject to the SPCC requirements must have no reportable oil discharges as described in § 112.1(b) during the ten years prior to self-certification or since becoming subject to the SPCC requirements, whichever time period is less. The Agency proposed using a facility's reportable discharge history as a reasonable indicator of the effective implementation of an SPCC Plan based on an established record of good oil spill prevention. The reportable discharge history criterion was intended to limit the option of self-certification to owners and operators of those facilities that had demonstrated an effective implementation of spill prevention measures in the past.

The commenters who supported the proposed reportable discharge requirement agree that it is important for a facility to have a clean spill history. However, a significant number of commenters argued against the proposed reportable discharge history criterion as an appropriate criterion, and that the small storage capacity alone should be sufficient to allow self-certification. One reason is that some reportable discharges are not the facility owner or operator's fault, but caused by outside sources. For example, a number of commenters pointed to the recent hurricanes in the Gulf Coast states that led to oil discharges that were not within the control of the facility owner or operator. A further reason is that facilities that have a clean discharge history might not always remain spill-free. As for the proposed ten-year period, one commenter stated that facility owners and operators are only required to keep records for SPCC Plans for three years; most owners and operators keep them for five years. Another commenter stated that a discharge history of ten years would almost be impossible to prove. Another commenter believed that the qualification for a qualified facility should not be based on the ten-year discharge history, but should be based on the discharge history under the current operator. A few commenters believed that risk of discharge should determine self-certification. Additionally, many commenters recommended alternative discharge history timeframes in place of the ten-year timeframe EPA proposed. Half of

the commenters believed that three years should be the time frame for the reportable discharge history since the SPCC record-keeping requirement for facility owners and operators is three years. Two commenters mentioned that if a discharge occurs and the Regional Administrator (RA) responds, and after review of the SPCC Plan the RA does not require an amendment in the Plan, then the discharge should not count against the facility owner or operator when determining its compliance with a spill-history criterion.

After consideration of the comments received, EPA is finalizing the reportable discharge criterion for qualified facilities but for three years, rather than ten years. The Agency agrees with commenters that a ten-year spill history is unreasonable, particularly since the facility owner or operator is only required to keep records for three years. In addition, EPA is modifying the types of discharges that must be considered for this criterion. The final rule provides that for the three years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years, the owner or operator of a facility must certify that the facility has (1) had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or (2) had no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period. When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches waters of the United States, adjoining shorelines, the contiguous zone or in connection with specified activities in waters and not the total amount of oil spilled. For example, a facility only experiencing one discharge over the past ten years in which 1,500 gallons of oil discharged onto the ground but only 20 gallons reached waters of the United States (causing a sheen and reportable to the NRC) would meet the reportable discharge history criterion. However, a facility having 1,500 gallon discharge to waters of the United States would not meet the reportable discharge history criterion.

In the preamble to the proposed rule, EPA requested comment on how extreme events such as natural disasters, acts of war or terrorism, sabotage or other calamities might potentially affect the discharge history criterion for qualified facilities. Many commenters stated that it would not be appropriate to include these events in the discharge history criterion. The Agency agrees that those reportable discharges caused by

external factors beyond the control of the facility owner or operator such as natural disasters, acts of war, or terrorism should not disqualify owners and operators of otherwise qualified facilities from taking advantage of the self-certification option. Therefore, we have excluded those events from consideration in the reportable discharge criterion in today's final rule. The Agency did not include sabotage/vandalism in the final list of reportable discharge history extreme events because these are not necessarily beyond the control or planning ability of the facility owner or operator. Only those discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism will not disqualify any owner or operator of an otherwise qualified facility from using the self-certification option.

The discharge criterion finalized in today's rule is similar to the provision in § 112.4(a) for discharges that must be reported to the EPA Regional Administrator (RA). A discharge that must be reported to the RA pursuant to § 112.4(a) may result from improper Plan implementation, rather than from a deficiency in the Plan itself, which would likely not cause the RA to require the facility owner or operator to amend its Plan. Therefore, the EPA does not agree with the commenters that suggested excluding those discharges as described in § 112.1(b) from the eligibility criterion that have been investigated by the RA with no subsequent requirement for a Plan amendment.

The determination of eligibility based on reportable discharge history is made at the time the SPCC Plan is certified—*i.e.*, when the SPCC Plan is amended to comply with the SPCC rule revisions in today's final rule and those promulgated in July 2002. Once the compliance date extension ends, Plans must be amended, certified and implemented. Any discharges to navigable waters and adjoining shorelines that occur from a qualified facility after the SPCC Plan has been certified do not impact the eligibility of an owner or operator of the qualified facility to take advantage of the self-certification option. The facility does not lose eligibility status as a result of a discharge as described in § 112.1(b), unless the RA requires an amendment to the SPCC Plan in accordance with § 112.4(d) and specifically requires PE-certification. If an owner or operator cannot certify that the facility meets the eligibility criterion at the initial date of Plan certification, but can later demonstrate a clean spill history of three years, as well as compliance with any remedial actions required by the RA

following a spill, then a technical amendment to the Plan can be self-certified and the Plan can be revised to allow for qualified status.

4. Requirements for Qualified Facilities

In today's rule, the Agency is creating a new section, § 112.6, with requirements specific for qualified facilities whose owners and operators choose to self-certify their Plans. Owners and operators of qualified facilities with an aggregate aboveground oil storage capacity of 10,000 gallons of oil or less may choose to comply with the requirements in § 112.6 by completing and implementing a self-certified SPCC Plan. A qualified facility's Plan, whether certified by a PE or self-certified, must comply with all of the applicable requirements of § 112.7 and subparts B and C of the rule. We note, however, that a facility's SPCC Plan does not need to conform to any particular format. There is flexibility with respect to how a facility owner or operator chooses to maintain the documentation comprising the facility's Plan, just as there is flexibility with respect to how the owner or operator chooses to carry out the elements of the Plan.

a. Self-Certification of Plan and Plan Amendment

The commenters who supported self-certification for owners and operators of qualified facilities believed that it would relieve burden on the owners and operators. The commenters who opposed self-certification did so for four main reasons. First, some commenters believe that the preparation of the SPCC Plan requires scientific, engineering, and professional judgment skills that are unique to engineers. Second, some commenters believe owners and operators of small facilities often cannot afford the cost of responding to a spill, and it is important that the SPCC Plan is prepared carefully and thoroughly by a PE. Third, some commenters believe that not having a PE involved would adversely affect public health, safety, and welfare. Fourth, some commenters believe that the proposal would allow non-engineers to perform a function that is only allowed by engineers under the National Council of Examiners for Engineering and Surveying, a Model Law adopted by the majority of States.

The self-certification option is designed for owners and operators of those facilities that store smaller amounts of oil. These smaller amounts of oil generally translate to facilities with simpler, pre-engineered installations, such as restaurants, office buildings, family farms, automotive

repair shops, and rural electrical substations. EPA believes that a differentiated option for users of smaller amounts of oil has merit as other official bodies, such as standards setting organizations have provided differentiations in their standards for smaller users of oil. For example, the National Fire Protection Association (NFPA) provides differentiated requirements based on type of facility and size of tanks. Specifically, NFPA 30 (*Flammable and Combustible Liquids Code*, 2000 Edition) applies to tanks that exceed 3,000 liters (793 gallons) and does not apply to facilities storing flammable and combustible liquids as covered by NFPA 395, *Standard for the Storage of Flammable and Combustible Liquids at Farms and Isolated Sites*. The Agency believes that the relative simplicity of operations at facilities using smaller amounts of oil has served as a basis for other official bodies to develop requirements that are simpler in scope.

To this end, the Agency is amending the certification language so that it clearly states that the owner or operator of the facility is the certifying official for those who choose the option to self-certify the Plan for qualified facilities. The Agency also intends to develop materials to assist these owners or operators in developing SPCC Plans. It should also be remembered that while owners and operators of these facilities may choose not to have their SPCC Plans certified by a PE, they will still be required to comply with all of the SPCC requirements and to develop and implement a spill prevention program in accordance with good engineering practices, and they may do so by following regulatory guidance, industry recommended practices and standard design and operation protocols. Finally, to the extent that a State has adopted a law, such as one based on the National Council of Examiners for Engineering and Surveying, that requires that a PE to perform certain functions, including certifying Plans, nothing in today's rule affects whether a facility owner or operator would be required to utilize a PE to meet the state or local requirements since today's rule does not pre-empt any State or local requirements.

The Agency believes providing the added flexibility of self-certification for the smaller oil handlers/simpler operations will yield an increase in overall compliance for this segment of the regulated community, which will result in improved compliance with the rule and as a result, improve overall spill prevention and environmental protection. However, owners or

operators of some qualified facilities with complicated operations may nonetheless find that having a PE-certified Plan offers a more cost-effective method of achieving compliance than the proposed option. Therefore, a qualified facility owner or operator could choose to follow the existing SPCC requirements (including the PE certification).

The Agency also proposed and is finalizing today that an owner or operator of a qualified facility may self-certify technical amendments to the Plan, including modification of site diagrams, and that owners and operators of facilities with PE-certified Plans that qualify for self-certification can choose to self-certify future technical amendments rather than hire a PE to certify the technical amendment. Owners and operators of facilities that are not eligible to self-certify are required to have a PE certify such modifications. In all cases, any technical amendment in an SPCC Plan must be certified in writing. As described in the preamble to the proposed rule, the Agency notes that under the existing SPCC regulations, the RA, after reviewing the facility's Plan, has the authority in § 112.4 to require an owner or operator of a facility that has had a discharge as described in § 112.1(b) or that poses an imminent danger of a discharge as described in § 112.1(b), to amend its SPCC Plan, including requiring PE certification in accordance with § 112.3(d).

b. Elements of Self-Certification and Plan Amendments for Owners and Operators of Qualified Facilities

The finalized requirements for owners and operators of qualified facilities are similar to those in the proposed qualified facilities option in the proposed rule. An owner or operator of a qualified facility may choose to comply with the requirements in § 112.6 by completing and implementing a self-certified SPCC Plan in lieu of having a PE certified Plan. The SPCC Plan must comply with all of the applicable requirements of § 112.7 and subparts B and C of the rule.

Owners and operators that choose to self-certify their Plans must certify that they are familiar with the requirements of the SPCC rule; they have visited and examined the facility; the Plan has been prepared in accordance with accepted and sound industry practices and standards; procedures for required inspections and testing have been established; the Plan is being fully implemented; the facility meets the qualification criteria set forth under § 112.3(g); the Plan does not include any

environmental equivalence measures as described in § 112.7(a)(2) or determinations of impracticability under § 112.7(d) unless each alternative method and/or determination has been reviewed and certified by a PE in accordance with § 112.6(d); and the Plan and the individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

The qualified facility self-certification approach is optional. Under today's final rule, an owner or operator of a qualified facility may choose to prepare and implement a PE-certified SPCC Plan to comply with the requirements under 40 CFR part 112.

c. Environmental Equivalence and Impracticability Determinations

Under § 112.7, all facility owners and operators have the flexibility to deviate from specific rule provisions if the Plan states the reason for nonconformance and if equivalent environmental protection is provided by some other means of spill prevention, control, or countermeasure. These "environmentally equivalent" measures must be described in the SPCC Plan, including how the equivalent environmental protection will be achieved based on good engineering practice. Allowance for "environmentally equivalent" deviations is provided in § 112.7(a)(2), and the deviations are available only for the specific requirements listed in § 112.7(a)(2), such as fencing and other security measures, evaluation of the potential for catastrophic tank failure due to brittle fracture, integrity testing, and overflow prevention. Environmental equivalence is not available for secondary containment or the administrative or recordkeeping requirements of the SPCC rule. As part of the SPCC Plan, any environmentally equivalent measures are required to be certified by a PE and the owner or operator, and the PE is required to consider industry standards in the development of the Plan. Thus, when a PE certifies a Plan that includes any environmentally equivalent protection measure, the PE is certifying that these alternative measures are consistent with relevant industry standards.

The SPCC rule also provides flexibility for owners or operators who determine that the general secondary containment requirements in § 112.7(c) or any of the applicable additional requirements for secondary containment in subparts B and C are impracticable. Where impracticability is demonstrated,

§ 112.7(d) allows facility owners and operators the flexibility to instead develop a contingency plan and comply with additional requirements. The SPCC Plan must explain why secondary containment measures are not practicable. Section 112.7(d) requires that, when containment for bulk storage containers is deemed impracticable, the owner or operator must conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping. The owner or operator also must provide an oil spill contingency plan that follows the provisions of 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans), and a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful as described in 40 CFR part 110. A PE must certify any determinations that secondary containment is impracticable, as well as the additional measures implemented in lieu of secondary containment.

Because of the expertise that a PE has in evaluating whether particular measures provide equivalent environmental protection and in knowing how to effectively implement such measures, EPA believes that the flexibility in these performance-based provisions is best suited to SPCC Plans that are reviewed and certified by a PE. The same expertise is necessary in determining whether the required secondary containment is impracticable.

EPA proposed that when a Plan is self-certified, the owner or operator would not be able to use environmentally equivalent measures or to make impracticability determinations with respect to secondary containment. Instead, EPA proposed specific alternative measures for compliance with security and integrity testing requirements at qualified facilities that self-certify. The commenters who supported this approach indicated that it added a safety factor into the self-certification. Most commenters opposed this approach because impracticability determinations and environmental equivalence were originally created to relieve burden, and owners and operators of small facilities still need the flexibility these mechanisms provide. Some commenters believed that the agricultural industry would be negatively affected because the environmental equivalence and impracticability provisions are an important element to reduce the burden on owners and operators of these facilities due to topography and operations. As for the proposed specific

alternative to environmentally equivalent measures for security, one commenter supported this proposal.

With respect to integrity testing, the Agency proposed to allow self-certifying owners and operators of qualified facilities to perform integrity testing by relying on industry standards for the integrity testing requirements as an alternative to the existing bulk storage containing integrity testing requirements. All but one commenter supported the proposal. One commenter supported it, but also wanted visual inspection of individual shop-fabricated tanks up to 10,000 gallons. Another commenter agreed, but believed that the expense of the Steel Tank Institute's (STI) Tank Inspection Standard, SP001 (July 2005), was high and the STI standard and accompanying checklists are not applicable to small facilities. A hybrid approach also was suggested whereby owners and operators of qualified facilities would be allowed to use the self-certification option, and, in the event that an environmental equivalency or impracticability determination is needed, the owner or operator must consult a PE for just that aspect of their program, rather than requiring a full PE review and approval of the entire Plan.

The Agency continues to believe that the flexibility afforded by the environmental equivalence or impracticability determinations should be available only to owners and operators of facilities having those elements reviewed and certified by a PE. At the same time, the Agency recognizes that by restricting these options for owners and operators of qualified facilities, the alternative of self-certification may not be as attractive for some owners or operators because they will lose the added flexibility of further tailoring the SPCC requirements to their facility's characteristics. The Agency agrees with commenters that under the proposed rule, there would likely be certain circumstances where, because of cost considerations, a facility owner or operator would not choose to self-certify because it would be more cost effective for a PE to prepare an SPCC Plan that utilizes environmentally equivalent measures or impracticability determinations.

In today's final rule, the Agency therefore is adopting a hybrid approach. This approach finalizes the alternatives for addressing security measures and integrity testing and also allows owners or operators of self-certified facilities to include environmentally equivalent measures with respect to requirements other than facility security and integrity testing, as well as to make

impracticability determinations, provided they have a PE certify these environmentally equivalent measures or impracticability determinations. Because qualified facilities typically have less complex operations and petroleum system configurations and storage capacities than other facilities subject to SPCC requirements, EPA believes that the alternative requirements for facility security and bulk storage container integrity testing finalized today are appropriate for self-certification. However, today's rule does not preclude a qualified facility from choosing to have a PE certify the integrity testing and/or security measures in the facility's Plan as environmentally equivalent measures. For example, where there are no industry standards to guide integrity testing at a qualified facility, the alternative integrity testing option in § 112.6(c)(4)(ii) is not available. However, the facility owner/operator is allowed to have a PE certify an integrity testing protocol in the Plan that is environmentally equivalent to the applicable requirements in subpart B or C. The Agency believes that this "hybrid" approach will further expand the flexibility offered by the self-certification compliance option to owners and operators of qualified facilities without compromising proper environmental protection.

Similarly, EPA is adopting a hybrid approach to certification of technical amendments to a qualified facility's SPCC Plan in § 112.5. PE-certified sections of a qualified facility's "hybrid" SPCC Plan require PE certification of any technical amendments to that portion of the Plan. Technical amendments to the non-PE certified sections of a qualified facility's "hybrid" Plan can be certified by the owner or operator.

B. Qualified Oil-Filled Operational Equipment

The definition of bulk storage container in § 112.2 specifically excludes oil-filled electrical, operating, and manufacturing equipment ("oil-filled equipment"). Therefore, oil-filled equipment is not subject to the bulk storage container requirements in §§ 112.8(c), 112.9(c), and 112.12(c). However, oil-filled equipment must meet the general requirements of § 112.7, including the general secondary containment requirements of § 112.7(c). The general secondary containment requirements are intended to address the most likely oil discharge from oil-filled equipment. Although oil-filled equipment differs from bulk storage containers in several ways, the oil

storage capacity of oil-filled equipment still counts towards the aggregate oil storage capacity of the facility.

EPA proposed to amend the SPCC rule to provide a definition of oil-filled operational equipment and an optional alternative to the general secondary containment requirements for oil-filled operational equipment at a facility that meets the qualifying criterion (hereafter referred to as "qualified oil-filled operational equipment"). These amendments are being finalized in today's rule. The rule allows owners and operators of facilities with eligible oil-filled operational equipment as defined in § 112.2 the option to prepare an oil spill contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove any oil discharged that may be harmful without having to make an individual impracticability determination as required in § 112.7(d). If an owner or operator takes this option, he or she is also required to establish and document an inspection or monitoring program for this qualified oil-filled operational equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment.

New provisions in § 112.7(k) define the criterion that facilities must meet in order to be considered eligible for the "qualified oil-filled operational equipment" option. Eligibility of a facility with oil-filled operational equipment is determined by considering the reportable discharge history from only oil-filled operational equipment at the facility; the Agency is adopting the same reportable discharge history criterion that it adopted for qualified facilities, as discussed in Section V.A.3.b above. That is, the qualified oil-filled operational equipment criterion specifically requires that the facility did not discharge more than 1,000 U.S. gallons in a single discharge as described in § 112.1(b) or discharge more than 42 U.S. gallons in each of two discharges as described in § 112.1(b) within twelve months, from any oil-filled operational equipment in the three years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years.

As proposed, the final rule provides an alternative means of SPCC compliance for this equipment; therefore, an owner or operator could choose to comply with the existing SPCC requirements to provide general secondary containment for each piece of qualified oil-filled operational equipment in accordance with

§ 112.7(c), if desired. For example, oil-filled operational equipment at electrical substations is often surrounded by a gravel bed, which serves as a passive fire quench system and support for the facility grounding network that can restrict the movement of oil in the event of a release. Gravel beds, if designed to prevent a discharge as described in § 112.1(b) (i.e., drainage systems that do not serve as a conduit to surface waters) may meet the general secondary containment requirements of § 112.7(c). EPA further notes that oil-filled operational equipment located within buildings with limited drainage and which prevent a discharge as described in § 112.1(b), may already meet the requirements for general secondary containment of § 112.7(c).

In some situations, permanent containment structures, such as dikes, may not be feasible (i.e., for certain electrical equipment). Section 112.7(c) allows for the use of certain types of active containment measures (countermeasures or spill response capability), which prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by the owner or operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge so long as the active measure is designed to prevent an oil spill from reaching navigable waters or adjoining shorelines. Thus, a method of detecting a discharge is of great importance to effectively implement the use of active containment measures. If an owner or operator provides secondary containment for oil-filled operational equipment by the use of active measures, a contingency plan for this equipment is not necessary. Ultimately, the decision whether to use the optional approach to secondary containment for qualified oil-filled equipment must be made by the owner or operator.

1. Oil-Filled Operational Equipment Definition

EPA proposed to define "oil-filled operational equipment" 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. Oil-Filled operational equipment is not considered a bulk storage container, and does not include oil-filled manufacturing equipment (flow-through process)." Many of the commenters supported this definition and therefore, we are finalizing this definition in today's rule and including examples in the

definition to provide additional clarity. Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (*i.e.*, those for pumps, compressors and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil solely to enable the operation of the device. When piping is intrinsic to the oil-filled operational equipment in a closed loop system, *i.e.*, inherent to the equipment and used solely to facilitate operation of the device, (*e.g.*, for lubrication) then EPA will consider the piping to be a component of the oil-filled operational equipment. However, piping not intrinsic to the operational equipment (*i.e.*, flowlines, transfer piping or piping associated with a process) will not be considered to be part of the oil-filled operational equipment.

The Agency received comments that included alternatives to the definition proposed. Specifically, commenters suggested that the word "storage" be removed from the definition of "oil-filled operational equipment." The Agency disagrees with the suggestion to remove the word "storage" from the definition because oil-filled operational equipment includes oil inherent to the device which is stored prior to and during use for the operation of the equipment and when the oil-filled operational equipment is in standby.

Some commenters asked that EPA identify generators ("gensets") as oil-filled operational equipment. EPA's position is that gensets are a combination of oil-filled operational equipment and a bulk oil storage container, and the oil that is consumed to generate electricity is not inherent to the device. (The bulk storage container on a genset often requires the transfer of oil.) Therefore, although gensets incorporate oil-filled operational equipment, such as the lubrication oil system, gensets, as a whole unit, do not meet the definition of oil-filled operational equipment in today's final rule. In situations where it is impracticable to provide appropriate secondary containment for gensets (for either the bulk storage containers or oil-filled operational equipment of the genset), a PE can make a determination of impracticability in accordance with § 112.7(d) and develop a contingency plan following the provisions of 40 CFR part 109 and provide a written commitment of manpower, equipment and materials to expeditiously control and remove any quantity of oil

discharged that may be harmful. See Chapter 4 of the *SPCC Guidance for Regional Inspectors* for further explanation regarding when sized secondary containment is required for mobile or portable containers that are in a stationary, unattended mode.

Several commenters argued that by combining oil-filled electrical with other operational equipment, EPA diluted the strong case for differentiation of oil-filled operational equipment. Commenters also suggested that EPA redefine electrical equipment to include not only circuit breakers, transformers, and electrical switches, but also hydraulic systems, lubricating systems, gear boxes, machining coolant systems, heat transfer systems, etc. In July 2002, when EPA clarified that oil-filled electrical, operating, and manufacturing equipment are not bulk storage containers, the Agency agreed to continue to evaluate whether the general secondary containment requirements found in § 112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. Today's definition of oil-filled operational equipment describes the function of both electrical equipment, as well as other types of operating equipment (hydraulic systems, lubricating systems, etc.)

Oil-filled electrical and operating equipment share common characteristics. They both typically have minimal oil throughput because such equipment does not require frequent transfers of oil. Further, the oil contained in oil-filled operational equipment, such as cooling or lubricating oil, is intrinsic to the operation of the device and facilitates the function of the equipment. Utilities have strong economic incentives to prevent power outages, to discover and respond to an outage, and to correct the conditions that produced the outage as quickly as possible. Other industry sectors also have strong incentives to prevent discharges to avoid disruption in business and costs of a cleanup. The Agency believes it is appropriate to allow the same alternative means of compliance with the general secondary containment requirements of § 112.7(c) for oil-filled operational equipment at all facilities. In addition, oil-filled operational equipment often is subject to routine maintenance and inspections to ensure proper operation. Therefore, the Agency believes it is appropriate to allow the same alternative means of compliance with general secondary containment requirements to apply to both oil-filled electrical and operational equipment. We have included both

types of equipment into the definition of oil-filled operational equipment.

2. Oil-Filled Manufacturing Equipment

The Agency is not finalizing a definition of oil-filled manufacturing equipment because we did not propose and seek comment on a definition. Additionally, the Agency does not agree with commenters that the alternative option to general secondary containment should also apply to oil-filled manufacturing equipment. Oil-filled manufacturing equipment is inherently more complicated than oil-filled operational equipment because it typically involves a flow-through process and is commonly interconnected through piping. For example, oil-filled manufacturing equipment may receive a continuous supply of oil, in contrast to the static capacity of other, non-flow-through oil-filled equipment. Examples of oil-filled manufacturing equipment include, but are not limited to, process vessels, conveyances such as piping associated with a process, and equipment used in the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils.

The final rule does not change any requirements for oil-filled manufacturing equipment. Oil-filled manufacturing equipment remains subject to the general SPCC requirements under § 112.7, including a demonstration of impracticability under § 112.7(d) if the SPCC Plan does not provide for general secondary containment as required by § 112.7(c). The oil storage containers associated with the storage of raw products or finished oil products are bulk oil storage containers and are not considered oil-filled manufacturing equipment or oil-filled operational equipment. Oil-filled manufacturing equipment is distinct from bulk storage containers in its purpose and is described in the SPCC Guidance for Regional Inspectors. Oil-filled manufacturing equipment stores oil only as an ancillary element of performing a mechanical or chemical operation to create or modify an intermediate or finished product. Some more specific examples of oil-filled manufacturing equipment may include reaction vessels, fermentors, high pressure vessels, mixing tanks, dryers, heat exchangers and distillation columns. Under the SPCC rule, flow-through process vessels are generally considered oil-filled manufacturing equipment since they are not intended to store oil. EPA expects the owner or operator and the certifying PE to delineate bulk storage containers from the oil-filled manufacturing equipment

in the facility's SPCC Plan (*i.e.*, on the facility's diagram and in discussion of compliance with inspection requirements of the rule). Additionally, although oil-filled manufacturing equipment is not a bulk storage container and is therefore not subject to the frequent visual inspection requirement for bulk storage containers under § 112.8(c)(6), EPA believes that it is good engineering practice to have some form of visual inspection or monitoring for oil-filled manufacturing equipment in order to prevent discharges as described in § 112.1(b). Furthermore, it is a challenge to comply with several of the SPCC provisions (for example, requirements for security under § 112.7(g)) and to address countermeasures for discharge discovery under § 112.7(a)(3)(iv)) without some form of inspection or monitoring program.

3. Eligibility Criteria

a. Reportable Discharge History

Part 110 defines a discharge of oil in such quantities that may be harmful to the public health, welfare, or the environment of the United States as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or on adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines (40 CFR 110.3). The Agency refers to such discharges as reportable discharges or as "a discharge as described in § 112.1(b)" of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1-800-424-8802 immediately. While EPA recognizes that past release history does not necessarily translate into a predictor of future performance, the Agency believes that discharge history is a reasonable indicator of a facility owner or operator's ability to develop an SPCC Plan for the facility without the involvement of a PE.

Under the proposal, the alternative compliance approach for general secondary containment for oil-filled operational equipment would not be allowed to be implemented at the facility unless the owner or operator had no reportable discharge from any oil-filled operational equipment in the ten years prior to the SPCC Plan certification date, or since becoming subject to 40 CFR part 112 if the facility had been in operation for less than ten years. This criterion was based on a proposal submitted by the Utility Solid

Waste Activities Group (USWAG), as described in the documents supplementing the September 20, 2004 Notice of Data Availability (NODA) at 69 FR 56184.

Many commenters agreed with the proposed eligibility requirement. However, several comments requested that the qualifier be dropped and the type of equipment be the only qualifier. These commenters argued that reportable discharge history was not a suitable criterion for a number of reasons, including: (1) It is arbitrary and capricious—eligibility should be rationally related to equipment or equivalent facility performance; (2) it is not effective to identify bad actors who do not report discharges; (3) it is unreasonable for crude oil and natural gas production facilities, so no requirements should apply; and (4) it does not take into consideration the volume of oil or location of equipment in assessing risk. Other commenters suggested considering the criterion for submitting reports to EPA under § 112.4 to be the eligibility criterion for oil-filled operational equipment. Another commenter requested EPA clarify that the discharge is from regulated equipment, *i.e.*, equipment that is greater than 55 gallons.

Although EPA recognizes that past discharge history does not necessarily predict future performance, the Agency believes that discharge history can be used as a surrogate measure for a facility owner or operator's ability to appropriately manage its oil. Hence, as with "qualified facilities," EPA is using this discharge history criterion to identify a facility owner or operator's ability to effectively implement its SPCC Plan and prevent discharges in quantities that may be harmful. In establishing a good oil spill prevention history for its oil-filled operational equipment, a facility then qualifies for the oil spill contingency plan option in lieu of secondary containment. Because the Agency believes it is appropriate to extend this approach to all oil-filled operational equipment, regardless of the oil storage capacity of the equipment, the spill history criterion is critical to establish an appropriate balance between environmental protection and streamlined requirements by identifying those facilities whose owners or operators have demonstrated good spill prevention practices in the past.

EPA does not agree that this is unreasonable for crude oil and natural gas production facilities because the reportable discharge criterion is applicable only to the oil-filled operational equipment at the facility and is not affected by other discharges

that may have occurred from the facility from other types of oil storage containers. One commenter pointed out that discharges from compressors, pumpjacks, and similar equipment are extremely rare and unlikely to reach navigable waters and adjoining shorelines.

Many commenters suggested an alternate reportable discharge history period of five years. One commenter suggested three years and another suggested either two or five years. A few commenters suggested the time period should be five years with a § 112.4 spill notification trigger.

In response to comments received on the proposed rule, EPA has reduced the discharge history period from ten years to three years, which is consistent with the recordkeeping requirements in § 112.7(e). In addition, rather than including all discharges reportable to the National Response Center, the Agency is specifying amounts of more than 1,000 U.S. gallons in a single discharge as described in § 112.1(b) or more than 42 U.S. gallons in two discharges as described in § 112.1(b) within a twelve month period during the three-year timeframe, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years, only from oil-filled operational equipment at the facility. This criterion does not include oil discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism. The approach is similar to the discharges that are reportable to the Regional Administrator under § 112.4(a), with the exception that the criterion finalized today applies only to discharges from oil-filled operational equipment and not all oil containers at a facility as in the case of § 112.4(a). When determining spill history, the gallon amount specified in the criterion (either 1,000 or 42) refers to the amount of oil that actually reaches waters of the United States, adjoining shorelines, the contiguous zone or in connection with specified activities in waters and not the total amount of oil spilled. For example, a facility only experiencing one discharge over the past ten years in which 1,500 gallons of oil discharged onto the ground but only 20 gallons reached waters of the United States (causing a sheen and reportable to the NRC) would meet the Reportable Discharge History criterion. However, a facility having 1,500-gallon discharge to waters of the United States would not meet the Reportable Discharge History criterion.

The determination of eligibility based on reportable discharge history is made at the time the SPCC Plan is certified.

That is, when the SPCC Plan is amended to comply with the SPCC rule revisions in today's final rule and those promulgated in July 2002. Once the current compliance date extension ends, Plans must be amended, certified and implemented. Any discharges to navigable waters and adjoining shorelines that occur from oil-filled operational equipment at the facility after the SPCC Plan has been certified do not impact the eligibility of qualified oil-filled operational equipment at the facility. The facility does not lose eligibility status as a result of a discharge as described in § 112.1(b), unless the RA requires an amendment to the SPCC Plan in accordance with § 112.4(d) and specifically requires secondary containment for oil-filled operational equipment. If an owner or operator cannot certify that the oil-filled operational equipment meets the eligibility criterion at the initial date of Plan certification, but can later demonstrate a clean spill history of three years, then a technical amendment to the Plan can be certified and the Plan can be revised to allow for qualified status for oil-filled operational equipment.

In the preamble to the proposed rule, EPA requested comment on how extreme events such as natural disasters and acts of war, terrorism, sabotage, or other calamities might potentially affect the discharge history criterion for qualified facilities. Many commenters agreed (and no commenters disagreed) that EPA should account for extreme events such as natural disasters, acts of war or terrorism, etc. in granting eligibility status. The Agency agrees that reportable discharges caused by external factors beyond the control of the facility owner or operator such as natural disasters, acts of war, or terrorism should not disqualify a facility from eligibility for the qualified oil-filled equipment provision. Therefore we have excluded those events from consideration in the reportable discharge eligibility criterion in today's final rule. The Agency has excluded sabotage/vandalism from the final list of extreme events not to be considered in the reportable discharge history because these are not necessarily beyond the control or planning ability of the facility owner or operator.

b. Consideration of Alternative Qualification Criteria

One commenter suggested that the inspection and monitoring program be the only qualifier for a facility owner or operator to take advantage of this option. Other suggestions would allow eligibility to be based on the type of

equipment and a commitment or duty to properly maintain that equipment such as the duty in 40 CFR 122.41(e) to maintain wastewater treatment equipment. In this case, facility owners or operators would lose eligibility based on their performance or SPCC inspection results (*i.e.* failure to maintain oil-filled electrical equipment). The Agency is not finalizing these alternatives as part of the eligibility criteria because we believe it is in the owner or operator's best interest to properly maintain equipment at the facility and a commitment to the Agency to maintain equipment is not necessary.

The Agency believes that inspections and monitoring are part of an effective spill prevention program and it is more appropriate to include these prevention practices as a component of the alternative option for compliance with general secondary containment requirements for oil-filled operational equipment. To include these spill prevention practices as a basis for qualification raises questions on the length of time and scope of the inspection and monitoring program necessary to be in place at the facility in order to demonstrate qualification.

Additionally, the SPCC regulations already provide EPA the authority to require SPCC Plan amendments under § 112.4 so it is not necessary to include an automatic loss of eligibility based on facility performance or SPCC inspection results. Section 112.4(a) requires an owner or operator of a facility that has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b) or that has discharged more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period, to submit information to the EPA RA within 60 days of the date of the discharge. As per § 112.4(d), the RA may require the facility owner or operator to amend the SPCC Plan in order to prevent and contain discharges, including a requirement that a facility owner or operator provide secondary containment for qualified oil-filled operational equipment. The time frame for this review and amendment process is described in § 112.4. The facility owner or operator may choose to appeal the RA's decision to require a Plan amendment under § 112.4. In addition, a discharge of oil "in such quantities as may be harmful" as defined in 40 CFR 110.3 that does not trigger the reporting requirements of § 112.4(a) must still be reported to the National Response Center. Criminal action can be taken against an owner or operator of a facility if discharges are willfully not reported.

EPA also receives copies of the NRC reports and has the authority under § 112.1(f) to require a facility owner or operator to prepare and implement an SPCC Plan or any applicable part of a Plan.

Owners and operators of facilities with qualified oil-filled operational equipment that choose the alternative to secondary containment and that subsequently have a discharge would not automatically lose eligibility for today's optional approach. Owners or operators of facilities that discharge oil in quantities that may be harmful from oil-filled operational equipment should re-evaluate the effectiveness of the SPCC Plan (specifically the contingency plan, written commitment of resources, and inspections/monitoring alternative discussed in today's final rule) and determine the need for secondary containment measures in lieu of contingency planning. Additionally, the Regional Administrator may determine that a facility owner or operator is no longer eligible to have a contingency plan in lieu of secondary containment without making an impracticability determination, and such owners or operators may be required to amend their Plans to provide secondary containment for their oil-filled operational equipment.

4. Requirements for Qualified Oil-Filled Operational Equipment In Lieu of Secondary Containment

a. Contingency Plans and a Written Commitment of Manpower, Equipment, and Materials

As described in the preamble to the proposed rule, EPA believes that secondary containment often may be impracticable for oil-filled operational equipment because of inherent design and safety considerations, as well as site configuration. The oil associated with oil-filled operational equipment remains inside the equipment and transfers do not occur regularly; for oil-filled electrical equipment (*i.e.*, transformers) transfers typically occur infrequently, if at all. The complexity of the equipment and the nature of the use of this equipment does not lend itself to traditional bulk storage containment methods and thus flexibility is appropriate in this area and may improve compliance with oil pollution prevention measures. EPA proposed amendments to § 112.7 to give owners and operators of facilities with qualified oil-filled operational equipment the option of implementing an inspection and monitoring program, developing an oil spill contingency plan and providing a written commitment of resources

required to expeditiously control and remove any quantity of oil discharged that may be harmful, in lieu of secondary containment for this equipment, without having to make an impracticability determination for each piece of oil-filled operational equipment. The inspection and/or monitoring program, contingency plan and written commitment of resources would be included in the facility SPCC Plan. Commenters generally supported this proposal and the provision is being finalized in § 112.7(k) as proposed.

A number of commenters were unclear regarding the intent of an oil spill contingency plan. For example, a common industry interpretation of an "oil spill contingency plan" covers anticipated responses to oil spills both on land, as well as spills that reach navigable waters. Some commenters suggested that the contingency plan be in lieu of an SPCC Plan entirely. Others suggested that it is an administrative burden to identify downstream water users and the majority of commenters suggested that it is inappropriate to consider large discharges to water since the goal should be to prevent oil from getting to navigable waters in the first place. Several commenters suggested that implementation of a contingency plan in accordance with the requirements of 40 CFR part 109 was inappropriate because the purpose of the contingency plan should be to prevent a discharge to navigable waters and adjoining shorelines.

Commenters suggested that the oil spill contingency plan should instead contain four major elements: hazard identification, vulnerability analysis, risk assessment and response actions. Many of the commenters that suggested simplifying the contingency planning option to allow for hazard identification, vulnerability analysis, risk assessment, and response actions may already be in compliance with the general secondary containment requirements of the SPCC rule by utilizing active secondary containment measures.

We do not believe that a contingency plan, by itself, is sufficient to substitute for an SPCC Plan. The purpose of the SPCC Plan is to prevent discharges of oil from reaching navigable waters and adjoining shorelines and includes a combination of procedures, measures and equipment to achieve that goal, *e.g.*, procedures for inspections and personnel training, equipment to prevent and control discharges of oil and security measures. Conversely, a contingency plan is a detailed oil spill response and removal plan that addresses controlling, containing, and

recovering an oil discharge in quantities that may be harmful to navigable waters or adjoining shorelines. Contingency plans have a dual purpose. The first purpose is to outline the response capability or countermeasures to limit the quantity of a discharge from reaching navigable waters or adjoining shorelines (if possible). The second is to address the facility owner or operator's effective preparation for a response to a discharge of oil that has already reached navigable waters or adjoining shorelines. A contingency plan should include the ability to expeditiously control and remove any quantity of oil discharged that may be harmful.

The elements of the contingency plan are outlined in § 109.5, and include: definition of the authorities, responsibilities, and duties of all persons, organizations, or agencies that are to be involved or could be involved in planning or directing oil removal operations; establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge; provisions to ensure that full resource capability is known and can be committed during an oil discharge situation; provisions for well-defined and specific actions to be taken after discovery and notification of an oil discharge; and specific and well-defined procedures to facilitate recovery of damages and enforcement measures as provided for by state and local statutes and ordinances.

An owner or operator of a facility with oil-filled operational equipment that has submitted a Facility Response Plan (FRP) to EPA in accordance with § 112.20 would not need to also develop a contingency plan in accordance with 40 CFR part 109 for the oil-filled operational equipment because an FRP is more comprehensive than a contingency plan. Additionally, the contingency planning requirement can be met either by a whole new plan or by ensuring that the elements called for in 40 CFR part 109 and the accompanying written commitment of manpower, equipment and materials are integrated into the SPCC Plan or another plan already in place at the facility (provided that a section cross-referencing the location of requirements listed in 40 CFR part 109 and the equivalent requirements in the other response plan is included).

For a contingency plan to satisfy the requirements listed in § 112.7(k) of today's final rule, a facility owner or operator must be able to implement the contingency plan. Activation of the contingency plan depends on the capability of the owner or operator of the facility to quickly detect a discharge.

Therefore, as part of an evaluation of the adequacy of a contingency plan to satisfy the requirements of § 112.7(k), EPA will consider the time it takes facility personnel to detect and mitigate a discharge as described in § 112.1(b).

Inspections or monitoring are particularly important to detect an oil discharge when there is no secondary containment in place. Therefore, EPA proposed and is finalizing the provision to require owners and operators of facilities with qualified oil-filled operational equipment that choose to develop and implement contingency plans to also develop and implement an inspection or monitoring program, as further discussed in this section of the preamble. Because the qualified oil-filled operational equipment approach is optional, an owner or operator of a facility with such equipment may choose to provide general secondary containment in accordance with § 112.7(c) for this oil-filled operational equipment, if desired. Ultimately, this is the decision of the owner or operator of the facility.

The comments received suggest there is a misunderstanding concerning the general secondary containment requirements of § 112.7(c). General secondary containment under § 112.7(c) should be designed to address the most likely discharge from the primary containment system, *i.e.*, appropriate containment and/or diversionary structures or equipment must be designed to prevent a discharge as described in § 112.1(b). Secondary containment may be either passive measures or active measures (countermeasures or land-based spill response capability) since both are designed to prevent a discharge from reaching navigable waters or adjoining shorelines.

Passive measures are permanent installations (such as dikes or berms) and do not require deployment or action by the owner or operator. However, permanent (passive) containment structures, such as dikes, may not always be feasible for certain oil-filled operational equipment (*i.e.*, electrical transformers, capacitors, switches). The owner or operator of an SPCC-regulated facility may instead use the flexibility of active containment measures to comply with the general secondary containment requirements for oil-filled operational equipment.

Active containment measures are those that require deployment or other specific action by the owner or operator of a facility. These active measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, so long as the

active measure is designed and can reasonably be implemented to prevent an oil spill from reaching navigable waters or adjoining shorelines. The efficacy of active secondary containment measures to prevent discharges depends on their technical effectiveness (*i.e.*, mode of operation, absorption rate), placement and quantity, and timely deployment prior to, or following a discharge. A method of detecting a discharge is therefore of great importance to effectively implement the use of active containment measures. These active measures must be implemented effectively and in a timely manner to prevent oil from reaching navigable waters and adjoining shorelines, as required by § 112.7(a)(3)(iii) and (c).

Many commenters indicated that the 40 CFR part 109 plan is designed for local governments and therefore inappropriate for facilities. Some commenters suggested using environmental equivalence to tailor a 40 CFR part 109 plan or allow flexibility for facility owners and operators to comply only with applicable requirements. Other commenters suggested the use of generic and multi-facility plans. Some commenters suggested expanding the training requirements to apply to more than just the oil-handling personnel at the facility. Commenters also indicated that it is onerous to list each piece of equipment in a Plan, and that it is burdensome to keep the Plan up-to-date to account for mobile equipment.

Environmental equivalence is available to allow for alternative means of fulfilling the same function as the specific provision listed in § 112.7(a)(2). Because the contingency plan elements in part 109 do not contain specific requirements as to how those elements are fulfilled, there is no need to provide for environmentally equivalent means of fulfilling those requirements. Thus, the Agency believes that there is already sufficient flexibility in the criteria for an oil spill contingency plan in 40 CFR part 109. Moreover, since the purpose of the plan is to prepare for response to a discharge of oil that has reached navigable waters or adjoining shorelines, each of the elements of a contingency plan listed in 40 CFR part 109 are appropriate. Although the elements of a contingency plan listed in 40 CFR part 109 were originally developed to outline procedures for local and regional oil removal contingency plans, these elements can be adapted for SPCC regulated facilities. A sample contingency plan adapted to the needs of an SPCC-regulated facility following the provisions of 40 CFR part

109 is included in Appendix F of the *SPCC Guidance for Regional Inspectors* which is available on the EPA Web site at <http://www.epa.gov/oilspill>. The guidance document also provides more information on active and passive secondary containment measures.

Other commenters suggested the use of generic and multi-facility SPCC Plans. In July 2002, the Agency stated that a multi-facility SPCC Plan may be appropriate for operating equipment (oil-filled operational equipment) (see 67 FR 47042, 47080.) This type of SPCC Plan is intended for electrical utility transmission systems, electrical cable systems, and similar facilities whose owners and operators might aggregate equipment located in diverse areas into one Plan. Multi-facility Plans would include all elements required for individual SPCC Plans. Site-specific information would be required for all equipment included in each Plan. However, the site-specific information might be maintained in a separate location, such as a central office, or an electronic database, as long as such information was immediately accessible to responders and inspectors. If you keep the information in an electronic database, you must also keep a paper or other backup that is immediately accessible for emergency response purposes, or for EPA inspectors, in case the computer is not functioning. It is not clear what the commenters meant by a generic Plan, however, the Agency believes that any Plan developed must be in accordance with the requirements of 40 CFR part 112.

Commenters recommended that training at a facility be expanded beyond the personnel involved in oil handling, with one commenter suggesting that training include any individuals who could reasonably be expected to implement any component of the contingency plan; they also suggested rule language for such an approach. The Agency agrees that any employee who is required to implement any component of an oil spill contingency plan may be considered "oil-handling personnel" and require training in accordance with § 112.7(f). This would consist of training in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules and regulations; general facility operations; and the contents of the facility SPCC Plan (including the contingency plan). Contractors involved in oil handling activities at the facility should also have appropriate oil spill response training.

Additionally, commenters indicated that it is onerous to list each piece of equipment in an SPCC Plan, and that it is burdensome to keep the Plan up-to-date to account for mobile equipment. The Agency agrees that it may be burdensome to frequently update an SPCC Plan for mobile equipment. However, we believe there is sufficient flexibility in the SPCC rule to address this concern. For example, EPA has stated that if you store mobile containers in a certain area, you must mark that area on the diagram. You may mark the contents of each container either on the diagram of the facility, or on a separate sheet or log if those contents change on a frequent basis. More information on the flexibility of the SPCC rule for mobile/portable containers is available in the *SPCC Guidance for Regional Inspectors* available on the EPA Web site at <http://www.epa.gov/oilspill>.

b. Inspections or Monitoring Program

The majority of commenters supported the proposal to include an inspection and monitoring program. A facility owner or operator must be able to quickly detect a discharge from oil-filled operational equipment in order for a contingency plan to be effective. Therefore, the Agency is including a requirement for an inspection and monitoring program in today's rule. Facility owners or operators who wish to take advantage of this alternative are required to develop an appropriate set of procedures for inspections or a monitoring program for qualified oil-filled operational equipment. For facility owners and operators that rely on contingency planning in lieu of secondary containment for qualified oil-filled operational equipment, the discovery of a discharge by inspection or monitoring is of paramount importance for effective and timely implementation of the contingency plan. An inspection or a monitoring program ensures that facility personnel are alerted quickly of equipment failures and/or discharges. A written description of the inspection or monitoring program is required to be included in the SPCC Plan. Under the requirement in § 112.7(e), the owner or operator is required to keep a record of inspections and tests, signed by the appropriate supervisor or inspector, for a period of three years.

Although oil-filled operational equipment is not a bulk storage container and is therefore not subject to the frequent visual inspection requirement for bulk storage containers under § 112.8(c)(6), EPA believes that it is good engineering practice to have

some form of visual inspection or monitoring for oil-filled operational equipment in order to prevent discharges as described in § 112.1(b). Therefore, in lieu of secondary containment, the proposal included the requirement for a facility owner or operator to establish and document an inspection or monitoring program, in addition to the preparation of a contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove discharged oil. One commenter suggested requiring only inspection and monitoring for oil-filled operational equipment up to 5,000-gallon capacity and no other written Plan. The Agency continues to believe that a written SPCC Plan is essential to document the prevention procedures and countermeasures employed at the facility and is necessary for effective implementation of an SPCC program, or any other program (business or otherwise). As a matter of practice, it would be extremely difficult for a facility owner or operator to be able to follow the regulatory requirements and to comply with all the recordkeeping components without the documentation that is the Plan itself. The Plan also serves as an important communication tool for both management and operators at the facility. The sole action of having to document all of the requirements can assist in uncovering flaws in the program implementation, and may serve as a tool to correct them. The Plan is also used to communicate these procedures and measures to employees. Additionally, the documentation of compliance with the rule's requirements in a written Plan serves as a facility specific oil spill response and prevention planning exercise which is designed to improve oil spill prevention.

c. Alternative Options Considered

Many commenters believed, and supported the Agency's proposal to not include, a capacity threshold qualifier. There was also significant support for the USWAG multi-tiered option for electrical equipment, with some commenters suggesting that the Agency differentiate between electrical and other oil-filled operational equipment and then adopt the USWAG proposal providing an exemption for most small equipment. Other commenters specifically commended EPA for not including a volume threshold for applicability of relief based on lack of data to suggest that large oil-filled equipment have greater potential for discharge over small oil-filled equipment. However, these commenters

indicated that small equipment should be exempt because of lack of spill data. Multiple commenters requested exemption or deferral requirements in the same manner as proposed for farms. Others requested suspension of the requirements.

The Agency agrees with commenters that no threshold qualifier is necessary to allow for an alternative means of compliance with secondary containment requirements for oil-filled operational equipment. The alternative measure is appropriate based on the type of equipment, *i.e.*, the oil is intrinsic to the operational equipment and present solely to support the apparatus and there is minimal oil throughput because such equipment does not require frequent transfers of oil. The Agency did not finalize the multi-tiered approach for electrical equipment to allow for an exemption for smaller pieces of oil-filled operational equipment because we believe there is still a reasonable potential for discharges from oil-filled operational equipment with an oil storage capacity of 1,320 gallons or less, thus coverage by some type of SPCC Plan is warranted. An exemption of these smaller pieces of oil-filled operational equipment could in some cases allow for large amounts of aggregate capacity that would not be counted for SPCC or FRP purposes, and would therefore be unregulated, posing a threat to the environment. However, in the July 17, 2002 **Federal Register** notice, EPA stated "We believe that it is not necessary to apply SPCC or FRP rules requiring measures like secondary containment, inspections, or integrity testing, to containers smaller than 55 gallons storing oil because a discharge from these containers generally poses a smaller risk to the environment." (67 FR 47066). Oil-filled operational equipment with a capacity of less than 55 gallons is not subject to the rule.

Oil-filled electrical and operating equipment share common characteristics. They both typically have minimal oil throughput because such equipment does not require frequent transfers of oil. Further, the oil contained in oil-filled operational equipment, such as cooling or lubricating oil, is intrinsic to the operation of the device and facilitates the function of the equipment. Should oil-filled electrical equipment fail, utilities responsible for such equipment have strong economic incentives to prevent power outages, to discover and respond to an outage, and to correct the conditions that produced the outage as quickly as possible to prevent an oil discharge. Similarly, when other critical oil-filled operating equipment fails, the

industry sectors responsible for such equipment also have strong incentives to respond and address failures to avoid disruption in business and costs of a cleanup. In addition, oil-filled operational equipment often is subject to routine maintenance and inspections to ensure proper operation. Therefore, the Agency is not promulgating different requirements, but believes it is appropriate to offer the same alternative means of compliance with the general secondary containment requirements of § 112.7(c) to both oil-filled electrical and operational equipment. Both types of equipment are addressed in the definition of oil-filled operational equipment.

The Agency has decided not to provide an indefinite extension or suspension for owners and operators of facilities with oil-filled operational equipment. The regulated community, particularly owners and operators of electrical facilities, identified secondary containment for oil-filled operational equipment as one of its major cost concerns. Today's rule addresses that concern and offers an alternative means of compliance for oil-filled operational equipment, while maintaining protection of human health and the environment.

5. Qualified Oil-Filled Operational Equipment and Qualified Facilities Overlap

Some facilities will meet the criteria for qualified facilities and have qualified oil-filled operational equipment on-site. Owners and operators of such facilities are able to benefit from both of the alternative compliance approaches finalized in today's rule. The owner or operator can choose to develop an oil spill contingency plan, a written commitment of manpower, equipment and materials and an inspection or monitoring program as an alternative to secondary containment for qualified oil-filled operational equipment. Since no impracticability determination is necessary for qualified oil-filled operational equipment, the owner or operator can self-certify his/her SPCC Plan and is not required to have a PE develop and certify the contingency plan for the qualified oil-filled operational equipment. The responsibility of preparing a contingency plan and identifying the necessary equipment, materials and manpower to implement the contingency plan would fall on the owner or operator of the qualified facility.

C. Motive Power

In the proposed rule, EPA addressed specific types of motor vehicles (including aircraft, buses, sport utility vehicles, small construction vehicles, cherry pickers, self-propelled cranes, self-propelled aviation ground service equipment vehicles, self-propelled forestry, agricultural, construction, and excavation vehicles and locomotives) that contain oil in capacities greater than or equal to 55 gallons solely for the purpose of providing fuel for propulsion, or solely to facilitate the operation of the vehicle, such as lubrication of moving parts or operation of onboard hydraulic equipment. Such oil storage containers are technically subject to the SPCC rule, including the requirement for secondary containment and other SPCC requirements. This means that heavy equipment dealers, commercial truck dealers, or certain parking lots may be subject to the SPCC requirements (including bulk storage secondary containment, inspection, and overflow protection) solely because of the presence of motive power containers. EPA never intended to regulate these motive power containers or facilities where these vehicles might be located and who are not otherwise subject to the SPCC requirements because of the impracticability of application of the SPCC requirements to such vehicles. These individually provide their own means of propulsion from location to location within or between facilities. The management, record keeping, and compliance with the spill prevention requirements associated with motive power containers would be difficult due to their movement throughout and between facilities. For example, a truck with a large fuel tank and associated large capacity hydraulic units that moves throughout a facility and between facilities would require tracking and containment under the SPCC requirements. This is impracticable because such vehicles are not stationary or located in a specific operational area, as is the case with mobile non-vehicular mobile/portable containers that are placed in specific oil handling or operational areas. Motor vehicles with a storage tank capacity of 55 gallons or greater, such as a number of semi-rigs delivering materials to an otherwise regulated SPCC facility that enter and leave a facility on a routine basis would provide a significant challenge for compliance with the SPCC requirements. Finally, these containers are either "end use" fuel tanks or oil-filled operational equipment in which transfers from the container are rare unlike other mobile portable containers.

To correct this unintended application of the SPCC rule, EPA proposed to exempt motive power containers from the SPCC requirements. Commenters generally favored this proposal and agreed that subjecting motive power containers to SPCC requirements would be impracticable. In today's action, EPA is clarifying its position on motive power containers associated with self-propelled motor vehicles by finalizing the proposed definition and exemption.

The Agency believes that the general protection and the spill response and planning activities in place at an otherwise regulated SPCC facility will address any discharges associated with these motive power containers.

For those facilities whose capacity is comprised solely of motive power containers, today's action may result in the facility no longer being subject to the SPCC requirements. However, for owners and operators of these facilities, EPA maintains the authority, under 311(j)(1)(C) of the CWA, to impose requirements to prevent oil discharges from motive power containers. EPA believes that owners and operators of these facilities will continue to act prudently to prevent discharges from motive power containers from reaching navigable waters and owners and operators of non-transportation-related facilities that fail to do so can be required by the EPA Regional Administrator (RA) to develop an SPCC Plan. The RA has the option under § 112.1(f) to require owners and operators of facilities, including those with motive power containers, to prepare and implement an SPCC Plan or any applicable part, if a determination is made that it is necessary to prevent a discharge of oil into waters of the United States. EPA will continue to encourage owners and operators of facilities that are no longer regulated under the SPCC rule, as a result of today's action, to provide prevention, planning and response measures to prevent oil discharges from motive power containers.

1. Definition of Motive Power

One commenter generally supported the definition as proposed. Several other commenters opposed the proposed definition and additional comments were submitted with alternate definitions of motive power containers. Those who opposed the definition indicated that it will not effectuate its purpose, simply because the gas tank, for example, is not used solely to power the movement of a motor vehicle. Other reasons for opposition note that the definition may not be broad enough, and it should be modified to clarify the

scope of "motor vehicle." The definition may not cover all motive power configurations, and it may not cover ground service equipment, including ground service equipment in the airport industry sector.

Recommendations included expanding the definition to include other mobile equipment like forestry and mining equipment. Other commenters indicated that the scope of the definition should be modified to clarify that a motor vehicle includes not just automobiles and trucks, but all types of motor vehicles including cranes, cherry pickers, or production drill rigs at mining sites and equipment that may be stationary for a temporary duration. Commenters also suggested that the definition be revised to cover various motive power configurations.

EPA agrees with the commenters that the scope of the definition should be clarified to include motor vehicle bulk storage containers that serve a non-operational purpose in addition to the propulsion of the motor vehicle (for example, a bulk storage container that supplies fuel to an engine which provides the propulsion for that motor vehicle, as well as its auxiliary units and functions (i.e., heaters, air conditioning units, and electrical power generation, etc.). As noted by commenters, the term "solely" in the definition of motive power containers limits the inclusion of motor power fuel tanks that serve one of the non-operational functions listed above in addition to providing fuel for propulsion of the motor vehicle. In response to this comment, EPA has removed the word "solely" and replaced it with the word "primarily." The definition of motive power containers only applies to motor vehicles where the primary purpose of the bulk storage container is to supply fuel to power the movement of the vehicle and, secondly, power other equipment on board the vehicle, so long as no further distribution (transfers) of oil occurs from the container as in the case with some mobile refuelers.

EPA agrees with the commenters that additional clarification is needed to describe the type of motor vehicles covered under the definition of motive power containers. Only motor vehicles which provide their own means of propulsion fall within the scope of this definition for the purposes of 40 CFR part 112. For example, aircraft, cherry pickers, self-propelled cranes, self-propelled aviation ground service equipment vehicles, self-propelled heavy (forestry, agricultural, mining, excavation and construction) vehicles and locomotives, all of which

individually provide their own means of propulsion from location to location within a facility or between facilities, are considered motor vehicles for the purposes of this definition and 40 CFR part 112. However, towed aviation ground service equipment, non-self-propelled construction/cargo cranes, non-self-propelled (forestry, agricultural, mining, excavation or construction) equipment, diesel powered generators, fire pumps, and compressors are examples of oil-filled equipment and bulk storage containers not considered motor vehicles for the purposes of this definition because they do not provide their own means of propulsion. The exemption was based on the impracticability of application of SPCC requirements to motor vehicles and their unique self-propelled capability of movement within and between facilities, typically without restriction.

2. Exemption

This final rule amendment exempts motive power containers, as defined above, from SPCC rule applicability by adding a new paragraph (7) under the general applicability section, § 112.1(d). Furthermore, the capacity of these storage containers are not counted toward facility oil storage capacity under § 112.1(d)(2). The RA has the option under § 112.1(f), however, to require owners and operators of facilities, including those with motive power containers, to prepare and implement an SPCC Plan or any applicable part, if a determination is made that it is necessary in order to prevent a discharge of oil into waters of the United States, or adjoining shorelines.

EPA notes that although this amendment provides an exemption from the SPCC requirements for the fuel tanks and ancillary onboard oil-filled operational equipment of motor vehicles, the oil transfer activities occurring within an SPCC-covered facility continue to be regulated. An example of such an activity would be the transfer of oil from an on-site tank via a dispenser to a motive power container. This transfer activity is subject to the general secondary containment requirements of § 112.7(c).

An onboard bulk storage container that supplies oil for the movement of a vehicle or operation of onboard equipment, and at the same time, is used for the distribution or storage of this oil, is not eligible for this exemption. For example, a mobile refueler that has an onboard bulk storage container used to distribute fuel to other vehicles on a site may also draw

its engine fuel (for propulsion) from that bulk container. However, such bulk storage containers (on a mobile refueler, as defined in today's rule under 112.2) are exempt from the sized secondary containment requirements in §§ 112.8(c)(2) and (11) and 112.12(c)(2) and (11), as applicable (see Section D below).

EPA is also not extending the exemption for motive power containers to oil drilling and workover equipment, including rigs. The Agency believes that because of the unique nature of oil drilling and workover rig operations and the large amounts and high flow rates of oil associated with these activities, it would not be appropriate or environmentally sound to exempt them from the SPCC requirements, and thus they remain subject to 40 CFR part 112. Although drilling and workover rigs are not exempt, other types of motive power containers located at drilling or workover facilities (i.e., trucks, automobiles, bulldozers, seismic exploration vehicles, or other earth-moving equipment) are exempted. The Agency believes that the general protection and the spill response and planning activities provided at an otherwise regulated SPCC facility will help the facility owner or operator to address any spills associated with these motive power containers. However, the specific provisions (such as blowout prevention), which are present in the rule for drilling or workover rigs, need to be preserved to maintain an adequate level of environmental protection for these unique activities. Therefore, an exemption for drilling and workover equipment, including rigs, is inappropriate.

Some commenters, representing the aviation, forestry, mining, recycling, and construction industries, requested that stationary cranes, gensets, and other non-self-propelled operational and towed ground service equipment be included in the exemption. The Agency believes that where these kinds of non-self-propelled, stationary or towed equipment operate in pre-determined oil handling areas, an SPCC Plan can reasonably address oil spill prevention measures under § 112.8(c)(2) and (11). For example, the Agency understands that towed ground service equipment at an airport is typically located at terminal gates for use when aircraft are parked at the gates. This equipment typically is staged and operated in an area that includes other oil storage containers such as airport mobile refuelers (see Section D below). As such, the identified oil spill prevention approach that addresses potential spills from an airport mobile refueler at the

gate should also address potential spills from nearby ground service equipment used by airline personnel at the same gate. Thus, the exemption does not include non-self-propelled stationary or towed equipment, such as towed ground service equipment or any type of gensets, but only motor vehicles that can provide propulsion to another location. See Chapter 4 of the *SPCC Guidance for Regional Inspectors* for further explanation regarding when sized secondary containment is required for mobile or portable containers that are in a stationary, unattended mode.

D. Mobile Refuelers

EPA proposed to amend the SPCC rule to define an airport mobile refueler as a vehicle with an onboard bulk storage container designed or used solely to store and transport fuel for transfer into or from aircraft and ground service equipment (such as belt loaders, tractors, luggage transport vehicles, deicing equipment, and lifts) at airports. Airport mobile refuelers have onboard bulk storage containers that are used solely to transport and transfer fuel and are subject to the SPCC rule because they are containers used to store oil prior to further distribution and use. As such, they are subject to all applicable SPCC rule provisions, including the sized secondary containment provisions of §§ 112.8(c)(2) (applicable to all bulk storage containers) and 112.8(c)(11) (applicable more specifically to mobile/portable bulk storage containers). These provisions require a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

As described in the preamble to EPA's proposed rule, members of the aviation sector have expressed concern that requiring sized secondary containment for airport mobile refuelers is not practicable for safety and security reasons. They argued that requiring refuelers to park in specifically sized secondary containment areas located within an Airport Operations Area (AOA) could create a safety and security hazard because it entails grouping the vehicles or placing impediments in the AOA. In response to these concerns, EPA proposed to exempt airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers in § 112.8(c)(2) and (11), while preserving environmental protection (especially for fuel transfers associated with airport mobile refuelers), afforded by the spill

prevention provisions outlined in § 112.7(c).

Members of the aviation sector were generally supportive of the proposal. Commenters generally supported the proposed exemption of airport mobile refuelers from certain provisions of the SPCC regulations and noted that general secondary containment is already practiced at airports. Commenters stated that requiring secondary containment around airport mobile refuelers, while they are stationary or idle creates serious safety and security risks. One commenter did have reservations about certain provisions of the rule still governing airport mobile refuelers, specifically the provisions of § 112.8(c) and the general secondary containment requirements of § 112.7(c). A Professional Engineering firm opposed the exemption of airport mobile refuelers from certain provisions of the SPCC regulation. The commenter asserted that the argument regarding the accident potential for not excluding airport fuel transporters is highly questionable, since airport fuel spills are well documented.

The Agency agrees with the commenter that fuel spills at airports are well documented, and that potential spills from airport mobile refuelers need to be addressed in the facility's SPCC Plan. Nevertheless, the Agency agrees with those commenters that argued that the sized secondary containment requirement did present safety and security concerns and therefore, we are finalizing the proposal to exclude mobile refuelers as defined in today's rule in § 112.2 from the specifically sized secondary containment requirements for bulk storage containers in §§ 112.8(c)(2) and (11) and 112.12(c)(2) and (11). General secondary containment still applies for mobile refuelers at non-transportation-related facilities, unless permanently closed as defined in § 112.2.

Although the Agency did not propose to extend this exclusion to other mobile refuelers that may operate within the confines of a non-transportation facility, we requested comment as to whether the proposed exclusion should be more broadly applied to other types of mobile refuelers. Commenters responded that the proposed exclusion for airport mobile refuelers from the sized secondary containment requirements should be extended to mobile refuelers at industrial sites, construction sites, chemical complexes (i.e., refineries), mining sites, seaport terminals, and tank truck home bases. Several commenters indicated that the same rationale discussed in the proposed rule preamble supporting this exclusion applies to

owners and operators of industrial facilities as well. Specifically, one commenter stated that: (1) Requiring sized secondary containment for industrial mobile refuelers is not practicable and distracts from safety and security monitoring by providing a blind spot and hiding location behind the containment unit; (2) requiring refuelers to park in specially designated secondary containment areas located within an industrial or chemical facility operating area will create safety and security hazards by grouping the vehicles or placing impediments in the operations area; and (3) requiring mobile refuelers to return to containment areas located within the industrial facilities tank farm between refueling operations will increase the risk of accidents (and therefore accidental oil discharge), as the vehicles would travel with increased frequency through the busy industrial operating areas. Another commenter also indicated that the clarification should extend to rail cars, since rail cars are less mobile than airport mobile refuelers and additional rail car movements in congested rail yards exposes these vehicles to many of the hazards identified for airport mobile refuelers.

The Agency agrees with commenters that the exclusion provided for airport mobile refuelers should be extended to mobile refuelers at other types of facilities. The Agency agrees that providing sized secondary containment for vehicles that move frequently within a non-transportation-related facility to perform refueling operations can raise safety and security concerns, so the exclusion from complying with the sized secondary containment requirements provided for airport mobile refuelers is being extended to mobile refuelers that are vehicles with an onboard bulk storage container used to store and transport oil for transfer into or from other vehicles, ground service equipment or another oil storage container.

Furthermore, the Agency continues to believe that other mobile/portable bulk storage tanks that are being towed by vehicles or otherwise moved to or from a designated area typically cannot be provided with sized secondary containment as per §§ 112.8(c)(2) and (11) and 112.12(c)(2) and (11), as applicable, during that movement or relocation. However, when these mobile/portable bulk storage containers (except mobile refuelers) are placed in a designated area of a site (e.g., a construction site) whereby a dike or catchment basin sufficient to contain the capacity of the largest single compartment or container with

sufficient freeboard to contain precipitation can be installed, sized secondary containment requirements would apply. In the same vein, the Agency believes that rail cars cannot be provided with sized secondary containment when entering, moving within, or exiting the confines of a facility. Conversely, when they are situated in defined locations at an otherwise regulated facility, sized secondary containment, such as a catchment basin, could be provided. See Chapter 4 of the *SPCC Guidance for Regional Inspectors* for further explanation regarding when sized secondary containment is required for mobile or portable containers that are in a stationary, unattended mode.

1. Definition of Mobile Refueler

EPA is amending the SPCC rule to exempt mobile refuelers from the requirements of §§ 112.8(c)(2) and (11) and 112.12(c)(2) and (11). In today's final rule, EPA defines a mobile refueler as "a bulk storage container, onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container." The definition is intended to describe vehicles of various sizes equipped with a bulk storage container such as a cargo tank or tank truck that is used to fuel or defuel aircraft, motor vehicles, locomotives, tanks, vessels or other oil storage containers. The definition is also intended to describe tank full trailers and tank semi-trailers including those at airports that are used to fuel or defuel aircraft. The definition does not include other mobile or portable oil storage containers that are not involved in fueling activities. When these other mobile or portable containers are in a stationary, unattended mode and not under the direct oversight or control of facility personnel, the requirements of §§ 112.8(c)(2) and (11) and 112.12(c)(2) and (11) apply. (See Chapter 4 of the *SPCC Guidance for Regional Inspectors*.) In addition, the Agency intends the secondary containment exemption to apply to vehicles used for refueling, and not vehicles used primarily for the bulk storage of oil in a stationary location, in place of stationary oil storage containers.

A commenter from the aviation sector supported EPA's proposed definition and encouraged the inclusion of fuel transfers into or from ground service equipment. Two commenters from the chemical manufacturing sector stated that the definition that was proposed is too broad and unlawfully extends EPA's

jurisdiction. The MOU between DOT and EPA establishes non-transportation facilities to include "highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a non-transportation-related facility and which are not intended to transport oil in interstate or intrastate commerce." EPA understands that mobile refuelers that operate solely within the confines of an airport, or other type of facility that is subject to SPCC regulations would be covered by the definition of mobile refuelers at § 112.2. Thus, a mobile refueler that operates solely on airport property, or some other type of facility would be subject to § 112.7(c) during all periods of operation. Conversely, for a mobile refueler that operates on highways (i.e., intended to transport oil in interstate or intrastate commerce) in addition to an airport, or other type of facility, then only the period of actual transfer operations at a non-transportation facility would be subject to the general secondary containment requirements of § 112.7(c), unless the transfer occurs at a loading/unloading rack, whereby the rack and vehicle are subject to the requirements at § 112.7(h).

Similarly, another commenter suggested applying the existing requirements for portable fueling facility requirements of § 112.3(c) to mobile refuelers when in a fixed, non-transportation mode. Specific requirements for mobile facilities should be developed as a separate subpart through rulemaking. The Agency disagrees that a separate rulemaking be initiated for mobile refuelers. We believe that the modification being promulgated today provides the owner or operator with considerable flexibility to identify the appropriate spill prevention measures under § 112.7(c) applicable to the mobile refueler operation operating solely at a non-transportation facility. Furthermore, we disagree that § 112.3(c) needs to be modified to apply to this type of mobile refueler that enters a non-transportation facility as this provision already addresses a portable fueling facility operating in a fixed, non-transportation-related mode. For either type of mobile refueler, § 112.7(c) applies.

2. Amended Requirements

This amendment revises §§ 112.8(c)(2) and (11) and 112.12(c)(2) and (11) to specifically exempt mobile refuelers, as defined above, from these provisions. As noted above, the Agency is expanding the proposed exemption from the sized secondary containment requirements to apply to any person that

operates a mobile refueler. Since mobile refuelers are mobile or portable bulk storage containers, the other provisions of §§ 112.8(c) and 112.12(c) still apply. Secondary containment systems sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation are no longer required. A commenter representing small business expressed concerns about the security, safety and logistical concerns for the proposed amendment for airport mobile refuelers. The commenter recommended that EPA further revise the SPCC requirements so that general secondary containment applies only when airport mobile refuelers are transferring fuel. The Agency disagrees that the amendment should be limited to transfer operations only, as another commenter asserts that mobile refuelers can experience leaks and spills (e.g., vehicular accidents, line leaks, or other equipment/container failure). Thus, we believe that the general secondary containment provisions at § 112.7(c) should apply to all mobile refueler operations.

Per § 112.7(c), appropriate containment and/or diversionary structures or equipment must be designed to prevent a discharge as described in § 112.1(b). The Agency believes general secondary containment should be designed to address the most likely discharge from the primary containment system (i.e., the storage container). Section 112.7(c) allows for the use of certain types of active containment measures (countermeasures or spill response capability) which prevent a discharge to navigable waters or adjoining shorelines. One aviation commenter indicated that the availability of "active measures" is necessary to make the general secondary containment provision workable in an airport setting. To clarify, EPA believes that active containment measures are those that require deployment or other specific action by the owner or operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, so long as the active measure is designed and can reasonably be implemented to prevent an oil spill from reaching navigable waters or adjoining shorelines. Passive measures are permanent installations and do not require deployment or action by the owner or operator. The efficacy of active containment measures to prevent a discharge depends on their technical effectiveness (i.e., mode of operation, absorption rate), placement and

quantity, and timely deployment prior to, or following a discharge. For discharges that occur only during manned activities, such as those occurring during transfers, an active measure (i.e., sock, mat, other portable barrier, or land-based response capability) may be appropriate, provided that the measure is capable of containing the oil discharge volume and rate, and is timely and properly constructed/deployed. The Agency also believes that these active measures may be appropriately applied to other situations (i.e., when the refueler is not engaged in transfer operations or moving around the facility).

In summary, EPA believes that the general provisions for secondary containment address the most likely spill scenarios associated with this equipment (i.e., during oil transfers into or from the mobile refuelers). Section 112.7(c) does not prescribe a size for a secondary containment structure, but does require appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b) including the use of active measures. This final rule would maintain environmental protection, while still allowing the necessary flexibility for compliance with the general secondary containment requirements of the rule for mobile refuelers at airports or other types of facilities.

E. Animal Fats and Vegetable Oils

The Agency proposed to amend Subpart C of part 112 by removing § 112.13 (requirements for onshore oil production facilities), § 112.14 (requirements for onshore oil drilling and workover facilities), and § 112.15 (requirements for offshore oil drilling, production, or workover facilities) and by reserving these sections of Subpart C of the regulation because they are not appropriate for animal fats and vegetable oils. Commenters generally supported this proposal and therefore, the Agency has amended the final rule to remove these provisions. In addition, the Agency also requested comment on whether different requirements were appropriate for animal fats and vegetable oils from the requirements for petroleum and other oils. Some commenters provided suggestions for differentiating animal fats and vegetable oils from other classes of oils in the SPCC rule. The Agency is continuing to examine these issues to determine the appropriateness of amendments to the regulatory scheme to differentiate the SPCC requirements for animal fats and vegetable oils from the requirements for petroleum and other oils and plans to

address this issue in a future rulemaking.

As a point of clarification, EPA also removed the phrase “for onshore facilities (excluding production facilities)” from the title of § 112.12 Spill Prevention, Control, and Countermeasure Plan requirements. Section 112.2 of the rule defines production facility to mean “all structures (including, but not limited to, wells, platforms, or storage facilities), piping (including, but not limited to flowlines or gathering lines), or equipment (including, but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.” The exclusion of production facilities from § 112.12 was originally intended to differentiate requirements based on facility type and § 112.13 applied to onshore production facilities. Since this final rule removes the inapplicable requirements for animal fats and vegetable oils, it is no longer necessary to differentiate onshore oil production facilities from other facilities in § 112.12.

As an editorial change, EPA revised the provisions in § 112.7(a)(2) and 112.7(d) to eliminate reference to the inapplicable provisions in §§ 112.13 and 112.14, because these sections have been removed.

F. Extension of Compliance Dates for Farm

While determining if the agriculture sector warrants specific consideration under the SPCC rule, EPA proposed to extend the compliance dates for preparing or amending and implementing SPCC Plans for farms that have a total storage capacity of 10,000 gallons of oil or less either indefinitely or until the Agency publishes a final rule in the **Federal Register** establishing a new compliance date. This final rule provides an extension for all farms as defined in this notice until the Agency promulgates a rule specifically addressing how farms should be regulated under the SPCC rules.

1. Eligibility Criteria

Most commenters, primarily from the agricultural sector, generally supported EPA’s proposed extension of compliance for farms with a storage capacity of 10,000 gallons of oil or less. Several commenters who supported the extension suggested modifications to the extension as proposed, such as

expanding the extension to all farms. Supporters argued the proposal reduces unnecessary regulatory burden on the agricultural community, while the Agency determines if this sector warrants specific consideration under the SPCC rule. Others argued that the sector is already regulated by state and local agencies for pollution-related activities on farms. Support for the argument that the physical layout of a farm makes this sector unique within the universe of SPCC-regulated facilities was also offered. Comments also were offered in opposition to the extension and potential exemptions from SPCC requirements for farms. Commenters argued that farms may endanger the environment, farmers, and their neighbors and expressed concern that farms are often close to surface waters. Commenters opposing the extension also argued that farms should have been in compliance with the original SPCC rule and that current technology makes compliance relatively inexpensive and easy.

In finalizing the compliance extension for farms, EPA is adopting the definition of “farm,” as proposed, for purposes of part 112 and the extension in the final rule. EPA defines “farm,” in part, by adapting the definition used by the National Agricultural Statistics Service (NASS) in its Census of Agriculture. NASS defines a farm as any place from which \$1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year. Operations receiving \$1,000 or more in Federal government payments are counted as farms, even if they have no sales and otherwise lack the potential to have \$1,000 or more in sales.

EPA also considered the definition it uses to exempt farm tanks under the Underground Storage Tank (UST) regulations at 40 CFR part 280. As defined in 40 CFR 280.12, a farm tank is a tank located on a tract of land devoted to the production of crops or raising of animals, including fish. The preamble to the UST rule explains that the term “farm” includes fish hatcheries, rangeland, and nurseries with growing operations, but does not include laboratories where animals are raised, land used to grow timber, and pesticide aviation operations. This term also does not include retail stores or garden centers where the product of nursery farms is marketed, but not produced, nor does the Agency interpret the term “farm” to include golf courses or other places dedicated primarily to recreational, aesthetic, or other non-agricultural activities. (See 53 FR 37082, 37117, September 23, 1988.) EPA

utilized elements of the UST definition of farm, in combination with the Census definition, in developing the proposal and final rule. By combining elements of both of these approaches, the Agency believes the definition more specifically targets the intended universe for the extension.

Several commenters provided general remarks on definitions of facility, farm, farming facility, farming operation, and/or agribusiness for purposes of the SPCC rule; some proposed alternate definitions of farm. One suggested alternative was to use the definition of eligible agricultural businesses used in the “Agricultural Business Security Tax Credit Act of 2005” (S. 052). Most broadly, the term “eligible agricultural business” means any person in the trade or business of: selling agricultural products, including specified agricultural chemicals, at retail predominantly to farmers and ranchers, or manufacturing, formulating, distributing, or aerially applying specified agricultural chemicals. The Agency disagrees with expanding the definition as suggested because we believe it would apply to businesses that are distinctly different from farms, e.g., oil marketing and distribution to farmers, that do not present the same unique issues that farms raise. In fact, these agribusinesses are more like industrial or manufacturing operations and thus, it would be inappropriate to include these businesses within the compliance extension. Several commenters suggested that the farm definition specify that operations comprised of non-contiguous or non-adjacent agricultural lands would not be considered a single “farm facility” for purposes of fuel tank storage capacity regardless of whether such parcels of land are under common ownership or control. They also suggested that the Agency allow for aggregate tank storage capacity to be determined separately for each field or parcel of such agricultural lands. The definition of facility as provided in § 112.2 currently provides the flexibility for the owner or operator of a farm to determine the scope of his or her facility as recommended by the commenters. However, the Agency will further explore these questions in a future rulemaking addressing farms.

The Agency is also expanding the extension to owners and operators of all facilities that meet the definition of farm finalized in today’s rule, which was supported by many of the commenters. This action allows the Agency to study the universe and determine whether the current requirements are appropriate for farms. The Agency is expanding this extension because, upon further

assessment, we believe it is premature for the Agency to determine that the current SPCC requirements are appropriate for farms with oil storage capacities greater than 10,000 gallons before we undertake our study of the universe of farms.

2. Compliance Date Extension for Farms

With today's action, EPA extends the compliance dates for the owner or operator of a farm, as defined in § 112.2, to prepare or amend and implement the farm's SPCC Plan until the effective date of a rule addressing whether to provide differentiated requirements for farms.

The Agency will announce the new compliance date in the **Federal Register**. The Agency will be conducting additional information collection and analysis to determine if differentiated SPCC requirements may be appropriate for farms. The Agency will be working with USDA to collect data that would more accurately characterize oil handling at these facilities, thereby allowing the Agency to focus on priorities where substantial environmental improvements can be obtained.

Some commenters argued that EPA should provide a suspension of requirements rather than an extension of the compliance date. We believe that providing a compliance extension in the same manner as previous compliance extensions that have been granted is appropriate. We are not aware that the farming community has had concerns with the previous compliance extensions that have been granted. In addition, we would have concerns about the impact that such an action may have as some number of farms handle significant quantities of oil and it would not be appropriate to issue a blanket suspension of all spill prevention requirements for owners and operators of these facilities. By extending the

compliance date, the Agency is allowing for burden relief, while it makes a determination of whether the agriculture sector warrants specific consideration under the SPCC rule.

Regardless of whether the Agency ultimately determines that differentiated requirements for farms are warranted, we will publish a notice in the **Federal Register** proposing new compliance dates for farms.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the "Regulatory Impact Analysis for the Final Revisions to the Oil Pollution Prevention Regulations" (October 2006). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here.

The regulatory impact analysis developed in support of today's action compares the compliance costs for owners and operators of facilities affected by the 2006 amendments to the costs owners and operators would face under the SPCC rule as amended in 2002 with respect to the four major components of the final rule: (1) Qualified facilities with 10,000 gallons

or less of storage capacity; (2) facilities with certain types of oil-filled operational equipment; (3) facilities with motive power containers; and (4) facilities with mobile refuelers.

For each of these components, the benefits consist of reductions in costs accruing from reductions in compliance costs. The main steps used to estimate the compliance cost impacts of the SPCC final Rule are as follows:

- Develop the baseline universe of SPCC-regulated facilities;
- Estimate the number of facilities affected by the final rule amendments;
- Estimate changes in compliance cost elements resulting from the final rule;
- Estimate total compliance cost savings to owners and operators of potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period, 2008 through 2017, and discount the estimates using 3 and 7 percent discount rates.

Based on these procedures, EPA estimated the average annual number of potentially affected facilities and the annual compliance cost savings associated with each of the four major components of the final rule, as can be seen in Exhibit 1. EPA assumes cost minimization behavior applies to all owners and operators of facilities that qualify for reduced regulatory requirements, whereby all those affected will seek burden relief. These estimates are not necessarily additive, given that they do not account for interactions among the various components of the final rule. Exhibit 1 presents one compliance cost savings scenario for each rule component, whereby all qualified facilities, 50 percent of qualified oil-filled operational equipment, 10 percent of motive power containers, and 50 percent of mobile refuelers are affected.

EXHIBIT 1.—COMPLIANCE COST SAVINGS ASSOCIATED WITH THIS FINAL ACTION

Major components of the final rule	Projected average annual number of affected facilities		Estimated annual compliance cost savings (\$2005 in millions)	
	Existing	New	Discounted 3%	Discounted 7%
Qualified Facilities	337,000	7,260	\$37.9	\$37.7
Qualified Oil-filled Equipment	10	5,040	53.1	52.8
Motive Power Containers	28,500	516	1.07	1.07
Mobile Refuelers	10	2,940	34.4	34.2

¹ The number of existing facilities with qualified oil-filled operational equipment and mobile refuelers is zero because EPA assumed that existing SPCC-regulated facilities would already have secondary containment or a determination of the impracticability of secondary containment in accordance with § 112.7(d).

EPA also prepared an Alternative Baseline that describes the estimated changes in cost savings resulting from

the 2006 SPCC final rule assuming partial (50 percent) compliance. For this alternative analysis, EPA assumed 50

percent compliance with both the 2002 and 2006 rules. The Agency anticipates the compliance rate under the 2006 final

rule to be at the same level as it would have been under the 2002 rule, or higher.

B. Paperwork Reduction Act

The information collection requirements for the final rule were submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 0328.13.

EPA does not collect the information required by the SPCC rule on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility owner or operator helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility personnel. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although facility personnel are the primary data user, EPA also uses the data in certain situations. EPA reviews SPCC Plans: (1) When it requests a facility owner or operator to submit required information in the event of certain discharges of oil or to evaluate an extension request; and, (2) as part of EPA's inspection program. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the Act as implemented by 40 CFR part 112.

EPA estimates that in the absence of this rulemaking, approximately 580,000 facilities would be subject to the SPCC rule in 2006 and have SPCC Plans. In addition, EPA estimates that approximately 17,500 new facilities would become subject to SPCC requirements annually. In the absence of this final rulemaking, EPA projects that the average annual public reporting and recordkeeping burden for this information collection would be 2,695,329 hours.

Under today's rulemaking, owners and operators of qualified facilities no longer need a licensed Professional Engineer to certify their Plans. Facilities that store oil solely in motive power containers are no longer regulated, while owners and operators of facilities with oil storage in addition to motive power containers may incur lower compliance costs. Today's rule also

allows greater use of contingency plans and written commitment of manpower, equipment, and resources without requiring an impracticability determination when combined with an inspection or monitoring program as an alternative to secondary containment for qualified oil-filled operational equipment. It also allows mobile refuelers at airports and facilities within other industries, to fall under a facility's general secondary containment requirements, rather than require specifically sized secondary containment.

Under today's rule, an estimated 434,000 regulated facilities would annually be subject to the SPCC information collection requirements of this rule during the information collection period. This figure excludes farms, to reflect the final compliance extension. Under this rule, the estimated annual average burden over the next three-year ICR period would be approximately 2,191,069 hours, resulting in a 19 percent average reduction. The estimated average annual public reporting for owners and operators of individual facilities already regulated under the SPCC rule would range between 3.3 and 7.1 hours, while the burden for owners and operators of newly regulated facilities would range between 40.1 and 70.1 hours as a result of this final action. The net annualized capital and start-up costs for the SPCC information collection portion of the rule would average \$1.4 million and net annualized operation and maintenance (O&M) costs are estimated to be \$34.3 million for owners and operators of all of these facilities combined.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control

numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business as defined in the SBA's regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this final rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the final rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule reduces regulatory burden on owners and operators of qualified facilities and facilities with qualified oil-filled operational equipment. Owners and operators of qualified facilities no longer need a licensed

Professional Engineer to certify their Plans. Facilities that store oil solely in motive power containers are no longer regulated, while owners and operators of facilities with oil storage in addition to motive power containers may incur lower compliance costs. Today's rule also allows greater use of contingency plans and a written commitment of manpower, equipment, and materials without requiring an impracticability determination as an alternative to secondary containment for qualified oil-filled operational equipment when combined with an established and documented inspection or monitoring program. It also allows mobile refuelers no matter the industry to fall under a facility's general secondary containment requirements rather than require specifically sized secondary containment. The Agency has therefore concluded that today's rule relieves regulatory burden for small entities.

Overall, EPA estimates that today's rule will reduce annual compliance costs by roughly \$38 million for owners and operators of qualified facilities, \$53 million for owners and operators of facilities with qualified oil-filled equipment, \$1 million for owners and operators of facilities with motive power containers, and \$34 million for owners and operators of facilities with mobile refuelers. Total costs were annualized over a 10-year period using both 3 and 7 percent discount rates assuming all qualified facilities, 50 percent of qualified oil-filled operational equipment, 10 percent of motive power containers, and 50 percent of mobile refuelers are affected under this scenario. EPA derived these savings by estimating the number of facilities affected by each provision in the final rule; identifying the specific behavioral changes (e.g., choosing to self-certify an SPCC Plan rather than using a licensed PE) that may occur; estimating the unit costs of compliance measures under the baseline and regulatory scenarios; and applying the change in unit costs to the projected number of affected facilities.

We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may

result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's final rule would reduce compliance costs on owners and operators of affected facilities by as much as \$126 million annually, although EPA acknowledges this estimate is derived from analyses of each of the four major components of the final rule and are not necessarily additive, given that they do not account for interactions among the various components. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of final rule would be to reduce burden and costs for owners and operators of qualified regulated facilities, including certain small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the Federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (October 22, 1991). This final rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule would not significantly or uniquely affect communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the rule is to decrease the regulatory burden on facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a “major rule” as defined by 5 U.S.C. 804(2) because it will likely result in an annual effect on the economy of \$100 million or more. This rule will be effective February 26, 2007.

List of Subjects in 40 CFR Part 112

Environmental protection, Airports, Animal fats and vegetable oils, Farms, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: December 12, 2006.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

■ 2. Amend § 112.1 by revising paragraph (d)(2)(ii) and adding paragraph (d)(7) to read as follows:

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

(ii) The aggregate aboveground storage capacity of the facility is 1,320 gallons or less of oil. For the purposes of this exemption, only containers with a capacity of 55 gallons or greater are counted. The aggregate aboveground storage capacity of a facility excludes the capacity of a container that is “permanently closed,” and the capacity of a “motive power container” as defined in § 112.2.

* * * * *

(7) Any “motive power container,” as defined in § 112.2. The transfer of fuel or other oil into a motive power container at an otherwise regulated

facility is not eligible for this exemption.

* * * * *

■ 3. Amend § 112.2 by adding definitions for “Farm,” “Mobile refueler,” “Motive power container,” and “Oil-filled operational equipment” in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Farm means a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, \$1,000 or more of agricultural products during a year.

* * * * *

Mobile refueler means a bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container.

Motive power container means any onboard bulk storage container used primarily to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment. An onboard bulk storage container which is used to store or transfer oil for further distribution is not a motive power container. The definition of motive power container does not include oil drilling or workover equipment, including rigs.

* * * * *

Oil-filled operational equipment means equipment that 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. Oil-filled operational equipment is not considered a bulk storage container, and does not include oil-filled manufacturing equipment (flow-through process). Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (e.g., those for pumps, compressors and other rotating equipment, including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil solely to enable the operation of the device.

■ 4. Amend § 112.3 as follows:

■ a. By redesignating paragraph (a) as paragraph (a)(1).

■ b. By adding paragraph (a)(2).

■ c. By redesignating paragraph (b) as paragraph (b)(1).

- d. By adding paragraph (b)(2).
- e. By revising paragraph (d) introductory text.
- f. By adding paragraph (g).

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a)(1) * * *

(2) If your onshore facility is a farm as defined in § 112.2, the compliance date described in paragraph (a)(1) of this section is delayed until the effective date of a rule establishing SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of this part.

(b)(1) * * *

(2) If your onshore facility meets the definition of farm in § 112.2, the compliance date described in paragraph (b)(1) of this section is delayed until the effective date of a rule establishing SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of this part.

* * * * *

(d) Except as provided in § 112.6, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.

* * * * *

(g) *Qualified Facilities.* The owner or operator of a qualified facility as defined in this subparagraph may self-certify his or her facility's Plan, as provided in § 112.6. A qualified facility is one that:

- (1) Has an aggregate aboveground storage capacity of 10,000 gallons or less; and
- (2) Has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism).

- 5. Amend § 112.5 by revising paragraph (c) to read as follows:

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

* * * * *

(c) Except as provided in § 112.6, have a Professional Engineer certify any technical amendments to your Plan in accordance with § 112.3(d).

- 6. Add § 112.6 to read as follows:

§ 112.6 Qualified Facility Plan Requirements.

(a) *Preparation and Self-certification of Plan.* If you are the owner or operator of a facility that meets the qualified facility qualification criteria in § 112.3(g), you may choose to self-certify your Plan. You must certify in the Plan that:

- (1) You are familiar with the requirements of this part;
- (2) You have visited and examined the facility;
- (3) The Plan has been prepared in accordance with accepted and sound industry practices and standards, and with the requirements of this part;
- (4) Procedures for required inspections and testing have been established;
- (5) The Plan is being fully implemented;
- (6) The facility meets the qualification criteria set forth under § 112.3(g);
- (7) The Plan does not deviate from any requirement of this part as allowed by §§ 112.7(a)(2) and 112.7(d), except as provided in paragraph (c) of this section; and
- (8) The Plan and individual(s) responsible for implementing the Plan have the full approval of management and the facility owner or operator has committed the necessary resources to fully implement the Plan.

(b) *Self-certification of Technical Amendments.* If you self-certify your Plan pursuant to paragraph (a) of this section, you must certify any technical amendments to your Plan in accordance with paragraph (a) of this section when there is a change in the facility design, construction, operation, or maintenance that affects its potential for a discharge as described in § 112.1(b) except:

- (1) If a Professional Engineer certified a portion of your Plan in accordance with paragraph (d) of this section, and the technical amendment affects this portion of the Plan, you must have the amended provisions of your Plan certified by a Professional Engineer in accordance with § 112.6(d)(2).
- (2) If the change is such that the facility no longer meets the qualifying criteria in § 112.3(g) because it exceeds 10,000 gallons in aggregate aboveground storage capacity, you must prepare a Plan in accordance with the general Plan requirements in § 112.7 and the applicable requirements in subparts B and C, including having the Plan certified by a Professional Engineer as required under § 112.3(d).

(c) *Applicable Requirements.* Except as provided in this subparagraph, your self-certified SPCC Plan must comply with § 112.7 and the applicable

requirements in subparts B and C of this part:

(1) *Environmental Equivalence.* Your Plan may not include alternate methods which provide environmental equivalence pursuant to § 112.7(a)(2), unless each alternate method has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (d) of this section.

(2) *Impracticability.* Your Plan may not include any determinations that secondary containment is impracticable and provisions in lieu of secondary containment pursuant to § 112.7(d), unless each such determination and alternative provision has been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (d) of this section.

(3) *Security (excluding oil production facilities).* You must either:

- (i) Comply with the requirements under § 112.7(g); or
- (ii) Describe in your Plan how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

(4) *Bulk Storage Container Inspections.* You must either:

- (i) Comply with the requirements under § 112.8(c)(6) or § 112.12(c)(6), as applicable; or
- (ii) Test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. You must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections which take into account container size, configuration, and design (such as containers that are: shop built, skid-mounted, elevated, equipped with a liner, double walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business

practices satisfy the recordkeeping requirements of this paragraph.

(d) *Professional Engineer Certification of Portions of a Qualified Facility's Self-certified Plan.* As described in paragraph (c) of this section, the facility owner or operator may not self-certify alternative measures allowed under § 112.7(a)(2) or (d), that are included in the facility's Plan. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer as follows:

(1) For each alternative measure allowed under § 112.7(a)(2), the Plan must be accompanied by a written statement by a Professional Engineer that states the reason for nonconformance and describes the alternative method and how it provides equivalent environmental protection in accordance with § 112.7(a)(2). For each determination of impracticability of secondary containment pursuant to § 112.7(d), the Plan must clearly explain why secondary containment measures are not practicable at this facility and provide the alternative measures required in § 112.7(d) in lieu of secondary containment.

(2) By certifying each measure allowed under § 112.7(a)(2) and (d), the Professional Engineer attests:

- (i) That he is familiar with the requirements of this part;
- (ii) That he or his agent has visited and examined the facility; and
- (iii) That the alternative method of environmental equivalence in accordance with § 112.7(a)(2) or the determination of impracticability and alternative measures in accordance with § 112.7(d) is consistent with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part.

(3) The review and certification by the Professional Engineer under this paragraph is limited to the alternative method which achieves equivalent environmental protection pursuant to § 112.7(a)(2) or to the impracticability determination and measures in lieu of secondary containment pursuant to § 112.7(d).

- 7. Amend § 112.7 as follows:
 - a. By revising paragraph (a)(2).
 - b. By revising paragraph (c) introductory text.
 - c. By revising paragraph (d) introductory text.
 - d. By adding paragraph (k).

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

- * * * * *
- (a) * * *

(2) Comply with all applicable requirements listed in this part. Except as provided in § 112.6, your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraph (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in § 112.4(d) and (e).

* * * * *

(c) Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in § 112.1(b), except as provided in paragraph (k) of this section for qualified oil-filled operational equipment. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs. At a minimum, you must use one of the following prevention systems or its equivalent:

* * * * *

(d) Provided your Plan is certified by a licensed Professional Engineer under § 112.3(d), or, in the case of a qualified facility that meets the criteria in § 112.3(g), the relevant sections of your Plan are certified by a licensed Professional Engineer under § 112.6(d), if you determine that the installation of any of the structures or pieces of equipment listed in paragraphs (c) and (h)(1) of this section, and §§ 112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11) to prevent a discharge as described in

§ 112.1(b) from any onshore or offshore facility is not practicable, you must clearly explain in your Plan why such measures are not practicable; for bulk storage containers, conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping; and, unless you have submitted a response plan under § 112.20, provide in your Plan the following:

* * * * *

(k) *Qualified Oil-filled Operational Equipment.* The owner or operator of a facility with oil-filled operational equipment that meets the qualification criteria in paragraph (k)(1) of this subsection may choose to implement for this qualified oil-filled operational equipment the alternate requirements as described in paragraph (k)(2) of this subsection in lieu of general secondary containment required in paragraph (c) of this section.

(1) *Qualification Criteria—Reportable Discharge History:* The owner or operator of a facility that has had no single discharge as described in § 112.1(b) from any oil-filled operational equipment exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) from any oil-filled operational equipment each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than oil discharges as described in § 112.1(b) that are the result of natural disasters, acts of war or terrorism); and

(2) *Alternative Requirements to General Secondary Containment.* If secondary containment is not provided for qualified oil-filled operational equipment pursuant to paragraph (c) of this section, the owner or operator of a facility with qualified oil-filled operational equipment must:

(i) Establish and document the facility procedures for inspections or a monitoring program to detect equipment failure and/or a discharge; and

(ii) Unless you have submitted a response plan under § 112.20, provide in your Plan the following:

(A) An oil spill contingency plan following the provisions of part 109 of this chapter.

(B) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

Subpart B—[Amended]

■ 8. Amend § 112.8 by revising paragraphs (c)(2) and (c)(11) to read as follows:

§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).

* * * * *

(c) * * *

(2) Construct all bulk storage tank installations (except mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

* * * * *

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

* * * * *

Subpart C—[Amended]

■ 9. Amend § 112.12 by revising the section heading and by revising paragraphs (c)(2) and (c)(11) to read as follows:

§ 112.12 Spill Prevention, Control, and Countermeasure Plan requirements.

* * * * *

(c) * * *

(2) Construct all bulk storage tank installations (except mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be

safely confined in a facility catchment basin or holding pond.

* * * * *

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

§ 112.13 [Removed and Reserved]

■ 10. Remove and reserve § 112.13.

§ 112.14 [Removed and Reserved]

■ 11. Remove and reserve § 112.14.

§ 112.15 [Removed and Reserved]

■ 12. Remove and reserve § 112.15.

[FR Doc. E6-21509 Filed 12-22-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[FRA-2006-24512]

RIN 2130-AB70

Revisions to Civil and Criminal Penalties; Penalty Guidelines

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Railroad Administration is revising its regulations to reflect revisions to the penalty provisions in the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), enacted on August 10, 2005. We are also revising baseline assessments for several categories of violations, including those related to training and security plans, in our Civil Penalty Assessment Guidelines. We publish our Guidelines in order to provide the regulated community and the general public with information on the hazardous materials civil penalty assessment process for violations related to the transportation of hazardous materials by rail.

DATES: *Effective Date:* This final rule is effective December 26, 2006.

FOR FURTHER INFORMATION CONTACT: Roberta Stewart, Trial Attorney, Office

of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

SUPPLEMENTARY INFORMATION:

I. Civil and Criminal Penalties

On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144. Title VII of SAFETEA-LU—the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005—revises the maximum and minimum civil penalties, and the maximum criminal penalty, for violations of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) or a regulation, order, special permit, or approval issued under Federal hazmat law (including 49 CFR subtitle B, chapter I, subchapters A and C). The Federal Railroad Administration (FRA) is revising references in our regulations to the maximum and minimum civil penalties, and the maximum criminal penalties, to reflect the following statutory changes:

- The maximum civil penalty was increased from \$32,500 to \$50,000 for a knowing violation, and to \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property.
- The minimum civil penalty has reverted from \$275 to \$250, except that a minimum civil penalty of \$450 applies to a violation related to training.
- Criminal penalties now apply to both reckless and willful violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder. The criminal penalties also apply to a knowing violation of the prohibition in 49 U.S.C. 5104(b) against tampering with a marking, label, placard, or description on a shipping document.
- The maximum criminal penalty of five years' imprisonment and a fine in accordance with Title 18 of the United States Code (\$250,000 for an individual, \$500,000 for a corporation) was retained, except that the maximum amount of imprisonment has been increased to 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to a person.

II. Revisions to Civil Penalty Guidelines

FRA's hazardous material transportation enforcement civil penalty

CHAPTER 62-761 UNDERGROUND STORAGE TANK SYSTEMS

62-761.100	Intent.
62-761.200	Definitions.
62-761.210	Reference Standards.
62-761.300	Applicability.
62-761.400	Registration and Financial Responsibility.
62-761.410	Registration Fees. (Repealed)
62-761.450	Notification and Reporting.
62-761.460	Reporting. (Repealed)
62-761.480	Financial Responsibility. (Repealed)
62-761.500	Performance Standards for Category-C Storage Tank Systems.
62-761.510	Performance Standards for Category-A and Category-B Storage Tank Systems.
62-761.520	Performance Standards for Other Existing Petroleum and Petroleum Product Storage Tank Systems (Non-Vehicular Fuels). (Repealed)
62-761.550	Performance Standards for New Hazardous Substance Storage Tank Systems. (Repealed)
62-761.560	Performance Standards for Existing Hazardous Substance Storage Tank Systems. (Repealed)
62-761.600	Release Detection Standards.
62-761.610	Release Detection Methods
62-761.620	Release Detection Standards for Other Existing Regulated Substance Storage Tanks. (Repealed)
62-761.630	Release Detection Standards for Integral Piping. (Repealed)
62-761.640	Performance Standards for Release Detection Methods.
62-761.680	Tightness Testing Standards. (Repealed)
62-761.700	Repairs, Operation and Maintenance of Storage Tank Systems.
62-761.710	Recordkeeping.
62-761.720	Inventory Requirements. (Repealed)
62-761.730	Operating Requirements for Cathodic Protection. (Repealed)
62-761.740	Certified Contractors. (Repealed)
62-761.800	Out-of-Service and Closure Requirements.
62-761.820	Incident and Discharge Response.
62-761.840	Locally Administered Programs. (Repealed)
62-761.850	Alternative Requirements and Equipment Approvals.
62-761.860	Approval of Storage Tank Systems and Release Detection Equipment. (Repealed)
62-761.890	Mineral Acid Storage Tank Requirements. (Repealed)
62-761.900	Storage Tank Forms.

62-761.100 Intent.

(1) The purpose of this Chapter is to provide standards for the registration, construction, installation, operation, maintenance, repair, closure, and disposal of storage tank systems that store regulated substances, and to minimize the occurrence and environmental risks of releases and discharges. This Chapter provides standards for underground storage tank systems having individual storage tank capacities greater than 110 gallons.

(2) This Chapter implements the requirements of Chapter 376, Florida Statutes. Final agency action related to the functions that may be carried out by a locally administered program (County) under contract with the Department pursuant to Section 376.3073, F.S., shall be taken by the Department.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.100, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.200 Definitions.

The following words, phrases or terms used in this chapter, unless the context indicates otherwise, shall have the following meaning:

(1) "Ammonia" includes organic amines and inorganic compounds that are liquids at standard temperature and pressure that, when discharged, release free ammonia (NH_3), or ammonium ion (NH_4^+).

(2) "AST" means an aboveground storage tank.

(3) "Bulk product piping" means on-site integral piping with an internal diameter greater than three inches that is utilized for transporting regulated substances.

(4) "Cathodic protection" means a method of preventing corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the use of devices such as galvanic anodes or impressed current.

(5) "Cathodic Protection Tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(6) "Certified Contractor" means a Pollutant Storage System Contractor certified by the Department of Business and Professional Regulation in accordance with Chapter 489, F.S. Except for the exemptions specified in Chapter 489, F.S., Certified Contractors are not required for activities that do not involve excavating or disturbing the backfill around UST systems. Certified Contractors are the only contractors authorized to perform the following activities for underground pollutant storage tank systems:

(a) Installation of:

1. USTs or integral piping, excluding drop tubes;
2. Overfill protection and spill containment;
3. Secondary containment;
4. Internal release detection devices;
5. Cathodic protection systems; and
6. Dispenser liners when the integral piping is connected or disconnected during the installation of secondary containment.

(b) Removal of tanks or integral piping; and

(c) Internal lining of tanks.

(7) "Chlorine" includes organic and inorganic compounds that are liquids at standard temperature and pressure that, when discharged, may release free chlorine (Cl_2) or chlorides (Cl^-).

(8) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the storage tank system under conditions likely to be encountered in the storage tank system.

(9) "Contamination" or "contaminated" means the presence of regulated substances in surface water, groundwater, soil, sediment, or upon the land, in quantities that result in exceedances of applicable cleanup target levels in Chapter 62-770, F.A.C., where petroleum or petroleum products are present, or water quality standards in Chapter 62-3, 62-302, 62-520, or 62-550, F.A.C.

(10) "Corrosion Professional" means a person who, by reason of knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal components of a storage tank system. Corrosion Professionals shall be accredited or certified by NACE International, or be a professional engineer registered in the State of Florida.

(11) "County" means a locally administered program under contract with the Department to perform compliance verification activities at facilities with storage tank systems.

(12) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, or dumping of any regulated substance which occurs and which affects lands and the surface and ground waters of the state.

(13) "Discovery" means:

(a) Either actual knowledge or knowledge of facts that could reasonably lead to actual knowledge of the existence of an incident, discharge, or an unmaintained storage tank system; or

(b) Discovery as specified in the Petroleum Contamination Site Cleanup Criteria subsection 62-770.200(10), F.A.C.

(14) "Dispenser" means a dispensing system that is used to transfer vehicular fuel from a fixed point to a vehicle.

(15) "Dispenser liner" means a liner installed as secondary containment beneath a dispenser to prevent discharges of regulated substances.

(16) "Dispensing system" means equipment that is used to transfer regulated substances from integral piping through a rigid or flexible hose or pipe to another point of use outside of the storage tank system.

(17) "Double-walled" means a storage tank that has an outer tank wall, or integral piping that has an outer wall that provides secondary containment of the primary tank or piping.

(18) "Empty" means all regulated substances have been removed so that no more than one inch in depth or 0.3 percent by weight of total system capacity of regulated substances remains in the storage tank system.

(19) "Existing contamination" means:

(a) The presence of free product or sheen on the groundwater;

(b) The presence of vapor levels in monitoring wells measured in accordance with DEP's "Guidelines for Vapor Monitoring" or by a Flame Ionization Detector or an equivalent instrument in excess of:

1. 500 parts per million total petroleum hydrocarbons for storage tank systems containing gasoline or equivalent petroleum products; or

2. 50 parts per million total petroleum hydrocarbons for storage tank systems containing kerosene, diesel or other equivalent petroleum products;

(c) Results of analytical tests on a groundwater sample that:

1. Exceed the cleanup target levels for petroleum products' contaminants of concern specified in Table I of Chapter 62-777, F.A.C.; or

2. Indicate the presence of a hazardous substance that is not described in subparagraph 62-761.200(19)(c)1., F.A.C., above; or

3. Indicate the presence of a regulated substance that is not described in subparagraph 62-761.200(19)(c)1., F.A.C., above; or

(d) After July 13, 1998, results of analytical tests on a soil sample that:

1. Exceed the lower of direct exposure residential and leachability based on groundwater criteria cleanup target levels for petroleum products' contaminants of concern specified in Table II of Chapter 62-777, F.A.C.; or

2. Indicate the presence of a hazardous substance that is not described in subparagraph 62-761.200(19)(d)1., F.A.C., above; or

3. Indicate the presence of a regulated substance that is not described in subparagraph 62-761.200(19)(d)1., F.A.C., above.

(20) "Facility" means a nonresidential location containing, or that contained, any stationary tank or tanks containing, or that contained regulated substances, and that have, or had, individual capacities greater than 110 gallons for UST systems.

(21) "Free product" means a regulated substance in excess of 0.01 foot in thickness, measured at its thickest point, floating on water, surface water or groundwater.

(22) "Hazardous substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 stat. 2767, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(23) "Heating oil" means any petroleum based fuel used in the operation of heating equipment, boilers, or furnaces.

(24) "High viscosity" means a pollutant with a viscosity of 30 centistokes (cSt) and higher at 40 degrees Centigrade.

(25) "Hydraulic lift tank" means a tank that holds hydraulic fluid for a closed-loop mechanical system used to operate lifts, elevators, and other similar devices.

(26) "Hydrostatic test" means a test for a storage tank or storage tank system component that is performed in accordance with this Chapter using equilibrium and the pressure of liquids to test the integrity of the tank or system component.

(27) "Impervious" means:

(a) A synthetic material or another material approved in accordance with subsection 62-761.850(2), F.A.C., that is compatible with the stored regulated substance, and has a permeability rate to the regulated substance stored of 1×10^{-7} cm/sec or less; or

(b) For concrete structures, a material that:

1. Meets the design and construction standards of ACI 350R-89 and ACI 224R-89; or

2. Is applied to the concrete in accordance with NACE International Standard RP0892-92.

(28) "In contact with the soil" means integral piping connected to USTs, or any portion of a tank, that:

(a) Physically touches the soil; or

(b) Is not in direct contact with the soil, and is separated from the soil only by a casing, wrapping, or other material that is not impervious.

(c) Those portions of integral piping that are elevated and that are not in direct contact with the soil are excluded from this definition.

(29) "Incident" is a condition or situation indicating that a discharge may have occurred from a storage tank system.

(30) “In-service” means a storage tank system that is being actively maintained and operated in accordance with this Chapter. Non-compliance with any specific rule within this Chapter does not exclude the system from being considered “in-service.” Subject to the above, a storage tank system is also considered to be in-service if it:

(a) Contains regulated substances or has regulated substances regularly added to or withdrawn from the system;

(b) Is emptied solely for the purpose of cleaning, routine maintenance, or a change in product, for a time period not exceeding 45 days; or

(c) Contains non-regulated substances and is still maintained in an in-service status at the request of the owner or operator.

(31) “Integral piping” means on-site piping, originating or terminating at the regulated storage tank or tanks, that conveys regulated substances. Vapor recovery lines, and vent lines are not considered integral piping. Integral piping includes all valves, elbows, joints, flanges, pumps, and flexible connectors, up to the:

(a) Union of the piping with the dispensing system;

(b) Fill cap or fill valve;

(c) Forwarding pump used for transferring regulated substances to a flow-through process tank or an industrial production or manufacturing point of use; or

(d) First flange or connection within the loading rack containment area.

(32) “Internal lining” means a material that is applied internally on USTs to protect the tank from internal corrosion.

(33) “Interstitial monitoring” is a release detection method that is used to determine the presence of regulated substances or water between the primary and secondary containment. Interstitial monitoring can be performed within:

(a) A closed interstitial space between two steel or impervious barriers that are sealed, not open to the atmosphere, and designed to be tested for a breach of integrity of the interstitial space; or

(b) An open interstitial space between two steel or impervious barriers that are open to the atmosphere, and not designed to be tested for a breach of integrity of the interstitial space.

(34) “Liner” means an impervious material that meets the performance standards of paragraph 62-761.500(1)(d), F.A.C., that is used externally as a method of secondary containment.

(35) “Maintenance” means the normal operational upkeep to prevent a storage tank system from releasing regulated substances.

(36) “Nationally Recognized Laboratory” means an organization that can perform quantitative and qualitative tests on storage tank system equipment, evaluate the test data and equipment performance, and make determinations of the equipment’s capability of meeting the technical standards of this Chapter. A Nationally Recognized Laboratory shall have at least five years of professional storage tank system equipment testing experience. Nationally Recognized Laboratories include organizations such as Underwriter’s Laboratories, Carnegie Mellon Research Institute, Midwest Research Institute, Ken Wilcox Associates, Factory Mutual, and American Board of Engineering and Technology (ABET) Accredited Universities.

(37) “On-site” means on the same or geographically contiguous property as the facility regulated under this Chapter, that is under the same ownership or control, and which may be divided by a public or private right-of-way or an easement.

(38) “Operational life” refers to the period from the start of installation of the storage tank system to the completion of the closure of the storage tank system in accordance with subsection 62-761.800(2), F.A.C.

(39) “Operator” means any person operating a facility, whether by lease, contract, or other form of agreement.

(40) “Out-of-service” means a storage tank system that:

(a) Is designated as an out-of-service system by owner or operator notification to the Department on Form 62-761.900(2);

(b) Is empty as defined in subsection 62-761.200(18), F.A.C.; and

(c) Does not have regulated substances transferred into or withdrawn from the tank as specified in subsection 62-761.800(1), F.A.C., for a maximum time of:

1. Two years of being taken out-of-service for USTs; or

2. Ten years of being taken out-of-service for storage tank systems with secondary containment.

(41) “Overfill” is a release or discharge that occurs when a tank is filled beyond its capacity.

(42) “Owner” means any person as defined in Section 376.301(23), F.S., owning a facility.

(43) “Pesticides” means all preparations, products, and substances included in the Department of Agriculture and Consumer Services’ Rule 5E-2.002, F.A.C.

(44) “Petroleum” includes:

(a) Oil, including crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid

form by ordinary methods and which are not the result of condensation of gas after it leaves the reservoir; and

(b) All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in paragraph 62-761.200(44)(a), F.A.C.

(45) "Petroleum product" means any liquid fuel commodity made from petroleum.

(a) Forms of fuel considered to be petroleum products include all fuels known or sold as:

1. Diesel fuel;
2. Kerosene;
3. Gasoline; and
4. Fuels containing mixtures of gasoline and other products.

(b) Forms of fuel excluded from this definition are:

1. Liquefied petroleum gas;
2. American Society for Testing and Materials (ASTM) grades no. 5 and no. 6 residual oils;
3. Bunker C residual oils;
4. Intermediate fuel oils used for marine bunkering with a viscosity of 30 and higher;
5. Asphalt oils; and
6. Petrochemical feedstocks.

(46) "Pipe" or "piping" means any hollow cylindrical or tubular conveyance through which regulated substances flow.

(47) "Piping sump" or "Submersible turbine pump sump" means a liner installed as secondary containment or a monitoring port at the top of a tank or at the lowest point in the integral piping to detect releases.

(48) "Pollutants" includes any "product" as defined in Section 377.19(11), F.S., pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(49) "Pressure test" means a test to determine the integrity of integral piping performed in accordance with subparagraph 62-761.640(5)(a)1., F.A.C.

(50) "Pressurized piping" means piping through which regulated substances flow due to a pump that is not located at the dispensing system.

(51) "Product" as defined in Section 377.19(11), F.S., means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, used oil, kerosene, benzene, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(52) "Registered Precision Tank Tester" means a contractor that performs tightness tests on USTs, and small diameter piping connected to USTs, that is registered by the Department of Business and Professional Regulation pursuant to Chapter 489, F.S.

(53) "Regulated substance" means a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), that is a pollutant or a hazardous substance, or any mixture of the two, when stored in a UST.

(54) "Release" means:

- (a) A discharge; or
- (b) A loss of regulated substances from a storage tank system into the system's secondary containment.

(55) "Release detection" means a method of:

- (a) Determining whether a discharge of regulated substances has occurred; or
- (b) Detecting the presence of regulated substances within a storage tank system's secondary containment.

(56) "Release detection response level" is the point of measurement, calculation, observation, or level that is established for each individual release detection device or method at which an investigation must be initiated to determine if an incident, release, or discharge has occurred.

(57) "Repair" means to restore or replace any defective or damaged parts of a storage tank system. Replacement of a non-defective part is not a repair.

(58) "Residential storage tank system" means a storage tank system that is located on property used primarily for dwelling purposes, and the storage and use of regulated substances in the tank is for residential purposes.

(59) "Secondary containment" means a release detection and prevention system that meets the performance standards of paragraph 62-761.500(1)(d), F.A.C., and includes dispenser liners, piping sumps, double-walled tanks and piping systems, or single-

walled tanks or piping systems that are contained within a liner or an impervious containment area.

(60) "Sheen" means a regulated substance less than or equal to 0.01 foot in thickness, measured at its thickest point, or visibly observed, floating on surface water, groundwater, or within secondary containment.

(61) "Significant loss or gain" means the sum of losses and gains of a regulated substance over a 30 day or monthly period that exceeds:

(a) For tanks with capacities between 111 and 2,000 gallons with an individual flow-through less than 5,000 gallons during the previous 30 days:

1. One percent of the tank capacity; or
2. One percent of the total weekly output; or
3. Fifty gallons, whichever is greatest; or

(b) For tanks with capacities greater than 2000 gallons, or tanks with an individual flow-through exceeding 5,000 gallons during the previous 30 days:

1. One percent of the tank capacity; or
2. One percent of the amount of product dispensed during the previous 30 days, plus 130 gallons, whichever is greatest.

(62) "Small diameter piping" means integral piping with an internal diameter of three inches or less that is utilized for transporting regulated substances.

(63) "Storage tank system" means a tank used to contain regulated substances, its integral piping, and all its components, including dispensing systems, spill containment devices, overfill protection devices, secondary containment systems, and any associated release detection equipment.

(64) "Suction piping" means piping through which regulated substances flow due to a pump located at the dispensing system.

(65) "Tank" means an enclosed stationary container or structure that is designed or used to store regulated substances, and the volume of which, including the volume of underground piping, is ten percent or more buried beneath the surface of the ground.

(66) "Tightness test" means a test for an underground storage tank or its small diameter piping that is performed in accordance with subparagraphs 62-761.640(3)(f)1. and (4)(b), F.A.C., by a precision tank tester registered with the Department of Business and Professional Regulation under Chapter 489, F.S.

(67) "UST" means an underground storage tank.

(68) "UST Category-A system" means a system containing pollutants that was installed on or before June 30, 1992, or a system containing hazardous substances that was installed before January 1, 1991.

(69) "UST Category-B system" means a system containing pollutants that was installed after June 30, 1992, or a system containing hazardous substances that was installed on or after January 1, 1991, and before July 13, 1998.

(70) "UST Category-C system" means a system that was installed on or after July 13, 1998. USTs that are removed and relocated on or after July 13, 1998 are considered Category-C systems.

(71) "Unmaintained" means:

- (a) A storage tank system that was not closed in accordance with Department rules; or
- (b) An out-of-service storage tank system that is not returned to in-service status within:
 1. Two years of its being out-of-service for USTs; or
 2. Ten years of its being out-of-service for storage tank systems with secondary containment.

(72) "Upgrade" means the addition or retrofit of cathodic protection, internal lining, spill prevention, overfill protection, or secondary containment, to a storage tank system, or the installation of single wall corrosion resistant storage tanks, to improve the ability of the storage tank system to prevent discharges of regulated substances.

(73) "Vehicular fuel" means a petroleum product used to fuel motor vehicles, including aircraft, watercraft, and vehicles used on and off roads and rails.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Amended 5-4-92, 3-8-94, Formerly 17-761.200, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.210 Reference Standards.

(1) Referenced standards are available for inspection at the County Offices, and the Department of Environmental Protection's District and Tallahassee Offices, and may be obtained from the following sources:

(a) ACI International (American Concrete Institute), Post Office Box 9094, Farmington Hills, Michigan 48333-9094, (248) 848-3700;

- (b) American Petroleum Institute (API), 1220 L Street, N.W. Washington, D.C. 20005, (202) 682-8000;
- (c) ASME International (The American Society of Mechanical Engineers), 22 Law Drive, Box 2300, Fairfield, New Jersey 07007-2300, (800) 843-2763;
- (d) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Conshohocken, Pennsylvania 19103, (610) 832-9500;
- (e) Florida Department of Environmental Protection (DEP), Storage Tank Regulation Section, 2600 Blair Stone Road, MS 4525, Tallahassee, Florida 32399-2400, (850) 245-8858;
- (f) NACE International (National Association of Corrosion Engineers), Post Office Box 218340, Houston, Texas 77218-8340, (281) 492-0535;
- (g) National Fire Protection Association (NFPA), 1 Battery March Park, Post Office Box 9101, Quincy, Massachusetts 02269-9101, (800) 344-3555;
- (h) National Leak Prevention Association (NLPA), Route 2 Box 106A, Falmouth, Kentucky 41040, (702) 832-2260;
- (i) Petroleum Equipment Institute (PEI), Post Office Box 2380, Tulsa, Oklahoma 74101-2380, (918) 494-9696;
- (j) Society for Protective Coatings (SSPC) 40 24th Street, 6th Floor, Pittsburgh, Pennsylvania 15222-4643, (412) 281-2331;
- (k) Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60047, (847) 438-8265;
- (l) Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, Illinois 60062-2096, (847) 272-8800; and
- (m) Government Printing Office, Superintendent of Documents, Attention: New Orders, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800.

(2) Titles of documents. References to documents listed in paragraphs 62-761.210(2)(a) through (m), F.A.C., below are made throughout this Chapter. Each document or part thereof is adopted and incorporated as a standard only to the extent that it is specifically referenced in this Chapter.

(a) ACI International:

1. ACI 224R-89, "Control of Cracking in Concrete Structures," May, 1990; and
2. ACI 350R-89, "Environmental Engineering Concrete Structures," June, 1990.

(b) American Petroleum Institute Standards:

1. API Standard 570, "Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems," June, 1993;
2. API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines," December, 1991;
3. API Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks", March, 1996;
4. API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems," March, 1996;
5. API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets," May, 1993;
6. API Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," April, 1992;
7. API Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," May, 1996; and
8. API Recommended Practice 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals," September, 1995.

(c) ASME International: B31.4-1992, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols" January, 1993 with 1994 Addenda.

(d) American Society for Testing and Materials:

1. Specification D4021-92, "Standard Specification for Glass Fiber Reinforced Polyester Underground Petroleum Storage Tanks," October, 1992; and
2. Designation: ES 40-94, "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection," January, 1995.

(e) Florida Department of Environmental Protection:

1. "Storage Tank System Closure Assessment Requirements" April, 1998;
2. "Guidelines for Vapor Monitoring," April, 1998; and
3. "Guidelines for Site-Suitability Determinations for External Monitoring," February, 1998.

(f) NACE International:

1. NACE Standard RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems,"

September, 1996; and

2. NACE Standard RP-0285-95, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," February, 1995.

(g) National Fire Protection Association:

1. NFPA 30, "Flammable and Combustible Liquids Code," August, 1996;

2. NFPA 30A, "Automotive and Marine Service Station Code," August, 1996; and

3. NFPA 329, "Handling Underground Releases of Flammable and Combustible Liquids," Chapters 3, 4, and 5, August, 1992.

(h) National Leak Prevention Association: NLPA Standard 631, "Entry, Cleaning, Interior Inspection, Repair and Lining of Underground Storage Tanks," Chapter B, 1991.

(i) Petroleum Equipment Institute: PEI/RP100-97 "Recommended Practices for Installation of Underground Liquid Storage Systems," 1997.

(j) Society for Protective Coatings: SSPC-TU 2/NACE 6G197, SSPC Publication No. 97-04, "Design, Installation, and Maintenance of Coating Systems for Concrete Used in Secondary Containment," February, 1997.

(k) Steel Tank Institute:

1. STI-P₃[®] "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks #STI-P₃[®]," April, 1996;

2. STI R892-89, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems," 1989; and

3. STI ACT-100[®] #F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks," April, 1996.

(l) Underwriters Laboratories Standards:

1. UL 58, "Steel Underground Tanks for Flammable and Combustible Liquids," December, 1996;

2. UL 567, "Pipe Connectors for Petroleum Products and LP Gas," June, 1996;

3. UL 971, "Non-metallic Underground Piping for Flammable Liquids," October, 1995;

4. UL 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures," January, 1994; and

5. UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks," July, 1993, with Revisions, November, 1997.

(m) Government Printing Office, Code of Federal Regulations:

1. Title 33, Part 154, July 1997;

2. Title 33, Part 156.170, July 1997;

3. Title 40, Part 112, July 1997;

4. Title 40, Part 280, Subpart H, July 1997; and

5. Title 40, Part 302, July 1997.

(3) Applicability of Reference Standards: Unless otherwise specified in this rule, Category-A and Category-B facilities are subject to the Reference Standards listed in the Department's storage tank rules that were in effect at the time of facility construction or operation. Category-C facilities shall comply with subsection 62-761.210(2), F.A.C., on or after July 13, 1998.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.210, Amended 7-13-98, 6-21-04.

62-761.300 Applicability.

(1) General Requirements:

(a) Underground storage tank systems: The requirements of this Chapter, unless specified otherwise, apply to owners and operators of facilities, or owners and operators of UST systems with individual storage tank capacities greater than 110 gallons, that contain or contained:

1. Vehicular fuel, subject to Chapter 17-61, F.A.C., after May 21, 1984;

2. Pollutants or hazardous substances after December 10, 1990; or

3. Regulated substances in unmaintained storage tank systems.

(b) This rule is applicable to non-residential facilities. Under 40 C.F.R. 280, residential tanks greater than 1100 gallons containing motor fuels are subject to federal UST rules (advisory information only-not required by this Chapter).

(2) Exemptions: The following underground systems are exempt from the requirements of this Chapter:

- (a) Any storage tank system storing any hazardous waste listed or identified under Subtitle C of the Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other regulated substances;
- (b) Any storage tank system regulated under the Toxic Substances Control Act (15 U.S.C. 2065);
- (c) Any pesticide waste degradation system regulated under Chapter 62-660, F.A.C.;
- (d) Storage tank systems used solely for temporary storage of mixtures of pesticides and diluent for reapplication as pesticides;
- (e) Any storage tank system with a storage capacity of less than 30,000 gallons used for the sole purpose of storing heating oil for consumptive use on the premises where stored;
- (f) Any tank that contains asphalt or asphalt products not containing other regulated substances;
- (g) Any storage tank system storing regulated substances that are solid or gaseous at standard temperature and pressure;
- (h) Any storage tank containing LP gas;
- (i) Any storage tank system that contains small quantities (de minimus, as per 40 C.F.R. Section 280.10(b)(5)) of regulated substances;
- (j) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;
- (k) Any septic tank system;
- (l) Any stormwater or wastewater collection system;
- (m) Any surface impoundment, pit, pond, or lagoon;
- (n) Any agricultural storage tank system of 550 gallons capacity or less;
- (o) Any residential storage tank system;
- (p) Any emergency spill or emergency overflow containment storage tank system that is emptied as soon as possible after use, and that routinely remains empty;
- (q) Any flow-through process tank system. For industrial and manufacturing facilities, integral piping is considered to terminate at the forwarding pump or valve used to transfer regulated substances to process, production, or manufacturing points of use or systems within the facility;
- (r) Any storage tank system, liquid trap, or associated gathering lines directly related to oil or gas production and gathering operations regulated by Chapter 377, F.S.;
- (s) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift or fluid tank systems and electrical equipment tank systems;
- (t) Any pipeline facilities;
- (u) Any storage tank system containing radionuclides or that is part of an emergency generator system for nuclear power generation at facilities regulated by the Nuclear Regulatory Commission under 10 C.F.R. Part 50 Appendix A;
- (v) Vapor recovery holding tanks and associated vapor recovery piping systems; or
- (w) Any rail or tanker truck loading or unloading operations (loading racks) specified in Chapter 5 of NFPA 30.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.300, Amended 7-13-98, 6-21-04.

62-761.400 Registration and Financial Responsibility.

(1) General registration requirements.

(a) The owner or operator of any facility, or the owner or operator of a storage tank system shall register the storage tank system with the Department on Form 62-761.900(2).

(b) A completed registration form shall be submitted to the Department no later than 30 days after regulated or hazardous substances are put into any new storage tank system.

(2) Registration fees.

(a) Registration fees are due from the tank or facility owner or operator, as indicated in this section, for all registered storage tank systems except for storage tank systems that have been properly closed in accordance with subsection 62-761.800(2), F.A.C.

(b) A registration fee of \$50.00 per tank or vessel shall be submitted for each initial registration of a storage tank system. The fee shall be paid within 30 days after receipt of an invoice by the Department.

(c) A renewal fee of \$25.00 per tank shall be paid to the Department for each storage tank system not meeting the closure requirements of subsection 62-761.800(2), F.A.C. by July 1 each year.

(d) A replacement fee of \$25.00 per tank shall be paid to the Department for each tank that is replaced for the purpose of facility

upgrading, within 30 days after receipt of an invoice by the Department.

(e) A late fee of \$20.00 per tank shall be paid to the Department for any renewal that is received after July 31.

(f) Each facility shall receive a registration placard upon payment of all applicable fees. The placard shall be displayed in plain view in the office, kiosk, or at another suitable location at the facility where the tank is located.

(3) Financial responsibility.

(a) General requirements.

1. The owner or operator of a facility, or individual tanks, if of different ownership, shall demonstrate financial responsibility to the Department. If the owner and operator of a tank are separate persons, only one person is required to demonstrate financial responsibility. However, both persons are liable in event of noncompliance. Financial responsibility is only required for tanks containing petroleum or petroleum products. Financial responsibility is the ability to pay for corrective action and third-party liability resulting from a discharge at the facility.

2. The demonstration of financial responsibility shall be made by the owner or operator in accordance with C.F.R. Title 40, Part 280, Subpart H.

3. Financial responsibility requirements for petroleum storage systems containing petroleum products may be supplemented by participation in the Florida Petroleum Liability Restoration and Insurance Program to the extent provided by Section 376.3072, F.S.

4. Notwithstanding the owner's or operator's financial responsibility status, the owner or operator may, in accordance with Chapter 376 or 403, F.S., be liable for any discharge at the facility.

(b) The minimum requirements for financial responsibility for USTs containing petroleum or petroleum products shall be the same as provided by C.F.R. Title 40, Part 280, Subpart H.

Specific Authority 376.303 FS. Law Implemented 376.303, 376.309, 376.3077 FS. History—New 12-10-90, Formerly 17-761.400, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.450 Notification and Reporting.

(1) Notification requirements.

(a) Verbal or written notice shall be provided to the County:

1. At least 30 days before installation or upgrading to meet the requirements of Rule 62-761.500, F.A.C., unless the County agrees to a shorter time period;

2. At least 10 days before an internal inspection of a UST, a change in service status, closure, or closure assessment, any of which is performed to meet the requirements of this Chapter;

3. At least 48 hours before:

a. Initiating activities specified in subparagraph 62-761.450(1)(a)1. or 2., F.A.C., above, to confirm the date and time of the scheduled activities;

b. Performing any tightness test required under this Chapter; and

4. Before the close of the County's next business day for an emergency change to an out-of-service status made as required by Rule 62-761.820, F.A.C. Verbal or written notification of the activities specified in subparagraph 62-761.450(1)(a)1. or 2., F.A.C., above performed as a direct result of the emergency change in service shall be made to the County before initiating the activities.

(b) Within 30 days after completion, the owner or operator shall notify the Department of the following items on Storage Tank Registration Form 62-761.900(2):

1. Any change in ownership of a facility or of a storage tank system. Notice of change of ownership shall be provided to the Department by the new owner. The notice shall include a copy of the bill of sale or a letter of acceptance by the new owner;

2. Closure or upgrading of a storage tank system;

3. Any change or correction in the information reported in the registration form, including changes in the type of regulated substances stored. A change within the same blend of regulated substances should not be reported (e.g., regular unleaded to premium unleaded gasoline); and

4. The establishment of, or changes to, the method of demonstrating financial responsibility required by subsection 62-761.400(3), F.A.C.

(c) Within 30 days after installation, replacement, or removal of a storage tank system, the Certified Contractor shall submit a completed Underground Storage Tank System Installation and Removal Form 62-761.900(5) to the County.

(2) Incident notification requirements.

(a) Notification of the discovery of the following incidents shall be made to the County on Incident Notification Form 62-761.900(6) within 24 hours or before the close of the County's next business day:

1. A failed SIR evaluation, or inconclusive SIR evaluations as specified in paragraph 62-761.640(3)(e), F.A.C., or a failed or inconclusive tightness, pressure, or breach of integrity test;

2. Internal inspection results, including perforations, corrosion holes, weld failures, or other similar defects, that indicate that a release could have occurred;

3. Unusual operating conditions, such as the erratic behavior of product dispensing equipment, the sudden loss of product from a storage tank system, or any unexplained presence of water in a tank or unexplained presence of water with or without sheen in a piping sump, unless system equipment is found to be defective but not leaking;

4. The presence of odors of a regulated substance from surface water or groundwater, soil, basements, sewers and utility lines at a facility or in the surrounding area from which it could be reasonably concluded that a release or discharge may have occurred;

5. The loss of a regulated substance from a storage tank system exceeding 100 gallons on impervious surfaces, other than secondary containment, such as driveways, airport runways, or other similar asphalt or concrete surfaces, provided that the loss does not come in contact with pervious surfaces;

6. A positive response of release detection devices or methods described in Rule 62-761.640, F.A.C., or approved under subsection 62-761.850(2), F.A.C. A positive response shall be the indication of a release of regulated substances, an exceedance of the Release Detection Response Level, or a breach of integrity of a storage tank system; and

7. The presence of free product in a piping sump.

(b) Incident Notification Form 62-761.900(6) need not be submitted if:

1. Within 24 hours of discovery of an incident, or before the close of the County's next business day, the investigation of the incident confirms that a discharge did not occur; or

2. An Incident Notification Form was previously submitted for that incident.

(3) Discharge reporting requirements.

(a) Upon discovery of an unreported discharge, the owner or operator shall report the following to the County on Discharge Report Form 62-761.900(1) within 24 hours or before the close of the County's next business day:

1. Results, or receipt of results, of analytical or field tests of surface water or groundwater indicating the presence of contamination by:

a. A hazardous substance from a UST system;

b. A regulated substance, other than petroleum products; or

c. Petroleum products' contaminants of concern specified in Table I or II, as applicable, in Chapter 62-777, F.A.C.;

2. Free product or sheen of a regulated substance, or a regulated substance that is visibly observed in soil, on surface water, in groundwater samples, on basement floors, in subsurface utility conduits or vaults, or in sewer lines at the facility or in the surrounding areas;

3. A spill or overfill event of a regulated substance to soil or another pervious surface, equal to or exceeding 25 gallons, unless the regulated substance has a more stringent reporting requirements specified in C.F.R. Title 40, Part 302;

4. Results of analytical or field tests of soil indicating the presence of contamination by:

a. A hazardous substance from a UST system;

b. A regulated substance, other than petroleum products;

c. Petroleum products' contaminants of concern that exceed the lower of direct exposure residential and leachability based on groundwater criteria cleanup target levels specified in Table II in Chapter 62-777, F.A.C., unless due to a spill or overfill event in a quantity less than that described in subparagraph 62-761.450(3)(a)3., F.A.C., above; or

5. Soils stained by regulated substances that are observed during a closure assessment performed in accordance with subsection 62-761.800(3), F.A.C.

(b) Copies of analytical or field test results that confirm a discharge shall be submitted to the County with Discharge Report Form 62-761.900(1).

(c) A request for a retraction of a submitted Discharge Report Form may be submitted to the County or the Department if evidence is presented that a discharge did not occur at the facility.

(d) A Discharge Report Form 62-761.900(1) does not need to be submitted for previously reported discharges.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.450, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.500 Performance Standards for Category C Storage Tank Systems.

(1) General performance standards. UST Category-C systems shall be constructed and installed in accordance with the requirements of this section. UST Category-C systems shall be made of, or internally lined with, materials that are compatible with the regulated substance stored in the system. The following requirements are applicable to UST systems:

(a) Siting. Persons are advised that, pursuant to paragraphs 62-521.400(1)(l)-(n) and subsection (2), F.A.C., no storage tank shall be installed within 500 feet of any existing community water supply system or any existing non-transient non-community water supply system. No Category-C system shall be installed within 100 feet of any other existing potable water supply well. These prohibitions shall not apply to the replacement of an existing storage tank system within the same excavation or the addition of new storage systems meeting the standards for Category-C systems at an existing facility.

(b) Spill containment. USTs shall be installed with a spill containment system at each tank fill connection. The spill containment system shall be a fixed component that is designed to prevent a discharge of regulated substances when the transfer hose or pipe is detached from the tank fill pipe. The spill containment system shall meet the requirements of paragraph 62-761.500(1)(d), F.A.C.

(c) Dispensing systems.

1. The dispensing system used for transferring fuels from storage tanks shall be installed and maintained in accordance with the provisions of NFPA 30 and Chapters 2, 4 and 9 of NFPA 30A.

2. Dispensers shall be designed, constructed, and maintained to provide access for examination and removal of collected product and accumulated water from dispenser liners.

(d) Secondary containment.

1. The materials used for secondary containment shall be:

a. Impervious to the regulated substance and able to withstand deterioration from external environmental conditions;

b. Non-corrosive or of corrosion-protected materials;

c. Capable of containing regulated substances for at least 30 days; and

d. Of sufficient thickness and strength to withstand hydrostatic forces at maximum capacity to prevent a discharge during its operating life.

2. Liners, unless previously approved by the Department, shall be approved by the Department in accordance with subsection 62-761.850(2), F.A.C. Liners shall not be constructed or consist of naturally occurring in-situ soils.

3. Secondary containment constructed of concrete shall be:

a. Designed and constructed in accordance with ACI 350R-89 and ACI 224R-89; or

b. Designed, evaluated, and certified by a professional engineer registered in the State of Florida that the concrete secondary containment system meets the General Construction Requirements specified in subparagraph 62-761.500(1)(d)1., F.A.C.

4. For cathodically protected tanks and integral piping, secondary containment systems shall not interfere with the operation of the cathodic protection system.

5. Storage tank system equipment with closed interstitial spaces, such as double-walled USTs and double-walled integral piping in contact with the soil that is connected to USTs, shall be designed, constructed and installed to allow for the detection of a breach of integrity in the inner or outer wall by the monitoring of the interstitial space in accordance with paragraph 62-761.640(3)(a), F.A.C. A breach of integrity test shall be performed before the storage tank system is put into service.

6. Secondary containment systems shall be designed and installed to direct any release to a monitoring point or points.

7. Airport and seaport hydrant pits. Underground hydrant pits shall be installed with a spill catchment basin, secondary containment, or other spill prevention equipment to prevent the discharge of pollutants during fueling of aircraft, vessels, or at any other time the hydrant system is in use. Any such equipment shall be sealed to and around the hydrant piping with an impervious, compatible material.

8. Field-fabricated dispenser liners and piping sumps installed before July 13, 1998 do not have to be approved in accordance with Rule 62-761.850, F.A.C.

(e) Cathodic protection.

1. Test stations. Cathodic protection systems shall be designed, constructed, and installed with at least one test station or method of monitoring to allow for a determination of current operating status. Cathodic protection test stations shall provide direct access to the soil electrolyte in close proximity to each cathodically protected structure for placement of reference electrodes, and monitoring wires that connect directly to cathodically protected structures. Facilities where direct access to soil in close proximity to cathodically protected structures is present, and where electrical connections to cathodically protected structures can be

conveniently accomplished, need not have separate dedicated cathodic protection test stations.

2. The cathodic protection system shall be operated and maintained in accordance with paragraph 62-761.700(1)(b), F.A.C.

3. Any field-installed cathodic protection system shall be designed by a Corrosion Professional.

(f) Relocation of USTs. Tanks that have been removed and that are to be reinstalled at a different location shall:

1. Be recertified that all original warranties are confirmed by the original manufacturer or the manufacturer's successor, and be reinstalled in accordance with the standards in Rule 62-761.500, F.A.C., that were in effect on July 13, 1998; or

2. Be recertified by a professional engineer registered in the State of Florida that the UST meets all applicable standards of Rule 62-761.500, F.A.C., in effect on July 13, 1998; and

3. Proof of recertification shall be provided to the Department and County prior to the completion of installation. The provisions of subsection 62-761.850(2), F.A.C., do not apply to the requirements of this subparagraph.

(g) Reuse of storage tanks. Unless it is recertified for use by a professional engineer registered in the State of Florida, or is recertified by the manufacturer, and is brought into service in accordance with Rule 62-761.500, F.A.C.:

1. A UST can not be used or reused as an AST for the storage of regulated substances; and

2. An AST can not be used or reused as a UST for the storage of regulated substances.

(2) Installation.

(a) All components of a storage tank system shall be installed in accordance with the manufacturer's instructions.

(b) All storage tank systems shall be installed according to the applicable provisions of NFPA 30 and 30A, PEI/RP100-97, and API RP 1615.

(c) A Certified Contractor shall perform the installation of storage tank systems containing pollutants, including tanks, integral piping (excluding drop tubes), overflow protection and spill containment equipment, internal release detection equipment, cathodic protection systems, secondary containment systems, and dispensing systems, if the installation of the storage tank system component disturbs the backfill, or where the integral piping is connected or disconnected during installation.

(d) A tightness test shall be performed on the tank and integral piping before any storage tank system is placed into service unless the system's equipment approval specifies otherwise.

(3) Tank construction standards.

(a) Fiberglass reinforced plastic tanks shall be constructed in accordance with UL 1316 and ASTM Standard D4021-86, or certified by a nationally recognized laboratory that these standards are met.

(b) Cathodically protected steel tanks shall be:

1. Constructed in accordance with UL 58 and UL 1746, or as applicable;

2. Constructed in accordance with STI #STI-P₃[®] Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks; or

3. Certified by a Nationally Recognized Laboratory that these standards are met, and constructed and designed by a corrosion professional in accordance with NACE International Standard RP0285-95 for any field-installed cathodic protection system.

(c) Steel tanks coated with a fiberglass reinforced plastic composite shall be constructed in accordance with UL-58 and either UL 1746, STI ACT 100[®] (F894), or certified by a nationally recognized laboratory that one of these standards is met.

(d) Storage tanks constructed of any other material, design, or corrosion protection shall be approved by the Department in accordance with subsection 62-761.850(2), F.A.C.

(e) Any new tank manufactured with previously used or remanufactured components shall be certified before being installed as meeting the applicable standards by Underwriters Laboratory, by a comparable certified product testing laboratory, or by a professional engineer registered in the State of Florida.

(f) Tanks shall be constructed or installed to provide for interstitial monitoring.

(4) Secondary containment. All tanks installed or constructed at a facility after July 13, 1998 shall have secondary containment.

(5) Overflow protection.

(a) At a minimum, fillbox covers shall be marked in accordance with API RP 1637, or with an equivalent method approved by the Department in accordance with subsection 62-761.850(2), F.A.C.

(b) USTs shall be equipped with a system that either:

1. Automatically shuts off flow to the tank when the tank is no more than 95% full;

2. Restricts flow to the tank when the tank is no more than 90% full;

3. Alerts the transfer operator when the tank is no more than 90% full by triggering a high level alarm;

4. Alerts the transfer operator with a high level alarm set at 400 gallons below tank top, but no less than one minute before

overflowing; or

5. Automatically shuts off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overflowing.

(6) Dispenser liners.

(a) Storage tank systems installed or replaced after July 13, 1998, shall be installed with liners meeting the performance standards of paragraph 62-761.500(1)(d), F.A.C., beneath the union of the piping and the dispenser.

(b) Hydrostatic tests shall be performed for all dispenser liners before placing the system into service. The duration of the tests shall be at least:

1. Twenty-four hours for field-fabricated dispenser liners; or
2. Three hours for factory-made dispenser liners.

(c) Dispenser liners shall be installed to allow for interstitial monitoring in accordance with paragraph 62-761.640(3)(a), F.A.C.

(7) Piping sumps.

(a) Piping sumps installed after July 13, 1998, shall meet the performance standards of paragraph 62-761.500(1)(d), F.A.C. The sumps shall be designed, constructed, and installed to minimize water entering the sump.

(b) Hydrostatic tests shall be performed for all piping sumps before placing the system into service. The duration of the tests shall be at least:

1. Twenty-four hours for field-fabricated piping sumps; or
2. Three hours for factory-made piping sumps.

(c) Piping sumps shall be installed to allow for interstitial monitoring in accordance with paragraph 62-761.640(3)(a), F.A.C.

(8) Integral piping for underground storage tank systems.

(a) Installation.

1. All integral piping shall be installed in accordance with the manufacturer's instructions, if applicable.

2. All integral piping shall be installed according to the applicable provisions of NFPA 30, NFPA 30A, and ASME B31.4.

3. A pressure test shall be performed for underground bulk product piping before the piping system is placed into service. Tightness tests for underground small diameter piping connected to USTs are subject to paragraph 62-761.500(2)(d), F.A.C.

4. All piping that is not in contact with the soil, installed after July 13, 1998, shall meet the construction standards in paragraphs 62-761.500(8)(a)-(d), F.A.C.

(b) Integral piping construction standards.

1. Fiberglass reinforced plastic piping or other non-metallic piping installed at a facility shall be listed with UL 971, UL 567, certified by a Nationally Recognized Laboratory that these standards are met, or approved in accordance with subparagraph 62-761.500(8)(b)3., F.A.C.

2. Coated steel piping shall be constructed in accordance with ASME B31.4. Integral piping in contact with the soil shall be cathodically protected in accordance with API RP 1632, NACE International RP-0169-96, and STI R892-96.

3. Integral piping constructed of other materials, design, or corrosion protection shall be approved by the Department in accordance with subsection 62-761.850(2), F.A.C.

(c) Small diameter piping.

1. Pressurized small diameter piping systems connected to dispensers shall be installed with shear valves or emergency shutoff valves in accordance with NFPA 30A, Section 4-3.6, if applicable. These valves shall be designed to close automatically if a dispenser is dislodged from the integral piping. The valves shall be rigidly anchored independently of the dispenser. For underground small diameter piping, the valves shall be checked at the time of installation by a certified contractor to confirm that the automatic closing function of the valve operates properly and that the valve is properly anchored.

2. Gravity-fed small diameter integral piping systems must be installed with an isolation valve at the point of connection to the storage tank to prevent the discharge of regulated substances in the case of piping failure. The valve shall meet the standards of NFPA 30A, Section 2-1.7.

3. Swing-joints shall not be installed.

(d) Bulk product piping. Bulk product piping shall be constructed and installed in accordance with NFPA 30, and ASME B31.4.

(e) Secondary containment.

1. Small diameter integral piping that is in contact with the soil or that transports regulated substances over surface waters of the state shall have secondary containment.

2. Bulk product piping that is in contact with the soil shall have secondary containment.

3. Remote fill piping that is in contact with the soil shall have secondary containment.

4. The following integral piping systems are exempt from the requirements for secondary containment:

- a. Integral piping that is in contact with the soil, and that is connected to storage tanks containing high viscosity regulated substances; and
- b. Vertical fill pipes equipped with a drop tube.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History--New 12-10-90, Amended 5-4-92, Formerly 17-761.500, Amended 9-30-96, 7-13-98, , 6-21-04.

62-761.510 Performance Standards for Category-A and Category-B Storage Tank Systems.

(1) General. This section provides deadlines for Category-A and Category-B storage tank systems to meet the standards for Category-C storage tank systems in accordance with Rule 62-761.500, F.A.C.

(a) Installation:

1. Installation shall be completed by the deadlines specified in Table UST. However, if installation or upgrade activities are initiated before the deadlines, work can continue after the deadlines, provided that all work is completed within 90 days of:

- a. Contract execution; or
- b. Receipt of construction approval or permits.

2. Installation is considered to have begun if:

- a. All federal, state, and local approvals or permits have been obtained or applied for to begin physical construction for installation of the system; or
- b. Contractual obligations have been made for installation of the system which cannot be cancelled or modified without substantial economic loss, provided that such obligations are pursued diligently in good faith to achieve the requirements of this rule.

(b) By December 31, 1998:

1. All pressurized small diameter piping systems connected to dispensers shall have shear valves or emergency shutoff valves installed in accordance with paragraph 62-761.500(8)(c), F.A.C.
2. Cathodic protection test stations shall be installed in accordance with subparagraphs 62-761.500(1)(e)1. and (2)(b)2., F.A.C., for cathodically protected UST systems without test stations.
3. Fillboxes shall be color coded in accordance with paragraph 62-761.500(5)(a), F.A.C.
4. ASTs that have been reinstalled as USTs, shall meet the requirements of Rule 62-761.500, F.A.C.

(c) After July 13, 1998, a closure assessment shall be performed in accordance with subsection 62-761.800(3), F.A.C., before the installation of dispenser liners, piping sumps, or secondary containment of tanks and integral piping.

(d) Valves meeting the requirements of Section 2-1.7 of NFPA 30A, shall be installed by January 13, 1999 on any storage tank system located at an elevation that produces a gravity head on the dispenser or on small diameter piping.

(e) Small diameter piping transporting regulated substances over surface waters of the state shall have secondary containment by December 31, 2004.

(2) UST Category-A single-walled tanks or underground single-walled piping shall be considered to be protected from corrosion if the tank or piping was constructed with corrosion resistant materials, initially installed with cathodic protection, or had cathodic protection or internal lining installed before June 30, 1992.

(3) UST Category-B systems.

(a) All tanks containing pollutants, installed or constructed at a facility after June 30, 1992, shall have secondary containment.

(b) All tanks containing hazardous substances, installed or constructed at a facility after January 1, 1991, shall have secondary containment.

(4) Small diameter integral piping in contact with the soil that is connected to UST systems shall have secondary containment if installed after December 10, 1990.

(5) By December 31 of the appropriate year shown in Table UST below, all storage tank systems shall meet the performance standards of Rule 62-761.500, F.A.C., or be permanently closed in accordance with subsection 62-761.800(2), F.A.C.

TABLE UST

Year Tank or Integral Piping Installed	1989	1992	1995	1998	2004	2009
+Before 1970	O	B		ACFL	D	E
+1970-1975		SBL		ACF	D	E
+1976-1980		B	SL	ACF	D	E
+1981-09/01/84		B		ACFL	D	E
+09/02/84-06/30/92		B		ACFL	D	E
+Other*		B		ACFL	D	E

Key to Table UST

* = All systems with a capacity of between 110 gallons and 550 gallons, all marine fueling facilities as defined in Section 376.031, F.S., and those systems of greater than 550 gallon capacity that use less than 1,000 gallons per month or 10,000 gallons per year.

A =

(1) Small diameter piping that was protected from corrosion by June 30, 1992, shall have:

(a) For pressurized piping, line leak detectors with automatic shutoff, or flow restriction in accordance with paragraph 62-761.640(4)(a), F.A.C.; or

(b) For suction integral piping:

1. Secondary containment in accordance with paragraph 62-761.500(1)(d), F.A.C.;

2. A single check valve installed in accordance with subparagraph 62-761.610(3)(a)3., F.A.C.;

3. An annual line tightness test in accordance with subparagraph 62-761.610(3)(a)1., F.A.C.; or

4. External monthly monitoring or release detection in accordance with sub-subparagraph 62-761.610(3)(a)1.b., F.A.C.

(2) Bulk product piping in contact with soil shall be upgraded with secondary containment unless the piping is:

(a) Constructed of corrosion resistant materials or upgraded with cathodic protection; and

(b) Tested on an annual basis in accordance with API RP 1110, ASME B31.4, or an equivalent method approved by the Department in accordance with Rule 62-761.850, F.A.C.

B = Vehicular fuel petroleum storage tank systems shall be upgraded with spill containment.

C = Secondary containment in accordance with paragraph 62-761.500(1)(d), F.A.C., shall be required for the following:

(1) Concrete storage tanks;

(2) Hazardous substance storage tank systems; and

(3) For pollutant storage tank systems, the storage tank or small diameter piping not protected from corrosion by June 30, 1992.

D = (1) Secondary containment shall be installed for small diameter piping extending over surface waters.

(2) Secondary containment for remote fill-pipes associated with Category-A and Category-B systems.

E = Pollutant storage tanks and small diameter piping protected from corrosion on or before June 30, 1992, and all manifolded piping, shall be upgraded with secondary containment.

F = (1) Storage tank systems, excluding vehicular fuel petroleum storage tank systems, shall be upgraded with spill containment, dispenser liners (as applicable), and overfill protection.

(2) Unless contained within secondary containment, swing-joints and flex-connectors that are not protected from corrosion shall be protected from corrosion. Facilities that have pressurized small diameter piping and that have not met the foregoing standard on or before July 13, 1998 shall protect the submersible turbine pump from corrosion or provide corrosion protection for the submersible turbine pump if the pump is not installed within secondary containment. Corrosion protection is not required for the submersible turbine pump riser.

L = (1) Category-A USTs and their integral piping systems that contain vehicular fuel, and that are not protected from corrosion, shall have secondary containment, or be upgraded with secondary containment in accordance with Rule 62-761.500, F.A.C.

(2) Dispenser liners and overfill protection equipment shall be installed at UST Category-A systems containing vehicular fuel.

O = UST Category-A vehicular fuel storage tank systems subject to Chapter 17-61, F.A.C., (1984), shall be retrofitted for

corrosion protection.

S = Secondary containment for storage tanks and integral piping not protected from corrosion.

Specific Authority 376.303 FS. Law Implemented 376.303-.3072 FS. History--New 12-10-90, Amended 5-4-92, Formerly 17-761.510, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.600 Release Detection Standards.

(1) General.

(a) Storage tank systems shall have a method, or combination of methods, of release detection that:

1. Can detect a new release from any portion of the storage tank system;

2. Is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability to ensure that the device is functioning as designed; and

3. Meets the applicable performance standards in Rule 62-761.640, F.A.C. All manufacturer's instructions, and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer shall be retained for as long as the storage tank system is used.

(b) A release detection response level shall be described in writing for each method or combination of methods of release detection used for a storage tank system.

(c) A release detection method shall be established and provided for all storage tank systems upon installation.

(d) Except as otherwise specified in Rules 62-761.600-.640, F.A.C., the release detection method or combination of methods used at a facility shall be performed at least once a month, but not exceeding 35 days, to determine if a release from the storage tank system has occurred.

(e) At least once a month, but not exceeding 35 days, any storage tank and component of a storage tank that can be inspected visually shall be visually inspected in accordance with paragraph 62-761.640(2)(e), F.A.C. A visual inspection is not required for any system component that has a continuous or monthly electronic release detection sensor. Continuous electronic leak detection devices shall be inspected for proper operation on a monthly basis. Inspection may consist of visual observation or remote verification of proper operation.

(f) A site suitability determination shall be performed for UST systems by December 31, 1998, in accordance with paragraphs 62-761.640(2)(a)-(d), F.A.C., for storage tank systems using groundwater or vapor monitoring wells for release detection. If the site suitability determination indicates that on-site conditions are unsuitable for external monitoring, another method of release detection must be used.

(g) Vapor monitoring plans shall be performed by December 31, 1998, for UST systems, in accordance with paragraph 62-761.640(2)(d), F.A.C., for storage tank systems using vapor monitoring for release detection.

(h) Any component of a storage tank system with secondary containment shall have an interstitial monitoring method meeting the requirements of paragraph 62-761.640(3)(a), F.A.C.

(i) Pressurized piping, excluding bulk product piping, shall be equipped with a line leak detector that meets the standards of paragraph 62-761.640(4)(a), F.A.C. Gravity piping systems are exempt from this requirement.

(j) Any storage tank system not provided with a method, or combination of methods, of release detection in accordance with this section, shall be closed in accordance with subsection 62-761.800(2), F.A.C., by the date upon which release detection is to be provided.

(k) Groundwater and vapor monitoring wells meeting the standards for external monitoring specified in paragraphs 62-761.640(2)(a)-(d), F.A.C., that are no longer used for release detection, shall be closed in accordance with subsection 62-532.500(4), F.A.C., by December 31, 2010. Wells not meeting these standards shall be closed in accordance with subsection 62-532.500(4), F.A.C., by December 31, 1998, unless the wells are:

1. Used for contamination assessment purposes as specified in paragraph 62-761.600(2)(d), F.A.C.; or

2. Required by rules adopted by a County government in accordance with Section 376.317, F.S.

(2) By December 10, 1990, vehicular fuel petroleum storage tank systems of greater than 550 gallon capacity shall be provided with release detection. Release detection for all other storage tank and integral piping systems in contact with the soil shall be provided by December 31 of the year shown in Table RD.

TABLE RD

Year Storage Tank System	Year Release	Detection Required
--------------------------	--------------	--------------------

Installed Before 1970 or unknown	1990 P/RD	1991	1992	1993
1970-1974	P	RD		
1975-1979	P		RD	
1980-1990	P			RD

P = Installation of Release Detection for Pressurized Piping

RD = Installation of Release Detection for Tanks and Suction Piping.

(3) Effective December 31 of the applicable year specified under the schedule in Table RD, any groundwater monitoring plan or spill prevention control and countermeasure plan implemented before December 22, 1990, shall be capable of detecting the leak rate or quantity specified in paragraph 62-761.640(1)(a), F.A.C.

(4) UST systems that store fuel solely for use by emergency power generators are not required to comply with the release detection standards of Rules 62-761.600 through 62-761.640, F.A.C.

(5) Monitoring wells shall meet the standards of subsection 62-761.640(2), F.A.C., by December 31, 1998. Wells that do not meet these standards shall be closed in accordance with subsection 62-532.500(4), F.A.C., by December 31, 1998, unless the wells are required by a rule that was adopted by a County government in accordance with Section 376.317, F.S. However, if a monitoring well is used solely for the purpose of monitoring petroleum contamination in accordance with Chapter 62-770, F.A.C., the well does not have to be closed until the completion of the site rehabilitation pursuant to Chapter 62-770, F.A.C. Covers of leak detection monitoring wells redesignated as site assessment wells by the facility owner or operator shall be colored black with a white circle within the black background. The diameter of the white circle shall be approximately one half the diameter of the manhole cover, or approximately four inches.

Specific Authority 376.303 FS. Law Implemented 376.303, 376.3072 FS. History--New 12-10-90, Formerly 17-761.600, Amended 7-13-98, 6-21-04.

62-761.610 Release Detection Methods.

(1) General.

(a) Category-A and Category-B systems. Release detection methods shall be one of the methods specified in this section, and shall meet the performance standards contained in Rule 62-761.640, F.A.C.

(b) Category-C systems. Release detection methods shall be either interstitial or visual monitoring of secondary containment in accordance with Rule 62-761.640, F.A.C. Small diameter pressurized piping shall have a line leak detector in accordance with paragraph 62-761.640(4)(a), F.A.C. A breach of integrity test shall be performed every five years for Category-C storage tank systems with closed interstitial spaces, unless the test is a continuous test.

(2) Category-A and Category-B USTs shall be equipped with one or more of the following release detection systems:

(a) An interstitial monitoring system between the walls of a double-walled tank;

(b) Interstitial monitoring involving a single monitoring well or vapor detector located within a liner that meets the standards in paragraph 62-761.500(1)(d), F.A.C., provided the well or detector is placed at the low point of the liner so that collected liquids will drain to the monitoring point;

(c) A continuously operating release detection system placed around a tank in an excavation or in the secondary containment in accordance with the manufacturer's requirements;

(d) A network of groundwater or vapor monitoring wells installed or verified in accordance with paragraphs 62-761.640(2)(a)-(d), F.A.C., as applicable;

(e) Automatic tank gauge systems.

1. An automatic tank gauge system with a tightness test of the storage tank every three years;

2. A continuous automatic tank gauge system;

(f) A statistical inventory reconciliation system with a tightness test of the storage tank every three years;

(g) Manual tank gauging shall be performed as specified in Table MTG in paragraph 62-761.640(3)(c), F.A.C., for tanks of 550 gallons or less nominal capacity, and for tanks 551-1000 gallons with known diameters of 48 or 64 inches;

(h) Manual tank gauging may be used for tanks of 551 to 2000 gallons nominal capacity provided that a tank tightness test is performed:

1. Every 12 months for tanks not protected from corrosion by June 30, 1992; or
2. Every five years for tanks installed with corrosion protection, or for tanks upgraded with corrosion protection by June 30, 1992. However, this method is only available for the first 10 years after:

- a. A tank is upgraded with cathodic protection;
- b. A single-walled corrosion-protected tank is installed; or
- c. Until December 22, 1998, whichever is later;

(i) An annual tank test in conjunction with inventory control performed in accordance with Rule 62-761.640, F.A.C. This method can only be used until:

- 1. Ten years after the date of installation of a single-walled corrosion protected tank;
- 2. Ten years after the tank is upgraded with corrosion protection or internal lining; or
- 3. December 22, 1998, whichever is later.

(3) Integral piping.

(a) Small diameter piping in contact with the soil. Single-walled piping that is in contact with soil shall be equipped with one of the following release detection systems:

1. Suction or gravity piping shall have:

- a. An annual line tightness test; or
- b. An external monthly monitoring or release detection method meeting the requirements of subsection 62-761.640(2), F.A.C., if designed to detect a discharge from any portion of the integral piping.

2. By December 31, 1998, pressurized piping shall have:

- a. Mechanical line leak detectors meeting the requirements of paragraph 62-761.640(4)(a), F.A.C., and either an annual line tightness test, or an external release detection method meeting the requirements of paragraphs 62-761.640(2)(a)-(d), F.A.C.; or
- b. Electronic line leak detectors meeting the requirements of paragraph 62-761.640(1)(a), F.A.C.

3. Exemptions. Release detection is not required for piping associated with:

a. Suction pumps, provided that a single check valve is installed directly below the suction pump, and the piping is sloped so that the contents of the pipe will drain back to the tank if the suction is broken. Written verification shall be provided by a certified contractor that no other check valves exist between the dispenser and the tank, and that the above criteria are met. Any subsequent modification of the piping which involves disconnection shall be recertified by a Certified Contractor that these conditions are still being met; and

b. Manifold piping systems.

(b) Small diameter piping not in contact with the soil, or that is exempt from secondary containment. These systems shall be visually inspected in accordance with paragraph 62-761.640(2)(e), F.A.C.

(c) Small diameter piping with secondary containment that is in contact with the soil. Double-walled piping, or single-walled piping with secondary containment shall be equipped with the following release detection systems:

1. Interstitial monitoring;

2. A method of testing for a breach of integrity that meets the requirements of subparagraph 62-761.640(3)(a)2., F.A.C., for Category-C systems, as applicable; and

3. A line leak detector that restricts or shuts off flow or a continuously operating interstitial monitoring device that meets the requirements of subparagraph 62-761.640(4)(a)5., F.A.C., for pressurized piping connected to a UST, by December 31, 1998.

(d) Bulk product and hydrant piping.

1. Single-walled piping in contact with the soil:

- a. Shall be pressure tested annually in accordance with paragraph 62-761.640(5)(a), F.A.C.; or
- b. Instead of annual testing, a monthly release detection system meeting the requirements of subsection 62-761.640(2) F.A.C., may be installed.

2. Piping not in contact with the soil, or that is exempt from secondary containment, shall be visually inspected in accordance with paragraph 62-761.640(2)(e), F.A.C.

3. Piping with secondary containment that is in contact with the soil, such as double-walled piping or single-walled piping with secondary containment, shall be equipped with the following release detection systems:

a. Interstitial monitoring; and, if applicable,

b. For Category-C systems, a method of testing for a breach of integrity that meets the requirements of subparagraph 62-761.640(3)(a)2., F.A.C., for piping with closed interstitial spaces.

62-761.640 Performance Standards for Release Detection Methods.

(1) General. Methods of release detection shall:

(a) Be capable of detecting a release of 0.2 gallons per hour or 150 gallons within 30 days with a probability of detection of 0.95, and a probability of false alarm of 0.05, with the exception of:

1. Tightness testing requirements in paragraph 62-761.640(3)(f) and subparagraph (4)(b)2., F.A.C.;
2. Visual inspections in paragraph 62-761.640(2)(e), F.A.C.;
3. Groundwater or vapor monitoring in subsection 62-761.640(2), F.A.C.; and
4. Manual tank gauging in paragraph 62-761.640(3)(c), F.A.C.

(b) With the exception of bailers and monitoring wells, be approved in accordance with subsection 62-761.850(2), F.A.C.

(c) Have a release detection response level described in writing for each method or combination of methods.

(2) External release detection methods.

(a) Well construction standards.

1. Monitoring well requirements. Monitoring wells shall be constructed and installed by a licensed water well contractor when required by Chapter 62-531, F.A.C. Monitoring wells shall:

- a. Be a minimum of two inches in interior diameter;
- b. Be slotted from the bottom to two feet below ground surface;
- c. Have a minimum slot size of 0.010 inch;
- d. Be backfilled with clean sand or a gravel filter pack to prevent blockage of the slots;
- e. Be constructed of at least schedule 40 PVC without any joints, or of another corrosion protected material;
- f. Be grouted into the borehole from the surface to the top of the filter pack plug with neat cement grout or other equivalent materials. Grouting shall not extend below the top of the well slotting. Bentonite slurry grouts shall not be used;
- g. Unless the monitoring well has an extended exterior casing, be equipped with a minimum six inch diameter manhole designed to prevent water intrusion with a one inch minimum grade increase above the surrounding surface. The well opening shall extend at least one inch above the bottom of the manhole;

h. Be equipped with a watertight cap. The well shall be kept locked or secured to prevent tampering at all times except when the monitoring well is being sampled or maintained. Monitoring wells shall be marked in accordance with API RP 1615;

i. Extend no deeper than 20 feet below ground surface. If such a depth penetrates a confining layer below the excavation, the monitoring well shall extend no deeper than to within six inches of the confining layer. Any well that penetrates a confining layer shall immediately be properly abandoned in accordance with Rule 62-532.500, F.A.C.; and

j. If installed within a secondary containment liner system, extend no deeper than six inches from the liner.

2. Groundwater monitoring wells shall:

a. Extend at least five feet below the normal groundwater surface level; and

b. Be properly developed by the licensed water well contractor before the initial sampling.

3. Vapor monitoring wells shall meet the requirements specified in DEP's "Guidelines for Vapor Monitoring."

4. Electronic sensors, probes, or fiber-optic systems shall be tested at least annually to verify that they operate in accordance with the Department's approval given pursuant to subsection 62-761.850(2), F.A.C.

5. Groundwater and vapor monitoring wells using the placement of sensors or probes in vertical, horizontal, or directionally-drilled wells shall be designed and installed in accordance with the equipment approval for that system granted in subsection 62-761.850(2), F.A.C.

(b) Site suitability determinations.

1. A site suitability determination shall be performed for each facility using groundwater or vapor monitoring. The site suitability determination shall be performed in accordance with DEP's "Guidelines for Site Suitability Determinations for External Monitoring" by a Professional Geologist registered in the State of Florida. If the site is not suitable for external monitoring, another method of release detection must be used.

2. The following facilities having Category-A and Category-B USTs are not required to perform site suitability determinations:

a. Facilities located in counties having rules more stringent than the Department as specified in Chapter 376.317, F.S.

b. Facilities with monitoring wells located in the tank excavation, provided that a demonstration can be made that the excavation contains sand or gravel backfill, and the wells were properly constructed and installed within the backfill.

(c) Groundwater monitoring.

1. The regulated substance shall be immiscible in water and have a specific gravity of less than one.

2. Groundwater monitoring shall not be used for release detection after free product or a sheen is discovered in a monitoring well, unless:

a. A Site Rehabilitation Completion Order has been issued by the Department following the remediation of the free product or sheen, and there is no longer any free product in the monitoring well; or

b. Free product or sheen is not present and has not been observed in the well within the previous thirty (30) months, as demonstrated by records of at least six (6) monthly ground water monitoring sampling events, and within the previous two years, the system has been tested tight with tank and line piping tests or another internal method of release detection performed in accordance with subsection 62-761.640(3), F.A.C.

3. Another method of release detection specified in Rule 62-761.610, F.A.C., other than groundwater monitoring, shall be used when:

a. There is less than one foot of groundwater present in the well; or

b. The groundwater level is above the slotted portion of the well.

4. Records. The following information shall be maintained in accordance with the recordkeeping requirements of this chapter:

a. Date of sampling;

b. Depth of well;

c. Depth to groundwater;

d. Any presence of odor of stored regulated substances; and

e. Any sheen or free product found.

(d) Vapor monitoring.

1. Vapor monitoring can only be used to monitor regulated substances that are sufficiently volatile to be detected in soils or groundwater by vapor monitoring equipment.

2. The measurement of vapors in a vapor monitoring well shall not be rendered inoperative by groundwater, rainfall, soil moisture or other known interferences so that a discharge could go undetected for more than 30 days.

3. Sampling equipment shall be capable of detecting:

a. A vapor concentration of 500 parts per million total petroleum hydrocarbons, as measured by a flame ionization detector, for storage tank systems containing gasoline or equivalent petroleum substances;

b. A vapor concentration of 50 parts per million total petroleum hydrocarbons, as measured by a flame ionization detector, for storage tank systems containing kerosene, diesel or equivalent petroleum substances;

c. Vapor concentrations of hazardous substances or their constituents that would indicate a release; or

d. Vapor concentrations of tracer compounds used for release detection.

4. Vapor monitoring shall not be used for release detection if existing contamination interferes with the ability to detect a new release.

5. The vapor monitoring plan shall be developed and performed in accordance with DEP's "Guidelines for Vapor Monitoring." The plan shall include a description of monitoring wells or probes, the method of sampling, the establishment of a release detection response level and the data management procedures. Facilities with monitoring wells located in the tank excavation do not have to meet the requirements for DEP's "Guidelines for Site-Suitability Determinations for External Monitoring," provided that a demonstration can be made that the excavation contains sand or gravel backfill, and the wells were properly constructed and installed within the backfill.

(e) Visual inspections. Any visual inspection of the storage tank system or its secondary containment that reveals signs of corrosion, cracks, structural damage, leakage, or other similar problems shall be noted. Repairs shall be made in accordance with the requirements of Rule 62-761.700, F.A.C.

(3) Internal release detection methods.

(a) Interstitial monitoring for UST systems.

1. Interstitial monitoring for double-walled tanks, double-walled integral piping, dispenser liners, piping sumps, and other secondary containment systems, shall be designed and constructed to allow monitoring of the space between the primary and secondary containment. One or more of the following methods of interstitial monitoring shall be used:

a. Manual sampling of, or visual monitoring for, liquids;

b. Continuous electronic sensing equipment;

- c. Hydrostatic monitoring systems; or
- d. Vacuum monitoring.

2. Breach of integrity tests for Category-C systems. A test shall be performed for a breach of integrity of the interstice for double-walled USTs and for double-walled integral piping that is in contact with the soil and that is connected to USTs. Piping sumps and dispenser liners are not required to perform a breach of integrity test. The test shall be performed to determine the integrity of the inner and outer wall, is required only for tanks and integral piping with closed interstices, and does not apply to open-interstice systems with liners. The test shall be performed at the time of installation, and every five years from the date of installation, unless the test is a continuous test. If a UST is totally submerged in groundwater, monthly monitoring of the interstice for the presence of water shall be conducted. The breach of integrity test may be performed by using at least one of the following methods:

- a. A continuous hydrostatic system approved by the Department in accordance with subsection 62-761.850(2), F.A.C.;
- b. A continuous vacuum system, pursuant to paragraph 62-761.640(3)(a), F.A.C., that is approved by the Department in accordance with subsection 62-761.850(2), F.A.C.;
- c. Testing of the interstice for liquid tightness in accordance with manufacturer's installation instructions; or
- d. Another method in accordance with subsection 62-761.850(2), F.A.C.

3. Vacuum monitoring of the interstice shall meet the following requirements:

a. Liquid-filled gauges and air-filled gauges shall be calibrated in accordance with the National Institute of Standards and Technology. The gauges shall be operational at all times.

b. Vacuum monitoring may be used as a continuous method of release detection provided that the vacuum system is equipped with an audible or visual alarm. The alarm shall indicate when the minimum vacuum level allowed is reached as provided in the equipment approval granted in accordance subsection 62-761.850(2), F.A.C.

c. Vacuum readings shall be recorded monthly. Upon discovery of any significant vacuum level decrease, or any loss of vacuum exceeding 20% of the initial level, or any loss in excess of the levels established in the test protocols provided in the third party certification for the test method, the tank manufacturer shall be contacted and the vacuum refreshed in accordance with the storage tank system's equipment approval in subsection 62-761.850(2), F.A.C. If the loss of vacuum persists, an investigation shall be initiated and an incident reported in accordance with subsection 62-761.450(2), F.A.C. The source of the loss shall be repaired in accordance with Rule 62-761.700, F.A.C.

4. Interstitial monitoring for storage tanks and integral piping equipped with liners shall be designed and constructed to allow monitoring of the space between the primary and secondary containment and shall:

- a. Be capable of detecting a release through the inner wall into the interstice;
- b. Be constructed and installed so that groundwater, rainfall, or soil moisture will not render the testing or sampling method used inoperative; and
- c. Be equipped with an external release detection method meeting the standards of paragraphs 62-761.640(2)(a)-(d), F.A.C., except for the groundwater level and excavation zone assessment requirements; or
- d. Be visually inspected in accordance with paragraph 62-761.640(2)(e), F.A.C.; or
- e. Be equipped with a monitoring device approved in accordance with subsection 62-761.850(2), F.A.C., installed at the monitoring point within the liner.

(b) Inventory control.

1. General.

a. Inventory control shall be maintained for each single-walled tank that contains vehicular fuel.

b. Storage tank systems that have secondary containment are exempt from inventory control requirements.

2. Inventory control for USTs shall be performed and recorded in accordance with API RP 1621, as applicable. Manifolder tanks may be treated as a single tank for the purposes of inventory control. Inventory control shall be performed in the following manner:

a. Volume measurements for product inputs, withdrawals, and the amount remaining in each tank shall be recorded each operating day;

b. Measurements of product levels shall be recorded to the nearest one-eighth of an inch;

c. Product inputs shall be reconciled with delivery receipts by measurement of the tank product volume before and after delivery;

d. Product dispensed shall be metered as required by Chapters 525 and 531, F.S., and in accordance with the standards

established by the Florida Department of Agriculture and Consumer Services in Chapter 5F-2, F.A.C.;

e. The measurement of water level in the bottom of the tank shall be made at least once a week to the nearest one-eighth of an inch; and

f. The significant loss or gain of product shall be calculated for each month.

3. Inventory control requirements for USTs. Water fluctuations exceeding one inch not attributed to deliveries shall be investigated in the following manner:

a. The accessible parts of the storage system shall be inspected for damage or openings;

b. Release detection systems shall be checked for signs of a discharge; and

c. If, within a week, the investigation does not reveal the source of the water fluctuation, the entire storage tank system shall be tested in accordance with subsection 62-761.640(3), F.A.C.

4. Investigation procedures for significant loss or gain. An investigation shall be initiated immediately to determine the source of a significant loss or gain. The entire storage tank system, excluding the vent, but including piping connections and remote fill lines, shall be tested or inspected to determine if the system is product tight. The investigation shall continue until the source has been found, using the following investigative procedure:

a. Inventory records shall be checked for errors in arithmetic, data recording, and measurement;

b. If the significant loss or gain is not reconcilable or cannot be affirmatively demonstrated to be the result of theft, the accessible parts of the storage system shall be checked for damage or leaks;

c. Release detection systems shall be checked for signs of a discharge;

d. Calibration of the inventory measuring system and dispensing system shall be verified;

e. If the investigation does not reveal the source of the significant loss or gain within one week for USTs, or if the Department or County determines that it is necessary to investigate based on evidence that the significant loss or gain could result in potential harm to the environment, the storage tank system shall be tested in accordance with the manufacturer's guidelines, if applicable, and subsections 62-761.640(3) and (4), F.A.C.; and

f. If a discharge is discovered, the leaking or defective component of the storage tank system shall be repaired in accordance with Rule 62-761.700, F.A.C. If the storage tank system cannot be repaired, it shall be closed in accordance with subsection 62-761.800(2), F.A.C.

(c) Manual tank gauging. Manual tank gauging for tanks of 2000 gallons or less containing regulated substances shall meet the following requirements:

1. Tank liquid level measurements shall be taken weekly at the beginning and ending of a period between 36 hours and 58 hours in accordance with Table MTG, during which no liquid is added to or removed from the tank;

2. Level measurements shall be based on an average of two consecutive stick readings taken at both the beginning and ending of the period; and

3. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

4. Readings exceeding the standards described in Table MTG shall be investigated in accordance with Rule 62-761.820, F.A.C.

TABLE MTG

Nominal tank capacity	Minimum duration of test	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less	36 hours	10 gallons	5 gallons
551-1,000 gallons (Tank diameter is less than or equal to 64")	44 hours	9 gallons	4 gallons
551-1,000 gallons (Tank diameter is less than or equal to 48")	58 hours	12 gallons	6 gallons
551-1,000 gallons (Tank diameter unknown)	36 hours	13 gallons	7 gallons
1,001-2,000 gallons	36 hours	26 gallons	13 gallons

(d) Automatic tank gauge systems.

1. Automatic tank gauge systems that do not analyze data in a continuous manner shall be placed in a test mode at least once every 30 days.

2. Automatic tank gauge systems that continuously analyze the data collected by the system shall be operated in continuous test mode at all times and shall provide test results daily.

(e) Statistical Inventory Reconciliation (SIR). SIR shall be conducted according to the following requirements:

1. Data submitted for SIR analysis must be gathered in accordance with the requirements of subparagraphs 62-761.640(3)(e)1.-5., F.A.C.;

2. Results of each monthly analyses must include the calculated results from the data set for leak threshold, the minimum detectable leak rate, the calculated leak rate, and a determination of whether the result of the test was "Pass," "Fail," or "Inconclusive." For the purposes of this section, the "leak threshold" is defined as the specific leak threshold of the SIR method approved in accordance with subsection 62-761.850(2), F.A.C., to meet the release detection level specified in paragraph 62-761.640(1)(a), F.A.C.;

3. "Pass" means that the calculated leak rate for the data set is less than the leak threshold and the minimum detectable leak rate is less than or equal to the certified performance standard (0.2 gph);

4. "Fail" means that the calculated leak rate for the data set is equal to or greater than the leak threshold;

5. "Inconclusive" means that the minimum detectable leak rate exceeds the certified performance standard (0.2 gph) and the calculated leak rate is less than the leak threshold. If for any other reason the test result is not a "pass" or "fail," the result is "inconclusive";

6. An Incident Notification Form shall be submitted to the County when a monthly SIR report of "Fail" is received;

7. An Incident Notification Form shall be submitted to the County after the receipt of two consecutive monthly SIR reports of "Inconclusive." An investigation shall be performed in accordance with the Incident Response requirements specified in Rule 62-761.820, F.A.C. However, if at the end of the fourteen day investigation period provided in subsection 62-761.820(1), F.A.C., the SIR

data from the previous month is still inconclusive, a tightness test of the system shall be performed;

8. A data set shall consist of at least one month of valid data gathered over a time period not exceeding 35 days. A minimum of 20 data points over this 35 day period shall be used to calculate the leak rate unless the vendor of the SIR system approved under subsection 62-761.850(2), F.A.C., has provided a third party determination that a lesser number of data points is capable of detecting a release of 0.2 gph or 150 gallons within 30 days with a probability of detection of 0.95 and a probability of false alarm of 0.05; and

9. Results of monthly evaluations shall be recorded on Form 62-761.900(7), or on another similar form that provides the same information. These forms shall be kept as records in accordance with Rule 62-761.710, F.A.C.

(f) Tightness testing.

1. Tightness testing for all tanks shall be capable of detecting a 0.1 gph leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05 from any portion of the tank. Tightness testing shall account for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

2. If any volumetric tank tightness test is conducted at a level lower than the overfill protection device set point, a non-volumetric test shall also be used to test the ullage portion of the tank. When volumetric tests are conducted, there must be a minimum pressure differential of plus or minus one psig (pounds per square inch gauge), measured at the bottom of the tank, between the product hydrostatic pressure inside the tank and the hydrostatic pressure due to the external water table. When using this method, positive field verification of the depth of the water table must be performed, and the minimum liquid level of product in the tank shall be at least 30% of tank capacity, provided that the third party evaluation for the test method verifies detection capability at this level. If the water table depth cannot be verified, the minimum liquid level for volumetric tank testing shall be 65% of tank capacity.

3. Tank and line tightness testing shall be performed in accordance with Chapter 4 of NFPA 329.

4. Overfill protection and spill containment devices shall be inspected before a tightness test is performed to ensure that these devices do not interfere with the test, and after the test to ensure that the devices are operating properly.

(4) Small diameter integral piping in contact with the soil.

(a) Line leak detectors for USTs. Line leak detectors shall:

1. Be capable of detecting a discharge of 3.0 gph with a probability of detection of 0.95 and a probability of false alarm of 0.05 at a line pressure of 10 psi within one hour;

2. Have an annual test of the operation of the leak detector conducted in accordance with the manufacturer's requirements by an individual certified or trained by the manufacturer to determine whether the device is functioning as designed. Remote testing of the leak detector can be performed by the manufacturer if the remote test is approved under subsection 62-761.850(2), F.A.C.;

3. Restrict flow within one hour if designed with mechanical flow restriction;

4. When a discharge of 3.0 gph is detected, shut off power to the pump if designed with automatic electronic shutoff. When in test mode, line leak detectors with automatic electronic shutoff shall also be able to detect a discharge of 0.2 gph at a line pressure of 150% of operating pressure, or an equivalent leak rate, with a probability of detection within a one month period of at least 0.95 and a probability of false alarm of no more than 0.05. When a discharge of 0.2 gph is detected, the leak detector shall provide audible or visual alarms that can be clearly heard or seen by the operator of the facility, or if monitored remotely on a real time basis, the alarm condition must be immediately transmitted from the remote location to the facility operator; and

5. Instead of using a line leak detector as a method of release detection for pressurized small diameter piping associated with double-walled integral piping, a continuously operating interstitial monitoring device can be used. Continuously operating interstitial monitoring devices shall be capable of detecting a release of 10 gallons within one hour and shutting off the pump.

(b) Tightness testing. Tightness testing for pressurized piping in contact with the soil shall be capable of detecting a 0.1 gallon per hour leak rate at one and one-half times the operating pressure with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(5) Bulk product piping.

(a) An annual test shall be performed of single-walled bulk product piping in contact with the soil. Prior to testing the piping system, a leak tightness evaluation of all exposed components shall be performed through visual inspection, or by another method approved by the Department in accordance with Rule 62-761.850, F.A.C. The evaluation shall be verified and recorded. One of the following methods shall be used for the annual test:

1. A bulk product piping test method approved in accordance with subsection 62-761.850(2), F.A.C.;

2. An API RP 1110 hydrostatic test; or
3. An ASME B31.4 hydrostatic test.

(b) Double-walled bulk product and hydrant piping, and other bulk piping equipped with secondary containment shall have methods of release detection and testing for a breach of integrity that meet the requirements of subparagraph 62-761.640(3)(a)2. or 4., F.A.C., as applicable.

(c) Records of all test results shall be maintained in accordance with the Appendix-Test Records of API RP 1110, or Chapter VI of ASME B31.4, as applicable, pursuant to subsection 62-761.710(1), F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.640, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.700 Repairs, Operation and Maintenance of Storage Tank Systems.

(1) General.

(a) Repairs.

1. Repairs shall be performed if any component of a storage tank system is discovered to have:

- a. Discharged or contributed to the discharge of a regulated substance;
- b. A release of regulated substances into secondary containment;
- c. The presence of groundwater in the interstice of a double-walled UST or pipe; or
- d. An operational or structural problem that could potentially result in a discharge or release.

2. If repairs are required for any component or part of a storage tank system, and the nature of the repair activities or the condition of the component or part of the system requiring a repair may result in a release, and the component or part cannot be otherwise isolated from the system, the storage tank system shall be taken out of operation until the tank has been repaired or replaced. The restrictions against storage tank system operation shall not apply if the system contains heating oil or other fuels used solely for the generation of electricity where the removal of the storage system from service would result in the shut down of electrical generating units serviced by the system.

3. Repairs shall be made:

a. In a manner that will prevent discharges from structural failure or corrosion for the remaining operational life of the storage tank system;

b. In accordance with manufacturer's specifications, NFPA Standard 30 or other applicable reference standards; and

c. To restore the structural integrity of the storage tank system.

4. Repaired components shall be tightness tested, pressure tested, or tested for a breach of integrity, as applicable, before being placed back into service.

5. Repairs to fiberglass reinforced plastic tanks and steel tanks coated with a fiberglass reinforced plastic composite shall be made by an authorized representative of the tank manufacturer or its successor, or in accordance with subsection 62-761.500(3), F.A.C.

6. Piping that is damaged or that has caused a discharge of a regulated substance shall be replaced or repaired. Pipe sections and fittings may be repaired in accordance with applicable standards in subsection 62-761.500(8), F.A.C. Replacement of additional lengths of piping in contact with the soil are exempt from the requirements for secondary containment, provided that:

a. The piping system does not have, or will not have to install, secondary containment until the deadlines established in Rule 62-761.510, F.A.C.; and

b. The length of replacement or additional piping is less than 25% of the total length of the existing integral piping for the individual tank, or 100 feet, whichever is less.

(b) Cathodic protection.

1. Cathodic protection systems shall be installed, operated and maintained to provide continuous corrosion protection to the metal components of those portions of the tank and integral piping in contact with the soil.

2. Inspection and testing requirements.

a. General. Storage tank systems equipped with any type of cathodic protection must be inspected and tested by a Corrosion Professional or a Cathodic Protection Tester within six months of installation or repair and at least every year thereafter in accordance with the criteria contained in NACE International RP-0169-96 and RP-0285-95, as applicable. Factory-installed (galvanic) cathodic protection systems may be tested every three years.

b. Impressed current systems. Storage tank systems with impressed current systems shall be inspected at intervals not exceeding two months. All sources of impressed current shall be inspected. Evidence of proper functioning shall be current output,

normal power consumption, a signal indicating normal operation, or satisfactory electrical state of the protected structure. Impressed current systems that are inoperative for a cumulative period exceeding 1440 hours shall be assessed by a Corrosion Professional to ensure that the storage tank system is structurally sound, free of corrosion holes, and operating in accordance with the design criteria.

c. Sacrificial anode systems. Storage tank systems with sacrificial anodes shall either have permanent test stations for soil-to-structure potential measurements or use temporary field test stations for annual testing in accordance with sub-subparagraph 62-761.700(1)(b)2.a., F.A.C.

3. Storage tank systems with cathodic protection systems that cannot achieve or maintain protection levels in accordance with the design criteria shall:

- a. Be repaired in accordance with sub-subparagraph 62-761.700(1)(b)2.a., F.A.C., or
- b. Be placed out-of-service in accordance with subsection 62-761.800(1), F.A.C.

4. Records of the continuous operation of impressed current systems and all cathodic protection inspection and testing activities shall be maintained in accordance with paragraph 62-761.700(1)(b), F.A.C.

(c) Operation and maintenance.

1. Spill containment devices, dispenser liners, and piping sumps shall be maintained to provide access for monthly examination and water removal as necessary. Water collected in spill containment devices, or in piping sumps and dispenser liners that is above the opening of the integral piping connection, or any regulated substances collected in these storage tank system components shall be removed and be either reused or properly disposed of.

2. Owners or operators shall ensure that the volume available in the tank is greater than the volume of regulated substances to be transferred to the tank before the transfer is made and shall ensure that any transfer is repeatedly monitored to prevent overfilling and spilling.

3. All release detection devices shall be tested annually to ensure proper operation. The test shall be conducted according to manufacturer's specifications, and shall include, at a minimum, a determination of whether the device operates as designed.

4. Petroleum contact water from storage tank systems shall be managed in accordance with Chapter 62-740, F.A.C.

5. Regardless of the method of release detection used, inventory control shall be performed for USTs containing vehicular fuel that do not have secondary containment. One of the following methods of inventory control shall be used:

- a. Inventory control in accordance with paragraph 62-761.640(3)(b), F.A.C.;
- b. Statistical inventory reconciliation in accordance with paragraph 62-761.640(3)(e), F.A.C.;
- c. Automatic tank gauging in accordance with paragraph 62-761.640(3)(d), F.A.C.; or
- d. Manual tank gauging in accordance with paragraph 62-761.640(3)(c), F.A.C.

(2) Single-walled storage tank systems that have been upgraded with cathodic protection or internally lined before June 30, 1992, may be repaired in accordance with this section until the storage tank system is upgraded with secondary containment in accordance with Rule 62-761.510, F.A.C. Storage tank systems with secondary containment may be repaired in accordance with this section at any time during the operational life of the storage tank system.

(3) Tanks shall be tightness tested before being placed back in service, unless another testing method has been approved in accordance with subsection 62-761.850(2), F.A.C. Small diameter piping shall be tightness tested before being placed back into service whenever dispensers connected to that piping are replaced or whenever the piping has been disconnected and then reconnected.

(4) Tanks may be repaired with internal lining if:

(a) The internal lining is installed in accordance with API RP 1631, and documentation is available from the installer that demonstrates these requirements have been met; and

(b) Within 10 years after the installation of internal lining, and every five years thereafter, the internally lined tank is:

1. Inspected internally in accordance with NLPA 631, Chapter B, and found to be structurally sound with the internal lining still performing in accordance with original design specifications, or repaired to original design specifications in accordance with API RP 1631. If the tank fails to meet these criteria, the owner or operator shall close the storage tank system in accordance with subsection 62-761.800(2), F.A.C.; or

2. Evaluated in accordance with ASTM Designation ES40-94, and determined by a Corrosion Professional to be suitable for the installation of cathodic protection. If a determination is made that the system is suitable, cathodic protection shall be designed by a Corrosion Professional, installed by a Certified Contractor, and operated in accordance with Rule 62-761.500, F.A.C. If the system is determined to be unsuitable, it shall be closed in accordance with subsection 62-761.800(2), F.A.C.; and

3. Tightness tested in accordance with subsection 62-761.640(3), F.A.C., before the tank is placed back into service and every five years after installation of the internal lining.

(5) Tanks may be repaired with internal lining and cathodic protection if:

(a) The internal lining is installed in accordance with API RP 1631;

(b) The cathodic protection system meets the requirements of sub-paragraphs 62-761.500(1)(a)2.b-d., F.A.C.; and

(c) A tightness test that meets the requirements of subsection 62-761.640(3), F.A.C., is performed before the tank is placed back into service and every five years after installation of the internal lining.

(6) UST Category-A tanks that were upgraded with internal lining or cathodic protection, or both, shall be internally inspected or tightness tested, as applicable, in accordance with subparagraph 62-761.700(2)(c)2., F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 3-12-91, Formerly 17-761.700, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.710 Recordkeeping.

(1) All records shall be dated, maintained in permanent form, and available for inspection by the Department or County. If records are not kept at the facility, they shall be made available at the facility or another agreed upon location upon five working days notice. Site access to the facility shall be provided for compliance inspections conducted at reasonable times.

(2) Records of the following are required to be kept for two years:

(a) Measurements and reconciliations of inventory, as applicable;

(b) Repair, operation, and maintenance records;

(c) Release detection results, including electronic test results, regardless of the frequency, and monthly visual inspections performed in accordance with paragraph 62-761.640(2)(e), F.A.C. The presence of a regulated substance's odor, sheen, or free product shall be recorded for each sampling event;

(d) Release detection response level descriptions;

(e) A copy of all test data and results gathered during tightness tests, pressure tests, and breach of integrity tests, and the name and type of the test approved under Rule 62-761.850, F.A.C.;

(f) Certification of Financial Responsibility on Form 62-761.900(3);

(g) Records of types of fuels stored per tank; and

(h) The repair or replacement of gaskets, valve packings, valves, flanges, and connection/disconnection fittings for bulk product piping if the repair or replacement is performed in response to a discharge or loss of regulated substances.

(3) Records of the following, generated after July 13, 1998, shall be maintained for the life of the storage tank system:

(a) Results of internal inspections and non-destructive testing;

(b) Any performance claims for release detection equipment described in writing by the equipment manufacturer or installer;

(c) Records of storage tank system installations, replacements, and upgrades;

(d) Records of installation, maintenance, inspections, and testing of cathodic protection systems in accordance with NACE standards;

(e) Site suitability determinations in accordance with subsection 62-761.640(2), F.A.C.;

(f) Vapor monitoring plans and all records kept pursuant to the plan;

(g) Closure assessment reports if the location continues as a facility; and

(h) Verification from a Certified Contractor of the existence of a single check valve beneath the suction pump for suction piping systems.

Specific Authority 376.303, 376.322(3) FS. Law Implemented 376.303, 376.322 FS. History—New 12-10-90, Formerly 17-761.710, Amended 9-30-96, 7-13-98, Repromulgated 6-21-04.

62-761.800 Out-of-Service and Closure Requirements.

(1) Out-of-service storage tank systems.

(a) General.

1. Storage tank systems that are taken out-of-service, as defined in subsection 62-761.200(40), F.A.C., shall:

a. Continue to operate and maintain corrosion protection in accordance with paragraph 62-761.700(1)(b), F.A.C.;

b. Perform external release detection for sites without contamination, as applicable, every six months in accordance with provisions of subsection 62-761.640(2), F.A.C.;

c. Leave vent lines open and functioning;

- d. Empty the system and cap or secure all lines, pumps, manways, and ancillary equipment, as applicable; and
- e. Secure or close off the system to outside access.

2. If the storage tank system is required to be upgraded during the time that it is out-of-service, it shall be upgraded or replaced in accordance with this chapter before it is returned to service.

3. Systems with secondary containment installed and operated in accordance with this Chapter may remain in a continuous out-of-service status for ten years. After this period, the system shall be returned to service or closed in accordance with subsection 62-761.800(2), F.A.C.

4. Tightness, pressure, or other tests shall be performed in accordance with subsection 62-761.640(2), F.A.C., as applicable, on any systems being returned to service.

(b) Before being returned to service, the following tests shall be performed in accordance with subsection 62-761.640(3), F.A.C., for systems that are taken out-of-service for more than 180 days:

- 1. A tightness test for single-walled systems; or
- 2. A breach of integrity test for double-walled Category-C systems.

(c) Single-walled systems that are taken out-of-service shall not be kept out-of-service longer than two years for corrosion-protected systems or one year for unprotected bare steel systems. After the end of these time periods, the systems shall either be upgraded or permanently closed.

(2) Closure of storage tank systems.

(a) General.

1. Closure of storage tank systems shall be performed by:

- a. Removing all liquids and accumulated sludges;
- b. Disconnecting and capping, or removing, all integral piping. Manways shall be secured to prevent access;
- c. Closing the storage tank system in accordance with paragraphs 62-761.800(2)(b), F.A.C., as applicable; and
- d. Conducting a closure assessment in accordance with subsection 62-761.800(3), F.A.C.

2. After closure, storage tank systems may be used to store materials or substances other than regulated substances in accordance with all applicable Department reference standards, (for example, API 1604). Owners and operators are advised that other federal, state, or local requirements may apply to these activities.

3. Monitoring wells associated with closed systems that are not being used for release detection or site assessment purposes shall be closed in accordance with paragraph 62-761.600(1)(k), F.A.C.

(b) Unmaintained systems shall be permanently closed within 90 days of discovery.

(c) System removal, closure in-place, and disposal shall be performed:

1. In accordance with API RP 1604 and NFPA 30; and

2. By a Certified Contractor if the system is removed from the ground, unless it is closed in place by filling it with a solid inert material of sufficient density to prevent a structural collapse of the closed system.

(3) Closure assessment of storage tank systems.

(a) At time of closure, replacement, installation of secondary containment, or change in service from a regulated substance to a non-regulated substance, an assessment shall be performed to determine if a discharge from the system or system components has occurred.

1. If a Site Rehabilitation Completion Order (SRCO) or a Monitoring Only Plan (MOP) Approval Order has been issued by the Department for a contaminated area of a site, a closure assessment shall be performed for any subsequent storage tank system removal, replacement, or installation of secondary containment.

2. Tanks, pipes, or other system components in contact with soil at any site are subject to closure assessment requirements.

(b) A closure assessment is not required for:

1. Sites with documented contamination requiring a site assessment in accordance with Chapter 62-770, F.A.C., including those that are eligible for the Early Detection Incentive Program (EDI), the Florida Petroleum Liability and Restoration Insurance Program (FPLRIP), and the Petroleum Cleanup Participation Program (PCPP), pursuant to Sections 376.3071 and 376.3072, F.S. Nevertheless, documentation of procedures followed and results obtained during closure shall be reported in a Limited Closure Summary Report, Form 62-761.900(8), and in accordance with Section A of DEP's "Storage Tank System Closure Assessment Requirements";

2. Systems initially installed with secondary containment, provided that no unexplained positive response of an interstitial release detection device or method occurred during the operational life of the system, or the secondary containment passed a breach of integrity test prior to closure; and

3. Systems upgraded with secondary containment that have closed interstitial spaces, where a closure assessment was performed prior to installation of secondary containment, provided that the secondary containment passed a breach of integrity test in accordance with paragraph 62-761.640(3)(a), F.A.C.;

(c) Closure assessment sampling and analysis shall be conducted according to DEP's "Storage Tank System Closure Assessment Requirements."

(d) A closure assessment report shall be submitted to the County within 60 days of completion of any of the activities listed in paragraph 62-761.800(3)(a), F.A.C. The report shall include sample types, sample locations and measurement methods, a site map, methods of maintaining quality assurance and quality control, and any analytical results obtained during the assessment in accordance with DEP's "Storage Tank System Closure Assessment Requirements."

(e) Persons are advised that contaminated soil excavated, disposed of, or stockpiled on site during the closure of a storage tank system is regulated by Chapter 62-770, F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.800, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.820 Incident and Discharge Response.

(1) Incident response.

(a) If an incident occurs at a facility, actions shall be taken promptly to investigate the incident to determine if a discharge has occurred. Notification of the incident shall be sent to the County on Form 62-761.900(6). A discharge shall be reported in accordance with subsection 62-761.450(3), F.A.C., if one is discovered during the incident investigation.

(b) If the investigation indicates that the incident was not a discharge, a written confirmation and explanation shall be submitted to the County. Test results or reports, which support the findings, shall be maintained on site as records.

(c) The investigation shall be completed within two weeks of the date of discovery of the incident. At the end of this time period, either a discharge report form or a written confirmation and explanation that the release was not a discharge shall be submitted to the County.

(d) Any spill or loss of regulated substance into secondary containment shall be removed within three days of discovery.

(2) Discharge response.

(a) If a discharge of a regulated substance occurs at a facility, actions shall be taken immediately to contain, remove, and abate the discharge under all applicable Department rules (for example, Chapter 62-770, F.A.C., Petroleum Contamination Site Cleanup Criteria). Owners and operators are advised that other federal, state, or local requirements may apply to these activities. If the contamination present is subject to the provisions of Chapter 62-770, F.A.C., corrective action, including free product recovery, shall be performed in accordance with that Chapter.

(b) When evidence of a discharge from a storage tank system is discovered and reported in accordance with subsection 62-761.450(3), F.A.C., the following actions shall be taken:

1. If the source or cause of the discharge is unknown, the discharge shall be investigated in accordance with NFPA 329, Chapters 3 and 5;

2. The regulated substance shall be removed from the system as necessary to prevent further discharge to the environment. Notice of the need to take the system out-of-service on an emergency basis shall be made to the County in accordance with subsection 62-761.450(1), F.A.C.;

3. Fire, explosion, and vapor hazards shall be identified and mitigated; and

4. The system shall be repaired in accordance with Rule 62-761.700, F.A.C. If the system cannot be repaired, it shall be closed in accordance with subsection 62-761.800(2), F.A.C.

(c) The system shall be tested if the Department or County determines that:

1. There has been a failure to comply with the release detection requirements of Rules 62-761.600-.640, F.A.C.;

2. A release detection device, well, or method indicates that a discharge of a regulated substance has occurred, and the discharge was not previously reported; or

3. Groundwater contamination that is not associated with previously known contamination is present in the vicinity of the system and the system is likely to be a source of the contamination.

(d) Within three days of the discovery of a discharge, the following steps shall be initiated:

1. A test on the system in accordance with subsection 62-761.640(3), F.A.C., if the test is necessary to confirm a discharge; and

2. If found to be leaking, placement of the system out-of-service in accordance with subsection 62-761.800(1), F.A.C., until repaired, replaced or closed.

(e) Contaminated soil excavated, disposed of, or stockpiled on site during the closure of a storage tank system shall be managed in accordance with Chapter 62-770, F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 12-10-90, Formerly 17-761.820, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.850 Alternative Requirements and Equipment Approvals.

(1) Alternative requirements.

(a) Any person subject to the provisions of this chapter may request in writing a determination by the Secretary or the Secretary's designee that any requirement of this Chapter shall not apply to a regulated storage tank system at a facility, and shall request approval of alternate procedures or requirements.

(b) The request shall set forth at a minimum the following information:

1. The specific storage tank system or facility for which an exception is sought;
2. The specific provisions of Chapter 62-761, F.A.C., from which an exception is sought;
3. The basis for the exception;
4. The alternative procedure or requirement for which approval is sought;

5. Documentation that demonstrates that the alternative procedure or requirement provides an equivalent or greater degree of protection for the lands, surface waters or groundwaters of the State as the established requirement; and

6. Documentation that demonstrates that the alternative procedure or requirement is at least as effective as the established procedure or requirement.

7. If an alternate procedure or requirement is not able to be sought under subparagraph 5. or 6., then documentation that demonstrates that the specific provisions of this Chapter from which the exception is sought imposes regulatory costs on the regulated entity that could be reduced through approval of a less costly regulatory alternative or requirement that provides a substantially equivalent degree of protection for the lands, surface waters, or groundwaters of the State as the established requirement.

(c) Within 60 days of the receipt of a request for approval of an alternative procedure or requirement, the Department shall approve the request or notify the responsible party in writing that the request does not demonstrate that the requirements of subsection 62-761.850(1), F.A.C., are met.

(d) The Secretary or the Secretary's designee shall specify by order each alternative procedure or requirement approved for an individual storage tank system or facility in accordance with this rule or shall issue an order denying the request for such approval. The Department's order shall be agency action, reviewable in accordance with Sections 120.569 and 120.57, F.S.

(e) The provisions of this rule do not preclude the use of any other applicable relief provisions.

(2) Equipment approvals.

(a) Storage tank system equipment used in the State of Florida must have the approval of the Department before installation or use, with the exception of:

1. Dispensers, dispenser islands, nozzles, and hoses;
2. Monitoring well bailers;
3. Manhole and fillbox covers;
4. Valves;
5. Cathodic protection test stations;
6. Metallic bulk product piping;
7. Small diameter piping not in contact with soil, unless the piping extends over or into surface waters; and
8. Vent lines.

(b) Equipment approval requests shall be submitted to the Department with a demonstration that the equipment will provide equivalent protection or meet the appropriate performance standards contained in this chapter. Any approvals or denials received from other states shall be included in the approval request to the Department.

(c) A third-party demonstration by a Nationally Recognized Laboratory shall be submitted to the Department with the application. The third-party demonstration shall provide:

1. A technical evaluation of the equipment;
2. Test results that verify that the equipment will function as designed; and
3. A professional certification that the equipment meets the performance standards contained in Rule 62-761.500, F.A.C.

(d) Within 60 days of the receipt of a request for an equipment approval, the Department shall approve the request or notify

the responsible party in writing that the request does not demonstrate that the requirements of subsection 62-761.850(2), F.A.C., are met.

(e) The Secretary or the Secretary's designee shall specify by order each equipment approval that is approved in accordance with this rule or shall issue an order denying the request for such approval. The Department's order shall be agency action, reviewable in accordance with Sections 120.569 and 120.57, F.S.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History--New 12-10-90, Formerly 17-761.850, Amended 9-30-96, 7-13-98, 6-21-04.

62-761.900 Storage Tank Forms.

The forms used by the Department in the Storage Tank System Program are adopted and incorporated by reference in this section. The forms are listed by rule number, which is also the form number, and with the subject title and effective date. Copies of forms may be obtained by writing to the Administrator, Storage Tank Regulation Section, Division of Waste Management, Florida Department of Environmental Protection, 2600 Blair Stone Road, M.S. 4525, Tallahassee, Florida 32399-2400.

- (1) Discharge Report Form, July 13, 1998.
- (2) Storage Tank Facility Registration Form, July 13, 1998.
- (3) Certification of Financial Responsibility, July 13, 1998.
- (4) Alternative Requirement or Procedure Form, July 13, 1998.
- (5) Underground Storage Tank Installation and Removal Form for Certified Contractors, July 13, 1998.
- (6) Incident Notification Form, July 13, 1998.
- (7) Monthly Statistical Inventory Reconciliation (SIR) Report, July 13, 1998.
- (8) Limited Closure Summary Report Form, July 13, 1998.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History--New 12-10-90, Formerly 17-761.900, Amended 9-30-98, 7-13-98, Repromulgated 6-21-04.



Florida Department of Environmental Protection

Twin Towers Office Bldg. • 2600 Blair Stone Road • Tallahassee, Florida 32399-2400

Division of Waste Management - Storage Tank Facility Registration Form Registration Instructions and Codes List

The Department of Environmental Protection Storage Tank Program registers the facilities and the storage tanks when aboveground or underground storage tanks store pollutants, hazardous substances, and/or mineral acid substances regulated by Chapter 62-761, Florida Administrative Code, or when aboveground storage tanks or compression vessels store a hazardous substance which requires registration according to Chapter 376, Florida Statutes.

Storage Tank Facility Registration Form

In the first section block, identify the types of information being submitted on the registration form.

Check **New Registration** when the **location** is being registered for the first time and no Facility Identification number exists.

If submitting a revised Registration form, check all other boxes that apply to designate the type(s) of revisions being submitted.

I. Facility Information - Properly describe the geographical location where the storage tank facility is located.

- Facility ID** Include the DEP Facility Identification number whenever possible. Write in "Pending" when submitting a new registration for the first time. Remember: the facility ID number identifies the location, and is transferred to a new owner upon sale of the facility.
- Facility Name** Provide the current name of the business establishment operating at the facility location. When registering an abandoned facility, where tanks exist *unmaintained*, identify the location with the property owner's name, as in "Smith Property", if no other facility name is being used.
- Facility Address** Include the county name, and the proper street number and name. Give directions when the facility is located in a rural area with no Rural Route number associated with it (i.e., 'x' miles N of intersection...). Provide the name and telephone number of a contact person or manager *on location*, where possible.
- Facility Type** This information is an explanation or term that most closely describes the operational use of the facility. Select the code(s) that provides the best or most appropriate description of the facility.

1. If the facility is owned by a government entity, select the appropriate type from the following:

- | | | |
|------------------------------|------------------------------------|-----------------------|
| F. Federal Government | H. Local or City Government | N. Indian Land |
| G. State Government | I. County Government | |

2. If the facility meets the definition of "bulk product facility" - "a waterfront location with at least one aboveground tank with a capacity greater than 30,000 gallons which is used for the storage of pollutants" ("Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.); select the type from:

- T. Coastal bulk product facility** - facility, as defined above and located on the Florida coast, may have storage tank systems that store hazardous substances in addition to pollutants. ("Coastline means the line of mean low water along the portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on Territorial Seas and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.")
- S. Inland Waterfront bulk product facility** - facility, as defined above and located on "inland waterways" (lakes, rivers), may have storage tank systems that store hazardous substances in addition to pollutants.

3. When the facility is a "waterfront location", but not a bulk product facility as defined above, select the most appropriate type from:

- V. Marine fueling facility** - a commercial, recreational, or retail coastal facility that provides fuel to vessels and may store other pollutants and/or hazardous substances on site.
- W. Waterfront fueling facility** - a commercial, recreational, or retail facility located on a non-coastal waterway that provides fuel to vessels and may store other pollutants and/or hazardous substances on site.

Facility Type continued

4. When the facility is not described as above, select the most appropriate type from:

- A. Retail Station** - primarily supplies vehicular fuel to automotive customers; may store other regulated substances.
- C. Fuel User, Non-retail** - primarily stores vehicular fuel and/or other pollutants or hazardous substances for consumption by facility/owner/operator.
- D. Inland Bulk Petroleum Storage** - inland facility with no waterfront access, that has multiple active UST and/or AST storage systems used primarily for storage of pollutants intended for distribution. May also store hazardous substances on-site for facility consumption and/or distribution purposes.
- E. Industrial Plant** - inland facility with no waterfront access; may include power plants and facilities designed for manufacturing and/or chemical processing; may have multiple active UST and/or AST storage systems used for storage of pollutants and/or hazardous substances intended for facility consumption.
- J. Collection Station** - maintenance or other related facility that acquires and temporarily stores used and/or waste oil prior to recycling and/or disposal.
- K. Inland Bulk Chemical Storage** - inland facility with no waterfront access, that has multiple active UST and/or AST storage systems and/or compression vessels used for storage of hazardous substances intended for distribution. May also store pollutants on site for facility consumption and/or distribution purposes.
- L. Chemical User** - facility primarily uses regulated hazardous substance tanks on site; may also store pollutants.
- M. Agricultural** - facility actively used in production of crops, plants, or livestock.
- B. Residential (not regulated)** - property used primarily for dwelling purposes; regulated substance used for non-commercial purposes; no UST exists > 1100 gallons.
- P. UST Residential (>1100 gallons)** - residence with USTs regulated by Federal Environmental Protection Agency.
- Z. Other** - Please identify the type of establishment that you are registering.

North American Industry Classification System (NAICS), developed jointly by the United States, Canada, and Mexico, has replaced the U.S. Standard Industrial Classification Code (SIC) system, effective January, 1997. The new system identifies new industry categories and re-organizes the current data more consistently. More information on this subject can be obtained from: National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22161; (800) 553-6847. See also U. S. Department of Commerce Web Sites: <http://ntis.gov> and <http://www.census.gov/epcd/www/naics.html>. When possible – please select the most appropriate code for your facility.

Financial Responsibility – The demonstration of financial responsibility shall be made by the owner or operator in accordance with C.F.R. Title 40, Part 280, Subpart H. Write in your selection of the following:

- 1. None
- 2. Insurance Carrier
- 3. Other Mechanism (includes all other financial responsibility methods meeting requirements of C.F.R. Title 40)

24 Hour Emergency Contact - Provide the name & telephone number of the Emergency Contact for this facility.

II. Responsible Party Information

- 1. In the first block, provide the name, address, contact name, and telephone number of the individual(s) and/or business(es) that are responsible for the operation of the storage tank facility and for the payment of DEP annual Storage Tank Registration fees. Identify the appropriate facility relationships for this party: Facility Owner/Operator, Tank Owner, and/or Property Owner. The first named party will also be associated with the role of Facility Account Owner. The Account Owner is responsible for payment of the annual storage tank registration fees, and will receive the annual storage tank registration placard(s) upon payment.
- 2. Identify additional individuals and/or companies that play a role in the ownership or operation of the facility, as necessary.
- 3. When submitting revisions to owner name or address information, please include their STCM Account Number, when available.
- 4. Submit a registration form when the facility or tank ownership changes, complete with the **date & new owner's signature**.

III. Tank/Compression Vessel Information - Complete one row in Section C for each storage tank and/or compression vessel system located at the facility. Use the following system description codes where appropriate.

- 1. Tank ID** - number systems sequentially, or provide a unique identification number; do not use symbols (#, %, -, etc.).
- 2. Tank or Vessel Indicator** - write in T or V to describe the system type.
- 3. Tank Placement** - Write in A or U to designate aboveground or underground placement of the system.
- 4. Tank Capacity** - Write in the storage tank capacity in gallons.
- 5. Installation Date** - Record the date of first installation in 'MM/YY' format; provide a best estimate if unknown.

6. Tank Content - Record the current content (or last content, if system is closed or not in use) from the list below.

- | | | |
|---|--|--|
| A. Leaded gasoline | K. Kerosene | S. Chlorine compound |
| B. Unleaded gasoline | L. Waste oil / Used oil | T. Hazardous substance (CERCLA) |
| C. Gasohol | M. Fuel oil: on-site heating only; USTs or ASTs <30K gals | U. Mineral acid |
| D. Vehicular diesel | N. Fuel oil: distribution; or on-site heating - ASTs > 30K gals | V. Grades 5 & 6, bunker 'C' residual oils |
| E. Aviation gasoline | O. New & lube oil | W. Petroleum-base additive product |
| F. Jet diesel fuel | P. Generic Gasoline - grade unknown | X. Miscellaneous petroleum-base product |
| G. Diesel fuel - emergency generator | Q. Pesticide | Y. Unknown Substance |
| H. Diesel fuel - generator or pump | R. Ammonia compound | Z. Other Substance: please identify |

* Mineral Acid = Hydrobromic acid, Hydrochloric acid, Hydrofluoric acid, Phosphoric acid, Sulfuric acid.

* M = fuel is used solely to heat the facility premises and must be stored in a tank with capacity < 30,000 gallons; exempt from regulation.

* N = fuel is distributed as heating fuel, or fuel is used solely to heat the facility premises, but the storage tank capacity exceeds 30,000 gallons.

** **Compartmented tanks** – register as a single tank; itemize the size and contents of each compartment.

** **Manifold tanks** – register as individual storage tanks; with individual size and content – even though they are “connected”.

7. Status - Record the current status of the system, & the status effective date (or best estimate) in 'MM/YY' format. Update the tank status timely, as necessary for tanks moving between “in service” and “out of service” status.

- A. Properly closed in place** * UST filled with sand, concrete or other inert material; AST rendered unusable.
- B. Removed from the site** *
*A or B: UST Closure Assessment required after 12/10/90; AST Closure Assessment required after 3/12/91 - refer to 62-761.800, F.A.C.
- E. Construction modified** - AST constructed as a “mobile tank” or enclosed in a building; no longer retains a “regulated” status.
- F. Unmaintained tank** - UST/AST not in use, not properly closed, not to be returned to service (tank must be properly closed within 90 days).
- T. Out-of-service tank** - UST/AST locked and monitored (10 yr limit for USTs with secondary containment; 2 yr limit for corrosion-protected USTs; 1 yr limit for unprotected USTs; 5 yr limit for ASTs).
- U. In-service** - UST/AST may be empty for up to 45 days for routine services/maintenance only.
- V. Temporary out of service** - special designation for field-erected ASTs, greater than or equal to 50,000 gallon capacity; may be empty for up to 180 days for routine services/maintenance only.
- Z. Non-regulated product** stored in tank; provide status effective date when status relates to a ‘change in product’ for a particular storage tank.

8. Construction, Piping, and Monitoring Attributes – please select from the lists below, the codes that best describe the attributes of each storage tank system. ** When “Z. Other DEP Approved” is selected; please specify the EQ #. **

CONSTRUCTION

- Primary Construction:**
- | | |
|---------------------------------|--|
| C. Steel | X. Concrete |
| D. Unknown | Y. Polyethylene |
| E. Fiberglass | Z. Other DEP approved tank material |
| F. Fiberglass-clad steel | |

- Overfill/Spill:**
- | | |
|------------------------------------|--|
| A. Ball check valve | O. Tight fill |
| M. Spill containment bucket | P. Level gauges, high-level alarms |
| N. Flow shut-off | Q. Other DEP approved protection method |

- Corrosion Protection:**
- | | |
|---|---|
| G. Cathodic protection - sacrificial anode | H. Cathodic protection - impressed current |
|---|---|

- Secondary Containment:**
- I.** Double wall construction: single material (outer tank material same as inner tank material)
 - R.** Double wall construction: dual material (outer tank - concrete, approved synthetic material, or tank “jacket”)
 - J.** Synthetic liner in tank excavation
 - K.** Concrete, synthetic material, and/or offsite clays beneath AST and in containment area
 - S.** Other DEP approved secondary containment system
 - V.** Pipeless UST with secondary containment

CONSTRUCTION - continued

- Miscellaneous attributes:** B. Internal lining
L. Compartmented
U. Field erected tank

PIPING

- Primary Construction:** B. Steel or galvanized metal
C. Fiberglass
N. Approved synthetic material
Y. Unknown
Z. Other DEP approved piping material
- Corrosion Protection:** D. External protective coating
E. Cathodically protected with sacrificial anode or impressed current
- Secondary Containment:** F. Double wall construction: single material (outer pipe material same as inner pipe material)
M. Double wall construction: dual material (outer pipe - approved synthetic material or pipe "jacket")
G. Synthetic liner or box/trench liner in piping excavation or pipe containment area
P. Internal Piping: contained within an internal sump riser, directly connected to tank & located beneath dispenser
- Miscellaneous attributes:** A. Aboveground, no contact with soil
I. Suction piping system
J. Pressurized piping system
K. Dispenser liners
L. Bulk product system
H. Airport/seaport hydrant system

MONITORING

- External:** A. Site Suitability Plan
B. Site Suitability Plan Exemption
C. Groundwater Monitoring Plan
D. SPCC Plan
E. Interstitial monitoring of UST synthetic liners
N. Groundwater monitoring wells
O. Vapor monitoring wells
P. Vapor monitoring with dilution procedures
Q. Visual inspection of AST systems
W. Fiber-optic technologies
Z. Other DEP approved monitoring method
- Internal:** F. Interstitial space - double wall tank
L. Automatic tank gauging system (USTs)
M. Manual tank gauging system (USTs)
R. Interstitial monitoring of AST tank bottom
S. Statistical Inventory Reconciliation (SIR) (USTs)
T. Annual tightness test with inventory (USTs)
- Piping monitoring:** G. Electronic line leak detector with flow shutoff
H. Mechanical line leak detector
J. Interstitial monitoring - piping liner
K. Interstitial monitoring - double wall piping
U. Bulk product piping pressure test
V. Suction pump check valve
6. External monitoring
- Miscellaneous:** I. Not required - see rule for exemptions
X. None
Y. Unknown
1. Continuous electronic sensing equipment
2. Visual inspections of piping sumps
3. Electronic monitoring of piping sumps
4. Visual inspections of dispenser liners
5. Electronic monitoring of dispenser liners

IV. Certified Contractor & Certification

Record the name and the *Department of Business and Professional Regulation License Number* for the *Certified Contractor* whenever an underground storage tank has been installed, removed, or closed in place. Do not rely on the contractor to file this form. Storage Tank Registration Forms are required to be submitted by the storage tank system owner or operator.

Please Remember that the Registration Form cannot be processed without the name and signature of the storage tank system owner or operator, and the date of the form submittal. Please print your name legibly in case a representative of the storage tank program should need to contact you.

If you have questions, please call a storage tank registration representative at (850) 245-8839 for assistance.

CHAPTER 62-762 ABOVEGROUND STORAGE TANK SYSTEMS

62-762.100	Intent. (Repealed)
62-762.101	Intent.
62-762.200	Definitions. (Repealed)
62-762.201	Definitions.
62-762.210	Referenced Standards. (Repealed)
62-762.211	Reference Standards.
62-762.300	Applicability. (Repealed)
62-762.301	Applicability.
62-762.400	Registration and Registration Fees. (Repealed)
62-762.401	Registration and Financial Responsibility.
62-762.410	Registration Fees. (Repealed)
62-762.450	Notification and Financial Responsibility. (Repealed)
62-762.451	Notification and Reporting.
62-762.460	Reporting. (Repealed)
62-762.480	Financial Responsibility. (Repealed)
62-762.500	Performance Standards for New Storage Tank Systems. (Repealed)
62-762.501	Performance Standards for Category C Storage Tank Systems.
62-762.510	Performance Standards for Existing Shop-Fabricated Storage Tank Systems. (Repealed)
62-762.511	Performance Standards for Category-A and Category-B Storage Tank Systems.
62-762.520	Performance Standards for Existing Field-Erected Storage Tank Systems. (Repealed)
62-762.590	Containment and Integrity Plans for Mineral Acid Storage Tanks. (Repealed)
62-762.600	General Release Detection Standards. (Repealed)
62-762.601	Release Detection Standards.
62-762.611	Release Detection Methods.
62-762.641	Performance Standards for Release Detection Methods.
62-762.700	Repairs, Operation and Maintenance of Storage Tank Systems. (Repealed)
62-762.701	Repairs, Operation and Maintenance of Storage Tank Systems.
62-762.710	Recordkeeping and Inventory Requirements. (Repealed)
62-762.711	Recordkeeping.
62-762.720	Inventory Requirements. (Repealed)
62-762.730	Operating Requirements for Cathodic Protection. (Repealed)
62-762.800	Out of Service and Closure Requirements. (Repealed)
62-762.801	Out-of Service and Closure Requirements.
62-762.820	Discharge Reporting and Response. (Repealed)
62-762.821	Incident and Discharge Response.
62-762.840	Locally Administered Programs. (Repealed)
62-762.850	Equipment Approval and Alternate Procedures. (Repealed)
62-762.851	Alternative Requirements and Equipment Approvals.
62-762.860	Approval of Storage Tank Systems and Release Detection Equipment. (Repealed)
62-762.891	Mineral Acid Storage Tank Requirements.
62-762.900	Forms. (Repealed)
62-762.901	Storage Tank Forms.

62-762.101 Intent.

(1) Except for aboveground mineral acid storage tank systems, the purpose of this chapter is to provide standards for the registration, construction, installation, operation, maintenance, repair, closure, and disposal of storage tank systems that store regulated substances, and to minimize the occurrence and environmental risks of releases and discharges. This chapter provides standards for aboveground storage tank systems having individual storage tank capacities greater than 550 gallons.

(2) For mineral acid storage tank systems, the purpose of this chapter is to minimize the occurrence and environmental risks of discharges from aboveground storage tanks having capacities greater than 110 gallons that contain hydrobromic, hydrochloric, hydrofluoric, phosphoric or sulfuric acid. Mineral acid storage tank systems are only subject to Rule 62-762.891, F.A.C.

(3) The purpose of this chapter is to establish a registration program for compression vessels and aboveground hazardous substance storage tank systems with individual capacities greater than 110 gallons. These systems are only subject to subsections 62-762.401(1)-(2), F.A.C.

(4) This chapter implements the requirements of Chapter 376, F.S. Final agency action related to the functions that may be carried out by a locally administered program (County) under contract with the Department pursuant to Section 376.3073, F.S., shall be taken by the Department.

Specific Authority 376.303, 376.322(3) FS. Law Implemented 376.303, 376.322(3), 376.3073 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.100.

62-762.201 Definitions.

The following words, phrases or terms used in this chapter, unless the context indicates otherwise, shall have the following meaning:

(1) “Airport or seaport hydrant piping” means the pressurized integral piping system, including hydrant pits, associated with petroleum storage tank systems serving airports, seaports, or military bases.

(2) “Ammonia” includes organic amines and inorganic compounds that are liquids at standard temperature and pressure that, when discharged, release free ammonia (NH₃), or ammonium ion (NH₄⁺).

(3) “AST” means an aboveground storage tank.

(4) “AST Category-A system” means a system that was installed on or before March 12, 1991.

(5) “AST Category-B system” means a system that was installed after March 12, 1991, and before July 13, 1998.

(6) “AST Category-C system” means a system that was installed on or after July 13, 1998. ASTs that are removed and relocated after July 13, 1998 are considered Category-C systems.

(7) “Bulk product facility” means a waterfront location with at least one aboveground tank with a capacity greater than 30,000 gallons that is used for the storage of pollutants.

(8) “Bulk product piping” means on-site integral piping with an internal diameter greater than three inches that:

(a) Originates at the first stationary or landward valve from a vessel loading or unloading area, and that delivers regulated substances up to and including the first valve within the dike field area of a bulk product facility; or

(b) Is utilized for transporting regulated substances.

(9) “Cathodic protection” means a method of preventing corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the use of devices such as galvanic anodes or impressed current.

(10) “Cathodic Protection Tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(11) “Chlorine” includes organic and inorganic compounds that are liquids at standard temperature and pressure that, when discharged, may release free chlorine (Cl₂) or chlorides (Cl⁻).

(12) “Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the storage tank system under conditions likely to be encountered in the storage tank system.

(13) “Compression vessel” means any stationary aboveground container, tank, or on-site integral piping system, or combination thereof, that has a capacity of greater than 110 gallons and that is primarily used to store pollutants or hazardous substances above atmospheric pressure or at a reduced temperature in order to lower the vapor pressure of the contents. Manifold

compression vessels that function as a single vessel shall be considered as one vessel.

(14) "Contamination" or "contaminated" means the presence of regulated substances in surface water, groundwater, soil, sediment, or upon the land, in quantities that result in exceedances of applicable cleanup target levels in Chapter 62-770, F.A.C., where petroleum or petroleum products are present, or water quality standards in Chapter 62-3, 62-302, 62-520, or 62-550, F.A.C.

(15) "Corrosion professional" means a person who, by reason of knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal components of a storage tank system. Corrosion Professionals shall be accredited or certified by NACE International, or be a professional engineer registered in the State of Florida.

(16) "County" means a locally administered program under contract with the Department to perform compliance verification activities at facilities with storage tank systems.

(17) "Cut and cover tank" means a tank that is constructed with steel or reinforced concrete that is surrounded by soil above the natural surface of the ground.

(18) "Dike field area" means the area around the tank or tanks that extends from the circumference of the base of an AST to the top of the berm, dike, or retaining wall surrounding the tank.

(19) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, or dumping of any regulated substance which occurs and which affects lands and the surface and ground waters of the state.

(20) "Discovery" means:

(a) Either actual knowledge or knowledge of facts that could reasonably lead to actual knowledge of the existence of an incident, discharge, or an unmaintained storage tank system; or

(b) Discovery as specified in the Petroleum Contamination Site Cleanup Criteria subsection 62-770.200(7), F.A.C.

(21) "Dispenser" means a dispensing system that is used to transfer vehicular fuel from a fixed point to a vehicle.

(22) "Dispenser liner" means a liner installed as secondary containment beneath a dispenser to prevent discharges of regulated substances.

(23) "Dispensing system" means equipment that is used to transfer regulated substances from integral piping through a rigid or flexible hose or pipe to another point of use outside of the storage tank system.

(24) "Double-bottomed" means an AST that has secondary containment in the form of an outer tank bottom having a closed interstitial space between the primary tank bottom and the secondary outer tank bottom.

(25) "Double-walled" means a storage tank that has an outer tank wall, or integral piping that has an outer wall that provides secondary containment of the primary tank or piping.

(26) "Empty" means all regulated substances have been removed so that no more than one inch in depth or 0.3 percent by weight of total system capacity of regulated substances remains in the storage tank system.

(27) "Existing contamination" means:

(a) The presence of free product or sheen on the groundwater;

(b) The presence of vapor levels in monitoring wells measured in accordance with DEP's "Guidelines for Vapor Monitoring" or by a Flame Ionization Detector or an equivalent instrument in excess of:

1. 500 parts per million total petroleum hydrocarbons for storage tank systems containing gasoline or equivalent petroleum products; or

2. 50 parts per million total petroleum hydrocarbons for storage tank systems containing kerosene, diesel or other equivalent petroleum products;

(c) Results of analytical tests on a groundwater sample that:

1. Exceed the cleanup target levels for petroleum products' chemicals of concern specified in Table V of Chapter 62-770, F.A.C.;

or

2. Indicate the presence of a hazardous substance that is not described in subparagraph (c)1. above; or

3. Indicate the presence of a regulated substance that is not described in subparagraph (c)1. above; or

(d) After July 13, 1998, results of analytical tests on a soil sample that:

1. Exceed the lower of direct exposure I and leachability Table V cleanup target levels for petroleum products' chemicals of concern listed in Table IV of Chapter 62-770, F.A.C.; or

2. Indicate the presence of a hazardous substance that is not described in subparagraph (d)1. above; or

3. Indicate the presence of a regulated substance that is not described in subparagraph (d)1. above.

(28) "Facility" means a nonresidential location containing, or that contained, any stationary tank or tanks containing, or that

contained regulated substances, and that have, or had, individual capacities greater than 550 gallons for AST systems.

(29) "Field-erected storage tank" means an AST that is constructed by assembling it on-site at the facility.

(30) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks include tanks associated with vapor recovery units and oil-water separators. Flow-through process tanks do not include storage tanks used for the storage of regulated substances before their introduction into the production process or for the storage of finished products or by-products from the production process.

(31) "Free product" means a regulated substance in excess of 0.01 foot in thickness, measured at its thickest point, floating on water, surface water or groundwater.

(32) "Hazardous substances" means those substances defined as hazardous substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 stat. 2767, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(33) "Heating oil" means any petroleum based fuel used in the operation of heating equipment, boilers, or furnaces.

(34) "High viscosity" means a pollutant with a viscosity of 30 centistokes (cSt) and higher at 40 degrees Centigrade, such as American Society for Testing and Materials (ASTM) grades 5 and 6 residual oils, intermediate fuel oils, or Bunker C fuel.

(35) "Hydraulic lift tank" means a tank that holds hydraulic fluid for a closed-loop mechanical system used to operate lifts, elevators, and other similar devices.

(36) "Hydrostatic test" means a test for a storage tank or storage tank system component that is performed in accordance with this chapter using equilibrium and the pressure of liquids to test the integrity of the tank or system component.

(37) "Impervious" means:

(a) A synthetic material or another material approved in accordance with subsection 62-762.851(2), F.A.C., that is compatible with the stored regulated substance, and has a permeability rate to the regulated substance stored of 1×10^{-7} cm/sec or less; or

(b) For concrete structures, a material that:

1. Meets the design and construction standards of ACI 350R-89 and ACI 224R-89; or

2. Is applied to the concrete in accordance with NACE International Standard RP0892-92.

(38) "In contact with the soil" means integral piping connected to ASTs or any portion of a tank, that:

(a) Physically touches the soil; or

(b) Is not in direct contact with the soil, and is separated from the soil only by a casing, wrapping, or other material that is not impervious.

(c) Those portions of integral piping that are elevated and that are not in direct contact with the soil are excluded from this definition.

(39) "Incident" is a condition or situation indicating that a discharge may have occurred from a storage tank system.

(40) "Industrial occupancy building" is an enclosed structure that contains an AST system that is used in association with an industrial or manufacturing process, or for electric power generating utilities, provided that the building was constructed and is used primarily for industrial, manufacturing, or electric power generating purposes, and not solely for the purpose of storing regulated substances. An industrial occupancy building is a structure that has an impervious floor without valves, drains, or other openings that would permit pollutants to be discharged. Industrial occupancy buildings constructed after July 13, 1998, must:

(a) Be constructed in accordance with NFPA 30, Section 2-5, Installation of Tanks Inside of Buildings, and Section 5-3, Facility Design;

(b) Have at least Type II construction in accordance with NFPA 220, Chapter 3;

(c) Be ventilated in accordance with NFPA 68 and 69; and

(d) Be verified as meeting the above construction requirements by either a registered architect or a professional engineer registered in the State of Florida.

(41) "In-service" means a storage tank system that is being actively maintained and operated in accordance with this chapter. Non-compliance with any specific rule within this chapter does not exclude the system from being considered "in-service." Subject to the above, a storage tank system is also considered to be in-service if it:

(a) Contains regulated substances or has regulated substances regularly added to or withdrawn from the system;

(b) Is emptied solely for the purpose of cleaning, routine maintenance, or a change in product, for a time period not exceeding 45 days; or

(c) Contains non-regulated substances and is still maintained in an in-service status at the request of the owner or operator.

(42) “Integral piping” means on-site piping, originating or terminating at the regulated storage tank or tanks, that conveys regulated substances. Vapor recovery lines, pipeline facilities, and vent lines are not considered integral piping. Integral piping is not considered on-site if the piping crosses state boundaries, or two or more county boundaries. Integral piping includes all valves, elbows, joints, flanges, pumps, and flexible connectors, up to the:

(a) Union of the piping with the dispensing system;

(b) Fill cap or fill valve;

(c) Forwarding pump used for transferring regulated substances to a flow-through process tank or an industrial production or manufacturing point of use; or

(d) First flange or connection within the loading rack containment area.

(43) “Internal lining” means a material that is applied internally on AST bottoms or USTs to protect the tank from internal corrosion.

(44) “Interstitial monitoring” is a release detection method that is used to determine the presence of regulated substances or water between the primary and secondary containment. Interstitial monitoring can be performed within:

(a) A closed interstitial space between two steel or impervious barriers that are sealed, not open to the atmosphere, and designed to be tested for a breach of integrity of the interstitial space; or

(b) An open interstitial space between two steel or impervious barriers that are open to the atmosphere, and not designed to be tested for a breach of integrity of the interstitial space.

(45) “Liner” means an impervious material that meets the performance standards of paragraph 62-762.501(1)(e), F.A.C., that is used externally as a method of secondary containment.

(46) “Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(47) “Maintenance” means the normal operational upkeep to prevent a storage tank system from releasing regulated substances.

(48) “Mobile tank” is:

(a) An AST that is moved to a different location at least once every 180 days; and

1. Has a current valid vehicle registration with the Florida Department of Highway Safety and Motor Vehicles and has current test and inspection markings in accordance with 49 C.F.R. 180.415; or

2. Is designed and constructed to be moved to other service locations, and its relocation within a facility or from site to site is inherent in its use; or

3. Is used for on-site construction activities, provided that the construction activities do not exceed 12 months, or the life of the construction project as long as construction is continuous, and the tanks are removed from the site when the construction is complete; and

(b) Not considered mobile if it is connected to stationary underground or aboveground integral piping, unless associated with the production of an agricultural commodity, provided that the tank is moved to a different location at least once every 180 days.

(49) “Nationally Recognized Laboratory” means an organization that can perform quantitative and qualitative tests on storage tank system equipment, evaluate the test data and equipment performance, and make determinations of the equipment’s capability of meeting the technical standards of this chapter. A Nationally Recognized Laboratory shall have at least five years of professional storage tank system equipment testing experience. Nationally Recognized Laboratories include organizations such as Underwriter’s Laboratories, Carnegie Mellon Research Institute, Midwest Research Institute, Ken Wilcox Associates, Factory Mutual, and American Board of Engineering and Technology (ABET) Accredited Universities.

(50) “On-site” means on the same or geographically contiguous property as the facility regulated under this chapter, that is under the same ownership or control, and which may be divided by a public or private right-of-way or an easement. Piping connecting ASTs with pipeline facilities are considered on-site up to the point where it crosses through the dike wall surrounding the AST.

(51) “Operational life” refers to the period from the start of installation of the storage tank system to the completion of the closure of the storage tank system in accordance with subsection 62-762.801(3), F.A.C.

(52) “Operator” means any person operating a facility, whether by lease, contract, or other form of agreement.

(53) “Out-of-service” means a storage tank system that:

(a) Is designated as an out-of-service system by owner or operator notification to the Department on Form 62-761.900(2);

(b) Is empty as defined in subsection 62-762.201(26), F.A.C.; and

(c) Does not have regulated substances transferred into or withdrawn from the tank as specified in subsection 62-762.801(2), F.A.C., for a maximum time of:

1. Two years of being taken out-of-service for USTs; or

2. Five years of being taken out-of-service for ASTs; or

3. Ten years of being taken out-of-service for storage tank systems with secondary containment.

(54) "Overfill" is a release or discharge that occurs when a tank is filled beyond its capacity.

(55) "Owner" means any person as defined in Section 376.301(23), F.S., owning a facility.

(56) "Pesticides" means all preparations, products, and substances included in the Department of Agriculture and Consumer Services' Rule 5E-2.002, F.A.C.

(57) "Petroleum" includes:

(a) Oil, including crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary methods and which are not the result of condensation of gas after it leaves the reservoir; and

(b) All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in paragraph (a).

(58) "Petroleum product" means any liquid fuel commodity made from petroleum.

(a) Forms of fuel considered to be petroleum products include all fuels known or sold as:

1. Diesel fuel;

2. Kerosene;

3. Gasoline; and

4. Fuels containing mixtures of gasoline and other products.

(b) Forms of fuel excluded from this definition are:

1. Liquefied petroleum gas;

2. American Society for Testing and Materials (ASTM) grades no. 5 and no. 6 residual oils;

3. Bunker C residual oils;

4. Intermediate fuel oils used for marine bunkering with a viscosity of 30 and higher;

5. Asphalt oils; and

6. Petrochemical feedstocks.

(59) "Pipe" or "piping" means any hollow cylindrical or tubular conveyance through which regulated substances flow.

(60) "Pipeline facilities" are pipe systems, rights-of-way and any associated equipment, gathering lines, buildings, or break-out tanks necessary for the long range transportation of regulated substances.

(61) "Piping sump" or "Submersible turbine pump sump" means a liner installed as secondary containment or a monitoring port at the top of a tank or at the lowest point in the integral piping to detect releases.

(62) "Pollutants" includes any "product" as defined in Section 377.19(11), F.S., pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(63) "Pressure test" means a test to determine the integrity of integral piping performed in accordance with subparagraph 62-762.641(3)(e)1., F.A.C.

(64) "Pressurized piping" means piping through which regulated substances flow due to a pump that is not located at the dispensing system.

(65) "Product" as defined in Section 377.19(11), F.S., means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, used oil, kerosene, benzene, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(66) "Regulated substance" means a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), that is a pollutant when stored in an AST.

(67) "Release" means:

(a) A discharge; or

(b) A loss of regulated substances from a storage tank system into the system's secondary containment.

(68) "Release detection" means a method of:

- (a) Determining whether a discharge of regulated substances has occurred; or
- (b) Detecting the presence of regulated substances within a storage tank system's secondary containment.

(69) "Release detection response level" is the point of measurement, calculation, observation, or level that is established for each individual release detection device or method at which an investigation must be initiated to determine if an incident, release, or discharge has occurred.

(70) "Repair" means to restore or replace any defective or damaged parts of a storage tank system. Replacement of a non-defective part is not a repair.

(71) "Residential storage tank system" means a storage tank system that is located on property used primarily for dwelling purposes, and the storage and use of regulated substances in the tank is for residential purposes.

(72) "Secondary containment" means a release detection and prevention system that meets the performance standards of paragraph 62-762.501(1)(e), F.A.C., and includes dispenser liners, piping sumps, double-walled tanks and piping systems, or single-walled tanks or piping systems that are contained within a liner or an impervious containment area. A Release Prevention Barrier, as specified in API Standard 650, Appendix I, is considered secondary containment for field-erected aboveground storage tank bottoms.

(73) "Sheen" means a regulated substance less than or equal to 0.01 foot in thickness, measured at its thickest point, or visibly observed, floating on surface water, groundwater, or within secondary containment.

(74) "Shop-fabricated storage tank" means an AST that is constructed at the tank manufacturer's plant and transported to the facility for installation.

(75) "Significant loss or gain" means the sum of losses and gains of a regulated substance over a 30 day or monthly period that exceeds:

(a) For tanks with capacities between 111 and 2,000 gallons with an individual flow-through less than 5,000 gallons during the previous 30 days:

- 1. One percent of the tank capacity; or
- 2. One percent of the total weekly output; or
- 3. Fifty gallons, whichever is greatest.

(b) For tanks with capacities between 2001 and 29,999 gallons, or tanks with an individual flow-through exceeding 5,000 gallons during the previous 30 days:

- 1. One percent of the tank capacity; or
- 2. One percent of the amount of product dispensed during the previous 30 days, plus 130 gallons, whichever is greatest.

(c) For tanks with capacities of 30,000 gallons or greater:

- 1. One percent of the tank capacity; or
- 2. One half of one percent of the amount of product dispensed during the previous 30 days, whichever is greater.

(76) "Small diameter piping" means integral piping with an internal diameter of three inches or less that is utilized for transporting regulated substances.

(77) "Storage tank system" means a tank used to contain regulated substances, its integral piping, and all its components, including dispensing systems, spill containment devices, overfill protection devices, secondary containment systems, and any associated release detection equipment.

(78) "Suction piping" means piping through which regulated substances flow due to a pump located at the dispensing system.

(79) "Tank" means an enclosed stationary container or structure that is designed or used to store regulated substances, and the volume of which, including the volume of underground piping, is less than ten percent beneath the surface of the ground. For purposes of this chapter, cut and cover tanks are considered aboveground storage tanks.

(80) "Temporary out-of-service" is a designation of a service status for a field-erected storage tank system that is emptied solely for the purpose of cleaning, routine maintenance, or change of product for a time period exceeding thirty days, but less than six months.

(81) "UST" means an underground storage tank.

(82) "Unmaintained" means:

- (a) A storage tank system that was not closed in accordance with Department rules; or
- (b) An out-of-service storage tank system that is not returned to in-service status within:
 - 1. Five years of its being out-of-service for ASTs; or

2. Ten years of its being out-of-service for storage tank systems with secondary containment.

(83) "Upgrade" means the addition or retrofit of cathodic protection, internal lining, spill prevention, overfill protection, or secondary containment, to a storage tank system, or the installation of single wall corrosion resistant storage tanks, to improve the ability of the storage tank system to prevent discharges of regulated substances.

(84) "Vehicular fuel" means a petroleum product used to fuel motor vehicles, including aircraft, watercraft, and vehicles used on and off roads and rails.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.200.

62-762.211 Reference Standards.

(1) Referenced standards are available for inspection at the County Offices, and the Department of Environmental Protection's District and Tallahassee Offices, and may be obtained from the following sources:

(a) ACI International (American Concrete Institute), Post Office Box 9094, Farmington Hills, Michigan 48333-9094, (248) 848-3700;

(b) American Petroleum Institute (API), 1220 L Street, N.W. Washington, D.C. 20005, (202) 682-8000;

(c) ASME International (The American Society of Mechanical Engineers), 22 Law Drive, Box 2300, Fairfield, New Jersey 07007-2300, (800) 843-2763;

(d) Florida Department of Environmental Protection (DEP), Storage Tank Regulation Section, 2600 Blair Stone Road, MS 4525, Tallahassee, Florida 32399-2400, (850) 245-8839;

(e) NACE International (National Association of Corrosion Engineers), Post Office Box 218340, Houston, Texas 77218-8340, (281) 492-0535;

(f) National Fire Protection Association (NFPA), 1 Battery March Park, Post Office Box 9101, Quincy, Massachusetts 02269-9101, (800) 344-3555;

(g) Petroleum Equipment Institute (PEI), Post Office Box 2380, Tulsa, Oklahoma 74101-2380, (918) 494-9696;

(h) Society for Protective Coatings (SSPC) 40 24th Street, 6th Floor, Pittsburgh, Pennsylvania 15222-4643, (412) 281-2331;

(i) Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60047, (847) 438-8265;

(j) Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, Illinois 60062-2096, (847) 272-8800; and

(k) Government Printing Office, Superintendent of Documents, Attention: New Orders, Post Office Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 512-1800.

(2) Titles of documents. References to documents listed in paragraphs (a) through (k) below are made throughout this chapter. Each document or part thereof is adopted and incorporated as a standard only to the extent that it is specifically referenced in this chapter.

(a) ACI International:

1. ACI 224R-89, "Control of Cracking in Concrete Structures," May, 1990; and

2. ACI 350R-89, "Environmental Engineering Concrete Structures," June, 1990.

(b) American Petroleum Institute Standards:

1. API Specification 12B, "Specification for Bolted Tanks for Storage of Production Liquids," February, 1995;

2. API Specification 12D, "Specification for Field Welded Tanks for Storage of Production Liquids," November, 1994;

3. API Specification 12F, "Specification for Shop Welded Tanks for Storage of Production Liquids," November, 1994, with Addenda 1, February, 1997;

4. API Specification 12P, "Specification for Fiberglass Reinforced Plastic Tanks," January, 1995;

5. API Standard 570, "Piping Inspection Code: Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems," June, 1993;

6. API Standard 620, "Design and Construction of Large Welded Low-pressure Storage Tanks", February, 1996, with Addenda 1, December, 1996, with Additional Pages for Addendum 1, February, 1997;

7. API Standard 650, "Welded Steel Tanks for Oil Storage," July, 1993, with Addendum 1, December, 1994, Addendum 2, December, 1995, and Addendum 3, December, 1996;

8. API Recommended Practice 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks," April, 1991;

9. API Recommended Practice 652, "Lining of Aboveground Petroleum Storage Tank Bottoms," April, 1991;

10. API Standard 653, "Tank Inspection, Repair, Alteration and Reconstruction," December, 1995, with Addendum 1, December, 1996;

11. API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines," December, 1991; and

12. API Recommended Practice 2350, "Overfill Protection for Petroleum Storage Tanks," January, 1996.

(c) ASME International:

1. B31.4-1992, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols" January, 1993 with 1994 Addenda; and

2. B96.1-1993, "Welded Aluminum-Alloy Storage Tanks," June, 1993.

(d) Florida Department of Environmental Protection:

1. "Storage Tank System Closure Assessment Requirements" April, 1998;

2. "Guidelines for Vapor Monitoring," April, 1998; and

3. "Guidelines for Site-Suitability Determinations for External Monitoring," February, 1998.

(e) NACE International:

1. NACE Standard RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," September, 1996;

2. NACE Standard RP-0892-92, "Linings over Concrete for Immersion Service," December, 1992; and

3. NACE Standard RP-0193-93, "External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms," October, 1993.

(f) National Fire Protection Association:

1. NFPA 30, "Flammable and Combustible Liquids Code," August, 1996;

2. NFPA 30A, "Automotive and Marine Service Station Code," August, 1996;

3. NFPA 329, "Handling Underground Releases of Flammable and Combustible Liquids," Chapters 3, 4, and 5, August, 1992;

4. NFPA 68, "Guide for Venting of Deflagrations," February, 1994;

5. NFPA 69, "Standard on Explosion Prevention Systems," February, 1997; and

6. NFPA 220, "Standard on Types of Building Construction," Chapter 3, August, 1995.

(g) Petroleum Equipment Institute: PEI/RP200-96, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling," 1996.

(h) Society for Protective Coatings:

1. SSPC-TU 2/NACE 6G197, SSPC Publication No. 97-04, "Design, Installation, and Maintenance of Coating Systems for Concrete Used in Secondary Containment," February, 1997; and

2. SSPC-PA 1, "Paint Application Specification No. 1," August, 1991.

(i) Steel Tank Institute:

1. STI R892-89, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems," 1989;

2. STI F911-93, "Standard for Diked Aboveground Storage Tanks," November, 1993; and

3. STI F921, "Standard for Aboveground Tanks with Integral Secondary Containment," April, 1996.

(j) Underwriters Laboratories Standards:

1. UL 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids," April, 1993;

2. UL 567, "Pipe Connectors for Petroleum Products and LP Gas," June, 1996;

3. UL 971, "Nonmetallic Underground Piping for Flammable Liquids," October, 1995; and

4. UL 2085 "Protected Aboveground Tanks for Flammable and Combustible Liquids," December, 1997.

(m) Government Printing Office, Code of Federal Regulations:

1. Title 33, Part 154, July 1997;

2. Title 33, Part 156.170, July 1997;

3. Title 40, Part 112, July 1997;

4. Title 40, Part 280, Subpart H, July 1997;

5. Title 40, Part 302, July 1997; and

6. Title 49, Part 180.415, October, 1996.

(3) Applicability of Reference Standards: Unless otherwise specified in this rule, Category-A and Category-B facilities are subject to the Reference Standards listed in the Department's storage tank rules that were in effect at the time of facility

construction or operation. Category -C facilities shall comply with subsection 62-762.211(2), F.A.C., on or after July 13, 1998.

Specific Authority 376.303 FS. Law Implemented 376.303, FS. History--New 6-21-04.

Editorial Note: Formerly 62-761.210.

62-762.301 Applicability.

(1) General Requirements:

(a) Aboveground storage tank systems: The requirements of this chapter, unless specified otherwise, apply to owners and operators of facilities, or owners and operators of aboveground stationary storage tank systems with individual storage tank capacities greater than 550 gallons, that contain or contained:

1. Vehicular fuel, subject to Chapter 17-61, F.A.C., after May 21, 1984;
2. Pollutants after March 12, 1991; or
3. Pollutants in unmaintained storage tank systems.

(b) Aboveground compression vessels and hazardous substance storage tank systems: Owners and operators of compression vessels and hazardous substance storage tanks with capacities of greater than 110 gallons containing hazardous substances are only required to comply with subsections 62-762.401(1)-(2), F.A.C.

(c) Aboveground mineral acid storage tank systems: Owners and operators of facilities, or owners and operators of aboveground mineral acid storage tank systems with capacities of greater than 110 gallons containing mineral acids are only required to comply with Rule 62-762.891, F.A.C.

(d) This rule is applicable to non-residential facilities.

(2) Exemptions: The following aboveground systems are exempt from the requirements of this chapter:

(a) Any storage tank system storing any hazardous waste listed or identified under Subtitle C of the Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other regulated substances;

(b) Any storage tank system regulated under the Toxic Substances Control Act (15 U.S.C. 2065);

(c) Any pesticide waste degradation system regulated under Chapter 62-660, F.A.C.;

(d) Storage tank systems used solely for temporary storage of mixtures of pesticides and diluent for reapplication as pesticides;

(e) Any storage tank system with a storage capacity of less than 30,000 gallons used for the sole purpose of storing heating oil for consumptive use on the premises where stored;

(f) Any tank that contains asphalt or asphalt products not containing other regulated substances;

(g) Any storage tank system storing regulated substances that are solid or gaseous at standard temperature and pressure;

(h) Any storage tank containing LP gas;

(i) Any storage tank system that contains small quantities (de minimus, as per 40 C.F.R. Section 280.10(b)(5)) of regulated substances;

(j) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;

(k) Any septic tank system;

(l) Any stormwater or wastewater collection system;

(m) Any surface impoundment, pit, pond, or lagoon;

(n) Any agricultural storage tank system of 550 gallons capacity or less;

(o) Any residential storage tank system;

(p) Any emergency spill or emergency overflow containment storage tank system that is emptied as soon as possible after use, and that routinely remains empty;

(q) Any flow-through process tank system. For industrial and manufacturing facilities, integral piping is considered to terminate at the forwarding pump or valve used to transfer regulated substances to process, production, or manufacturing points of use or systems within the facility;

(r) Any storage tank system, liquid trap, or associated gathering lines directly related to oil or gas production and gathering operations regulated by Chapter 377, F.S.;

(s) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift or fluid tank systems and electrical equipment tank systems;

- (t) Any pipeline facilities;
- (u) Any storage tank system containing radionuclides or that is part of an emergency generator system for nuclear power generation at facilities regulated by the Nuclear Regulatory Commission under 10 C.F.R. Part 50 Appendix A;
- (v) Vapor recovery holding tanks and associated vapor recovery piping systems; or
- (w) Any rail or tanker truck loading or unloading operations (loading racks) specified in Chapter 5 of NFPA 30;
- (x) Drip irrigation systems that:
 1. Are not in contact with the soil;
 2. Are constructed of corrosion resistant materials;
 3. Are compatible with the products stored;
 4. Contain less than 80% concentration of fertilizer materials by volume; and
 5. Are applied on site.
- (y) Systems used exclusively for the storage of aqueous solutions of sodium hypochlorite;
- (z) Any mobile tank;
- (aa) Any system located entirely within an industrial occupancy building;
- (bb) Any storage tank system located entirely within an enclosed building or vault with an adequate roof and walls to prevent rainwater from reaching the system, and with an impervious floor containing no valves, drains, or other openings that would permit pollutants to be discharged from the system that were constructed before July 13, 1998; or
- (cc) Any mobile double-wall tank, regardless of how long it is located at a facility, that is connected with a power module system that is used for the emergency or supplemental generation of electrical power by an electric utility as defined in Chapter 366, F.S. This exemption is limited to tanks that are designed and constructed to be moved to other service locations, and the relocation within a facility or from site to site is inherent in its use.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.300.

62-762.401 Registration and Financial Responsibility.

- (1) General registration requirements.
 - (a) The owner or operator of any facility, or the owner or operator of a storage tank system, aboveground hazardous substance tank, or compression vessel, shall register the storage tank system, aboveground hazardous substance tank, or compression vessel with the Department on Form 62-761.900(2).
 - (b) A completed registration form shall be submitted to the Department no later than 30 days after regulated or hazardous substances are put into any new storage tank system, above ground hazardous substance tank, or compression vessel.
- (2) Registration fees.
 - (a) General requirements.
 1. Registration fees are due from the tank or facility owner or operator, as indicated in this section, for all registered storage tank systems and compression vessels, except for:
 - a. Storage tank systems that have been properly closed in accordance with subsection 62-762.801(3), F.A.C.; and
 - b. ASTs at federally-owned or operated facilities.
 2. A registration fee of \$50.00 per tank or vessel shall be submitted for each initial registration of a storage tank system or compression vessel. The fee shall be paid within 30 days after receipt of an invoice by the Department.
 3. A renewal fee of \$25.00 per tank shall be paid to the Department for each storage tank system not meeting the closure requirements of subsection 62-762.801(3), F.A.C., by July 1 each year.
 4. A replacement fee of \$25.00 per tank shall be paid to the Department for each tank that is replaced for the purpose of facility upgrading, within 30 days after receipt of an invoice by the Department.
 5. A late fee of \$20.00 per tank shall be paid to the Department for any renewal that is received after July 31.
 6. Each facility shall receive a registration placard upon payment of all applicable fees. The placard shall be displayed in plain view in the office, kiosk, or at another suitable location at the facility where the tank is located.
 - (b) Specific requirements.
 1. Bulk product facilities. Owners or operators shall submit:
 - a. An annual renewal fee of \$25.00 for each tank with a capacity of 250,000 gallons or less by July 1 of each year; and

b. An annual renewal fee of one dollar per every 10,000 gallons of storage capacity, for each tank with a storage capacity greater than 250,000 gallons, by July 1 of each year, not to exceed \$1,000.00 per tank.

c. In no circumstances will the owner or operator of any facility pay an annual fee greater than \$5,000 for all pollutant storage tanks located at the facility.

2. Compression vessels and aboveground hazardous substance storage tanks.

a. Owners and operators shall submit a renewal fee of \$25.00 per tank or vessel to the Department by July 1 each year.

b. In no circumstance will the owner or operator of any facility pay an annual fee greater than \$2500.00 for all registered compression vessels and aboveground hazardous substance storage tanks located at the facility.

(3) Financial responsibility.

(a) General requirements.

1. The owner or operator of a facility, or individual tanks, if of different ownership, shall demonstrate financial responsibility to the Department. If the owner and operator of a tank are separate persons, only one person is required to demonstrate financial responsibility. However, both persons are liable in event of noncompliance. Financial responsibility is only required for tanks containing petroleum or petroleum products. Financial responsibility is the ability to pay for corrective action and third-party liability resulting from a discharge at the facility.

2. The demonstration of financial responsibility shall be made by the owner or operator in accordance with C.F.R. Title 40, Part 280, Subpart H. Owners or operators shall substitute "aboveground" or "aboveground and underground" for "underground," where applicable, for any documents required in C.F.R. Title 40, Part 280, Subpart H, that are submitted to the Department to demonstrate financial responsibility.

3. Financial responsibility requirements for petroleum storage systems containing petroleum products may be supplemented by participation in the Florida Petroleum Liability Restoration and Insurance Program to the extent provided by Section 376.3072, F.S.

4. Notwithstanding the owner's or operator's financial responsibility status, the owner or operator may, in accordance with Chapter 376 or 403, F.S., be liable for any discharge at the facility.

(b) Aboveground storage tank systems. The minimum requirements for financial responsibility for ASTs containing petroleum or petroleum products became effective on January 1, 1995, and are the same as provided by C.F.R. Title 40, Part 280, Subpart H, except for the following:

1. For a storage tank system with a capacity greater than 550 gallons and less than or equal to 10,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$500,000.00 per incident and \$1 million annual aggregate.

2. For a storage tank system with a capacity greater than 10,000 gallons and less than or equal to 30,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$1 million per incident and \$1 million annual aggregate.

3. For a storage tank system with a capacity greater than 30,000 gallons and less than or equal to 250,000 gallons the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$1 million per incident and \$2 million annual aggregate.

4. For a storage tank system with a capacity greater than 250,000 gallons, the demonstration of financial responsibility for corrective action and third-party liability shall be a minimum of \$3 million per incident and \$6 million annual aggregate.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.400.

62-762.451 Notification and Reporting.

(1) Notification requirements.

(a) Verbal or written notice shall be provided to the County:

1. At least 30 days before installation or upgrading to meet the requirements of Rule 62-762.501, F.A.C., unless the County agrees to a shorter time period;

2. At least 10 days before an internal inspection of a UST, an API 653 internal inspection, a change in service status, closure, or closure assessment, any of which is performed to meet the requirements of this chapter;

3. At least 48 hours before:

- a. Initiating activities specified in subparagraphs 1. or 2. above, to confirm the date and time of the scheduled activities;
- b. The establishment of temporary out-of-service status for field-erected ASTs; and
- c. Performing any tightness test required under this chapter.

4. Before the close of the County's next business day for an emergency change to an out-of-service status made as required by Rule 62-762.821, F.A.C. Verbal or written notification of the activities specified in subparagraphs 1. or 2. above performed as a direct result of the emergency change in service shall be made to the County before initiating the activities.

(b) Within 30 days after completion, the owner or operator shall notify the Department of the following items on Storage Tank Registration Form 62-761.900(2):

1. Any change in ownership of a facility or of a storage tank system. Notice of change of ownership shall be provided to the Department by the new owner. The notice shall include a copy of the bill of sale or a letter of acceptance by the new owner;
2. Closure or upgrading of a storage tank system;
3. Any change or correction in the information reported in the registration form, including changes in the type of regulated substances stored. A change within the same blend of regulated substances should not be reported (e.g., regular unleaded to premium unleaded gasoline); and
4. The establishment of, or changes to, the method of demonstrating financial responsibility required by subsection 62-762.401(3), F.A.C.

(2) Incident notification requirements.

(a) Notification of the discovery of the following incidents shall be made to the County on Incident Notification Form 62-761.900(6) within 24 hours or before the close of the County's next business day:

1. A failed or inconclusive tightness, pressure, or breach of integrity test;
2. Internal inspection results, including perforations, corrosion holes, weld failures, or other similar defects, that indicate that a release could have occurred;
3. Unusual operating conditions, such as the erratic behavior of product dispensing equipment, the sudden loss of product from a storage tank system, or any unexplained presence of water in a tank or unexplained presence of water with or without sheen in a piping sump, unless system equipment is found to be defective but not leaking;
4. The presence of odors of a regulated substance from surface water or groundwater, soil, basements, sewers and utility lines at a facility or in the surrounding area from which it could be reasonably concluded that a release or discharge may have occurred;
5. The loss of a regulated substance from a storage tank system exceeding 100 gallons on impervious surfaces, other than secondary containment, such as driveways, airport runways, or other similar asphalt or concrete surfaces, provided that the loss does not come in contact with pervious surfaces;
6. The loss of a regulated substance exceeding 500 gallons inside a dike field area with secondary containment;
7. A positive response of release detection devices or methods described in Rule 62-762.641, F.A.C., or approved under subsection 62-762.851(2), F.A.C. A positive response shall be the indication of a release of regulated substances, an exceedance of the Release Detection Response Level, or a breach of integrity of a storage tank system; and
8. The presence of free product in a piping sump.

(b) Incident Notification Form 62-761.900(6) need not be submitted if:

1. Within 24 hours of discovery of an incident, or before the close of the County's next business day, the investigation of the incident confirms that a discharge did not occur; or
2. An Incident Notification Form was previously submitted for that incident.

(3) Discharge reporting requirements.

(a) Upon discovery of an unreported discharge, the owner or operator shall report the following to the County on Discharge Report Form 62-761.900(1) within 24 hours or before the close of the County's next business day:

1. Results, or receipt of results, of analytical or field tests of surface water or groundwater indicating the presence of contamination by:
 - a. A hazardous substance from a UST system;
 - b. A regulated substance, other than petroleum products; or
 - c. Petroleum products' chemicals of concern specified in Table V or VII, as applicable, in Chapter 62-770, F.A.C.;
2. Free product or sheen of a regulated substance, or a regulated substance that is visibly observed in soil, on surface water, in groundwater samples, on basement floors, in subsurface utility conduits or vaults, or in sewer lines at the facility or in the surrounding areas;

3. A spill or overfill event of a regulated substance to soil or another pervious surface, equal to or exceeding 25 gallons, unless the regulated substance has a more stringent reporting requirement specified in C.F.R. Title 40, Part 302;

4. Results of analytical or field tests of soil indicating the presence of contamination by:

a. A hazardous substance from a UST system;

b. A regulated substance, other than petroleum products;

c. Petroleum products' chemicals of concern that exceed the lower of direct exposure I and leachability Table V cleanup target levels specified in Table IV in Chapter 62-770, F.A.C., unless due to a spill or overfill event in a quantity less than that described in subparagraph 3. above; or

5. Soils stained by regulated substances that are observed during a closure assessment performed in accordance with subsection 62-762.801(4), F.A.C.

(b) Copies of analytical or field test results that confirm a discharge shall be submitted to the County with Discharge Report Form 62-761.900(1).

(c) A request for a retraction of a submitted Discharge Report Form may be submitted to the County or the Department if evidence is presented that a discharge did not occur at the facility.

(d) A Discharge Report Form 62-761.900(1) does not need to be submitted for previously reported discharges.

Specific Authority 376.303, 376.309 FS. Law Implemented 376.303, 376.309 FS. History--New 6-21-04.

Editorial Note: Formerly 62-761.450.

62-762.501 Performance Standards for Category C Storage Tank Systems.

(1) General performance standards. AST Category-C systems shall be constructed and installed in accordance with the requirements of this section. AST Category-C systems shall be made of, or internally lined with, materials that are compatible with the regulated substance stored in the system. The following requirements are applicable to AST systems:

(a) Siting. Persons are advised that, pursuant to paragraphs 62-521.400(1)(l)-(n) and subsection (2), F.A.C., no storage tank shall be installed within 500 feet of any existing community water supply system or any existing non-transient non-community water supply system. No Category-C system shall be installed within 100 feet of any other existing potable water supply well. These prohibitions shall not apply to the replacement of an existing storage tank system within the same excavation or dike field area, or the addition of new storage systems meeting the standards for Category-C systems at an existing facility.

(b) Exterior coatings. Exterior portions of aboveground tanks and aboveground integral piping, excluding double-walled systems, shall be coated or otherwise protected from external corrosion. The coating shall be designed and applied to resist corrosion, deterioration, and degradation of the exterior wall. SSPC-PA 1, Paint Application Specification No. 1 may be used to protect storage tank systems from external corrosion.

(c) Spill containment. USTs and shop-fabricated ASTs shall be installed with a spill containment system at each tank fill connection. The spill containment system shall be a fixed component that is designed to prevent a discharge of regulated substances when the transfer hose or pipe is detached from the tank fill pipe. The spill containment system shall meet the requirements of paragraph 62-762.501(1)(e), F.A.C.

(d) Dispensing systems.

1. The dispensing system used for transferring fuels from storage tanks shall be installed and maintained in accordance with the provisions of NFPA 30 and Chapters 2, 4 and 9 of NFPA 30A.

2. Dispensers shall be designed, constructed, and maintained to provide access for examination and removal of collected product and accumulated water from dispenser liners.

(e) Secondary containment.

1. The materials used for secondary containment shall be:

a. Impervious to the regulated substance and able to withstand deterioration from external environmental conditions;

b. Non-corrosive or of corrosion-protected materials;

c. Capable of containing regulated substances for at least 30 days; and

d. Of sufficient thickness and strength to withstand hydrostatic forces at maximum capacity to prevent a discharge during its operating life.

2. Liners, unless previously approved by the Department, shall be approved by the Department in accordance with subsection 62-762.851(2), F.A.C. Liners shall not be constructed or consist of naturally occurring in-situ soils.

3. Secondary containment constructed of concrete shall be:

a. Designed and constructed in accordance with ACI 350R-89 and ACI 224R-89; or

b. Lined on the visible interior surfaces of the dike field area in accordance with NACE International Standard RP 0892-92, or SSPC Publication 97-04, Design, Installation, and Maintenance of Coating Systems for Concrete Used in Secondary Containment; or

c. Designed, evaluated, and certified by a professional engineer registered in the State of Florida that the concrete secondary containment system meets the General Construction Requirements specified in subparagraph 62-762.501(1)(e)1., F.A.C.

4. For cathodically protected tanks and integral piping, secondary containment systems shall not interfere with the operation of the cathodic protection system.

5. Storage tank system equipment with closed interstitial spaces, such as double-bottomed ASTs and double-walled integral piping in contact with the soil that is connected to ASTs, shall be designed, constructed and installed to allow for the detection of a breach of integrity in the inner or outer wall by the monitoring of the interstitial space in accordance with paragraph 62-762.641(3)(a), F.A.C. A breach of integrity test shall be performed before the storage tank system is put into service.

6. Secondary containment systems shall be designed and installed to direct any release to a monitoring point or points.

7. Airport and seaport hydrant pits. Underground hydrant pits shall be installed with a spill catchment basin, secondary containment, or other spill prevention equipment to prevent the discharge of pollutants during fueling of aircraft, vessels, or at any other time the hydrant system is in use. Any such equipment shall be sealed to and around the hydrant piping with an impervious, compatible material.

8. Field-fabricated dispenser liners and piping sumps installed before July 13, 1998 do not have to be approved in accordance with Rule 62-762.851, F.A.C.

(f) Cathodic protection.

1. Test stations. Cathodic protection systems shall be designed, constructed, and installed with at least one test station or method of monitoring to allow for a determination of current operating status. Cathodic protection test stations shall provide direct access to the soil electrolyte in close proximity to each cathodically protected structure for placement of reference electrodes, and monitoring wires that connect directly to cathodically protected structures. Facilities where direct access to soil in close proximity to cathodically protected structures is present, and where electrical connections to cathodically protected structures can be conveniently accomplished, need not have separate dedicated cathodic protection test stations.

2. The cathodic protection system shall be operated and maintained in accordance with paragraph 62-762.701(1)(b), F.A.C.

3. Any field-installed cathodic protection system shall be designed by a Corrosion Professional.

(g) Relocation of ASTs. Tanks that have been removed and that are to be reinstalled at a different location shall:

1. For field-erected tanks, comply with API Standard 653; or

2. For shop-fabricated tanks, be reinstalled in accordance with manufacturer's specifications, if applicable, and with the standards in Rule 62-762.501, F.A.C., that were in effect on July 13, 1998.

(h) Reuse of storage tanks. Unless it is recertified for use by a professional engineer registered in the State of Florida, or is recertified by the manufacturer, and is brought into service in accordance with Rule 62-762.501, F.A.C.:

1. A UST can not be used or reused as an AST for the storage of regulated substances; and

2. An AST can not be used or reused as a UST for the storage of regulated substances.

(2) Aboveground storage tank systems.

(a) Installation.

1. All components of a storage tank system shall be installed in accordance with the manufacturer's instructions.

2. Storage tank systems shall be installed according to the applicable provisions of NFPA 30, NFPA 30A and PEI/RP200-96.

(b) Tank construction standards.

1. Shop-fabricated tanks shall be constructed in accordance with one of the following:

a. UL 142;

b. API Standard 620;

c. API Specification 12B;

d. API Specification 12F;

e. API Specification 12P;

f. STI F911-93;

g. STI F921@;

- h. ASME B96.1; or
- i. UL 2085.

2. Field-erected tanks shall be constructed in accordance with one of the following:

- a. ASME B96.1;
- b. API Standard 620;
- c. API Standard 650;
- d. API Specification 12B; or
- e. API Specification 12D.

3. Field-erected tanks shall have an inspection and testing frequency established in accordance with API Standard 653 and maintained for the life of the tank.

4. Steel tanks in contact with soil shall have a cathodic protection system meeting the following requirements:

- a. The cathodic protection system shall be designed, constructed, and installed in accordance with API RP 651 and NACE International Standard RP-0193-93;
- b. A field-installed cathodic protection system shall be designed by a Corrosion Professional;
- c. The cathodic protection system shall be designed and installed with at least one test station in accordance with subparagraph 62-762.501(1)(f)1., F.A.C., or a method of monitoring to allow for a determination of current operating status; and
- d. The cathodic protection system shall be operated and maintained in accordance with paragraph 62-762.701(1)(b), F.A.C.

5. Tanks constructed of any other material, design, or corrosion protection shall be approved by the Department in accordance with subsection 62-762.851(2), F.A.C.

(c) Secondary containment.

1. All tanks installed or constructed at a facility after July 13, 1998 shall have secondary containment beneath the tank and within the dike field area, except for the following:

a. Tanks containing high viscosity regulated substances are exempt from the requirements for secondary containment. However, used or waste oil tanks, regardless of viscosity, shall have secondary containment beneath the tank and within the dike field area.

b. Double-walled shop-fabricated tanks approved in accordance with subsection 62-762.851(2), F.A.C., do not have to be installed in a dike field area.

c. Shop-fabricated tanks containing petroleum contact water pursuant to Chapter 62-740, F.A.C., that are subject to this chapter, elevated above and not in contact with the soil, and that have an impervious surface directly beneath the area of the tank.

d. Field-erected tanks used for the temporary storage of petroleum contact water pursuant to Chapter 62-740, F.A.C., that are subject to this chapter, and that have passed an internal inspection for structural integrity in accordance with API Standard 653.

e. AST Category-C field-erected tanks constructed within a dike field area with AST Category-A field-erected tanks shall have secondary containment beneath the tank, but shall not be required to have secondary containment within the dike field area until December 31, 1999.

2. Release prevention barriers such as double-bottoms, liners, or other undertank secondary containment systems for field-erected tanks shall be designed and constructed in accordance with API Standard 650.

3. Dike field areas with secondary containment shall:

a. Conform to the requirements of NFPA 30, Chapter 2-3;

b. Contain a minimum of 110% of the maximum capacity of the tank or of the largest single-walled tank within the dike field area. Capacity calculations shall include the volume occupied above the area of the "footprint" of the tank bottom or the largest tank within the dike field area;

c. If not roofed or otherwise protected from the accumulation of rainfall, be constructed with a manually controlled pump or siphon, or a gravity drain pipe which has a manually controlled valve to remove accumulated liquids. Gravity drain pipes shall be designed and constructed to prevent a discharge in the event of fire;

d. Have all integral piping and other penetrations that pass through the secondary containment of dike field areas sealed around the outside of the penetration with an impervious compatible material to prevent the discharge of pollutants; and

e. If constructed of steel, be tested in accordance with UL 142.

(d) Overfill protection.

1. No transfer of regulated substances shall be made unless the volume available in the tank is greater than the volume of regulated substances to be transferred. The transfer shall be repeatedly monitored to prevent overfilling.

2. Overfill protection shall be performed in accordance with API RP 2350.

3. At a minimum, fillbox covers shall be marked in accordance with API RP 1637, or an equivalent method approved by the Department in accordance with subsection 62-762.851(2), F.A.C.

4. All tanks shall be equipped with at least one of the following:

a. A gauge or other measuring device that accurately shows the level of pollutant in the tank and that is visible to the person who is monitoring the filling;

b. A high level warning alarm;

c. A high level liquid flow cutoff controller;

d. An impervious dike field area; or

e. Another device approved in accordance with subsection 62-762.851(2), F.A.C.

5. Calibrated stick measurements of the level of pollutants in the tank shall only be used for tanks with a capacity of 15,000 gallons or less that are not loaded with high-volume pressurized nozzles. Such tanks shall not be loaded beyond 95% capacity.

(e) Dispenser liners.

1. Dispensers connected to AST systems that are installed or replaced after July 13, 1998 shall be installed with liners meeting the performance standards of paragraph 62-762.501(1)(e), F.A.C., beneath the union of the piping and the dispenser. Dispensers mounted directly upon a tank are exempt from this requirement.

2. Hydrostatic tests shall be performed for all dispenser liners before placing the system into service. The duration of the tests shall be at least:

a. Twenty-four hours for field-fabricated dispenser liners; or

b. Three hours for factory-made dispenser liners.

3. Dispenser liners shall be installed to allow for interstitial monitoring in accordance with paragraph 62-762.641(3)(a), F.A.C.

(f) Piping sumps.

1. Piping sumps installed after July 13, 1998 shall meet the performance standards of paragraph 62-762.501(1)(e), F.A.C. The sumps shall be designed, constructed, and installed to minimize water entering the sump.

2. Hydrostatic tests shall be performed for all piping sumps before placing the system into service. The duration of the tests shall be at least:

a. Twenty-four hours for field-fabricated piping sumps; or

b. Three hours for factory-made piping sumps.

3. Piping sumps shall be installed to allow for interstitial monitoring in accordance with paragraph 62-762.641(3)(a), F.A.C.

(3) Integral piping for aboveground storage tank systems.

(a) Installation.

1. All integral piping shall be installed in accordance with the manufacturer's instructions, if applicable.

2. All integral piping shall be installed according to the applicable provisions of NFPA 30, NFPA 30A, and ASME B31.4.

3. A tightness test shall be performed on underground small diameter piping associated with ASTs before any new underground piping system is placed into service. A pressure test shall be performed for underground bulk product piping before the piping system is placed into service.

4. All piping that is not in contact with the soil, installed after July 13, 1998, shall meet the construction standards in paragraphs 62-762.501(3)(a)-(d), F.A.C.

(b) Integral piping construction standards.

1. Fiberglass reinforced plastic piping or other non-metallic piping installed at a facility shall be listed with UL 971, UL 567, certified by a Nationally Recognized Laboratory that these standards are met, or approved in accordance with subparagraph 62-762.501(3)(b)3., F.A.C.

2. Coated steel piping shall be constructed in accordance with ASME B31.4. Integral piping in contact with the soil shall be cathodically protected in accordance with API RP 1632, NACE International RP-0169-96, and STI R892-96.

3. Integral piping constructed of other materials, design, or corrosion protection shall be approved by the Department in accordance with subsection 62-762.851(2), F.A.C.

(c) Small diameter piping.

1. Pressurized small diameter piping systems connected to dispensers shall be installed with shear valves or emergency shutoff valves in accordance with NFPA 30A, Section 4-3.6, if applicable. These valves shall be designed to close automatically if a dispenser is dislodged from the integral piping. The valves shall be rigidly anchored independently of the dispenser.

2. Gravity-fed small diameter integral piping systems must be installed with an isolation valve at the point of connection to the storage tank to prevent the discharge of regulated substances in the case of piping failure. The valve shall meet the standards of NFPA 30A, Section 2-1.7.

3. Swing-joints shall not be installed.

(d) Bulk product piping. Bulk product piping shall be constructed and installed in accordance with NFPA 30, and ASME B31.4.

(e) Secondary containment.

1. Small diameter integral piping that is in contact with the soil or that transports regulated substances over surface waters of the state shall have secondary containment.

2. Bulk product piping that is in contact with the soil shall have secondary containment.

3. Remote fill piping that is in contact with the soil shall have secondary containment.

4. Integral piping that is in contact with the soil, and that is connected to storage tanks containing high viscosity regulated substances is exempt from the requirements for secondary containment.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.500.

62-762.511 Performance Standards for Category-A and Category-B Storage Tank Systems.

(1) General. This section provides deadlines for Category-A and Category-B storage tank systems to meet the standards for Category-C storage tank systems in accordance with Rule 62-762.501, F.A.C.

(a) Installation:

1. Installation shall be completed by the deadlines specified in Table AST. However, if installation or upgrade activities are initiated before the deadlines, work can continue after the deadlines, provided that all work is completed within 90 days of:

a. Contract execution; or

b. Receipt of construction approval or permits.

2. Installation is considered to have begun if:

a. All federal, state, and local approvals or permits have been obtained or applied for to begin physical construction for installation of the system; or

b. Contractual obligations have been made for installation of the system which cannot be canceled or modified without substantial economic loss, provided that such obligations are pursued diligently in good faith to achieve the requirements of this rule.

(b) By December 31, 1998:

1. All pressurized small diameter piping systems connected to dispensers shall have shear valves or emergency shutoff valves installed in accordance with paragraph 62-762.501(3)(c), F.A.C.

2. Cathodic protection test stations shall be installed in accordance with subparagraph 62-762.501(1)(f)1., F.A.C., for cathodically protected AST systems without test stations.

3. ASTs that have been reinstalled as USTs shall meet the requirements of Rule 62-762.501, F.A.C.

(c) After July 13, 1998, a closure assessment shall be performed in accordance with subsection 62-762.801(4), F.A.C., before the installation of dispenser liners, piping sumps, or secondary containment of tanks and integral piping.

(d) Valves meeting the requirements of Section 2-1.7 of NFPA 30A, shall be installed by January 13, 1999 on any storage tank system located at an elevation that produces a gravity head on the dispenser or on small diameter piping.

(e) Small diameter piping transporting regulated substances over surface waters of the state shall have secondary containment by December 31, 2004.

(2) Aboveground storage tank systems.

(a) All storage tank systems with tanks having capacities greater than 550 gallons that contain vehicular fuel and that were subject to Chapter 17-61, F.A.C., shall have met the requirements of such chapter by January 1, 1990.

(b) AST Category-B tanks, with the exception of tanks exempt under sub-subparagraph 62-762.501(2)(c)1.a., F.A.C., installed or constructed at a facility after March 12, 1991, shall have secondary containment for the tank.

(c) Integral piping that is in contact with the soil and that is connected to AST systems shall have secondary containment if installed after March 12, 1991. For integral piping that is exempt under subparagraph 62-762.501(3)(e)4., F.A.C., it is not required to install secondary containment.

(d) By January 1 of the appropriate year shown in Table AST below, unless specified otherwise, all AST Category-A and Category-B storage tank systems shall meet the following requirements or be permanently closed in accordance with subsection 62-762.801(3), F.A.C.

TABLE AST

Year Tank or

Integral Piping

Installed	1993	2000	2005	2010
+Before July 13, 1998	P	TVX	W	U

Key to Table AST

P = With the exception of high viscosity bulk product piping, bulk product piping in contact with soil and not in secondary containment shall be tested in accordance with API RP 1110, ASME B31.4, or an equivalent method approved by the Department in accordance with Rule 62-762.851, F.A.C. Such testing shall be performed annually thereafter.

T =

(1) With the exception of siting and material construction standards, Category-A and Category-B systems shall meet the performance standards of Rule 62-762.501, F.A.C. In addition:

(a) Storage tank system construction standards that include cathodic protection remain applicable; and

(b) Storage tanks where the entire bottom of the tank is in contact with concrete do not have to seal the concrete beneath the tank until such time that the tank bottom is replaced. However, concrete secondary containment systems designed in accordance with sub-subparagraph 62-762.501(1)(e)3.a., F.A.C., do not have to be sealed.

(2) Category-A bulk product piping in contact with the soil shall be upgraded with secondary containment, unless:

(a) A structural evaluation is performed in accordance with API 570, as specified in "U" (2) (b), of Table AST, and results of the structural evaluation indicate that the bulk product piping has remaining useful life; or

(b) The integral piping conveys high viscosity regulated substances, that are exempt from secondary containment in accordance with subparagraph 62-762.501(3)(e)4., F.A.C.; or

(c) The integral piping is protected from corrosion and is tested annually in accordance with ASME B31.4, API 1110, or an equivalent method approved by the Department in accordance with Rule 62-762.851, F.A.C. This piping shall have secondary containment by January 1, 2010, in accordance with "U" of Table AST.

(3) Initial internal and external inspections, examinations, and tests for each tank shall be performed in accordance with API Standard 653, and an appropriate reinspection interval for each tank shall be established in accordance with API Standard 653. If any deficiency is discovered during the inspections, the person performing the evaluation of the tank in accordance with API 653 must verify that the tank is ready for service before the storage tank is put back into service. This verification must be documented in the internal inspection records. Future tests for each tank shall be performed in accordance with the inspection interval established in accordance with API 653 (1996). Baseline inspections already conducted according to the API Standard 653 (1991) will be accepted.

(4) As an alternative to installing secondary containment underneath an AST Category-A or Category-B storage tank, the interior bottom of the tank and at least 18 inches up the sides may be internally lined in accordance with API RP 652. Secondary containment must nonetheless be installed in the dike field area and be continuously bonded to the perimeter of the tank foundation.

U =

(1) All internally lined single bottom storage tanks, with the exception of tanks exempt under paragraph 62-762.501(4)(a), F.A.C., shall be upgraded with secondary containment.

(2) All AST Category-A bulk product piping in contact with the soil, except for piping exempt from secondary containment requirements under subparagraph 62-762.501(8)(e)4., F.A.C., shall be:

(a) Upgraded with secondary containment in accordance with paragraph 62-762.501(1)(e), F.A.C.; or

(b) Instead of being upgraded with secondary containment, be evaluated for structural integrity by:

1. Establishing and maintaining the piping inspection intervals in accordance with API 570, Section 4-2, by January 1, 2000;

2. Determining the remaining life of the system in accordance with API 570, Section 5.0, by January 1, 2000. If the determination indicates that the piping:

a. Must be repaired, then the piping shall be repaired within three months of the determination in accordance with API 570 and Rule

62-762.701, F.A.C.;

- b. Is leaking, then the piping must be immediately taken out of operation. If the piping cannot be repaired, it must be closed or upgraded with secondary containment within one year of the determination;
- c. Is not leaking, but has corroded to a point where it no longer has structural integrity, then the piping shall be closed, or upgraded with secondary containment by January 1, 2000; or
- d. Has remaining useful life, then the piping shall be closed or upgraded with secondary containment when the API 570 inspection and remaining life determination data indicates that closure or replacement is necessary.

3. Providing a certification by a professional engineer registered in the State of Florida that the evaluation meets the above criteria.

V =

- (1) Secondary containment for cut and cover or concrete storage tanks.
- (2) Spill containment in accordance with paragraph 62-762.501(1)(c), F.A.C.
- (3) Dispenser liners for shop-fabricated tanks in accordance with paragraph 62-762.501(2)(e), F.A.C.
- (4) Secondary containment in accordance with paragraphs 62-762.501(1)(e) and (2)(c), F.A.C., for dike field areas of facilities with shop-fabricated tanks having dike field area secondary containment that is constructed of concrete or installed with synthetic liners not meeting these requirements.

W =

- (1) Secondary containment in accordance with paragraphs 62-762.500(1)(e) and (3)(c), F.A.C., for dike field areas of facilities with field-erected tanks having dike field area secondary containment that is constructed of concrete or installed with synthetic liners not meeting these requirements.
- (2) Secondary containment for small diameter piping extending over surface waters.
- (3) Secondary containment for small diameter petroleum contact water piping in contact with the soil.

X = Deadline to determine integrity of single wall bulk product piping with an API 570 structural integrity evaluation in accordance with the option for Category-A systems in "U" of Table AST.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.510.

62-762.601 Release Detection Standards.

(1) General.

(a) Storage tank systems shall have a method, or combination of methods, of release detection that:

- 1. Can detect a new release from any portion of the storage tank system;
- 2. Is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability to ensure that the device is functioning as designed; and
- 3. Meets the applicable performance standards in Rule 62-762.641, F.A.C. All manufacturer's instructions, and the performance claims and their manner of determination described in writing by the equipment manufacturer or installer shall be retained for as long as the storage tank system is used.

(b) A release detection response level shall be described in writing for each method or combination of methods of release detection used for a storage tank system.

(c) A release detection method shall be established and provided for all storage tank systems upon installation.

(d) Except as otherwise specified in Rules 62-762.601-641, F.A.C., the release detection method or combination of methods used at a facility shall be performed at least once a month, but not exceeding 35 days, to determine if a release from the storage tank system has occurred.

(e) At least once a month, but not exceeding 35 days, any storage tank and component of a storage tank that can be inspected visually shall be visually inspected in accordance with paragraph 62-762.641(2)(e), F.A.C. A visual inspection is not required for any system component that has a continuous or monthly electronic release detection sensor. Continuous electronic leak detection devices shall be inspected for proper operation on a monthly basis. Inspection may consist of visual observation or remote verification of proper operation.

(f) A site suitability determination shall be performed for UST systems by December 31, 1998, and January 1, 2000 for AST systems, in accordance with paragraphs 62-762.641(2)(a)-(d), F.A.C., for storage tank systems using groundwater or vapor monitoring wells for release detection. If the site suitability determination indicates that on-site conditions are unsuitable for

external monitoring, another method of release detection must be used.

(g) Vapor monitoring plans shall be performed by January 1, 2000, for AST systems, in accordance with paragraph 62-762.641(2)(d), F.A.C., for storage tank systems using vapor monitoring for release detection.

(h) Any component of a storage tank system with secondary containment shall have an interstitial monitoring method meeting the requirements of paragraph 62-762.641(3)(a), F.A.C.

(i) Pressurized piping, excluding bulk product piping, shall be equipped with a line leak detector that meets the standards of subparagraph 62-762.641(3)(c)1., F.A.C. Gravity piping systems are exempt from this requirement.

(j) Any storage tank system not provided with a method, or combination of methods, of release detection in accordance with this section, shall be closed in accordance with subsection 62-762.801(3), F.A.C., by the date upon which release detection is to be provided.

(k) Groundwater and vapor monitoring wells meeting the standards for external monitoring specified in paragraphs 62-762.641(2)(a)-(d), F.A.C., that are no longer used for release detection, shall be closed in accordance with subsection 62-532.500(4), F.A.C., by December 31, 2010. Wells not meeting these standards shall be closed in accordance with subsection 62-532.500(4), F.A.C., by December 31, 1998, unless the wells are:

1. Used for contamination assessment purposes as specified in Rule 62-770, F.A.C.; or
2. Required by rules adopted by a County government in accordance with Section 376.317, F.S.

(2) Aboveground storage tank systems.

(a) The following methods of release detection that were implemented before March 12, 1991, shall be capable of detecting the leak rate or quantity specified in paragraph 62-762.641(1)(a), F.A.C., by December 31, 1999:

1. Any groundwater monitoring plan that meets the requirements of Rule 62-528.700, F.A.C.; or
2. Any Spill Prevention Control and Countermeasure plan as required by 40 C.F.R. Section 112.

(b) All monitoring wells used for release detection shall meet the standards in subsection 62-762.641(2), F.A.C., by January 1, 2000, or be properly closed in accordance with subsection 62-532.500(4), F.A.C.

(c) Release detection for field-erected storage tanks with secondary containment beneath the tank shall comply with API Standard 650, Appendix I.

(d) Storage tanks upgraded with internal lining shall, by the completion of the installation of the internal lining, be provided with a method of release detection that meets the standards in subsection 62-762.641(2), F.A.C.

(e) AST integral piping in contact with the soil shall be provided with a method, or combination of methods, of release detection. Integral piping in contact with the soil having secondary containment shall have interstitial monitoring, and single-walled integral piping in contact with the soil shall have release detection meeting the requirements of subsection 62-762.611(3), F.A.C.

(f) Facilities using a Spill Prevention Control and Countermeasure plan as required by 40 C.F.R. Section 112, for release detection, or a groundwater monitoring plan meeting the requirements of Rule 62-528.700, F.A.C., for release detection, shall meet the release detection requirements of Rule 62-762.611, F.A.C., by December 31, 1999.

(g) ASTs containing high viscosity regulated substances are exempt from all release detection requirements except for visual inspections pursuant to paragraph 62-762.641(2)(e), F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.600.

62-762.611 Release Detection Methods.

(1) General.

(a) Category-A and Category-B systems. Release detection methods shall be one of the methods specified in this section, and shall meet the performance standards contained in Rule 62-762.641, F.A.C.

(b) Category-C systems. Release detection methods shall be either interstitial or visual monitoring of secondary containment in accordance with Rule 62-762.641, F.A.C. Small diameter pressurized piping shall have a line leak detector in accordance with subparagraph 62-762.641(3)(c)1., F.A.C. A breach of integrity test shall be performed every five years for Category-C storage tank systems with closed interstitial spaces, unless the test is a continuous test.

(2) Aboveground storage tank systems.

(a) Tanks. Category-A and Category-B ASTs shall be equipped with one or more of the following release detection systems:

1. Tanks with secondary containment shall have an interstitial monitoring system:
 - a. Between the walls of a double-walled tank;
 - b. In the interstice between the tank and any liner used for secondary containment;
 - c. Between the tank bottom and the secondary containment for double-bottomed tanks;
2. Tanks without secondary containment or that are exempt from secondary containment shall have a visual inspection performed in accordance with paragraph 62-762.611(3)(b), F.A.C.
3. Tanks with internal lining and cut and cover tanks shall have a method of release detection that meets the requirements of subsection 62-762.641(2), F.A.C.
 - (b) Visual inspections of tank systems. A visual inspection of the exterior of each tank, the aboveground integral piping system, the secondary containment within the dike field area (if applicable), the dike field area, and any other storage system components shall be conducted and documented at least once a month, but not exceeding 35 days.
 - (3) Integral piping.
 - (a) Small diameter piping in contact with the soil. Single-walled piping that is in contact with soil shall be equipped with one of the following release detection systems:
 1. Suction or gravity piping shall have:
 - a. An annual line tightness test; or
 - b. An external monthly monitoring or release detection method meeting the requirements of subsection 62-762.641(2), F.A.C., if designed to detect a discharge from any portion of the integral piping.
 2. By December 31, 1998, pressurized piping shall have:
 - a. Mechanical line leak detectors meeting the requirements of paragraph 62-762.641(3)(c), F.A.C., and either an annual line tightness test, or an external release detection method meeting the requirements of paragraph 62-762.641(3)(c), F.A.C.; or
 - b. Electronic line leak detectors meeting the requirements of paragraph 62-762.641(1)(a), F.A.C.
 3. Exemptions. Release detection is not required for piping associated with:
 - a. Suction pumps, provided that a single check valve is installed directly below the suction pump, and the piping is sloped so that the contents of the pipe will drain back to the tank if the suction is broken; and
 - b. Manifold piping systems.
 - (b) Small diameter piping not in contact with the soil, or that is exempt from secondary containment. These systems shall be visually inspected in accordance with paragraph 62-762.611(2)(b), F.A.C.
 - (c) Small diameter piping with secondary containment that is in contact with the soil. Double-walled piping, or single-walled piping with secondary containment shall be equipped with the following release detection systems:
 1. Interstitial monitoring; and
 2. A method of testing for a breach of integrity that meets the requirements of subparagraph 62-762.641(3)(a)2., F.A.C., for Category-C systems, as applicable.
 - (d) Bulk product and hydrant piping.
 1. Single-walled piping in contact with the soil:
 - a. Shall be pressure tested annually in accordance with paragraph 62-762.641(3)(d), F.A.C.; or
 - b. Instead of annual testing, a monthly release detection system meeting the requirements of subsection 62-762.641(2) F.A.C., may be installed.
 2. Piping not in contact with the soil, or that is exempt from secondary containment, shall be visually inspected in accordance with paragraph 62-762.611(2)(b), F.A.C.
 3. Piping with secondary containment that is in contact with the soil, such as double-walled piping or single-walled piping with secondary containment, shall be equipped with the following release detection systems:
 - a. Interstitial monitoring; and, if applicable,
 - b. For Category-C systems, a method of testing for a breach of integrity that meets the requirements of subparagraph 62-762.641(3)(a)2., F.A.C., for piping with closed interstitial spaces.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.610.

62-762.641 Performance Standards for Release Detection Methods.

(1) General. Methods of release detection shall:

(a) Be capable of detecting a release of 0.2 gallons per hour or 150 gallons within 30 days with a probability of detection of 0.95, and a probability of false alarm of 0.05, with the exception of:

1. Tightness testing requirements in subparagraphs 62-762.641(3)(c)2. and (3)(d)1., F.A.C.;
2. Visual inspections in paragraph 62-762.641(2)(e), F.A.C.;
3. Groundwater or vapor monitoring in subsection 62-762.641(2), F.A.C.; and
4. Manual tank gauging in subparagraph 62-762.640(3)(c)1., F.A.C.

(b) With the exception of bailers and monitoring wells, be approved in accordance with subsection 62-762.851(2), F.A.C.

(c) Have a release detection response level described in writing for each method or combination of methods.

(2) External release detection methods.

(a) Well construction standards.

1. Monitoring well requirements. Monitoring wells shall be constructed and installed by a licensed water well contractor when required by Chapter 62-531, F.A.C. Monitoring wells shall:

- a. Be a minimum of two inches in interior diameter;
- b. Be slotted from the bottom to two feet below ground surface;
- c. Have a minimum slot size of 0.010 inch;
- d. Be backfilled with clean sand or a gravel filter pack to prevent blockage of the slots;
- e. Be constructed of at least schedule 40 PVC without any joints, or of another corrosion protected material;
- f. Be grouted into the borehole from the surface to the top of the filter pack plug with neat cement grout or other equivalent materials. Grouting shall not extend below the top of the well slotting. Bentonite slurry grouts shall not be used;
- g. Unless the monitoring well has an extended exterior casing, be equipped with a minimum six inch diameter manhole designed to prevent water intrusion with a one inch minimum grade increase above the surrounding surface. The well opening shall extend at least one inch above the bottom of the manhole;

h. Be equipped with a watertight cap. The well shall be kept locked or secured to prevent tampering at all times except when the monitoring well is being sampled or maintained. Monitoring wells shall be marked in accordance with API RP 1615;

i. Extend no deeper than 20 feet below ground surface. If such a depth penetrates a confining layer below the excavation, the monitoring well shall extend no deeper than to within six inches of the confining layer. Any well that penetrates a confining layer shall immediately be properly abandoned in accordance with Rule 62-532.500, F.A.C.; and

j. If installed within a secondary containment liner system, extend no deeper than six inches from the liner.

2. Groundwater monitoring wells shall:

a. Extend at least five feet below the normal groundwater surface level; and

b. Be properly developed by the licensed water well contractor before the initial sampling.

3. Vapor monitoring wells shall meet the requirements specified in DEP's "Guidelines for Vapor Monitoring."

4. Electronic sensors, probes, or fiber-optic systems shall be tested at least annually to verify that they operate in accordance with the Department's approval given pursuant to subsection 62-762.851(2), F.A.C.

5. Groundwater and vapor monitoring wells using the placement of sensors or probes in vertical, horizontal, or directionally-drilled wells shall be designed and installed in accordance with the equipment approval for that system granted in subsection 62-762.851(2), F.A.C.

(b) Site suitability determinations.

1. A site suitability determination shall be performed for each facility using groundwater or vapor monitoring. The site suitability determination shall be performed in accordance with DEP's "Guidelines for Site Suitability Determinations for External Monitoring" by a Professional Geologist registered in the State of Florida. If the site is not suitable for external monitoring, another method of release detection must be used.

2. The following facilities having Category-A and Category-B ASTs that use external monitoring are not required to perform site suitability determinations:

a. Facilities located in counties having rules more stringent than the Department as specified in Chapter 376.317, F.S.

b. Facilities with monitoring wells located in the tank excavation, provided that a demonstration can be made that the excavation contains sand or gravel backfill, and the wells were properly constructed and installed within the backfill.

(c) Groundwater monitoring.

1. The regulated substance shall be immiscible in water and have a specific gravity of less than one.
2. Groundwater monitoring shall not be used for release detection after free product or a sheen is discovered in a monitoring well, unless:

a. A Site Rehabilitation Completion Order has been issued by the Department following the remediation of the free product or sheen, and there is no longer any free product in the monitoring well; or

b. Free product or sheen is not present and has not been observed in the well within the previous thirty (30) months, as demonstrated by records of at least six (6) monthly ground water monitoring sampling events, and within the previous two years, the system has been tested tight with tank and line piping tests or another internal method of release detection performed in accordance with subsection 62-762.641(3), F.A.C.

3. Another method of release detection specified in Rule 62-762.611, F.A.C., other than groundwater monitoring, shall be used when:

a. There is less than one foot of groundwater present in the well; or

b. The groundwater level is above the slotted portion of the well.

4. Records. The following information shall be maintained in accordance with the recordkeeping requirements of this chapter:

a. Date of sampling;

b. Depth of well;

c. Depth to groundwater;

d. Any presence of odor of stored regulated substances; and

e. Any sheen or free product found.

(d) Vapor monitoring.

1. Vapor monitoring can only be used to monitor regulated substances that are sufficiently volatile to be detected in soils or groundwater by vapor monitoring equipment.

2. The measurement of vapors in a vapor monitoring well shall not be rendered inoperative by groundwater, rainfall, soil moisture or other known interferences so that a discharge could go undetected for more than 30 days.

3. Sampling equipment shall be capable of detecting:

a. A vapor concentration of 500 parts per million total petroleum hydrocarbons, as measured by a flame ionization detector, for storage tank systems containing gasoline or equivalent petroleum substances;

b. A vapor concentration of 50 parts per million total petroleum hydrocarbons, as measured by a flame ionization detector, for storage tank systems containing kerosene, diesel or equivalent petroleum substances;

c. Vapor concentrations of hazardous substances or their constituents that would indicate a release; or

d. Vapor concentrations of tracer compounds used for release detection.

4. Vapor monitoring shall not be used for release detection if existing contamination interferes with the ability to detect a new release.

5. The vapor monitoring plan shall be developed and performed in accordance with DEP's "Guidelines for Vapor Monitoring." The plan shall include a description of monitoring wells or probes, the method of sampling, the establishment of a release detection response level and the data management procedures. Facilities with monitoring wells located in the tank excavation do not have to meet the requirements for DEP's "Guidelines for Site-Suitability Determinations for External Monitoring," provided that a demonstration can be made that the excavation contains sand or gravel backfill, and the wells were properly constructed and installed within the backfill.

(e) Visual inspections. Any visual inspection of the storage tank system or its secondary containment that reveals signs of corrosion, cracks, structural damage, leakage, or other similar problems shall be noted. Repairs shall be made in accordance with the requirements of Rule 62-762.701, F.A.C.

(3) Internal release detection methods.

(a) Interstitial monitoring for AST systems.

1. Interstitial monitoring for double-walled tanks, double-walled integral piping, dispenser liners, piping sumps, and other secondary containment systems, shall be designed and constructed to allow monitoring of the space between the primary and secondary containment. One or more of the following methods of interstitial monitoring shall be used:

a. Manual sampling of, or visual monitoring for, liquids;

b. Continuous electronic sensing equipment;

c. Hydrostatic monitoring systems; or

d. Vacuum monitoring.

2. Breach of integrity tests for Category-C systems. A test shall be performed for a breach of integrity of the interstice for double-walled USTs, double-bottomed ASTs, and for double-walled integral piping that is in contact with the soil and that is connected to ASTs or USTs. Double-walled shop-fabricated ASTs, piping sumps, and dispenser liners are not required to perform a breach of integrity test. The test shall be performed to determine the integrity of the inner and outer wall, is required only for tanks and integral piping with closed interstices, and does not apply to open-interstice systems with liners. The test shall be performed at the time of installation, and every five years from the date of installation, unless the test is a continuous test. If a UST is totally submerged in groundwater, monthly monitoring of the interstice for the presence of water shall be conducted. The breach of integrity test may be performed by using at least one of the following methods:

a. A continuous hydrostatic system approved by the Department in accordance with subsection 62-762.851(2), F.A.C.;

b. A continuous vacuum system, pursuant to paragraph 62-762.641(3)(a), F.A.C., that is approved by the Department in accordance with subsection 62-762.851(2), F.A.C.;

c. Testing of the interstice for liquid tightness in accordance with manufacturer's installation instructions; or

d. Another method in accordance with subsection 62-762.851(2), F.A.C.

3. Vacuum monitoring of the interstice shall meet the following requirements:

a. Liquid-filled gauges and air-filled gauges shall be calibrated in accordance with the National Institute of Standards and Technology. The gauges shall be operational at all times.

b. Vacuum monitoring may be used as a continuous method of release detection provided that the vacuum system is equipped with an audible or visual alarm. The alarm shall indicate when the minimum vacuum level allowed is reached as provided in the equipment approval granted in accordance subsection 62-762.851(2), F.A.C.

c. Vacuum readings shall be recorded monthly. Upon discovery of any significant vacuum level decrease, or any loss of vacuum exceeding 20% of the initial level, or any loss in excess of the levels established in the test protocols provided in the third party certification for the test method, the tank manufacturer shall be contacted and the vacuum refreshed in accordance with the storage tank system's equipment approval in subsection 62-762.851(2), F.A.C. If the loss of vacuum persists, an investigation shall be initiated and an incident reported in accordance with subsection 62-762.451(2), F.A.C. The source of the loss shall be repaired in accordance with Rule 62-762.701, F.A.C.

4. Interstitial monitoring for storage tanks and integral piping equipped with liners shall be designed and constructed to allow monitoring of the space between the primary and secondary containment and shall:

a. Be capable of detecting a release through the inner wall into the interstice;

b. Be constructed and installed so that groundwater, rainfall, or soil moisture will not render the testing or sampling method used inoperative; and

c. Be equipped with an external release detection method meeting the standards of paragraphs 62-762.641(2)(a)-(d), F.A.C., except for the groundwater level and excavation zone assessment requirements; or

d. Be visually inspected in accordance with paragraph 62-762.641(2)(e), F.A.C.; or

e. Be equipped with a monitoring device approved in accordance with subsection 62-762.851(2), F.A.C., installed at the monitoring point within the liner.

(b) Inventory control.

1. General.

a. Inventory control shall be maintained for each single-walled tank that contains vehicular fuel.

b. Storage tank systems that are elevated above the soil or that have secondary containment are exempt from inventory control requirements. ASTs that rest on an impervious surface are also exempt.

2. Inventory control for shop-fabricated ASTs shall be performed and recorded in accordance with API RP 1621, as applicable. Manifolder tanks may be treated as a single tank for the purposes of inventory control. Inventory control shall be performed in the following manner:

a. Volume measurements for product inputs, withdrawals, and the amount remaining in each tank shall be recorded each operating day;

b. Measurements of product levels shall be recorded to the nearest one-eighth of an inch;

c. Product inputs shall be reconciled with delivery receipts by measurement of the tank product volume before and after delivery;

d. Product dispensed shall be metered as required by Chapters 525 and 531, F.S., and in accordance with the standards

established by the Florida Department of Agriculture and Consumer Services in Chapter 5F-2, F.A.C.;

e. The measurement of water level in the bottom of the tank shall be made at least once a week to the nearest one-eighth of an inch; and

f. The significant loss or gain of product shall be calculated for each month.

3. Inventory control requirements for field-erected ASTs.

a. Bulk product facilities may use product inventory control for multiple tanks provided that a demonstration of equivalent protection is made in accordance with subsection 62-762.851(1), F.A.C.

b. Inventory measurements for field-erected systems, manifolded systems, and non-manifolded systems with a capacity of 30,000 gallons or greater shall be reconciled to detect the presence of a significant loss or gain. The equipment and method used shall be capable of accurately measuring the level or volume of product over the full range of the tank's usable storage capacity, to the nearest one fourth of an inch.

4. Investigation procedures for significant loss or gain. An investigation shall be initiated immediately to determine the source of a significant loss or gain. The entire storage tank system, excluding the vent, but including piping connections and remote fill lines, shall be tested or inspected to determine if the system is product tight. The investigation shall continue until the source has been found, using the following investigative procedure:

a. Inventory records shall be checked for errors in arithmetic, data recording, and measurement;

b. If the significant loss or gain is not reconcilable or cannot be affirmatively demonstrated to be the result of theft, the accessible parts of the storage system shall be checked for damage or leaks;

c. Release detection systems shall be checked for signs of a discharge;

d. Calibration of the inventory measuring system and dispensing system shall be verified;

e. If the investigation does not reveal the source of the significant loss or gain within one week for USTs, and two weeks for ASTs, or if the Department or County determines that it is necessary to investigate based on evidence that the significant loss or gain could result in potential harm to the environment, the storage tank system shall be tested in accordance with the manufacturer's guidelines, if applicable, and subsection 62-762.641(3), F.A.C.; and

f. If a discharge is discovered, the leaking or defective component of the storage tank system shall be repaired in accordance with Rule 62-762.701, F.A.C. If the storage tank system cannot be repaired, it shall be closed in accordance with subsection 62-762.801(3), F.A.C.

(c) Small diameter integral piping in contact with the soil.

1. Line leak detectors for USTs. Line leak detectors shall:

a. Be capable of detecting a discharge of 3.0 gph with a probability of detection of 0.95 and a probability of false alarm of 0.05 at a line pressure of 10 psi within one hour;

b. Have an annual test of the operation of the leak detector conducted in accordance with the manufacturer's requirements by an individual certified or trained by the manufacturer to determine whether the device is functioning as designed. Remote testing of the leak detector can be performed by the manufacturer if the remote test is approved under subsection 62-762.851(2), F.A.C.;

c. Restrict flow within one hour if designed with mechanical flow restriction;

d. When a discharge of 3.0 gph is detected, shut off power to the pump if designed with automatic electronic shutoff. When in test mode, line leak detectors with automatic electronic shutoff shall also be able to detect a discharge of 0.2 gph at a line pressure of 150% of operating pressure, or an equivalent leak rate, with a probability of detection within a one month period of at least 0.95 and a probability of false alarm of no more than 0.05. When a discharge of 0.2 gph is detected, the leak detector shall provide audible or visual alarms that can be clearly heard or seen by the operator of the facility, or if monitored remotely on a real time basis, the alarm condition must be immediately transmitted from the remote location to the facility operator; and

e. Instead of using a line leak detector as a method of release detection for pressurized small diameter piping associated with double-walled integral piping, a continuously operating interstitial monitoring device can be used. Continuously operating interstitial monitoring devices shall be capable of detecting a release of 10 gallons within one hour and shutting off the pump.

2. Tightness testing. Tightness testing for pressurized piping in contact with the soil shall be capable of detecting a 0.1 gallon per hour leak rate at one and one-half times the operating pressure with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(d) Bulk product piping.

1. An annual test shall be performed of single-walled bulk product piping in contact with the soil. Prior to testing the piping system, a leak tightness evaluation of all exposed components shall be performed through visual inspection, or by another method

approved by the Department in accordance with Rule 62-762.851, F.A.C. The evaluation shall be verified and recorded. One of the following methods shall be used for the annual test:

- a. A bulk product piping test method approved in accordance with subsection 62-762.851(2), F.A.C.;
- b. An API RP 1110 hydrostatic test; or
- c. An ASME B31.4 hydrostatic test.

2. Double-walled bulk product and hydrant piping, and other bulk product piping equipped with secondary containment shall have methods of release detection and testing for a breach of integrity that meet the requirements of subparagraph 62-762.641(3)(a)2. or 4., F.A.C., as applicable.

3. Records of all test results shall be maintained in accordance with the Appendix-Test Records of API RP 1110, or Chapter VI of ASME B31.4, as applicable, pursuant to subsection 62-762.711(1), F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.640.

62-762.701 Repairs, Operation and Maintenance of Storage Tank Systems.

(1) General.

(a) Repairs.

1. Repairs shall be performed if any component of a storage tank system is discovered to have:

- a. Discharged or contributed to the discharge of a regulated substance;
- b. A release of regulated substances or AST water bottoms into secondary containment;
- c. The presence of groundwater in the interstice of a double-walled pipe; or
- d. An operational or structural problem that could potentially result in a discharge or release.

2. If repairs are required for any component or part of a storage tank system, and the nature of the repair activities or the condition of the component or part of the system requiring a repair may result in a release, and the component or part cannot be otherwise isolated from the system, the storage tank system shall be taken out of operation until the tank has been repaired or replaced. The restrictions against storage tank system operation shall not apply if the system contains heating oil or other fuels used solely for the generation of electricity where the removal of the storage system from service would result in the shut down of electrical generating units serviced by the system.

3. Repairs shall be made:

a. In a manner that will prevent discharges from structural failure or corrosion for the remaining operational life of the storage tank system;

b. In accordance with manufacturer's specifications, NFPA Standard 30 or other applicable reference standards; and

c. To restore the structural integrity of the storage tank system.

4. Repaired components shall be tightness tested, pressure tested, or tested for a breach of integrity, as applicable, before being placed back into service.

5. Repairs to fiberglass reinforced plastic tanks shall be made by an authorized representative of the tank manufacturer or its successor, or in accordance with subsection 62-762.501(2), F.A.C.

6. Piping that is damaged or that has caused a discharge of a regulated substance shall be replaced or repaired. Pipe sections and fittings may be repaired in accordance with applicable standards in subsection 62-762.501(3), F.A.C. Replacement of additional lengths of piping in contact with the soil are exempt from the requirements for secondary containment, provided that:

a. The piping system does not have, or will not have to install, secondary containment until the deadlines established in Rule 62-762.511, F.A.C.; and

b. The length of replacement or additional piping is less than 25% of the total length of the existing integral piping for the individual tank, or 100 feet, whichever is less.

(b) Cathodic protection.

1. Cathodic protection systems shall be installed, operated and maintained to provide continuous corrosion protection to the metal components of those portions of the tank and integral piping in contact with the soil.

2. Inspection and testing requirements.

a. General. Storage tank systems equipped with any type of cathodic protection must be inspected and tested by a Corrosion Professional or a Cathodic Protection Tester within six months of installation or repair and at least every year thereafter in

accordance with the criteria contained in NACE International RP-0169-96 and RP-0193-93, as applicable. Factory-installed (galvanic) cathodic protection systems may be tested every three years.

b. Impressed current systems. Storage tank systems with impressed current systems shall be inspected at intervals not exceeding two months. All sources of impressed current shall be inspected. Evidence of proper functioning shall be current output, normal power consumption, a signal indicating normal operation, or satisfactory electrical state of the protected structure. Impressed current systems that are inoperative for a cumulative period exceeding 1440 hours shall be assessed by a Corrosion Professional to ensure that the storage tank system is structurally sound, free of corrosion holes, and operating in accordance with the design criteria.

c. Sacrificial anode systems. Storage tank systems with sacrificial anodes shall either have permanent test stations for soil-to-structure potential measurements or use temporary field test stations for annual testing in accordance with sub-subparagraph 62-762.701(1)(b)2.a., F.A.C.

3. Storage tank systems with cathodic protection systems that cannot achieve or maintain protection levels in accordance with the design criteria shall:

- a. Be repaired in accordance with sub-subparagraph 62-762.701(1)(b)2.a., F.A.C., or
- b. Be placed out-of-service in accordance with subsection 62-762.801(1), F.A.C.

4. Records of the continuous operation of impressed current systems and all cathodic protection inspection and testing activities shall be maintained in accordance with paragraph 62-762.701(1)(b), F.A.C.

(c) Operation and maintenance.

1. Spill containment devices, dispenser liners, and piping sumps shall be maintained to provide access for monthly examination and water removal as necessary. Water collected in spill containment devices, or in piping sumps and dispenser liners that is above the opening of the integral piping connection, or any regulated substances collected in these storage tank system components shall be removed and be either reused or properly disposed of.

2. Owners or operators shall ensure that the volume available in the tank is greater than the volume of regulated substances to be transferred to the tank before the transfer is made and shall ensure that any transfer is repeatedly monitored to prevent overfilling and spilling.

3. All release detection devices shall be tested annually to ensure proper operation. The test shall be conducted according to manufacturer's specifications, and shall include, at a minimum, a determination of whether the device operates as designed.

4. Petroleum contact water from storage tank systems shall be managed in accordance with Chapter 62-740, F.A.C.

5. Exterior Coatings may be maintained in accordance with SSPC PA-1.

6. Regardless of the method of release detection used, inventory control shall be performed for ASTs containing vehicular fuel that do not have secondary containment.

(2) Stormwater management for secondary containment systems.

(a) The removal or release of stormwater from a facility should be performed in accordance with all applicable Department rules (for example, Chapter 62-25, F.A.C., Regulation of Stormwater Discharge). Owners and operators are advised that other federal, state, or local requirements may apply to these activities.

(b) Accumulated stormwater shall:

1. Be drawn off within one week after a rainfall event unless another frequency is allowed by the facility's stormwater discharge permit or by another instrument, such as a Spill Prevention Control Countermeasure Plan or a Department permit; and

2. Not be discharged without treatment if it has a visible sheen.

(c) If gravity drain pipes are used to remove water from the dike field areas, all valves shall be kept closed except when the operator is in the process of draining water.

(3) API 653 inspections. Field-erected tanks shall be evaluated and the re-testing frequency established and implemented in accordance with API Standard 653. AST Category-B and Category-C tanks shall be evaluated at the time of installation. Initial examinations for AST Category-A and Category-B tanks shall be completed by December 31, 1999. Evaluations shall be certified by a professional engineer registered in the State of Florida, or approved by an API 653 inspector. Non-destructive testing shall be performed by qualified personnel as specified in API 653 and API 650. All field-erected tanks shall be repaired in accordance with API Standard 653.

(4) Testing for piping in contact with soil.

(a) Small diameter piping shall be tightness tested before being placed back into service whenever dispensers connected to that piping are replaced or whenever the piping has been disconnected and then reconnected.

(b) Hydrant piping and bulk product piping shall be pressure tested in accordance with paragraph 62-762.641(3)(e), F.A.C., before being placed back into service.

(5) Bulk product piping extending over surface water shall:

(a) Be tested annually in accordance with Title 33, Part 156.170, Code of Federal Regulation; and

(b) Be maintained and operated in accordance with Title 33, Part 154, as applicable.

(6) Secondary containment systems shall be repaired as necessary to maintain product tightness and containment volume of the system, including sealing cracks in concrete, repairing punctures, and maintaining containment walls. If the storage tank secondary treatment system has a crack, puncture, or other defect that compromises the system's product tightness, the system shall be repaired in accordance with paragraph 62-762.501(1)(e), F.A.C.

(7) Overfill protection shall be performed in accordance with API RP 2350 and NFPA 30, Section 2-10, for each field-erected AST that receives fuel by mainline pipeline or marine vessels.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.700.

62-762.711 Recordkeeping.

(1) All records shall be dated, maintained in permanent form, and available for inspection by the Department or County. If records are not kept at the facility, they shall be made available at the facility or another agreed upon location upon five working days notice. Site access to the facility shall be provided for compliance inspections conducted at reasonable times.

(2) Records of the following are required to be kept for two years:

(a) Measurements and reconciliations of inventory, as applicable;

(b) Repair, operation, and maintenance records;

(c) Release detection results, including electronic test results, regardless of the frequency, and monthly visual inspections performed in accordance with paragraph 62-762.641(2)(e), F.A.C. The presence of a regulated substance's odor, sheen, or free product shall be recorded for each sampling event;

(d) Release detection response level descriptions;

(e) A copy of all test data and results gathered during tightness tests, pressure tests, and breach of integrity tests, and the name and type of the test approved under Rule 62-762.851, F.A.C.;

(f) Certification of Financial Responsibility on Form 62-761.900(3);

(g) Records of types of fuels stored per tank; and

(h) The repair or replacement of gaskets, valve packings, valves, flanges, and connection/disconnection fittings for bulk product piping if the repair or replacement is performed in response to a discharge or loss of regulated substances.

(3) Records of the following, generated after July 13, 1998, shall be maintained for the life of the storage tank system:

(a) Results of internal inspections and non-destructive testing;

(b) Any performance claims for release detection equipment described in writing by the equipment manufacturer or installer;

(c) Records of storage tank system installations, replacements, and upgrades;

(d) Records of installation, maintenance, inspections, and testing of cathodic protection systems in accordance with NACE standards;

(e) Site suitability determinations in accordance with subsection 62-762.641(2), F.A.C.;

(f) Vapor monitoring plans and all records kept pursuant to the plan; and

(g) Closure assessment reports if the location continues as a facility.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761-710.

62-762.801 Out-of Service and Closure Requirements.

(1) Temporary out-of-service. Field-erected storage tank systems taken temporarily out-of-service shall:

(a) Continue to operate and maintain corrosion protection in accordance with paragraph 62-762.701(1)(b), F.A.C.;

(b) If the tank system has an external release detection method, perform release detection monthly in accordance with applicable provisions of Rules 62-762.601-.641, F.A.C.; and

(c) Leave venting systems open and functioning.

(2) Out-of-service storage tank systems.

(a) General.

1. Storage tank systems that are taken out-of-service, as defined in subsection 62-762.201(53), F.A.C., shall:

a. Continue to operate and maintain corrosion protection in accordance with paragraph 62-762.701(1)(b), F.A.C.;

b. Perform external release detection for sites without contamination, as applicable, every six months in accordance with provisions of subsection 62-762.641(2), F.A.C.;

c. Leave vent lines open and functioning;

d. Empty the system and cap or secure all lines, pumps, manways, and ancillary equipment, as applicable; and

e. Secure or close off the system to outside access.

2. If the storage tank system is required to be upgraded during the time that it is out-of-service, it shall be upgraded or replaced in accordance with this chapter before it is returned to service.

3. Systems with secondary containment installed and operated in accordance with this chapter may remain in a continuous out-of-service status for ten years. After this period, the system shall be returned to service or closed in accordance with subsection 62-762.801(3), F.A.C.

4. Tightness, pressure, or other tests shall be performed in accordance with subsection 62-762.641(3), F.A.C., as applicable, on any systems being returned to service.

(b) Systems without secondary containment shall not remain in a continuous out-of-service status for more than five years. Before the expiration of this five year time period, any remaining product and sludges shall be removed, and a closure assessment shall be performed in accordance with subsection 62-762.801(4), F.A.C. for:

1. AST Category-A and Category-B systems, regardless of when taken out-of-service, by December 31, 1999; or

2. Systems taken out-of-service after July 13, 1998.

(c) Out-of-service tanks that are returned to service shall be:

1. Inspected and evaluated in accordance with subparagraph 62-762.501(3)(b)1., F.A.C., for shop-fabricated tanks; or

2. Structurally evaluated in accordance with API Standard 653 for field-erected tanks, unless the system has been out-of-service for less than six months.

(d) Field-erected tanks changing the type of product stored within the tank shall comply with API Standard 653, Section 2.2.4.

(3) Closure of storage tank systems.

(a) General.

1. Closure of storage tank systems shall be performed by:

a. Removing all liquids and accumulated sludges;

b. Disconnecting and capping, or removing, all integral piping. Manways shall be secured to prevent access;

c. Closing the storage tank system in accordance with paragraphs 62-762.801(3)(b), F.A.C., as applicable; and

d. Conducting a closure assessment in accordance with subsection 62-762.801(4), F.A.C.

2. After closure, storage tank systems may be used to store materials or substances other than regulated substances in accordance with all applicable Department reference standards, (for example, API 1604). Owners and operators are advised that other federal, state, or local requirements may apply to these activities.

3. Monitoring wells associated with closed systems that are not being used for release detection or site assessment purposes shall be closed in accordance with paragraph 62-762.601(1)(k), F.A.C.

(b) Unmaintained systems shall be permanently closed within 90 days of discovery.

(c) The tank shall be rendered free of pollutant vapors at the time of closure to prevent hazardous explosive conditions, and maintained to prevent future explosive conditions.

(d) The tank shall be protected from flotation in accordance with NFPA 30, Section 2-6.

(4) Closure assessment of storage tank systems.

(a) At time of closure, replacement, installation of secondary containment, or change in service from a regulated substance to a non-regulated substance, an assessment shall be performed to determine if a discharge from the system or system components has occurred.

1. If a Site Rehabilitation Completion Order (SRCO) or a Monitoring Only Plan (MOP) Approval Order has been issued by the Department for a contaminated area of a site, a closure assessment shall be performed for any subsequent storage tank system removal, replacement, or installation of secondary containment.

2. Tanks, pipes, or other system components in contact with soil at any site are subject to closure assessment requirements.

(b) A closure assessment is not required for:

1. Sites with documented contamination requiring a site assessment in accordance with Chapter 62-770, F.A.C., including those that are eligible for the Early Detection Incentive Program (EDI), the Florida Petroleum Liability and Restoration Insurance Program (FPLRIP), and the Petroleum Cleanup Participation Program (PCPP), pursuant to Sections 376.3071 and 376.3072, F.S. Nevertheless, documentation of procedures followed and results obtained during closure shall be reported in a Limited Closure Summary Report, Form 62-761.900(8), and in accordance with Section A of DEP's "Storage Tank System Closure Assessment Requirements";

2. Systems initially installed with secondary containment, provided that no unexplained positive response of an interstitial release detection device or method occurred during the operational life of the system, or the secondary containment passed a breach of integrity test prior to closure;

3. Systems upgraded with secondary containment that have closed interstitial spaces, where a closure assessment was performed prior to installation of secondary containment, provided that the secondary containment passed a breach of integrity test in accordance with paragraph 62-762.641(3)(a), F.A.C.;

4. Double-walled shop-fabricated aboveground tanks; and

5. Aboveground systems with storage capacities less than 1,100 gallons that are upgrading with secondary containment, and that are elevated from and not in contact with the soil. Instead of performing a closure assessment, a visual inspection may be performed of the system and the ground surface underneath it for signs of a discharge. Written certification shall be provided to the County within 10 days after installation of the secondary containment, documenting that there has been no discharge.

(c) Closure assessment sampling and analysis shall be conducted according to DEP's "Storage Tank System Closure Assessment Requirements."

(d) A closure assessment report shall be submitted to the County within 60 days of completion of any of the activities listed in paragraph 62-762.801(4)(a), F.A.C. The report shall include sample types, sample locations and measurement methods, a site map, methods of maintaining quality assurance and quality control, and any analytical results obtained during the assessment in accordance with DEP's "Storage Tank System Closure Assessment Requirements."

(e) Persons are advised that contaminated soil excavated, disposed of, or stockpiled on site during the closure of a storage tank system is regulated by Chapter 62-770, F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.800.

62-762.821 Incident and Discharge Response.

(1) Incident response.

(a) If an incident occurs at a facility, actions shall be taken promptly to investigate the incident to determine if a discharge has occurred. Notification of the incident shall be sent to the County on Form 62-761.900(6). A discharge shall be reported in accordance with subsection 62-762.451(3), F.A.C., if one is discovered during the incident investigation.

(b) If the investigation indicates that the incident was not a discharge, a written confirmation and explanation shall be submitted to the County. Test results or reports, which support the findings, shall be maintained on site as records.

(c) The investigation shall be completed within two weeks of the date of discovery of the incident. At the end of this time period, either a discharge report form or a written confirmation and explanation that the release was not a discharge shall be submitted to the County.

(d) Any spill or loss of regulated substance into secondary containment shall be removed within three days of discovery.

(2) Discharge response.

(a) If a discharge of a regulated substance occurs at a facility, actions shall be taken immediately to contain, remove, and abate the discharge under all applicable Department rules (for example, Chapter 62-770, F.A.C., Petroleum Contamination Site Cleanup Criteria). Owners and operators are advised that other federal, state, or local requirements may apply to these activities. If the contamination present is subject to the provisions of Chapter 62-770, F.A.C., corrective action, including free product recovery, shall be performed in accordance with that chapter.

(b) When evidence of a discharge from a storage tank system is discovered and reported in accordance with subsection 62-762.451(3), F.A.C., the following actions shall be taken:

1. If the source or cause of the discharge is unknown, the discharge shall be investigated in accordance with NFPA 329,

Chapters 3 and 5;

2. The regulated substance shall be removed from the system as necessary to prevent further discharge to the environment. Notice of the need to take the system out-of-service on an emergency basis shall be made to the County in accordance with subsection 62-762.451(1), F.A.C.;

3. Fire, explosion, and vapor hazards shall be identified and mitigated; and

4. The system shall be repaired in accordance with Rule 62-762.701, F.A.C. If the system cannot be repaired, it shall be closed in accordance with subsection 62-762.801(3), F.A.C.

(c) The system shall be tested if the Department or County determines that:

1. There has been a failure to comply with the release detection requirements of Rules 62-762.601-.641, F.A.C.;

2. A release detection device, well, or method indicates that a discharge of a regulated substance has occurred, and the discharge was not previously reported; or

3. Groundwater contamination that is not associated with previously known contamination is present in the vicinity of the system and the system is likely to be a source of the contamination.

(d) Within three days of the discovery of a discharge, the following steps shall be initiated:

1. A test on the system in accordance with subsection 62-762.641(3), F.A.C., if the test is necessary to confirm a discharge; and

2. If found to be leaking, placement of the system out-of-service in accordance with subsection 62-762.801(2), F.A.C., until repaired, replaced or closed.

(e) Contaminated soil excavated, disposed of, or stockpiled on site during the closure of a storage tank system shall be managed in accordance with Chapter 62-770, F.A.C.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History–New 6-21-04.

Editorial Note: Formerly 62-761.820.

62-762.851 Alternative Requirements and Equipment Approvals.

(1) Alternative requirements.

(a) Any person subject to the provisions of this chapter may request in writing a determination by the Secretary or the Secretary's designee that any requirement of this chapter shall not apply to a regulated storage tank system at a facility, and shall request approval of alternate procedures or requirements.

(b) The request shall set forth at a minimum the following information:

1. The specific storage tank system or facility for which an exception is sought;

2. The specific provisions of Chapter 62-762, F.A.C., from which an exception is sought;

3. The basis for the exception;

4. The alternative procedure or requirement for which approval is sought;

5. Documentation that demonstrates that the alternative procedure or requirement provides an equivalent or greater degree of protection for the lands, surface waters or groundwaters of the State as the established requirement; and

6. Documentation that demonstrates that the alternative procedure or requirement is at least as effective as the established procedure or requirement.

7. If an alternate procedure or requirement is not able to be sought under subparagraph 5. or 6., then documentation that demonstrates that the specific provisions of this chapter from which the exception is sought imposes regulatory costs on the regulated entity that could be reduced through approval of a less costly regulatory alternative or requirement that provides a substantially equivalent degree of protection for the lands, surface waters, or groundwaters of the State as the established requirement.

(c) Within 60 days of the receipt of a request for approval of an alternative procedure or requirement, the Department shall approve the request or notify the responsible party in writing that the request does not demonstrate that the requirements of subsection 62-762.851(1), F.A.C., are met.

(d) The Secretary or the Secretary's designee shall specify by order each alternative procedure or requirement approved for an individual storage tank system or facility in accordance with this rule or shall issue an order denying the request for such approval. The Department's order shall be agency action, reviewable in accordance with Section 120.569 and 120.57, F.S.

(e) The provisions of this rule do not preclude the use of any other applicable relief provisions.

(2) Equipment approvals.

(a) Storage tank system equipment used in the State of Florida must have the approval of the Department before installation or use, with the exception of:

1. Dispensers, dispenser islands, nozzles, and hoses;
2. Monitoring well bailers;
3. Manhole and fillbox covers;
4. Valves;
5. Cathodic protection test stations;
6. Metallic bulk product piping;
7. Small diameter piping not in contact with soil, unless the piping extends over or into surface waters;
8. Vent lines; and
9. AST vents.

(b) Equipment approval requests shall be submitted to the Department with a demonstration that the equipment will provide equivalent protection or meet the appropriate performance standards contained in this chapter. Any approvals or denials received from other states shall be included in the approval request to the Department.

(c) A third-party demonstration by a Nationally Recognized Laboratory shall be submitted to the Department with the application. The third-party demonstration shall provide:

1. A technical evaluation of the equipment;
2. Test results that verify that the equipment will function as designed; and
3. A professional certification that the equipment meets the performance standards contained in Rule 62-762.501, F.A.C.

(d) Within 60 days of the receipt of a request for an equipment approval, the Department shall approve the request or notify the responsible party in writing that the request does not demonstrate that the requirements of subsection 62-762.851(2), F.A.C., are met.

(e) The Secretary or the Secretary's designee shall specify by order each equipment approval that is approved in accordance with this rule or shall issue an order denying the request for such approval. The Department's order shall be agency action, reviewable in accordance with Section 120.569 and 120.57, F.S.

Specific Authority 376.303 FS. Law Implemented 376.303 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.850.

62-762.891 Mineral Acid Storage Tank Requirements.

(1) Definitions. The following words, phrases, or terms used in this rule, unless the context indicates otherwise, shall have the following meaning:

(a) "Aboveground" means that more than 90 percent of a tank volume is not buried below the ground surface. An aboveground tank may either be in contact with or elevated above the ground.

(b) "Containment and integrity plan" or "CIP" means a document designed, created, and maintained at a facility, which shall be considered a public record and made available pursuant to the provisions of Chapter 119, F.S. The CIP establishes procedures for the inspection and maintenance program for tanks storing mineral acids at that facility. The inspection and maintenance program shall be designed for the chemical and physical characteristics of the specific mineral acid stored, and for the specific materials of construction of the tank. The CIP shall be designed to ensure control of the specific mineral acid for the expected lifetime of the tank.

(c) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, or dumping of any mineral acid which occurs and which affects lands and the surface and ground waters of the state.

(d) "Discovery" means, as related to a discharge, initial detection of mineral acids in ground water or surface water, or the initial detection of soil contamination, resulting from the discharge of mineral acids in quantities greater than the amounts reportable in Rule 62-762.891, F.A.C.

(e) "Existing storage tank" means a tank that was installed on or before January 7, 1992. Installation is considered to have begun if:

1. The owner or operator has obtained, or has applied for, all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank; and
2. Either a continuous on-site physical construction or installation program has begun or the owner or operator has entered

into contractual obligations which cannot be cancelled or modified without substantial economic loss.

(f) "Facility" means any non-residential location or part thereof containing an aboveground tank or tanks that contain specified mineral acids that have an individual storage capacity greater than 110 gallons.

(g) "Flow-through process tank" means an aboveground tank that contains hazardous substances or specified mineral acids and that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks include, but are not limited to, seal tanks, vapor recovery units, surge tanks, blend tanks, feed tanks, check and delay tanks, batch tanks, oil-water separators, or tanks in which mechanical, physical, or chemical change of a material is accomplished.

(h) "Inspection and maintenance plan" means a plan that establishes the procedures used to prevent releases of mineral acids.

(i) "Liner" means an artificially constructed material of sufficient thickness, density, and composition that will contain the discharge of any specified mineral acid from an aboveground tank until such time as the mineral acid can be neutralized and/or removed. The liner shall prevent any escape of specified mineral acids or accumulated liquid to the soil, surface water, or groundwater (except through secondary containment as provided in paragraph 62-762.891(1)(p), F.A.C.).

(j) "Mineral acids" means hydrobromic acid (HBr), hydrochloric acid (HCl), hydrofluoric acid (HF), phosphoric acid (H₃PO₄), and sulfuric acid (H₂SO₄), including those five acids in solution, if at least 20% by weight of the solution is one of the five listed acids.

(k) "New tank" means a tank that was installed after January 7, 1992.

(l) "Non-residential" means that the tank is not used at a private dwelling.

(m) "Operator" means any person operating a facility, whether by lease, contract, or other form of agreement.

(n) "Owner" means any person owning an aboveground tank subject to Sections 376.320-.326, F.S.

(o) "Permitted wastewater treatment system" means a facility to which the Department has issued a permit to treat wastewater and release the treated product into the environment.

(p) "Secondary containment" means a system that is used for release prevention, and may include one or more of the following devices:

1. A double-walled tank;

2. An external liner; or

3. A system or structure constructed such that accidental releases from a tank would be collected by a drainage system within the system or structure and routed to a permitted wastewater treatment system, plant recirculating process system, or alternative containment system approved by the Department in accordance with Rule 62-762.851, F.A.C.

(q) "Stationary" means a tank or tanks not meant for multiple site use or that remain in one location at the facility site for a period of 180 days or longer.

(r) "Tank" means an aboveground stationary device that is constructed primarily of non-earthen materials (e.g., concrete, metal, plastic, glass) that provides structural support and is designed primarily to contain mineral acids. Connected piping from the tank to and including the nearest cutoff valve shall be considered part of the tank for purposes of this definition. "Tank" does not include flow-through process tanks.

(s) "Upgrade" means the replacement of a tank or the installation of secondary containment.

(2) Applicability.

(a) The requirements of this rule apply to owners and operators of a facility with an aboveground storage tank with a storage capacity of more than 110 gallons that contains mineral acids.

(b) The following systems are exempt from the requirements of this rule:

1. Any mobile or skid tank that is moved at least every 180 days;

2. Any tank containing mineral acids that are less than 20% by weight of the solution;

3. Any tank of 110 gallons or less capacity that contains mineral acids;

4. Any flow-through process tank; and

5. Any tank containing mineral acids that are regulated as hazardous wastes under Subtitle C of the Resource Conservation and Recovery Act.

(3) Registration.

(a) The owner of any tank containing mineral acids shall register the tank with the Department on Form 62-761.900(2).

(b) A completed registration form shall be submitted to the Department by July 1, 1992, or no later than 30 days after mineral acids are put into a new storage tank.

(c) Each facility shall receive a registration placard upon payment of all applicable fees. The placard shall be available for inspection by the Department and filed with records maintained in accordance with Rule 62-762.891, F.A.C.

(4) Registration fees.

(a) Registration fees are due from the owner or operator for all registered tanks as indicated in this subsection.

(b) Registration fee schedule.

1. Within 30 days after receipt of notification by the Department, the following fees shall be submitted:

a. \$50.00 per tank for each initial registration;

b. \$25.00 per tank for annual renewal of tanks with capacities of 125,000 gallons or less; and

c. One dollar per every 5,000 gallons of storage capacity, per tank, for annual renewal of tanks with capacities of greater than 125,000 gallons.

2. Total annual registration fees for renewals shall not exceed \$2,500.00 per facility.

(5) Notification.

(a) The Department shall be notified of the following items on Form 62-761.900(2):

1. The date and method of closure, at least 30 days before closure of a tank;

2. Any change in ownership of a tank, no later than 30 days after ownership has been transferred. The notice of change of ownership shall be provided by the transferor. The notice shall include a copy of the bill of sale or a letter of acceptance by the new owner;

3. Upgrading of a tank, at least 10 days before upgrading occurs, except for emergency replacements of tanks or connected piping required by an actual or anticipated discharge. Notification of emergency replacement shall be provided within 10 days after the emergency replacement.

4. Any change in registration form information, including any change in the identity of the material being stored.

(b) The Department shall be notified of the certification of the CIP or the secondary containment system on Form 62-762.891(1) within 10 days of the completion of the form. The Containment and Integrity Plan Certification Form shall be signed by a professional engineer registered in the State of Florida.

(c) Within three working days of discovery, the Department shall be notified of any release into a secondary containment system of a mineral acid in excess of 110 gallons, or the reportable quantity in effect on July 1, 1991, under the Comprehensive Environmental Response Compensation and Liability act of 1980, whichever is greater.

(6) Reporting of discharges. Within 24 hours of discovery, or before the close of the next business day, Form 62-761.900(1) shall be used to report any discharge exceeding:

(a) 100 pounds of hydrobromic or hydrofluoric acid;

(b) 1000 pounds of sulfuric acid; or

(c) 5000 pounds of hydrochloric or phosphoric acid.

(7) Performance standards for mineral acid tanks.

(a) General.

1. Existing mineral acid storage facilities that were in operation after January 1, 1992, shall have either a CIP or secondary containment.

2. New or replacement mineral acid tanks installed after July 1, 1992, shall have secondary containment.

(b) Containment and Integrity Plans. The CIP shall include procedures and requirements to minimize the risk of spills, releases, and discharges from tanks. The CIP shall be reviewed and updated at least every two years by a professional engineer registered in the State of Florida. The CIP shall be made available for inspection by the Department, and shall address:

1. An inspection and maintenance program detailing:

a. The qualifications of the person providing the inspection;

b. The inspection and routine maintenance procedures;

c. Schedules used to evaluate and maintain the integrity of the tank, and secondary containment (if applicable);

d. Release detection procedures; and

e. Frequency of inspections and proper response to inspection findings.

2. Materials of construction for each tank and compatibility of the mineral acid with the construction materials;

3. Secondary containment of tanks, if applicable;

4. Location of surface water bodies near the tank and the potential for discharges to enter the surface water body or to move off-site;

5. Discharge response procedures for containment and abatement;
6. Cleanup procedures; and
7. For tanks without secondary containment, the CIP shall also address:
 - a. Procedures and equipment for treating spill wastes;
 - b. Procedures for disposing of spill wastes;
 - c. Containment and diversionary structures to prevent discharges from entering the nearby surface water bodies or moving off-site; and
 - d. A demonstration of corrosion protection of the tank if the tanks are in contact with the soil.

(c) Containment and Integrity Plan alternatives. In place of the CIP, a certification may be provided to the Department by a professional engineer registered in the State of Florida that:

1. No mineral acid tank at the facility is in direct contact with the ground; and
2. A secondary containment system has been placed under and around each tank, and sealed to its supports. Secondary containment shall be either:
 - a. Designed and built to contain in excess of 110% of the capacity of the largest tank within the containment; or
 - b. Equipped with a drainage system routed to a permitted wastewater treatment system that is capable of containing any accidental release from the tank.

(d) Secondary containment. Tanks installed after July 1, 1992, shall have secondary containment and meet the requirements of this section before the tank is placed into active service. Liners used for secondary containment that are installed after July 13, 1998 shall meet the requirements of subparagraphs 62-762.501(1)(e)1.-3., F.A.C.

(e) Certification. A professional engineer registered in the State of Florida shall certify that:

1. The tanks covered by the CIP for that facility have been inspected and maintained in accordance with the CIP and that the integrity and containment of the tanks has not been compromised. For purposes of this certification, maintenance will be presumed to have been performed if the professional engineer verifies that records demonstrating compliance with this subsection are available, complete, and indicate proper maintenance; or
2. The tank or tanks have secondary containment in accordance with this subsection.

(8) Recordkeeping. Copies of the following shall be maintained and made available for inspection by the Department at reasonable times:

- (a) The Containment and Integrity Plan; or
 - (b) The certification of secondary containment.
- (9) Discharge response.

(a) When evidence of a discharge from a tank is discovered and reported in accordance with subsection 62-762.891(6), F.A.C., the owner or operator shall:

1. Remove as much of the mineral acid from the tank as necessary to prevent further discharge;
2. Repair the tank in accordance with original design specifications; and
3. If the storage tank cannot be repaired, all mineral acid shall be removed from the tank and the tank shall be permanently closed.

(b) Any owner or operator of a facility discharging mineral acids shall immediately undertake to contain, remove, neutralize, or otherwise abate the discharge.

(10) Forms. Copies of forms may be obtained by writing to the Administrator, Storage Tank Regulation Section, Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. The following forms shall be used for mineral acid tanks:

- (a) Discharge Report Form 62-761.900(1), July 13, 1998.
- (b) Storage Tank Facility Registration Form 62-761.900(2), July 13, 1998.
- (c) Containment and Integrity Plan Certification Form 62-762.891(1), July 13, 1998.

Specific Authority 376.322(3), 403.087 FS. Law Implemented 376.324, 376.325, 403.087 FS. History—New 6-21-04.

Editorial Note: Formerly 62-761.890.

62-762.901 Storage Tank Forms.

The forms used by the Department in the Storage Tank System Program are adopted and incorporated by reference in this section.

The forms are listed by rule number, which is also the form number, and with the subject title and effective date. Copies of forms may be obtained by writing to the Administrator, Storage Tank Regulation Section, Division of Waste Management, Florida Department of Environmental Protection, 2600 Blair Stone Road, M.S. 4525, Tallahassee, Florida 32399-2400.

- (1) Form 62-761.900(1) Discharge Report Form, July 13, 1998.
- (2) Form 62-761.900(2) Storage Tank Facility Registration Form, July 13, 1998.
- (3) Form 62-761.900(3) Certification of Financial Responsibility, July 13, 1998.
- (4) Form 62-761.900(4) Alternative Requirement or Procedure Form, July 13, 1998.
- (5) Form 62-761.900(6) Incident Notification Form, July 13, 1998.
- (6) Form 62-761.900(8) Limited Closure Summary Report Form, July 13, 1998.

Specific Authority 376.303, FS. Law Implemented 376.303, FS. History–New 6-21-04.

Editorial Note: Formerly 62-761.900.

Appendix B
Tank Data Sheets and Photographs

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



JSSROC, Tank ID: 290-ER

NAS Key West
Aboveground Storage Tanks
Truman Annex



JIATF, Tank ID: 290-R

NAS Key West
Aboveground Storage Tanks
Truman Annex



JIATF, Tank ID: 290-A
(Day Tank on left)

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



JIATF, Tank ID: 291

NAS Key West
Aboveground Storage Tanks
Truman Annex



Building 437 Emergency Generator AST, Tank ID: A-437

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



Barracks, Tank ID: 439-R

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



Tank ID: 1279-BR

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



Barracks, Tank ID: 1351-R

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



Barracks, Tank ID: 1352

NAS Key West
Aboveground Storage Tanks
Truman Annex



JIATF, Tank ID: 1355

**NAS Key West
Aboveground Storage Tanks
Truman Annex**



Building 4199 Emergency Generator AST, Tank ID: A-4199FT

NAS Key West
Aboveground Storage Tanks
Naval Regional Medical Center



Tank ID: L-47

**NAS Key West
Aboveground Storage Tanks
Sigsbee Park**



Water Tower, Tank ID: V-1274

**NAS Key West
Aboveground Storage Tanks
Sigsbee Park**



Main Gate, Tank ID: V-1552-BR

**NAS Key West
Aboveground Storage Tanks
Sigsbee Park**



Tank ID: V-4111-AR

**NAS Key West
Aboveground Storage Tanks
Sigsbee Park**



Navy Lodge, Tank ID: V-4114-R

**NAS Key West
Aboveground Storage Tanks
Sigsbee Park**



Marina, Tank ID: V-4186

**NAS Key West
Aboveground Storage Tanks
Saddlebunch**



Tank ID: J-1561-A

**NAS Key West
Aboveground Storage Tanks
Saddlebunch**



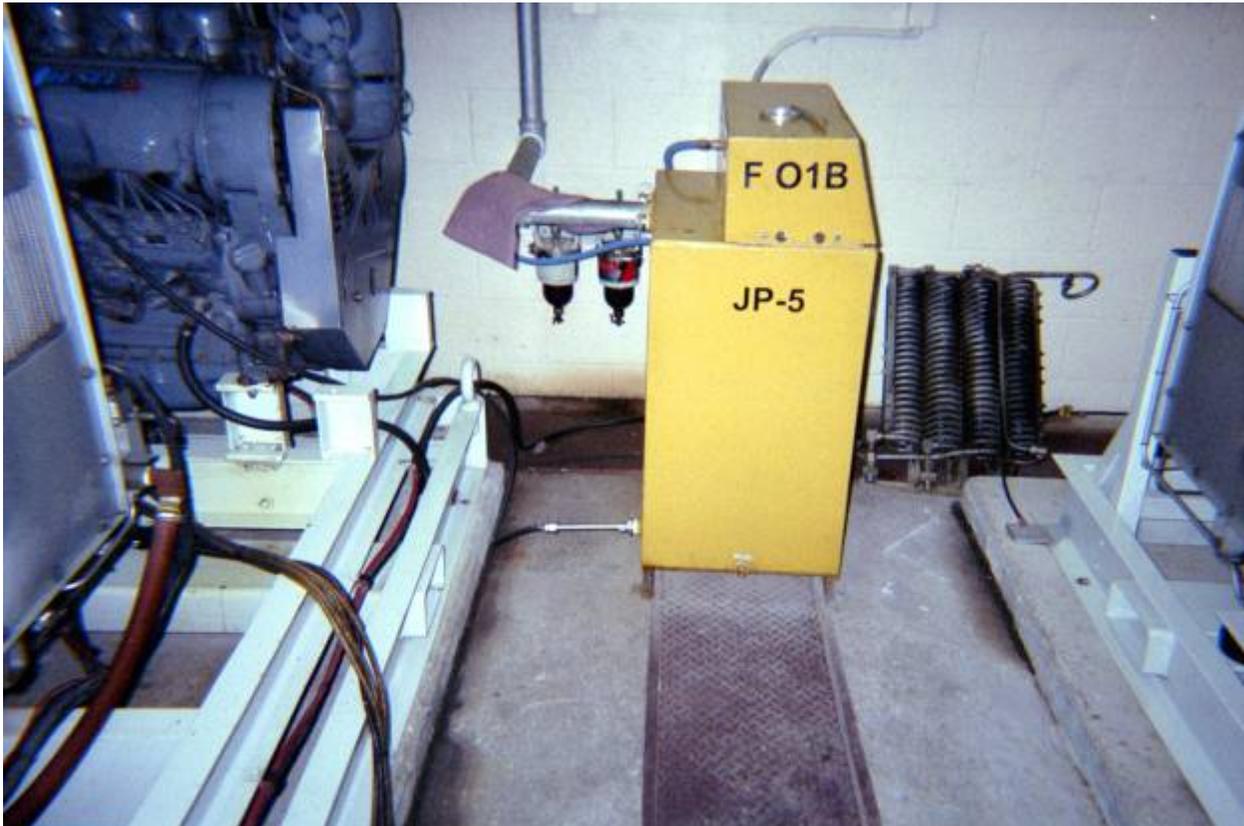
Radio Transmitter, Tank ID: J-1563-R

**NAS Key West
Aboveground Storage Tanks
Fleming Key**



Special Forces, Tank ID: F-01

NAS Key West
Aboveground Storage Tanks
Fleming Key



KW-200, SF Comp/Gen Bldg., Tank ID: F-01B

NAS Key West
Aboveground Storage Tanks
Fleming Key



KW-200, SF Comp/Gen Bldg., Tank ID: F-01C

NAS Key West
Aboveground Storage Tanks
Fleming Key



KW-200, SF Comp/Gen Bldg., Tank ID: F-01D

**NAS Key West
Aboveground Storage Tanks
Fleming Key**



Tank ID: F-02

NAS Key West
Aboveground Storage Tanks
Fleming Key



Tank ID: KW-400

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Firehouse, Tank ID: A-132

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Pump Station, Tank ID: A-229A, B

**NAS Key West
Aboveground Storage Tanks
Boca Chica**

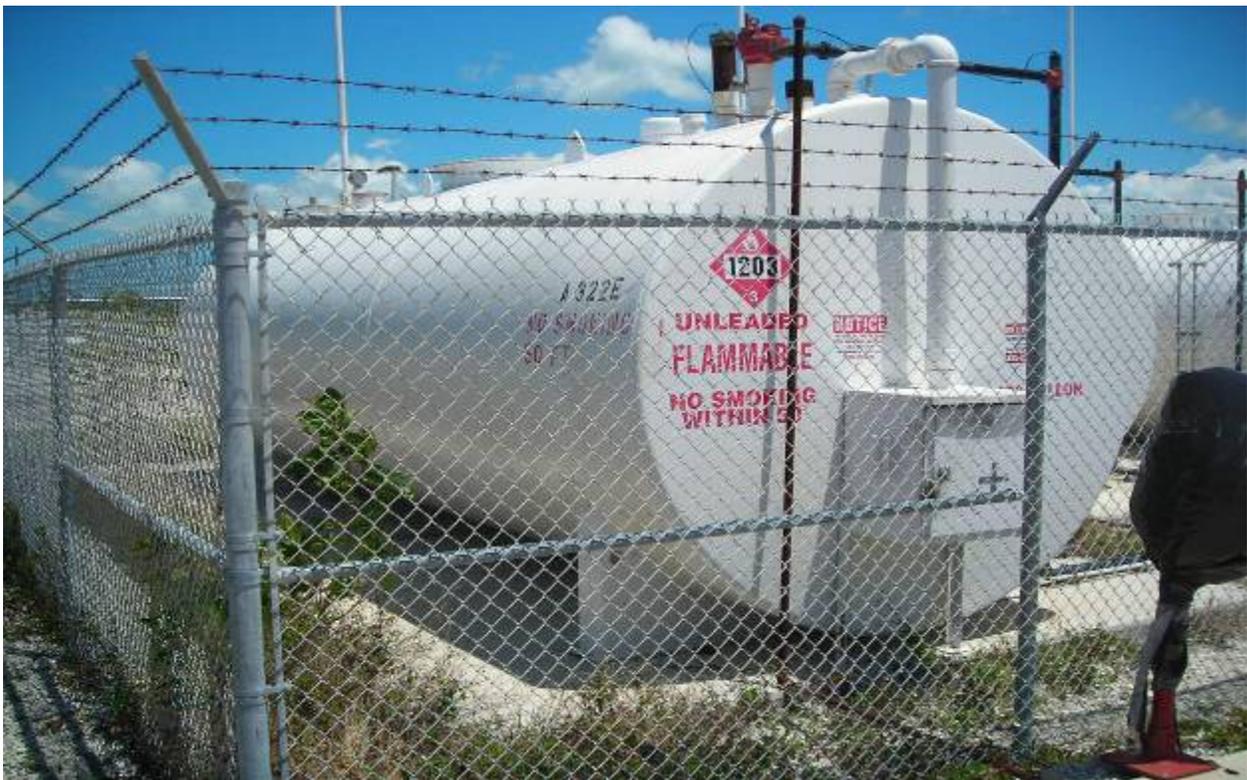


Electrical Station, Tank ID: A-230-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank ID: A-322E, F, G



Tank ID: A-322E

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank ID: A-322F



Tank ID: A-322G

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Administration Building, Tank ID: A-324-R

NAS Key West
Aboveground Storage Tanks
Boca Chica



Power Plant, Tank ID: A-419D, E

NAS Key West
Aboveground Storage Tanks
Boca Chica



Tank ID: A-419F, G



Tank ID: A-419F



Tank ID: A-419G

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Pump Station, Tank ID: A-447

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank ID: A-526-A

**Non-regulated AST- taken out of service 2004.
Monthly inspection records reside in Public Works Environmental Office.**

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



CBO, Tank ID: A-638-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



CBO, Tank ID: A-639-R

NAS Key West
Aboveground Storage Tanks
Boca Chica



CBO, Tank ID: A-648-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



CBO, Tank ID: A-649-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



CBO, Tank ID: A-727-R

NAS Key West
Aboveground Storage Tanks
Boca Chica



Truck Fill Stand, Tank ID: A-902-BR

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank Farm, Tank ID: A-924-R & A-925-R



Tank Farm, Tank ID: A-924-R



**Tank Farm, Tank ID: A-925-R
(Out of Service)**

NAS Key West
Aboveground Storage Tanks
Boca Chica



Tank Farm, Tank ID: A-929-B

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Truck Fill Stand, Tank ID: A-935-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank Farm, Tank ID: A-938

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank Farm, Tank ID: A-944

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank Farm, Tank ID: A-945

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Tank Farm, Tank ID: A-958

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Building 981 Fueling Bowsers, Tank ID: A-981-A & A981-B

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



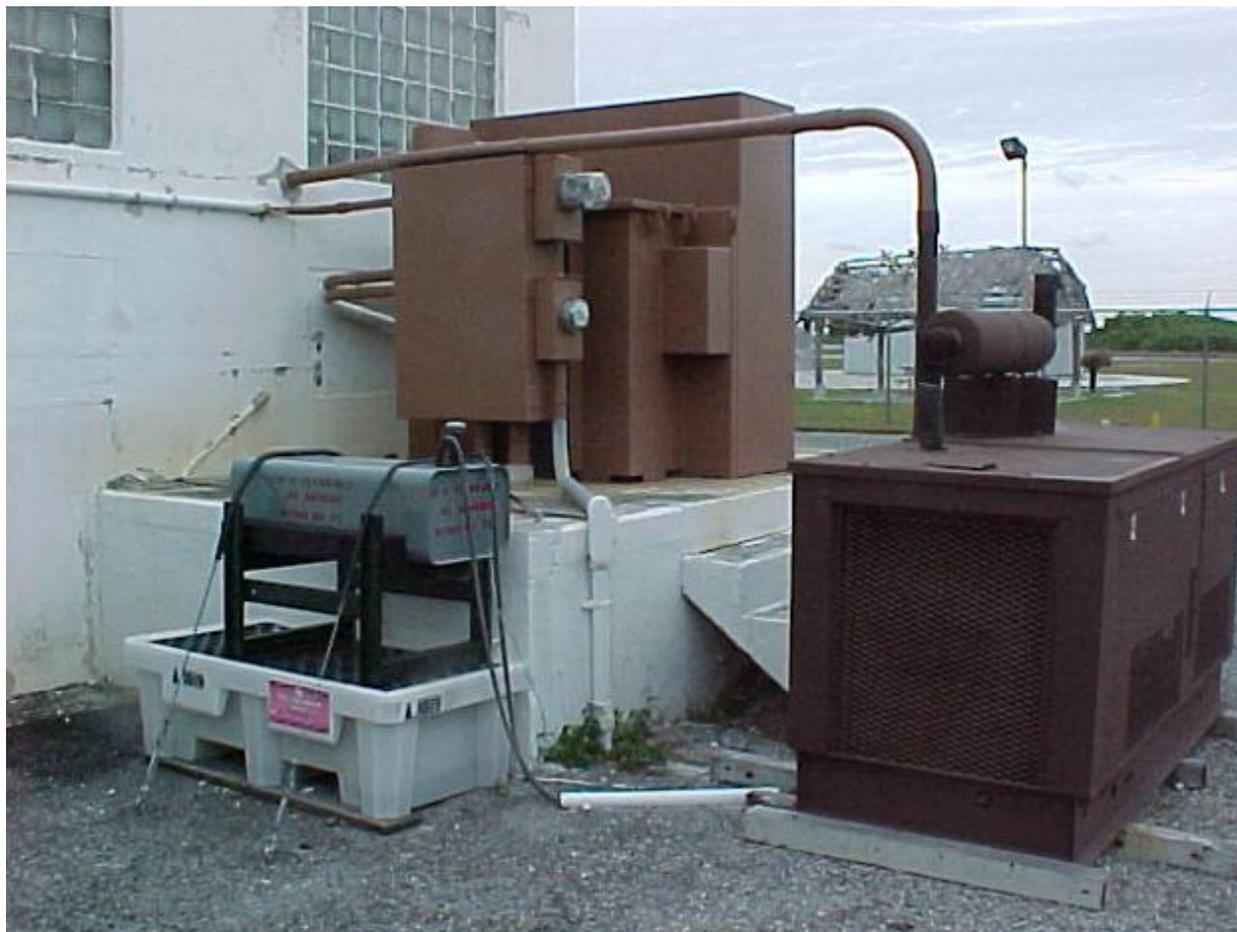
Message Center, Tank ID: A-1004

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Transmitter Site, Tank ID: A-1006-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Message Center, Tank ID: A-1019

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



TACAN Site, Tank ID: A-1020-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Building 1103 Emergency Generator AST, Tank ID: A-1103-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



TACTS Site, Tank ID: A-1125

NAS Key West
Aboveground Storage Tanks
Boca Chica



Tank Farm Building 4010, Tank ID: A-4010

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



PAR Site, Tank ID: A-4054

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Airfield Operations, Tank ID: A-4085-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



TACTS, Tank ID: A-4082

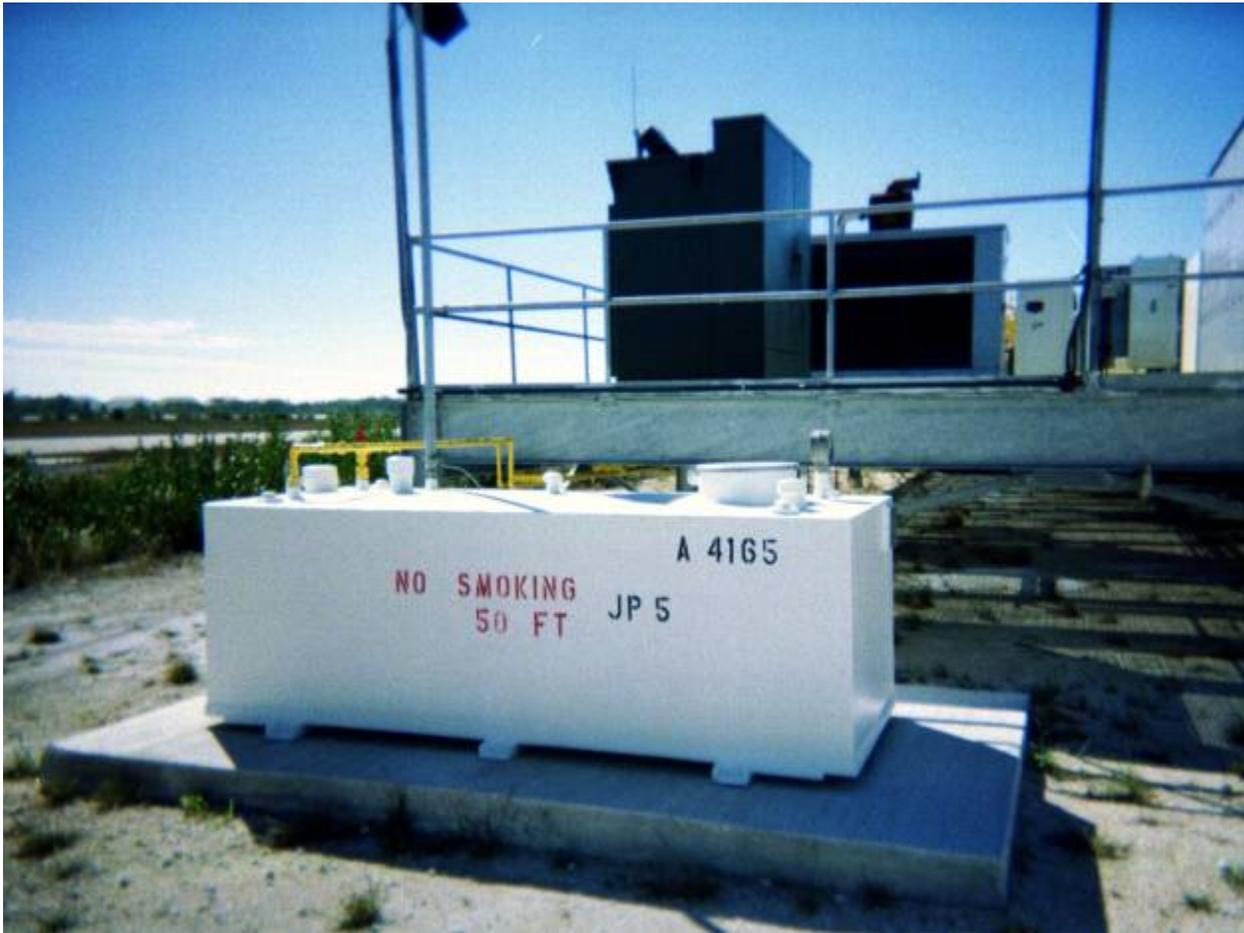
**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Pump Station, Tank ID: A-4162-3, 4, 5



**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Air Start, Tank ID: A-4165-R

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



FAA, Tank ID: A-4173

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Waste Water Treatment Plant, Tank ID: A-4174

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Operations Building 4203 Emergency Generator, Tank ID: A-4203

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



NOAA Engine Generator, Building, Tank ID: NOAA-1A and 1B

NAS Key West
Aboveground Storage Tanks
Boca Chica



Hawk Missile Site, Tank ID: NOAA-1

**NAS Key West
Aboveground Storage Tanks
Boca Chica**



Runway Arresting Gear, Tank ID: AG-103-A, AG-104-A, AG-233-A, AG-234-A, AG-263-A, AG-264-A, AG-509-A, AG-510-A, AG-759-A, AG-760-A, AG-837-A, AG-840-A

NAS Key West
Aboveground Storage Tanks
Trumbo Point



Port Operations Building, Tank ID: C-1

**NAS Key West
Aboveground Storage Tanks
Trumbo Point**



Fire Station, Tank ID: C-5

**NAS Key West
Aboveground Storage Tanks
Trumbo Point**



Water Reservoir, Tank ID: C-83

NAS Key West
Aboveground Storage Tanks
Trumbo Point



BOQ, Tank ID: C-2076

**NAS Key West
Aboveground Storage Tanks
Trumbo Point**



Fuel Farm, Tank ID: D-29R

**NAS Key West
Aboveground Storage Tanks
Trumbo Point**



Near Key West Pipeline Office, Tank ID: D1292-BR

Appendix C
Inspection Forms

OIL/WATER SEPARATOR (OWS) INSPECTION CHECKLIST

Instructions: Complete routine external visual inspection of OWS. Notify Environmental Engineer immediately if any significant deficiencies are identified.

Regulatory Driver: 40 CFR 112

Frequency: Quarterly

Site/Date: _____

Inspector: _____

	SAT	UNSAT	NA	CAR	Comments
DETECTION¹					
Presence of Free Product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Presence of Sheen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Presence of Fuel Odor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Presence of Down Stream Oil Source ²	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
STRUCTURAL					
OWS Functioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Gate and Valve Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Wall/Separator Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Shoreline/OWS Contact and Seal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
FLOW					
OWS Free of Blockage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Up/down Stream Free of Blockage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Note:

SAT – satisfactory

UNSAT – unsatisfactory

NA – not applicable

CAR – corrective action required

1 – Inspect OWS and effluent from Outfalls 4 and 7 – current OWSs (2). Inspect OWS and effluent from Outfalls 2 and 3 future OWSs (2 at Diesel Fuel Area).

2 – The drainage ditch preceding Outfall 4 has the potential to receive a release of oil from nearby Depot activities. Therefore, an oil release could theoretically occur between the OWS and Outfall 4. Outfall 7 and its associated OWS are isolated from nearby Depot activities. Therefore, this checklist item is only applicable to the OWS at Outfall 4.

ANCILLARY AST, GENERATOR AND TRANSFORMER INSPECTION CHECKLIST

Instructions: Complete routine external visual inspection of ancillary ASTs (i.e., ASTs <5,000 gal.), diesel powered electrical generators and pad-mounted electrical transformers. Notify Environmental Engineer immediately if any significant deficiencies are identified.

Regulatory Driver: 40 CFR 112 and FL DEP 62-761

Frequency: Monthly – except transformers (semi annually) [FL DEP cites frequency to be no more than every 35 days for ASTs > 550 gal.].

Site/Date: _____

Inspector: _____

	Yes	No	NA	CAR	Comments
STRUCTURAL INTEGRITY					
Surface free of leaks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Valves and gaskets free of leaks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Condition sound (no rusting, corrosion, pitting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bolts, rivets, welds and seams intact/sound?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Foundation intact/sound?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Level gauges and alarms working?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Vents unobstructed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
ATTACHED PIPING					
Surface free of leaks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Valves and fittings free of leaks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Piping adequately supported?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pipes and supports free of corrosion?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Buried pipes exposed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Out-of-service pipes capped?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Signs/barriers present near aboveground piping?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Localized vegetation free of distress?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SECONDARY CONTAINMENT					
Drainage valves closed and locked?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Drainage valves free of leaks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Containment area free of drain(able) standing water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Standing water free of product/sheen?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Debris absent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Containment structure intact/sound?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SECURITY					
Unit locked?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Gates/fences intact/sound?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Gates/fences locked?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Starter controls locked?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Lighting adequate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Note:

NA – not applicable

CAR – corrective action required

PIPING INSPECTION CHECKLIST

Instructions: Complete routine external visual inspection of product piping. Notify Environmental Engineer immediately if any significant deficiencies are identified.

Regulatory Driver: FL DEP 62-761

Frequency: Monthly.

Site/Date: _____

Inspector: _____

	SAT	UNSAT	NA	CAR	Comments
LEAKS					
Piping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Expansion Joints	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Clamps and Supports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Valves	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
MISALIGNMENT					
Piping Misalignment/Restricted Movement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Expansion Joint Misalignment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
VIBRATION					
Excessive Overhung Weight	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Inadequate Support	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Thin, Small-bore, or Alloy Piping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Threaded Connections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Loose Supports Causing Metal Wear	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SUPPORTS					
Shoes off Support	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Hanger Distortion or Breakage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bottomed-Out Springs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Excessive Pipe Sag	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Brace Distortion/Breakage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Loose Brackets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Slide Plates/Rollers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Counter Balance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
CORROSION					
Piping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Supports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Insulation Interfaces	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Biological Growth	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
MISCELLANEOUS					
Bolts and Nuts Present/Tight	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pipe and Valve Labeling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Grounding/Anode Straps	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Note:

SAT – satisfactory

UNSAT – unsatisfactory

NA – not applicable

CAR – corrective action required

CATHODIC PROTECTION SYSTEM INSPECTION CHECKLIST

Instructions: Complete routine external operational inspection of cathodic protection (CP) system. Notify Environmental Engineer immediately if any significant deficiencies are identified.

Regulatory Driver: FL DEP 62-761

Frequency: Every Two Months (for impressed current systems).

Site/Date: _____

Inspector: _____

	SAT	UNSAT	NA	CAR	Comments
BULK TANKS AND PIPING					
Test Stations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Connections	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Electrical Panel Box	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Rectifier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
CP Cable (condition and connections)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
FUEL PIER					
CP Cable at Pilings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
CP Cable under Pier (suspended)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Electrical Panel Box	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Rectifier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
OPERATIONAL					
Output Normal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Power Consumption Normal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Satisfactory Electrical State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Note:

SAT – satisfactory

UNSAT – unsatisfactory

NA – not applicable

CAR – corrective action required

BULK STORAGE TANK ROUTINE IN-SERVICE INSPECTION CHECKLIST

Instructions: Complete routine external in-service inspection of bulk storage tanks (i.e., JP-5, JP-8 and DFM tanks). Notify Environmental Engineer immediately if any significant deficiencies are identified.

Regulatory Driver: FL DEP 62-761

Frequency: Monthly¹.

Site/Date: _____

Inspector: _____

	SAT	UNSAT	NA	CAR	Comments
FOUNDATION					
Leaks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Intact/Sound	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Settlement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SHELL					
Leaks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Distortion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Paint Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pitting and Corrosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bottom/Foundation Seal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
ROOF					
Leaks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Paint Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pitting and Corrosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Drainage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Seal Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
MANWAYS, MANIFOLDS AND NOZZLES					
Leaks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Sealing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pitting and Corrosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
PIPING					
Leaks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Paint Condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pitting and Corrosion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Adequate Support	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SECONDARY CONTAINMENT					
Free of Stormwater ^{2,3}	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Free of Debris and Vegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Cracks, Holes or other Breaches	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Drain Valve Closed and Locked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Drain Valve Functioning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
MISCELLANEOUS					
Grounding/Anode Straps	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
High Level Alarms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Remote/Side Gauges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Note:

1 – not to exceed 35 days between inspections

2 – stormwater is to be drained within 7 days of rain event

3 – stormwater must be treated before discharge if sheen present

SAT – satisfactory

UNSAT – unsatisfactory

CAR – corrective action required

NA – not applicable

TRUCK LOADING STATION INSPECTION CHECKLIST

Instructions: Complete routine external visual inspection of truck loading stations. Notify Environmental Engineer immediately if any significant deficiencies are identified.

Regulatory Driver: 40 CFR 112 and FL DEP 62-761

Frequency: Weekly.

Site/Date: _____

Inspector: _____

	SAT	UNSAT	NA	CAR	Comments
HOSES, PIPES AND VALVES					
Leaks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Operation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Deterioration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Clamps and Supports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
STRUCTURE					
Bolts, Clamps and Supports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Roofing and Ladders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
GENERAL					
Electrical Ground	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Portable Equipment Stowed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Secondary Containment Structure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Instruction/Warning Signage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Traffic Control Devices	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Dispenser Labeling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Security Lighting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
CONTROL DEVICES					
Early Departure Warning Device	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Starter Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Scully System	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Dead-man Controls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Pumps	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
SECONDARY CONTAINMENT					
Standing Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Valves Closed and Locked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Oil Stains/Sheen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Note:

SAT – satisfactory

UNSAT – unsatisfactory

NA – not applicable

CAR – corrective action required

Appendix D
Storm Water Drainage Basins

Description of Drainage Basins

1.3.1.1 Site Location

NASKW is located approximately 150 miles southwest of Miami on the westernmost of two major islands of the Florida Keys (Boca Chica and Key West). The Overseas Highway (US Highway No. 1) connects it to the mainland. Key West is about four miles long and 1.5 miles wide; Boca Chica Key is approximately 3 miles long and 3 miles wide.

1.3.1.2 Site Description

The primary mission of NASKW is to maintain and operate facilities and provide services and material to support operations of aviation activities and units of the operating forces of the Navy and other activities and units as designated by the Chief of Naval Operations.

NASKW has a number of noncontiguous facilities on Boca Chica and in downtown Key West. These facilities include the Naval Air Station at Boca Chica, Sigsbee Park, Trumbo Point, Truman Annex, and others totaling approximately 5,000 acres.

1.3.1.3 Site Drainage

Storm water runoff within the basin flows to a series of catch basins storm water runoff at NASKW can be divided into two categories: runoff associated with developed (paved) areas, and runoff from undeveloped areas. Runoff from paved areas is generally directed to storm drain inlets, ditches, and pipe culverts with designated outfall points. Runoff associated with undeveloped areas is generally directed to ditches and lowlands. Runoff from unpaved areas has a high infiltration rate since the area soils are primarily sand and coral. During the field reconnaissance for the SWPPP, all of the pipe outfall discharges, and many of the pipes themselves, were surcharged with water (tidal influences or minimal slopes due to a lack of topographic relief).

In the delineation of the drainage areas at NASKW, specific topographic data was not available. Information obtained from the USGS Quadrangles for the area was inconclusive and did not indicate specific drainage patterns. Information available from the Public Works Department at NASKW indicated storm drainage systems; i.e., catch basins, culverts, pipes, outfalls, etc. Topographic information was not available. Because of the lack of specific information relative to surface flow, the drainage basin's delineation has been approximated based on observed field conditions and assumptions based on gradient. Drainage at NASKW, including Boca Chica, Fleming Key, Trumbo Point, Truman Annex, and Sigsbee Park, comprise 51 separate drainage basins. Within these 51 predominate areas, there are approximately 30 direct discharges either through drainage pipes or concentrated ditch flows. There are 21 drainage basins that either sheet flow to low points with no apparent outfall or sheet flow off-site with no concentrated outfall. The basins are described as follows:

Boca Chica Key

Drainage Basin "A:" - This basin is located north of Forrestal Street, south of Highway 1, east of Shangri-la Avenue and comprises approximately 6.36 acres. Industrial areas of concern within this basin are associated with the Morale, Welfare and Recreation Hobby Shop. Storm water runoff within the basin flows easterly to a series of catch basins. The catch basins are interconnected by a series of sub-surface drainage pipes. The discharge point for this basin is from two 12 inch pipes into the lagoon (outfall #001) located at the northeast corner of the basin.

Drainage Basin "B" - This basin is located north of Langley Street, south of the lagoon, west of Ticonderoga Avenue and comprises approximately 8.99 acres. There are no industrial areas of concern associated with this basin. The runoff within this basin is primarily associated with residential housing. Storm water runoff within the basin flows east then north to a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is from two 12 inch pipes into the lagoon at the north side of the basin (outfall #002). Material provided concerning sub-surface pipes indicates a connection between Drainage Basins "B" and "C". It appears that if the sub-surface drainage pipes flow in Drainage Basin "B" exceed capacity, the excess is diverted to Drainage Basin "C" by way of a 12 inch sub-surface pipe.

Drainage Basin "C" - This basin is located north of Langley Street and south of the vegetated area adjacent to and south of the lagoon and comprises approximately 17.43 acres. Industrial areas of concern within the basin are associated with Public Works Utilities.

Storm water runoff within the basin flows west and north to a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is from a 30 inch pipe into the lagoon at the northeast corner of the basin (outfall #003).

Drainage Basin "D" - this basin is located north of Midway Avenue, south of Forrestal Street, west of the lagoon and comprises approximately 37.69 acres. Industrial activities within the basin are from the Public Works Transportation Department, Public Works Utilities Department and Public Works Fuel Stand.

Storm water runoff within the basin flows to a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is from a 24-inch pipe into the lagoon at the east side of the basin (outfall #004).

Drainage Basin "E" - This basin is located north of Taxiway "A", south of Midway Avenue and comprises approximately 117.43 acres. Industrial areas of concern within the basin are associated with the Public Works Utility Department, Public Works Transportation Department, VF-45/Lockheed Maintenance Hangar, Fleet Liaison, Supply Warehouse, and Fuel Supply Operations.

Storm water runoff within the basin flows to one of three outfall locations, that all flow into one lagoon that does not have a surface discharge. The following are the various routes the storm water may take:

1. Storm water surface flows from Building A981 to a series of catch basins and sub-surface drainage pipes flowing in a northeasterly direction. The discharge point for this area of the basin is from a 36-inch and a 33-inch pipe into the lagoon (outfall #005).

2. Storm water flows from Building A936 northerly through a series of sub-surface drainage pipes. It then flows north then east through a drainage ditch and finally southeast to a discharge point into the lagoon (outfall #006).
3. Storm water flows from the Public Works area through a series of catch basins and sub-surface drainage pipes to a drainage ditch flowing west then southwest to a discharge point into the lagoon (outfall #007).
4. Storm water runoff from the Fuel Supply Operations area surface flows to a low point within the basin. There is no apparent outfall for the storm water flow in the Fuel Supply Operations area.

Drainage Basin "F" - This basin is located northwest of Runway "3-21", south of Midway Avenue and comprises approximately 70.75 acres. Industrial activities within the basin include OMD operations which consist of flammable storage, hazardous waste storage, and an aircraft hanger; the Fire Department; Arresting Gear Operation; and Public Works Utility Department Warehouse.

Storm water within the basin flows east then northeast through a series of catch basins, sub-surface drainage pipes, and a French drain. The discharge point for the basin is a 24-inch pipe into a lagoon at the northeast side of the basin (outfall #008).

Drainage Basin "G" - This basin is located north of Runway "7-25", southeast of Taxiway "H", southwest of Taxiway "G" and comprises approximately 111.40 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows towards a low point, then to a pipe at the northeast corner of the basin. Water discharges through the pipe and into the lagoon (outfall #009).

Drainage Basin "H" - This basin is located north of Taxiway "G", south of a lagoon and comprises approximately 1.13 acres. Past industrial activities within the basin are from the Aircraft Intermediate Maintenance Division's (AIMD) Jet Engine Test Cell (no longer in operation). Storm water runoff within the basin surface flows north into a lagoon. There is no specific outfall point to this basin.

Drainage Basin "I" - This basin is located north of Runway "7-25", south of Taxiway "F" and comprises approximately 22.10 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows to a low point within the basin. There is no apparent outfall to this drainage basin.

Drainage Basin "J" - This basin is located north of Taxiway "A", south of Drainage Basin "E" and comprises approximately 22.68 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows to a drainage ditch, which flows in a westerly direction towards a lagoon. The discharge point for this basin is a 24-inch pipe at the western edge of the basin (Outfall #010).

Drainage Basin "K" - This basin is located north of Runway "7-25", south of Taxiway "A", west of Taxiway "C" and comprises approximately 20.01 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows to a low point. There is no apparent outfall to this drainage basin.

Drainage Basin "L" - This basin is located north of Runway "7-25", south of Taxiway "A", east of Taxiway "C" and comprises approximately 72.65 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows towards a centrally located low point. There is apparent no outfall to this drainage basin.

Drainage Basin "M" - This basin is located north of Drainage Basin "N", south of Runway "7-25", and comprises approximately 27.47 acres. Industrial areas of concern within the basin include a portion of AIMD Airframes Testing and Ground Support Equipment and VF45 Maintenance Hangar.

Storm water runoff within the basin surface flows to a lagoon located west of the basin. There are two 24-inch pipes located at the southwest corner of the drainage basin which discharge runoff waters to the adjacent lagoon (outfall #011).

Drainage Basin "N" - This basin is located north of Midway Avenue, south of Drainage Basin "M", and comprises approximately 5.33 acres. Industrial areas of concern within the basin include a portion of AIMD Airframes Testing and Ground Support Equipment and VF45 Maintenance Hangar.

Storm water runoff within the basin surface flows southwesterly to a low point, where a 24-inch pipe discharges runoff waters to an adjacent lagoon (outfall #012).

Drainage Basin "O" - This basin is located south of Runway "7-25", west of Taxiway "D" and comprises approximately 31.04 acres. Industrial activities within the basin are from the AIMD Ground Support Equipment.

Storm water runoff within the basin, surface flows in a southwesterly direction then south to a lagoon through a 24-inch pipe at the southwest corner of the basin (outfall #013).

Drainage Basin "P" - This basin is located south of Drainage Basin "O", west of Taxiway "D" and comprises approximately 8.97 acres. Industrial areas of concern within the basin are associated with the Fuel Supply Operations, which consist of the Boca Chica Fuel Tank Farm. Storm water runoff within the basin surface flows in a southerly direction to a lagoon (outfall #014).

Drainage Basin "Q" - This basin is located northwest of Runway "3-21", south of runway "7-25", east of Taxiway "D" and comprises approximately 95.56 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows towards a marsh area, which is drained by a ditch flowing south then westerly through a 24 inch pipe into a lagoon (outfall #015).

Drainage Basin "R" - This basin is located northeast of Taxiway "E", southwest of Runway "13-21", southeast of Runway "7-25" and comprises approximately 33.16 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows in a southeasterly direction to a low point within the basin. There is no apparent outfall to this drainage basin.

Drainage Basin "S" - This basin is located south of Runway "7-25", west of Perimeter Road, northeast of Runway "13-31" and comprises approximately 230.54 acres. Industrial areas of concern associated with this basin include an aircraft washout area and the former fire training pit. Storm water runoff within the basin surface flows to a drainage ditch flowing southeasterly to a low point located in the south corner of the basin. There is no apparent outfall to this drainage basin.

Drainage Basin "T" - This basin is located north of Highway 1, west of the Gulf of Mexico and comprises approximately 4.39 acres. Industrial activities within the basin include the Hazardous Waste Storage Facility and the Public Works Waste Water Treatment Plant.

Storm water runoff within the basin surface flows easterly into the Gulf of Mexico immediately east of the wastewater treatment plant.

Drainage Basin "U" - This basin is located north of Midway Avenue, south of Langley Avenue, east of Shangri-La Avenue and comprises approximately 10.44 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows to a low point located in the southwest corner of the basin. There is no apparent outfall to this drainage basin.

Drainage Basin "V" - This basin is located northeast of Taxiway "E", southwest of Runway "13-31", southeast of Drainage Basin "R" and comprises approximately 28.02 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin surface flows to a low point within the basin. There is no apparent outfall to this drainage basin.

Drainage Basin "W" - This basin is located south of state road S-941, west of Midway Avenue and comprises approximately 2.47 acres. Industrial areas of concern within the basin are associated with the Temporary Duration Forces (Seabees), specifically building A993. Storm water runoff within the basin surface flows southeasterly to a lagoon.

SWMU NO.1 - BOCA CHICA OPEN DISPOSAL AREA

The Boca Chica Open Disposal Area is located in the southeastern part of Boca Chica Key, between Perimeter Road and Geiger Creek. The site consists of a burn and open disposal area with miscellaneous debris deposited into the mangroves and brush. The site was operated originally as an open disposal and burning area from 1942 to the mid 1960s. The site received general refuse and waste associated with the operation and maintenance of aircraft. These wastes may have included waste oils, hydraulic fluids, paint thinners, and solvents. It has been estimated that approximately 2,600 tons of waste were disposed and burned each year.

The site is relatively flat with brush and mangroves around the perimeter. The site is adjacent to a communications center. Roads in the area were built to access remote antenna sites that are no longer in use. Past characterizations indicate that the debris is confined to the eastern perimeter of the site.

The site-specific hydrogeology of the site was determined from soil borings and monitoring wells. The indigenous material encountered below SWMU No. 1 consists of compacted fill overlaying oolitic limestone. The oolitic limestone is expected to have hydraulic conductivity and transmissivity value at the higher end of the range for limestone; whereas, the compacted fill is expected to represent the lower end of the range for soil.

Based on past ground-water elevation data, ground water at the site is flowing to the west towards the mangroves, the Atlantic Ocean, and the creek located east of the site. The hydraulic gradient of the ground-water flow at the site is 0.0009.

SWMU NO.1 is located outside of the defined drainage basins (A-W).

SWMU NO.2 - BOCA CHICA DDT MIXING AREA

The site is adjacent to the north side of a man-made drainage ditch that is connected to large borrow pit and is along the southeast side of a taxiway on Boca Chica island. The site is approximately 0.18 acres.

DDT mixing operations were conducted from the 1940s to the early 1970s in a building (demolished in 1982) located approximately 30 feet from the drainage ditch. The area near the demolished building is now partly covered with sparse grass. The ditch has medium size mangroves around its banks and discharges towards the east into an old borrow pit that is filled with water. Numerous fish were observed in the ditch.

Based on the monitoring wells, the depth to ground water at the site is approximately 6 feet below sea level. The primary hydrogeologic unit underlying the site is the surficial oolitic limestone aquifer. The oolitic limestone has a hydraulic conductivity value at the higher end of the range for that particular type rock. Based on past water level elevations the groundwater flow direction at the site is to the southwest towards the ditch and the lagoon with a hydraulic gradient of 0.0017. Recharge of the aquifer is through direct infiltration of precipitation.

Based on past data, the ground-water levels at the site appear to be influenced by seasonal variations. The highest levels occurred in September and the lowest in May.

SWMU NO.2 is located inside the defined area of drainage basin S.

SWMU NO.3 - BOCA CHICA FIRE FIGHTING TRAINING AREA

The Fire Fighting Training Area is located immediately west of the southern blimp pad. This site is located on Boca Chica Key in the southeast portion of NAS Key West. This area consists of two unlined circular pits approximately 20 feet in diameter and 2 to 3 feet in depth. A gravel apron surrounds the pits. The area is open and flat. Mangroves and brush grow along the shoreline that borders the study site to the southwest.

Past studies were used to construct a geologic framework to assess the potential for contaminant migration. The site was underlain by fill material consisting of crushed oolitic limestone. The fill material appeared to have been compacted and was medium to very dense.

Based on past water level measurements, the groundwater flow direction at the site are to the east and southeast towards the mangroves and the lagoon.

SWMU NO.3 is located inside the defined area of drainage basin S.

SWMU NO.4 - AIMD BUILDING

The site is located at the Aircraft Intermediate Maintenance Department (AIMD, Building A-980) at the NAS Key West, which is located on Boca Chica Key. The site is surrounded on all sides by drainage ditches and a lagoon to the north. The lagoon was designed for mosquito control. The ditches and lagoon are hydrologically connected to Florida Bay. In the late 1960s, the area was filled with six feet of crushed limerock, compacted, and building A-980 was constructed.

Between 1981 and 1987, two in-ground 55-gallon drums were used to receive and store solvents and oil mixtures that were drained from the interior of Building A-980. In 1989, both drums were excavated and disposed of by the U.S. Navy.

Based on monitoring well construction logs, the depth to ground water at the site is approximately 6 feet below sea level. The primary hydrogeologic unit underlying the site is the surficial oolitic limestone aquifer. The oolitic limestone aquifer is expected to have hydraulic conductivity values at the higher end of the range. Recharge of the aquifer is through direct infiltration of precipitation. The wetlands, which are located to the north of the site, also act as a recharge area for the aquifer. Based on past groundwater elevations groundwater flow is to the northwest at a gradient of approximately 0.001.

SWMU NO.4 is located outside the defined drainage basins (A-W).

SWMU NO.5 – AIMD SAND BLASTING AREA by BUILDING A-990

The sand blasting area is located between Buildings A-990 and A-989. The area has historically been used to sand blast “yellow gear,” (yellow gear is the ground handling/ground support equipment for aircraft, i.e., moving vehicles and refueling tankers) aircraft parts and various metal objects as needed by the facility since the early 1970s. This area is approximately 65 ft by 90 ft. There exists a surface drainage ditch that collects surface runoff waters running behind the AIMD buildings. This drainage ditch directs rain water to a culvert which empties into a tidal area containing mangrove trees.

In June of 1984 the Navy collected groundwater samples from the soil. “Black Beauty, I” this material is a compound of coal slag obtained from an electrical power company.

This site has annual recurrent monitoring and land use controls implemented to ensure protective measures are taken.

A portion of SWMU NO.5 is located inside the defined area of drainage basin M.

SWMU NO.7 - BUILDING A-824

Building A-824 is located west of US Highway 1 on Boca Chica Key. The building was formerly used to store hazardous waste. The building currently houses a solvent recycling operation and is used for the storage of empty 55-gallon drums and old transformers.

SWMU NO.7 is located outside the defined drainage basins (A-W).

SWMU NO.9 – JET ENGINE TEST CELL (BUILDING A-969)

The Jet Engine Test Cell site (Building A969) was used to test recently repaired jet engines. Jet engine testing activities were performed under a canopied area located in the central part of the site (see Executive Summary Figure). During testing, jet engines are fueled by a 5,000-gallon JP-5 jet fuel aboveground storage tank (AST) located within a concrete containment berm approximately 70 feet southwest of the canopy. Aboveground fuel piping extends from the

northeast end of the berm to the testing area. In January 1989, a filter system leak resulted in the release of approximately 700 gallons of JP-5 jet fuel on the western side of the AST. Approximately 650 gallons of free product were recovered during initial remedial activities. During a site investigation in November 1992, stained soil was observed near the northwest corner of the canopy where lubrication oil had spilled from an overturned drum.

Current remedial action plans are to characterize chlorinated solvent constituents in the groundwater utilizing a Trident Probe Technology to enable effective characterization of plume and to plan appropriate treatment train technologies.

This site has annual recurrent monitoring and land use controls implemented to ensure protective measures are taken.

SWMU NO.9 is located inside the defined area of drainage basin H.

Fleming Key

Drainage Basin "FK-A" - This basin is located on the western portion of the northern end of Fleming Key and comprises approximately 6.40 acres. Industrial activities within the basin are associated with the Army Special Forces Center, specifically, the Boat Maintenance Building, the Barracks/Dining/Boat Storage Building, the Fire Pump Building, and the Compressor/Generator Building. The catch basins are interconnected by a series of sub-surface drainage pipes that drain into a detention pond. Overflow from the pond flows north through a 15-inch pipe into the Gulf of Mexico (outfall #FK-001).

Drainage Basin "FK-B" - This basin is located on the central portion of the northern end of Fleming Key and comprises approximately 1.85 acres. Industrial activities within the basin are associated with the Army Special Forces Center, specifically the Pool and Mechanical Building. Storm water runoff within the basin flows south through a series of catch basins and sub-surface drainage pipes then surface flows in a southerly direction to the Gulf of Mexico.

Drainage Basin "FK-C" - This basin is located on the eastern portion of the northern end of Fleming key and comprises approximately 3.27 acres. There are no industrial activities within the basin. Storm water runoff within the basin flows through a series of catch basins and sub-surface drainage pipes then surface flows in a northeasterly direction to the Gulf of Mexico.

Drainage Basin "FK-D" - This basin is located on the northern end of Fleming Key south of the Army Special Forces Center and comprises approximately 1.52 acres. Industrial activities within the basin are associated with the United States Department of Agriculture (USDA) Animal Import Center's wastewater treatment plant and wash rack. Storm water runoff within the basin flows to the wastewater treatment plant on site.

Drainage Basin "FK-E" - This basin is located on the northern end of Fleming Key south of the Army Special forces Center and comprises approximately 2.00 acres. Industrial activities within the basin are associated with the USDA Animal Import Center's outdoor storage area and a portion of the rooftop drainage. Storm water runoff within the basin surface flows in a northwesterly to an 18" pipe (outfall #FK-002), continues northwesterly to the Gulf of Mexico. Drainage Basins "FK-F" and "FK-E" contain a portion of Installation Restoration (IR) site Number 7. The following is a description of IR site 7:

IR NO.7 - FLEMING KEY NORTH LANDFILL

The Fleming Key North Landfill (IR No. 7) covers approximately 30 acres on the northern end of Fleming key. The site currently houses the U.S. Department of Agriculture (USDA) Animal Import Center. South of the site is a munitions storage area for NASKW. North of the site is a small Army Special Forces base. Docks are present on the northeast corner and on the west side of the island for launching and docking Army boats. The site is generally flat with trees, brush, and mangroves along the west shoreline.

The east shoreline has grass cover and concrete rubble riprap for erosion protection. The northwest portion of the site is wooded. The remainder of the site is open area which is covered with grass.

From 1952 to 1962 the site was used as the landfill for NASKW and the City of Key West. Reportedly, approximately 4,000 to 5,000 tons of unknown waste was disposed of annually. The wastes were placed in trenches typically 25 feet wide, 10 feet deep, and 500 to 1,000 feet long.

In 1977, a building housing the USDA Animal import Center was constructed over a portion of the landfill. During the construction phase, wastes were excavated and transferred to an area immediately to the west of the construction site and buried under a soil/rock cover. Currently, the entire landfill area is covered with soil and has either a grass or tree cover.

An initial investigation revealed that several organic compounds including base neutral extractables and volatile organic carbons were present in the ground water collected from four shallow ground-water monitoring wells. Analysis for priority pollutant metals indicated that the concentrations of copper, mercury and arsenic were above detection limits.

IR NO.8 - FLEMING KEY SOUTH LANDFILL

The Fleming Key South Landfill covers approximately 45 acres on the southern end of Fleming Key. Reportedly, as much as 8,000 tons of unknown wastes were disposed at the landfill annually between 1962 and 1982. Since 1966, the waste disposal activities of the City of Key West were combined with those of the Navy at this site. The open trench disposal method was practiced at this site, with the trenches being constructed in a manner similar to that at Fleming Key North Landfill. The trenches were partially full of sea water when the wastes were disposed. Combustible wastes were taken to the western portion of the site and burned. The ash and unburned wastes were then deposited in an area in the western portion of the site.

Groundwater flow at the site tends to the northeast and is greatly influenced by tidal variation. High metal concentrations were detected in the downgradient wells thereby showing evidence of the migration of metals in groundwater. Potable water in Key West is piped in from the mainland; therefore, direct human ingestion of metal contaminated groundwater would not be expected.

This site does not appear to have any immediate impact on human health based on the preceding information and active land use controls apply to this site location which restricts any direct exposure to constituents of concern.

Truman Annex

Drainage Basin "TA-A" - This basin is located west of Emma Street, east of the Gulf of Mexico, and comprises approximately 2.46 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows westerly through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a 12 inch pipe into the Gulf of Mexico (outfall #TA-001).

Drainage Basin "TA-B" - This basin is located west of Emma Street, east of the Gulf of Mexico, and comprises approximately 1.24 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows west, southwest, and then west through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a 12-inch pipe into the Gulf of Mexico (outfall #TA-002).

Drainage Basin "TA-C" - This basin is located west of Emma Street, east of the Gulf of Mexico, and comprises approximately 1.95 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows north, and then west through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a 24 inch pipe into the Gulf of Mexico (outfall #TA-003).

Drainage Basin "TA-D" - This basin is located west of Emma Street, east of the Gulf of Mexico and comprises approximately 1.48 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows north and south through a series of catch basins and sub-surface drainage pipes towards a centrally located discharge point. The discharge point for this basin is through an 18-inch pipe into the Gulf of Mexico (outfall #TA-004).

Drainage Basin "TA-E" - This basin is located west of Emma Street, east of the Gulf of Mexico, and comprises approximately 2.74 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows north and south, and then west through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a 12 inch pipe into the Gulf of Mexico (outfall #TA-005).

Drainage Basin "TA-F" - This basin is located west of Emma Street, east of the Gulf of Mexico, and comprises approximately 2.97 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows west, then north and south through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through an 18 inch pipe into the Gulf of Mexico (outfall #TA-006).

Drainage Basin "TA-G" - This basin is located south of Drainage Basin "F", east of the Gulf of Mexico, and comprises approximately 2.89 acres. There are non-industrial areas of concern associated with this basin. Storm water runoff within the basin flows west through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a 30 inch pipe into the Gulf of Mexico (outfall #TA-007).

Drainage Basin "TA-H" - This basin is located south of Eaton Street, east of the Gulf of Mexico and comprises approximately 33.37 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through a 30-inch pipe into the Gulf of Mexico (outfall #TA-008).

Drainage Basin "TA-I" - this basin is located south of Southard Street and the Gulf of Mexico, southwest of Fort Street and comprises approximately 28.54 acres. Industrial activities within the basin are associated with Public Works Utilities Department. Storm water runoff within the basin flows through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through both a 24 and 8 inch pipe into the Gulf of Mexico (outfall #TA-009).

Drainage Basin "TA-J" - This basin is located north of the BEQs, south of the Gulf of Mexico and comprises approximately 7.61 acres. Industrial activities within the basin are associated with Port Operations, which includes fueling of vessels and vehicles, inboard, and outboard engine maintenance, and the Fire Department, both facilities located in Building 149. Storm water runoff within the basin flows northeast, northwest, west, then northwest through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is through an 18-inch pipe into the Gulf of Mexico (outfall #TA-010).

Drainage Basin "TA-J1" - this basin is located immediately north of basin TA-J and comprises approximately 1.09 acres. Industrial areas of concern associated with this basin include the pier and fuel island operated by Port Operations. Storm water associated with this basin surface flow into the Gulf of Mexico. There is no specific outfall to this basin.

Drainage Basin "TA-K" - This basin is located north of the Atlantic Ocean, west of Covington Avenue and comprises approximately 27.67 acres. Industrial areas of concern within this basin are associated with the aboveground storage tanks located at building 290 (BEQ). Storm water runoff within the basin flows through a series of catch basins and sub-surface drainage pipes then surface flows in a southerly direction. The discharge point for this basin is into the Atlantic Ocean (outfall #TA-011).

Drainage Basin "TA-L" - This basin is located southwest of Dekalb Avenue, northwest of the Atlantic Ocean and comprises approximately 5.40 acres. There are no industrial areas of concern associated with this basin. Storm water runoff within the basin flows easterly, then southeast through a series of catch basins and sub-surface drainage pipes. The discharge point for this basin is from a 15-inch pipe into the Atlantic Ocean (outfall #TA-012).

Drainage Basin "TA-M" - This basin is located southwest of Basin "TA-J" and is comprised of approximately 8.25 acres. Industrial areas of concern within this basin are associated with the Defense, Reutilization and Marketing Office (DRMO).

Storm water runoff within this basin surface flows in a southwesterly direction to a "moat" which surrounds Ft. Zachary Taylor, located at the southwest corner of the basin. There is no apparent outfall to this basin.

IR SITE 1 - TRUMAN ANNEX REFUSE DISPOSAL AREA

The Truman Annex Refuse Disposal Area is located along the southern shore of the Truman Annex on Key West. The site covers approximately seven acres, including the antenna field and an area immediately north. A fence surrounds the site and access is controlled. Shoreline erosion protection consists of large rubble and concrete. The main sewer line outfall for Key West runs through the property.

From 1952 until the mid 1960s, the Truman Annex Refuse Disposal Area was used for general

refuse disposal and open burning. No restrictions were placed on the type of wastes disposed at the site. General refuse, waste paint thinners and solvents may have been disposed at the site.

IR SITE 3 - TRUMAN ANNEX DDT MIXING AREA

The Truman Annex DDT Mixing Area (IR Site 3) is located at the former site of NAS Building 265. The site covers an area of about 0.25 acres and is located approximately 1,100 feet inland from the coastline in an area that is subject to restricted vehicular and pedestrian traffic. Fort Street, which is the westernmost street of a residential area, is located to the northeast of the site. The site is underlain by highly permeable soils with no surface water drainage or holding features present. A chain link fence surrounds the site and the one gate is kept locked. The surface of the site is flat with tall grass and weeds.

From the 1940s to the early 1970s, the location was used as a DDT mixing area. Powdered DDT concentrate was mixed with water and temporarily stored in 55-gallon drums both inside and outside the former building. The mixed solution was then transferred to trucks for disposal. Discharges at the site were from accidental spillage.

During a previous investigation performed in 1986, soil samples were collected and analyzed for pesticides. Results of the analyses revealed that DDT other pesticides such as BHC were present in site soils.

A preliminary IR performed in 1990 revealed that cadmium, iron, and sodium were present in concentrations above the established standard. Although sodium and iron are considered to occur naturally at the site, the high cadmium concentrations were indicative of ground-water contamination.

IR SITE 21 – SEMINOLE BATTERY AREA

Seminole Battery and an adjacent area known to include a former fueling area and grease rack that operated in the 1940s and 1950s (B&R Environmental, 1996). The battery was constructed during the Civil War; a modern battery addition as added similar in construction to the East Martello Battery in the 1950s. Both structures are currently unused, and entry is restricted. The materials used while the batteries were in operation are unknown. The oldest portion of the battery has the remnants of a generator exhaust system. The former fueling area known as 248 Tanks A&B is located west of Seminole Battery. The fueling island and the tanks were removed in August 1995. No visible stains are present on or near the slabs (B&R Environmental, Process considered the groundwater at Truman Annex as a single unit in the decision-making process.

Used oils, cleaning agents, solvents, fuel, and metals were considered to be potential contaminants at Seminole Battery from past activities including storage of hazardous materials and vehicles. This site has land use control restrictions placed on this site.

Trumbo Point

Drainage Basin "TP-A" - This basin is located north of Palm Avenue, east of Mustin Street and west of Ellyson Drive and comprises approximately 63.44 acres. Industrial areas of concern within this basin are associated with the Naval Air Warfare Center (NAWC) and the Seaplane Hangar Recycling.

Storm water runoff from the basin generally surface flows north to the Gulf of Mexico. A portion of the basin surface flows to a series of catch basins, which flow northerly to the Gulf of Mexico (outfall #TP-001).

Drainage Basin "TP-B" - This basin is located north of Whiting Avenue, west of Mustin Street and east of Trumbo Road and comprises approximately 17.03 acres. Industrial areas of concern within this basin are associated with the Fuel Farm. Storm water runoff from the basin generally surface flows away from the Fuel Farm storage tank area and towards the Gulf of Mexico. Storm water, which falls within the tank containment area infiltrates into the ground due to the unlined containment basins. There is no specific outfall to this basin.

Drainage Basin "TP-C" - This basin is located north of the U.S. Coast Guard Station and immediately south of the Gulf of Mexico and comprises approximately 2.44 acres. There are no industrial areas of concern associated with this basin. Storm water runoff from the basin generally surface flows north to the Gulf of Mexico.

Drainage Basin "TP-D" - This basin is located north of the U.S. Coast Guard Station and immediately south of drainage basin "TP-C" and comprises approximately 1.56 acres. There are no industrial areas of concern associated with this basin. Storm water runoff from the basin generally surface flows south to Key West Bight.

Drainage Basin "TP-E" - This basin is located south of the U.S. Coast Guard Station and immediately north of drainage basin "TP-F" and comprises approximately 1.97 acres. The industrial areas of concern associated with this basin include a portion of Buildings B-27 and B-28, Ordinance Research and Development. Storm water runoff from the basin generally surface flows north to Key West Bight.

Drainage Basin "TP-F" - This basin is located south of the U.S. Coast Guard Station and immediately south of drainage basin "TP-E" and comprises approximately 2.36 acres. The industrial areas of concern associated with this basin include a portion of Buildings B-27 and B-28, Ordinance Research and Development. Storm water runoff from the basin generally flows south to Key West Bight.

Drainage Basin "TP-G" - This basin is located south of drainage basin "TP-B" and north of Whiting Avenue and comprises approximately 2.34 acres. Industrial areas of concern within this basin are associated with the Public Works Utilities. Storm water runoff from the basin generally flows southwest to Key West Bight.

Sigsbee Park

Drainage Basin "SP-A" - This basin is located along the north side of Sigsbee Park, east of Arthur Sawyer Road, north of Sigsbee Road, and comprises approximately 1.10 acres. Industrial areas of concern associated with this basin include the area of the Marina and the fuel island.

Storm water runoff from this basin sheet flows in a northerly direction into the basin and the Gulf of Mexico. There is no specific outfall to this basin.

Drainage Basin "SP-B" - This basin is located along an unnamed roadway off of Arthur Sawyer Road on the north side of Sigsbee Park. Industrial areas of concern associated with this basin include the Public Works Utilities.

Storm Water runoff from this area generally sheet flows in a northwesterly direction to the Gulf of Mexico. There is no specific outfall to this basin.

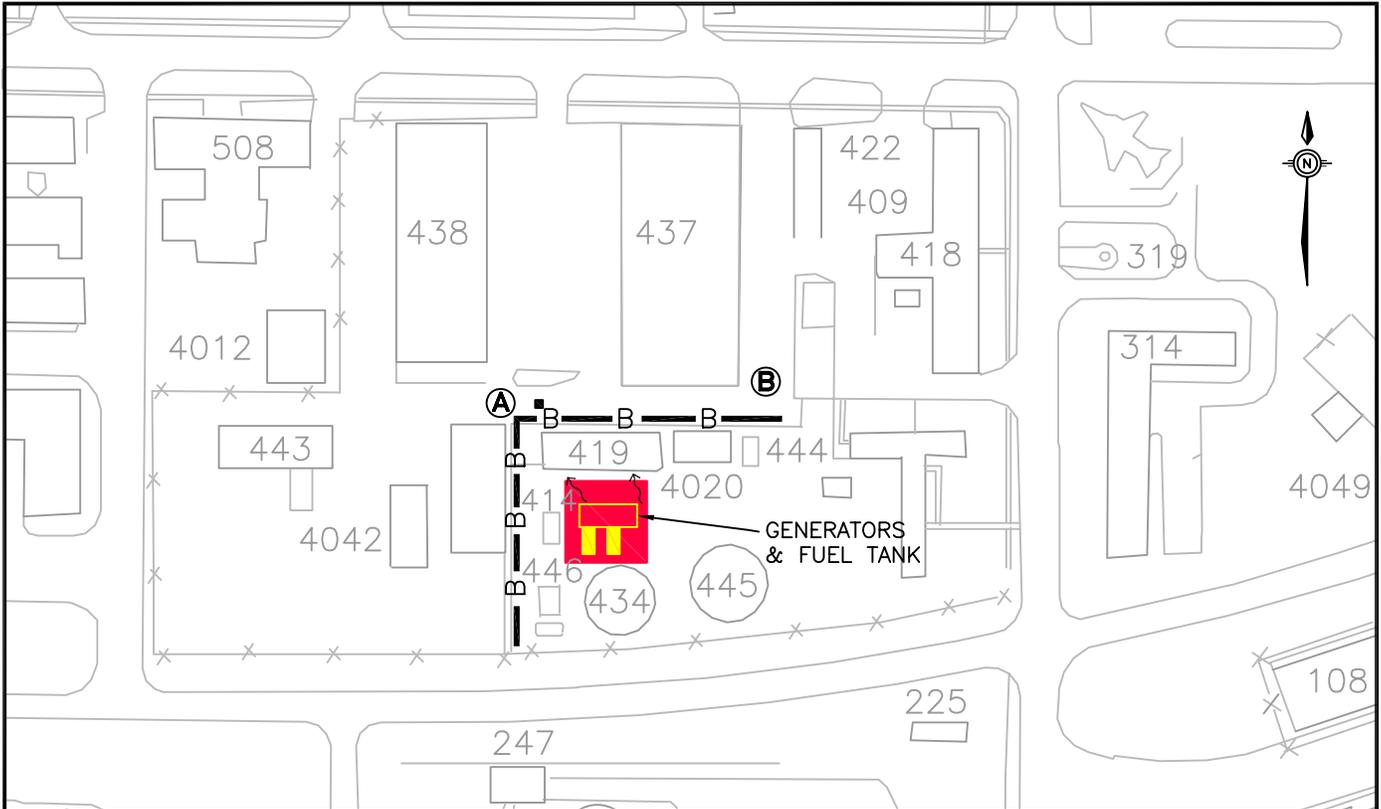
These drainage basins are indicated on the enclosed site maps. The facility site maps represent information obtained from existing features maps as provided by the NASKW Public Works Department, a review of aerial mapping taken November 1994, and on-site observations during November 1994.

Appendix E
NAS Key West Transformer Inventory

Appendix F

Maps

ERAP Map # QR 15	Quick Reference Response Strategy
ERAP Map # 1-1	Site Plan Boca Chica Field Plan Areas
ERAP Map # 1-1A	Site Plan Boca Chica Field Plan Areas (Industrial Areas)
ERAP Map # 1-1B	Tank Farm Boca Chica Field Plan Areas
ERAP Map # 2	Site Plan Truman Annex Plan Areas
ERAP Map # 3	Site Plan Trumbo Point Plan Areas
ERAP Map # 4	Site Plan Sigsbee Park Plan Areas
ERAP Map # 5	Site Plan Saddlebunch Key Plan Areas
ERAP Map # 6	Site Plan Fleming Key Plan Areas
ERAP Map # 7	Site Plan Naval Hospital Plan Areas



RESPONSE STRATEGY OPTIONS

<u>SITE</u>	<u>RESPONSE OPTION</u>	<u>EQUIPMENT</u>
A	COVER STORM DRAIN	PLYWOOD, EARTH, BACKHOE
B	400' ABSORBENT BOOM/PADS AS REQUIRED	BOOM, PADS

LEGEND

- B—** — BOOM
- TRENCH
- EARTHEN BERM
- SENSITIVE AREA—MANGROVES
- STORM DRAIN
- DRAINAGE PATH



QUICK REFERENCE
RESPONSE STRATEGY
NAS KEY WEST
KEY WEST, FLORIDA

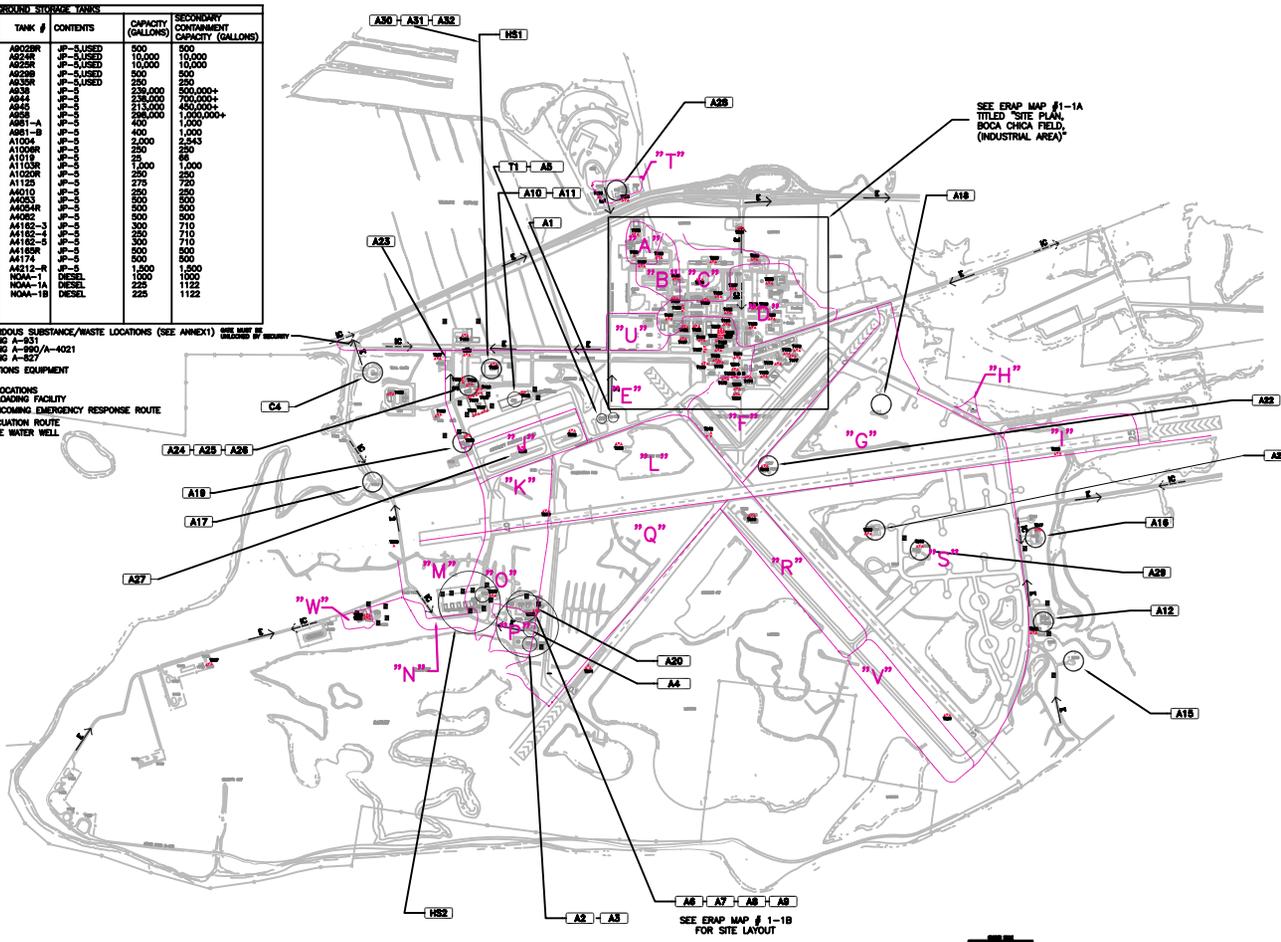
NAS KEY WEST
QUICK REFERENCE RESPONSE STRATEGY
FIGURE QR4
BOCA CHICA PRIMARY BACKUP
POWER PLANT

DWG DATE: 05/31/07

NAME:

MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A1	A802BR	JP-5 LIQUID	500	500
A2	A822R	JP-5 LIQUID	10,000	10,000
A3	A822R	JP-5 LIQUID	10,000	10,000
A4	A822BR	JP-5 LIQUID	500	500
A5	A832R	JP-5 LIQUID	200	200
A6	A832R	JP-5 LIQUID	200	200
A7	A844	JP-5	238,000	500,000+
A8	A845	JP-5	213,000	450,000+
A9	A858	JP-5	298,000	1,000,000+
A10	A857-A	JP-5	400	1,000
A11	A857-B	JP-5	400	1,000
A12	A1004	JP-5	2,000	2,543
A15	A1006R	JP-5	200	200
A16	A1019	JP-5	200	200
A17	A1020R	JP-5	1,200	1,200
A18	A1020R	JP-5	200	200
A19	A1125	JP-5	275	700
A20	A4010	JP-5	200	200
A21	A4063	JP-5	500	500
A22	A4024R	JP-5	500	500
A23	A4062	JP-5	500	500
A24	A4182-3	JP-5	300	710
A25	A4182-4	JP-5	300	710
A26	A4182-5	JP-5	300	710
A27	A4182R	JP-5	500	500
A28	A4174	JP-5	500	500
A29	A4212-R	JP-5	1,800	1,800
A30	NOM-1	DIESEL	1,000	1,000
A31	NOM-1A	DIESEL	225	1122
A32	NOM-1B	DIESEL	225	1122

BULK HAZARDOUS SUBSTANCE/WASTE LOCATIONS (SEE ANNEX 1) ONE MILE W. OF WILSON W. HIGHWAY
 H51 BUILDING A-831
 H52 BUILDING A-890/A-4021
 H53 BUILDING A-857
 COMMUNICATIONS EQUIPMENT
 CA FUELS
 TRANSFER LOCATIONS
 T1 TRUCK LOADING FACILITY
 E- -> RICHING EMERGENCY RESPONSE ROUTE
 - -> EVACUATION ROUTE
 ■ FIRE WATER WELL



TRANSFORMER NUMBER	TRANSFORMER TYPE	TRANSFORMER VOLTAGE
1	15	15KV
2	15	15KV
3	15	15KV
4	15	15KV
5	15	15KV
6	15	15KV
7	15	15KV
8	15	15KV
9	15	15KV
10	15	15KV
11	15	15KV
12	15	15KV
13	15	15KV
14	15	15KV
15	15	15KV
16	15	15KV
17	15	15KV
18	15	15KV
19	15	15KV
20	15	15KV
21	15	15KV
22	15	15KV
23	15	15KV
24	15	15KV
25	15	15KV
26	15	15KV
27	15	15KV
28	15	15KV
29	15	15KV
30	15	15KV
31	15	15KV
32	15	15KV
33	15	15KV
34	15	15KV
35	15	15KV
36	15	15KV
37	15	15KV
38	15	15KV
39	15	15KV
40	15	15KV
41	15	15KV
42	15	15KV
43	15	15KV
44	15	15KV
45	15	15KV
46	15	15KV
47	15	15KV
48	15	15KV
49	15	15KV
50	15	15KV
51	15	15KV
52	15	15KV
53	15	15KV
54	15	15KV
55	15	15KV
56	15	15KV
57	15	15KV
58	15	15KV
59	15	15KV
60	15	15KV
61	15	15KV
62	15	15KV
63	15	15KV
64	15	15KV
65	15	15KV
66	15	15KV
67	15	15KV
68	15	15KV
69	15	15KV
70	15	15KV
71	15	15KV
72	15	15KV
73	15	15KV
74	15	15KV
75	15	15KV
76	15	15KV
77	15	15KV
78	15	15KV
79	15	15KV
80	15	15KV
81	15	15KV
82	15	15KV
83	15	15KV
84	15	15KV
85	15	15KV
86	15	15KV
87	15	15KV
88	15	15KV
89	15	15KV
90	15	15KV
91	15	15KV
92	15	15KV
93	15	15KV
94	15	15KV
95	15	15KV
96	15	15KV
97	15	15KV
98	15	15KV
99	15	15KV
100	15	15KV

TRANSFORMER NUMBER	TRANSFORMER TYPE	TRANSFORMER VOLTAGE
1	15	15KV
2	15	15KV
3	15	15KV
4	15	15KV
5	15	15KV
6	15	15KV
7	15	15KV
8	15	15KV
9	15	15KV
10	15	15KV
11	15	15KV
12	15	15KV
13	15	15KV
14	15	15KV
15	15	15KV
16	15	15KV
17	15	15KV
18	15	15KV
19	15	15KV
20	15	15KV
21	15	15KV
22	15	15KV
23	15	15KV
24	15	15KV
25	15	15KV
26	15	15KV
27	15	15KV
28	15	15KV
29	15	15KV
30	15	15KV
31	15	15KV
32	15	15KV
33	15	15KV
34	15	15KV
35	15	15KV
36	15	15KV
37	15	15KV
38	15	15KV
39	15	15KV
40	15	15KV
41	15	15KV
42	15	15KV
43	15	15KV
44	15	15KV
45	15	15KV
46	15	15KV
47	15	15KV
48	15	15KV
49	15	15KV
50	15	15KV
51	15	15KV
52	15	15KV
53	15	15KV
54	15	15KV
55	15	15KV
56	15	15KV
57	15	15KV
58	15	15KV
59	15	15KV
60	15	15KV
61	15	15KV
62	15	15KV
63	15	15KV
64	15	15KV
65	15	15KV
66	15	15KV
67	15	15KV
68	15	15KV
69	15	15KV
70	15	15KV
71	15	15KV
72	15	15KV
73	15	15KV
74	15	15KV
75	15	15KV
76	15	15KV
77	15	15KV
78	15	15KV
79	15	15KV
80	15	15KV
81	15	15KV
82	15	15KV
83	15	15KV
84	15	15KV
85	15	15KV
86	15	15KV
87	15	15KV
88	15	15KV
89	15	15KV
90	15	15KV
91	15	15KV
92	15	15KV
93	15	15KV
94	15	15KV
95	15	15KV
96	15	15KV
97	15	15KV
98	15	15KV
99	15	15KV
100	15	15KV

LEGEND
 * - 15 TRANSFORMER LOCATION
 - -> 15 TRANS. OR 2-15 TRANS.
 - -> TRANS. IDENTIFICATION (SEQUENTIAL)
 - -> STORAGE WATER BASH BOUNDARIES

NOTE: AN INVENTORY OF TRANSFORMERS IS INCLUDED IN APPENDIX E OF THE JULY 2007 SPOC PLAN

ERMP MAP #1-1

FACILITY RESPONSE PLAN
 H&J KEY
 KEY WEST, FLORIDA

SITE PLAN
 BOCA CHICA FIELD
 PLAN H&J

By: [Signature] To: [Signature]
 Date: 07/24/07 Date: 07/24/07

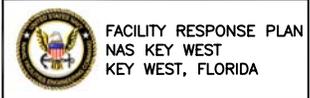
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
B24R	AB24	LP-G	10,000	10,000
B25R	AB25	LP-G	10,000	10,000
B38	AB38	LP-G	238,000	500,000+
B44	AB44	LP-G	238,000	700,000+
B45	AB45	LP-G	213,000	480,000+
B55	AB55	LP-G	288,000	1,000,000+
AG25B	AB25B	LP-G	500	500
AG10	AB10	LP-G	500	500
NA	BOCA CHICA FIELD	ONLY WATER, OILS AND GWF/1,000		

GENERAL FLOW DIRECTION
 FIRE WATER WELL
 THROUGH DRZS DRAIN VALVE



NOTE: AN INVENTORY OF TRANSFORMERS IS INCLUDED IN APPENDIX E OF THE JULY 2007 SPCC PLAN

- LEGEND
- 1# TRANSFORMER LOCATION
 - 3# TRANS. OR 3-1# TRANS.
 - TRANS. IDENTIFICATION (SEQUENTIAL)
- ERAP MAP #1-1B



FACILITY RESPONSE PLAN
 NAS KEY WEST
 KEY WEST, FLORIDA

TANK FARM
 BOCA CHICA FIELD
 PLAN AREAS

DWG DATE: 07/06/07 NAME:



ABOVE GROUND STORAGE TANKS				
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A55	290-R	JP5	6,000	6,000
A55	290-A	JP5	150	150
A56	1352	JP5	600	600
A57	290-ER	JP5	6,000	6,000
A58	1355	JP5	250	250
A59	1279-BR	JP5	6,000	6,000
A60	A-437	JP5	500	500
A61	439-R	JP5	500	500
A62	291	JP5	4,000	4,000
A63	1351-R	JP5	500	500
A64	4199-FT	JP5	6,000	6,000

EMERGENCY RESPONSE EQUIPMENT
 E5 OIL SPILL RESPONSE OFFICE AND MAJOR EQUIPMENT STORAGE
 COMMUNICATIONS EQUIPMENT
 C5 OIL SPILL RESPONSE OFFICE
 TRANSFER LOCATIONS
 T3 TANK TRUCK (MOBILE MTR FACILITY) TO VESSEL FUELING LOCATION
 -IC-> INCOMING EMERGENCY RESPONSE ROUTE
 -E-> EVACUATION ROUTE
 ■ FIRE WATER WELL

NOTE: AN INVENTORY OF TRANSFORMERS IS INCLUDED IN APPENDIX E OF THE JULY 2007 SPCC PLAN

LEGEND
 ▲ - 1Ø TRANSFORMER LOCATION
 ▲▲ - 3Ø TRANS. OR 3-1Ø TRANS.
 T1 - TRANS. IDENTIFICATION (SEQUENTIAL)
 --- STORM WATER DRAINAGE BASIN

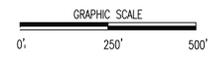
ERAP MAP #1-2



FACILITY RESPONSE PLAN
 NAS KEY WEST
 KEY WEST, FLORIDA

SITE PLAN
 TRUMAN ANNEX
 PLAN AREAS

Dr by: G.Paul	Tr by:	Sheet 1
Ck by: A.Sarkar	App by:	Of 1
Date: 05/31/07	DWG Name:	



FLEMING KEY

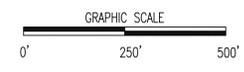
GULF OF MEXICO



ABOVE GROUND STORAGE TANKS				
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A65	C-1	GASOLINE	1,000	1,000
A66	D29R	DIESEL	500	120
A67	C83	DIESEL	500	500
A68	D1292-BR	EMPTY	20,000 (OUT OF SERVICE)	500
A69	C2076	DIESEL	1,000	22,000
A70	C-5	DIESEL	120	1,000

- EMERGENCY RESPONSE EQUIPMENT
 E6 OIL SPILL RESPONSE TRAILER ON PIER D-2
- TRANSFER LOCATIONS
 T2 TANK TRUCK (MOBILE MTR FACILITY) TO VESSEL FUELING LOCATION
- BULK HAZARDOUS SUBSTANCE/WASTE LOCATIONS (SEE ANNEX1)
 HS7 BUILDING B-52
- INCOMING EMERGENCY RESPONSE ROUTE
 EVACUATION ROUTE
 FIRE WATER WELL
 (16 OTHER WELLS ALSO SCATTERED THROUGHOUT OFFICE/HOUSING AREA)
 STORM WATER FLOW DIRECTION

OIL DRUM STORAGE	
LOCATION	CONTENTS/CAPACITY GALLONS
DRUMS AT PWD OIL SPILL RESPONSE AT C-1	NEW OIL/ 1 @ 55
DRUMS AT USCG STATION (BLDG. B-52)	NEW OIL/USED OIL/55
COAST GUARD GALLEY AT TRUMBO POINT	GREASE/55

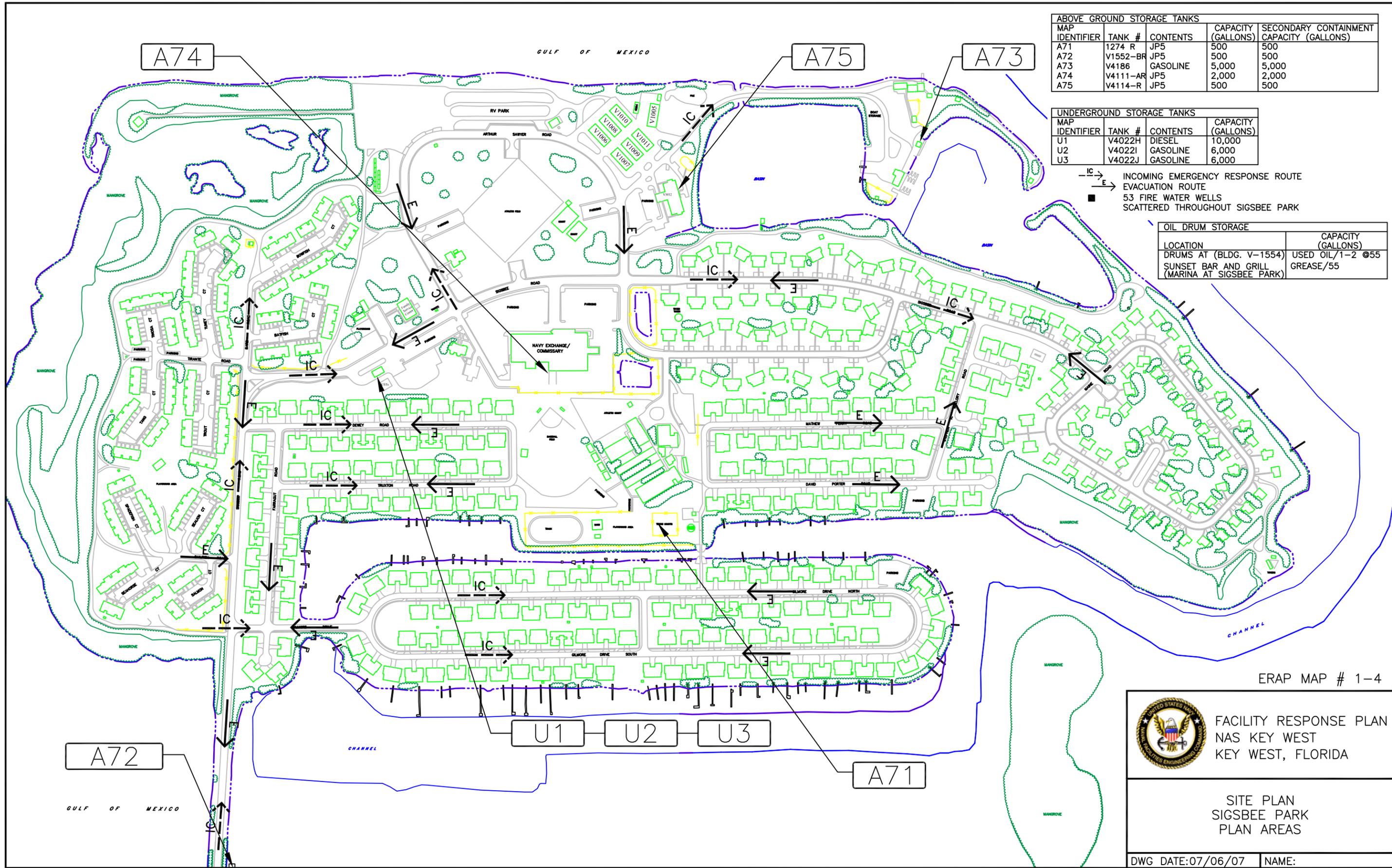


ERAP MAP #1-3

FACILITY RESPONSE PLAN
 NAS KEY WEST
 KEY WEST, FLORIDA

SITE PLAN
 TRUMBO POINT
 PLAN AREAS

Dr by: G.Paul	Tr by:	Sheet 1
Ck by: A.Sarkar	App by:	Of 1
Date: 07/06/07	DWG Name:	



ABOVE GROUND STORAGE TANKS				
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A71	1274-R	JP5	500	500
A72	V1552-BR	JP5	500	500
A73	V4186	GASOLINE	5,000	5,000
A74	V4111-AR	JP5	2,000	2,000
A75	V4114-R	JP5	500	500

UNDERGROUND STORAGE TANKS			
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)
U1	V4022H	DIESEL	10,000
U2	V4022I	GASOLINE	6,000
U3	V4022J	GASOLINE	6,000

INCOMING EMERGENCY RESPONSE ROUTE
 EVACUATION ROUTE
 53 FIRE WATER WELLS SCATTERED THROUGHOUT SIGSBEE PARK

OIL DRUM STORAGE	
LOCATION	CAPACITY (GALLONS)
DRUMS AT (BLDG. V-1554)	USED OIL/1-2 @55
SUNSET BAR AND GRILL (MARINA AT SIGSBEE PARK)	GREASE/55

ERAP MAP # 1-4



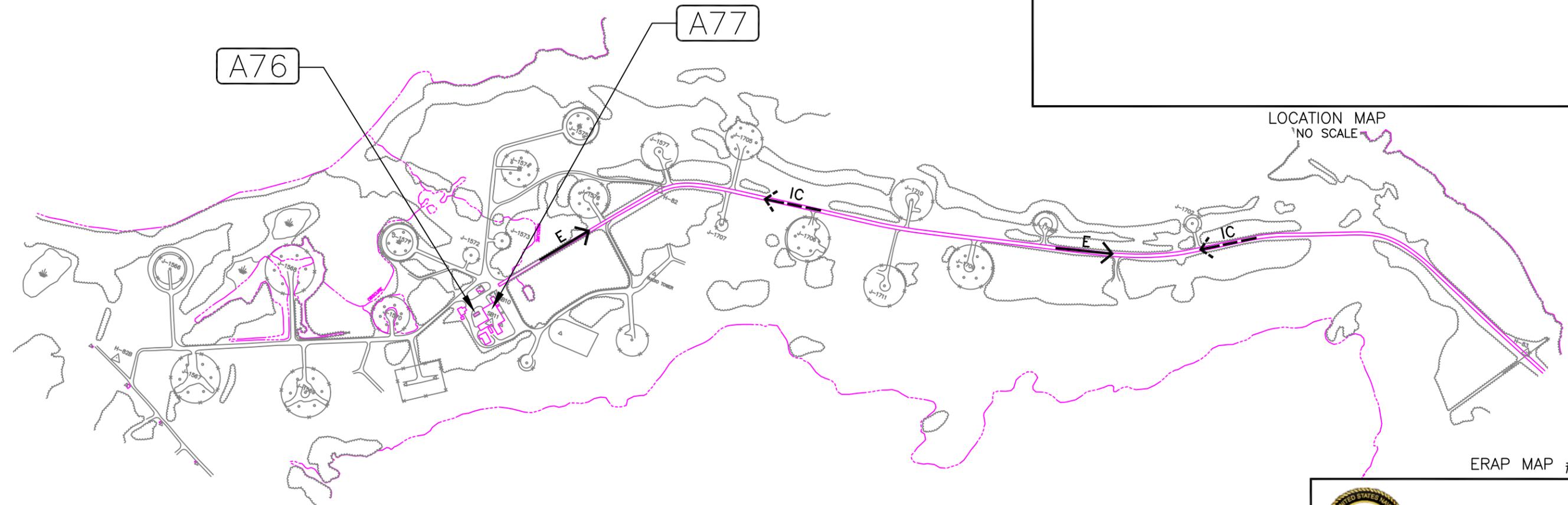
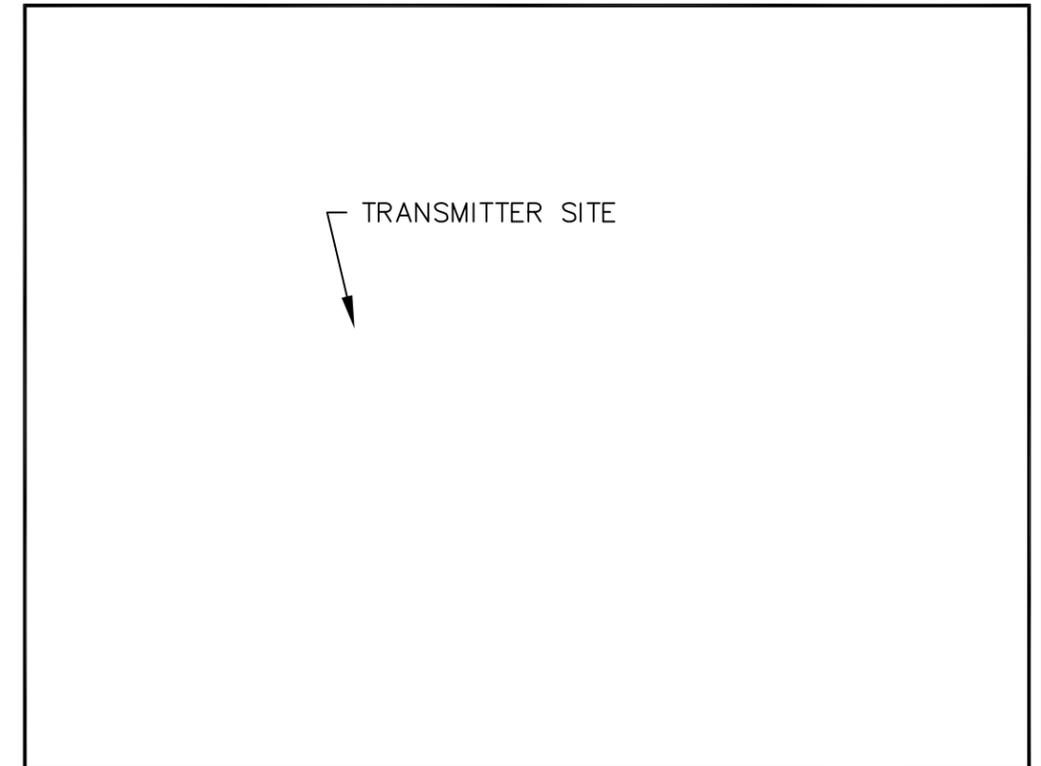
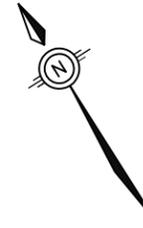
FACILITY RESPONSE PLAN
 NAS KEY WEST
 KEY WEST, FLORIDA

SITE PLAN
 SIGSBEE PARK
 PLAN AREAS

DWG DATE: 07/06/07 NAME:

ABOVE GROUND STORAGE TANKS				
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A76	J-1563 R	JP-5	10,000	10,732
A77	J-1561 A	JP-5	200	INSIDE BUILDING

 INCOMING EMERGENCY RESPONSE ROUTE
 EVACUATION ROUTE
 ONE FIRE WATER WELL ON SITE



LOCATION MAP
NO SCALE

ERAP MAP # 1-5



FACILITY RESPONSE PLAN
NAS KEY WEST
KEY WEST, FLORIDA

SITE PLAN
TRANSMITTER SITE
SADDLEBUNCH KEY
PLAN AREAS

DWG DATE: 05/31/07 NAME:

A79 A79B A79C A79D

A78

A80

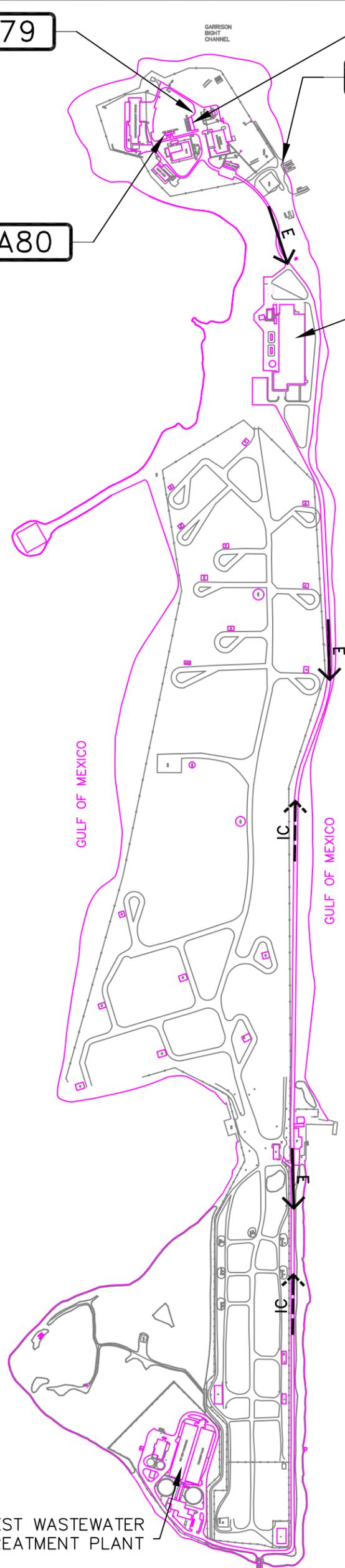
GULF OF MEXICO

DEPARTMENT OF AGRICULTURE
ANIMAL IMPORT CENTER

GULF OF MEXICO



TO KEY WEST / TRUMBO POINT



ABOVE GROUND STORAGE TANKS				
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A78	F02	GASOLINE	4,000	4,000
A79	F01	DIESEL	2,000	4,344
A79B	F-01-B	DIESEL	50	>50
A79C	F-01-C	DIESEL	50	>50
A79D	F-01-D	DIESEL	25	>50
A80	KW-400	DIESEL	250	140

INCOMING EMERGENCY RESPONSE ROUTE
 EVACUATION ROUTE
 FIRE WATER WELL

OIL WATER SEPARATORS		
TANK #	LOCATION	CONTENTS/CAPACITY (GALLONS)
KW-600	OIL-WATER SEPARATOR FOR BLDG. KW-600, FLEMING KEY (NO LONGER USED)	USED OIL/400

OIL DRUM STORAGE		
LOCATION	CONTENTS/CAPACITY (GALLONS)	
FLEMING KEY	DRUMS AT BLDG. KW-600	NEW OIL/1 @ 55
FLEMING KEY	SPECIAL FORCES CENTER (FLEMING KEY)	GREASE/55

KEY WEST WASTEWATER TREATMENT PLANT

MUSTIN STREET
FLEMING KEY BRIDGE

DATE OF PHOTOGRAPHY: NOVEMBER 3, 1994
 400 0 400 800 1200 1600
 500 FT. GRID BASED ON FLORIDA EAST ZONE RECTANGULAR GRID SYSTEM, N.A.D. 1983.

ERAP MAP #1-6



FACILITY RESPONSE PLAN
NAS KEY WEST
KEY WEST, FLORIDA

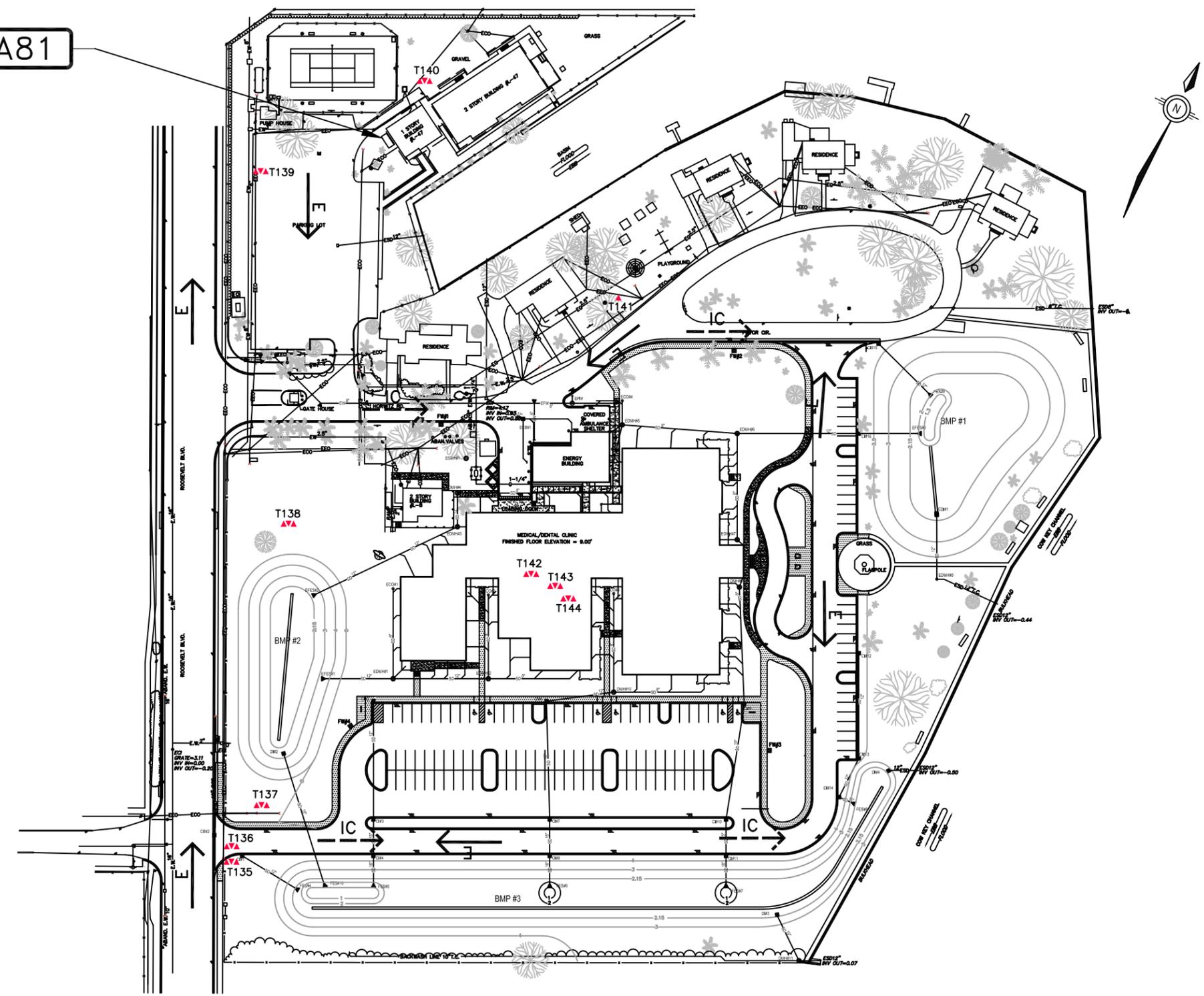
SITE PLAN
FLEMING KEY
PLAN AREAS

DWG DATE: 05/31/07 NAME:

ABOVE GROUND STORAGE TANKS				
MAP IDENTIFIER	TANK #	CONTENTS	CAPACITY (GALLONS)	SECONDARY CONTAINMENT CAPACITY (GALLONS)
A81	L47 R	JET FUEL	250	250

- IC → INCOMING EMERGENCY RESPONSE ROUTE
- E → EVACUATION ROUTE
- FIRE WATER WELL

A81



NOTE: AN INVENTORY OF TRANSFORMERS IS INCLUDED IN APPENDIX E OF THE June 2007 SPCC PLAN

LEGEND

- ▲ - 1Ø TRANSFORMER LOCATION
- ▲▲ - 3Ø TRANS. OR 3-1Ø TRANS.
- T1 - TRANS. IDENTIFICATION (SEQUENTIAL)

ERAP MAP # 1-7



FACILITY RESPONSE PLAN
 NAS KEY WEST
 KEY WEST, FLORIDA

SITE PLAN
 NAVAL HOSPITAL
 PLAN AREAS