

## *Regulatory Analysis*

### **Spill Prevention, Control and Countermeasure Rule**

November 2008

On November 20, 2008, the U.S. Environmental Protection Agency (EPA) issued changes to the Spill Prevention, Control and Countermeasure (SPCC) final rule that was issued in December 2006, including an extension of the compliance date for affected entities (those newer facilities built after August 16, 2002) from July 1, 200, to November 20, 2009.

*It is important to note that if a facility was built before August 16, 2002, and does not currently have an SPCC Plan, the operators of that facility should prepare a plan as soon as possible as the facility is out of compliance.*

According to the EPA, the "new amendments to the SPCC rule will clarify regulatory requirements, tailor requirements to particular industry sectors, and streamline certain requirements for facility owners or operators subject to the rule. With these changes, EPA expects to encourage greater compliance with the SPCC regulations, thus resulting in increased protection of human health and the environment."

Items included in the new rule that are not expected to affect aviation:

- New requirements for farms
- An exemption for Hot Mix Asphalt facilities
- An exemption for certain pesticide application equipment
- An exemption for heating oil tanks at single-family residences
- Reduced requirements for non-transportation-related tank trucks (this does not change the rule for refueler trucks)
- Amendment of rules for animal fats and vegetable oils
- An exemption for underground oil tanks at nuclear power generation facilities

New items likely to affect aviation (discussed individually below):

- A new definition of "facility"
- A new definition of "loading/unloading racks"
- A new streamlined approach for smaller facilities
- Amendment of the facility diagram requirement
- Amendment of the integrity testing requirement

#### Discussion SPCC rule changes affecting aviation

The EPA provided a new definition of "facility" that modifies the old definition in three ways:

1. Clarifies that this definition alone governs the applicability of the SPCC Rule.
2. Clarifies that containers can be separated or aggregated, based on various factors such as contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines that make up the facility.
3. Adds the qualifier "oil" before the term "waste treatment."

With this new definition, airports could allow leased operations and tenant operations to prepare their own SPCC Plan as a separate “facility.” If a tenant operation only had one 500-gallon fuel tank (or any amount less than 1,320 gallons), the tenant would not be required to prepare an SPCC Plan and the tenant’s tank would not be required to be included in the airport’s SPCC Plan. Airports may, however, choose to include all tanks at the airport in the SPCC Plan and to control the entire airport with that plan. There are several examples at airports where this has already been applied, and this new definition provides needed clarification. This new definition provides additional flexibility to the aviation industry.

The EPA also provided a definition of “loading/unloading racks” as follows:

“Loading/unloading rack means a fixed structure (such as a platform, gangway) necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a loading or unloading arm and may include any combination of the following: piping assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.”

Facilities that have a “loading rack” will be required to build a containment structure for the delivery vehicle or rail car that is large enough to contain the largest compartment in the vehicle plus sufficient freeboard from precipitation. If the facility only has simple loading areas (which is the case on most airports), only the general secondary containment rules apply and a more simple containment structure is required. The certifying professional engineer (PE) who prepares your plan will provide the details that will be appropriate to your airport.

The photo below is an example of a facility that would meet the requirement for a loading rack. Note the platform and the loading arm. This is used to transfer fuel into the top of the mobile refueler.



The EPA is providing additional streamlined provisions of smaller facilities. Under the previous rule published by the EPA in December 2006, facilities that have less than 10,000 gallons of total aggregate storage can prepare their own SPCC Plan and will not require a PE to certify the plan. These self-certified plans still require all the SPCC requirements and the SPCC Plan would be similar to a PE’s plan, only without the cost of hiring the PE. Under this new rule today, if a facility has less than 10,000 gallons of aggregate storage AND no container greater than 5,000 gallons (and

several other requirements), the facility will be allowed to utilize a streamlined template provided by the EPA to prepare their self-certified SPCC Plan. This approach will be much easier for smaller facilities and could apply to many smaller airports and smaller airport tenant operations.

The following table provides additional clarification regarding the Tier 1 and Tier 2 facilities.

Qualified facilities*		All other facilities
Tier I	Tier II	
10,000 U.S. gallons or less aggregate aboveground oil storage capacity; and		More than 10,000 U.S. gallons aggregate aboveground oil storage capacity, or
Within any twelve-month period, three years prior to the Plan certification date, or since becoming subject to the SPCC rule if in operation for less than three years, there has been: (1) No single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons; and (2) No two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons **; and		Within any twelve-month period, three years prior to the Plan certification date, or since becoming subject to the SPCC rule if in operation for less than three years, there has been: (1) A single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gallons; or (2) Two discharges of oil to navigable waters or adjoining shorelines each exceeding 42 U.S. gallons **; or
No individual aboveground oil containers greater than 5,000 U.S. gallons;	Has individual aboveground oil containers greater than 5,000 U.S. gallons; or Owner or operator eligible for Tier I qualified facility status, but decides not to take the option or chooses to develop a “hybrid” Plan;	Owner or operator eligible for qualified facility status, but decides not to take the option;
Then: Complete and self-certify Plan template (Appendix G to 40 CFR part 112) in lieu of a full PE-certified Plan.	Then: Prepare self-certified Plan in accordance with all applicable requirements of §112.7 and subparts B and C of the rule, in lieu of a PE-certified Plan.	Then: Prepare PE-certified Plan in accordance with all applicable requirements of §112.7 and subparts B and C.

\* See Section V.M of this notice for more information on qualified facility eligibility criteria specific to the oil production sector.

\*\* This criterion does not include discharges as described in §112.1(b) that are the result of natural disasters, acts of war, or terrorism. Additionally, the gallon amount described in this criterion addresses the amount of the discharge that actually reaches navigable waters or adjoining shorelines.

The EPA is providing additional flexibility in preparing the facility diagram required by the SPCC Rule. The facility diagram must show the location of all fixed tanks, mobile tanks, refuelers, totes, and drums. The plan must also include the capacity of each container and the contents of each container, but this new rule allows this information to be included in supporting tables or other means, not necessarily on the diagram itself. The EPA has suggested that mobile tanks, mobile refuelers, totes, and drums be identified in their normal storage location, but they do not need to be identified in each possible location if these containers are typically moved throughout the facility. If the number of containers varies (such as number of drums), the EPA agrees that a range of containers can be utilized in the plan. Finally, the EPA agreed that drawings from other plans (such as emergency response plans, storm water plans, etc.) can be used for the SPCC Plan as long as the diagram meets the requirements of the SPCC Rule.

The EPA is amending the requirements for integrity testing for bulk storage tanks. Under this new rule, facilities can utilize appropriate industry standards without satisfying the requirement of “environmental equivalence” as required previously. For example, if the certifying PE who prepares the SPCC Plan determines that the American Petroleum Institute (API) testing procedure API -653 is

the appropriate testing requirement, he/she can simply state that in the SPCC Plan. Other applicable industry standards include the Steel Tank Institute (STI) procedure, SP-001 and the Petroleum Marketers Association of America (PMAA) standards. The EPA specifically referenced the environmental equivalence flexibility granted in the litigation and the letter to the PMAA regarding smaller shop-built tanks (less than 30,000 gallons in size and not in contact with the ground). In this agreement, the EPA stated that it would be sufficient to perform visual examinations of these smaller shop-built tanks, but it would require a certification of environmental equivalence by the PE in the SPCC Plan.

The NATA will continue to provide detailed information to its members regarding new EPA rules and regulations. Questions and comments can be directed to Eric Byer at [ebyer@nata.aero](mailto:ebyer@nata.aero).