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DO NOT DELAY SPCC COMPLIANCE:

Disastrous Oil Spills Raise Awareness

DO NOT DELAY SPCC COMPLIANCE: DISASTROUS OIL SPILLS RAISE AWARENESS

There is never a time during which an in-force environmental regulation can be safely ignored. However, since 2010's disastrous Gulf of Mexico oil spill and the 2018 rupture of a 12-inch pipeline near Philadelphia, Pennsylvania, which released more than 33,000 gallons (gal) of oil into Darby Creek, any avoidance of spill prevention regulations, including the federal oil spill prevention, control, and countermeasure (SPCC) regulations, would be a managerial error of the highest order. Public and official anger at any lack of diligence in complying with or enforcing regulations intended to prevent and properly respond to oil spills of any type is probably at an all-time high.

The Darby Creek event involved a transportation facility and was therefore regulated under safety requirements issued by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), not under the U.S. Environmental Protection Agency's (EPA) SPCC program. But the event still serves to highlight the harm that spilled oil inflicts on water bodies, wildlife, and human safety and further emphasizes the imperative and the obligation to prevent spills whether your facility is classified as nontransportation or transportation.

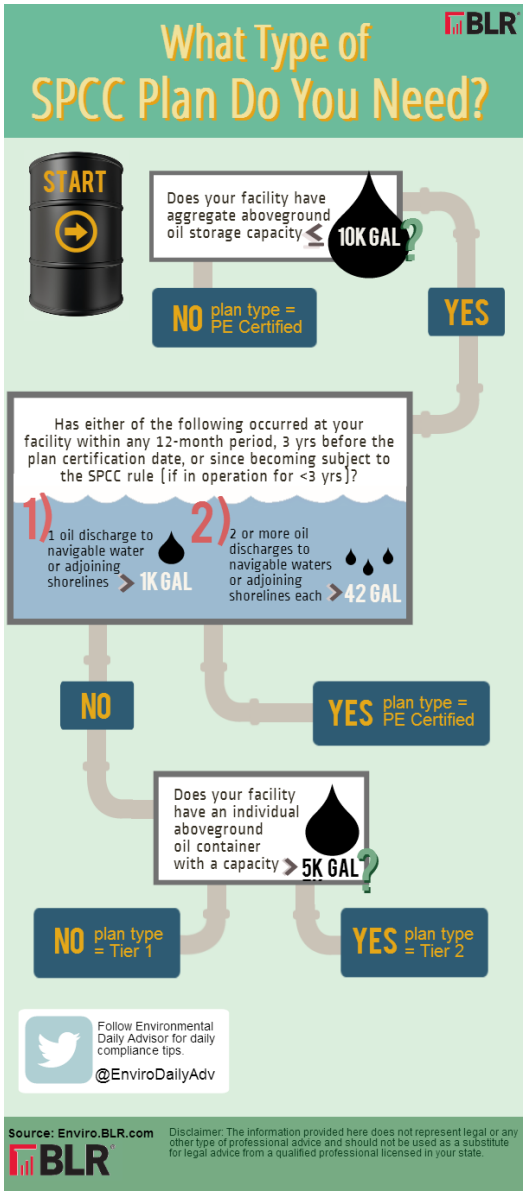
Given the state of heightened public and government awareness about how accidental oil releases can occur in virtually any part of the country and the devastation they can cause, it is always good to remind readers of their SPCC requirements. One reason to bring particular attention to SPCC is that the program casts a very broad net, affecting facilities that have a relatively small storage capacity when compared to the large corporations that operate oil pipelines.

The EPA estimates that about 670,000 facilities are subject to the SPCC rule. SPCC applies to facilities with an aggregate aboveground oil storage capacity greater than 1,320 U.S. gal and/or buried storage of greater than 42,000 U.S. gal and that, because of their location, have the potential to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.* That's a very low regulatory threshold, and it is likely to be found at many small facilities that have little or no experience with environmental regulations.

Who must comply?

Several points must be emphasized in determining if your facility is subject to the SPCC program.

- First, the program applies to *capacity*, not to the actual amount of oil stored.
- Second, in calculating capacity, count only containers with storage capacity equal to or greater than 55 U.S. gal.
- Third, oil-filled equipment also counts in the capacity determination. Such equipment typically includes hydraulic systems, lubricating systems, gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, and manufacturing equipment. When calculating your capacity, do not make the mistake of looking only at oil storage vessels such as tanks or drums. Also, vehicles (e.g., tank trucks) and railroad cars used to transport oil exclusively within the confines of a facility are subject to SPCC regulation.
- Fourth, oil of *any type* is subject to the SPCC program. In addition to the various petroleum products, types of oil that require SPCC compliance include fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oil from seeds, nuts, fruits, or kernels; and mineral oils.



The complete SPCC regulations are at 40 CFR Part 112. Managers of subject facilities are advised to study the regulations to acquire a confidence that they understand each applicable requirement. In your review, pay special attention to the following.

No discharge to water

Managers with facilities not directly adjacent to U.S. waters or their tributaries may seek to avoid SPCC regulation by demonstrating that no spilled oil could reasonably be expected to reach the water. According to the regulatory language, making such a determination requires consideration of the geographical and locational aspects of the facility. The location of the facility must be considered in relation to any feature that could convey spilled oil to a U.S. water. Such features include streams, ponds, lakes, ditches, storm or sanitary sewers, wetlands, mudflats, sandflats, or farm tile drains.

The distance to navigable waters, volume of material stored, worst-case weather conditions, drainage patterns, land contours, soil conditions, etc., must also be taken into account.

Furthermore, according to the regulations, the determination may not include consideration of man-made features such as dikes, equipment, or other structures (like levees) that may serve to restrain, hinder, contain, or prevent an oil discharge. EPA's thinking here is that these structures were not specifically designed and constructed to block oil flows; in addition, a catastrophic event that caused an oil discharge could also result in the failure of other structures that may not then contain the release.

Equipment and plan

There are two major steps in complying with the SPCC program.

First, acquire and maintain the equipment needed to prevent oil spills. However, the regulations do not stipulate specific equipment that must be included. In this regard, the SPCC requirements are *performance-based*. In the context of the rule, this means that managers have flexibility in selecting the type of prevention equipment that works best at the best price and ease of operation and maintenance for their specific facilities. Some simple guidelines to follow regarding equipment and equipment selection include:

- **Use containers suitable for the oil stored.** For example, use a container designed for flammable liquids to store gasoline.
- **Provide overfill prevention for oil storage containers.** You could use a high-level alarm or audible vent.

- **Provide sized secondary containment for bulk storage containers**, such as a dike or a remote impoundment. The containment needs to hold the full capacity of the container plus possible rainfall. The dike may be constructed of earth or concrete. A double-walled tank may also suffice.
- **Provide general secondary containment to catch the most likely oil spills** where you transfer oil to and from containers and for mobile refuelers and tanker trucks. For example, you may use sorbent materials, drip pans, or curbing for these areas.
- **Periodically inspect and test pipes and containers.** You need to visually inspect aboveground pipes and oil containers according to industry standards; buried pipes need to be leak tested when they are installed or repaired.

Second, prepare and implement an SPCC Plan. Identifying your equipment and describing how that equipment will prevent spills or retain spilled oil are two major elements of the SPCC Plan. The federal regulations define the SPCC Plan as the "document that details the equipment, workforce, procedures, and steps to prevent, control, and provide adequate countermeasures to a discharge." Although each SPCC Plan is unique to the facility, there are certain elements that must be described in every plan, including:

- Operating procedures at the facility to prevent oil spills;
- Control measures (such as secondary containment) installed to prevent oil spills from entering navigable waters or adjoining shorelines; *and*
- Countermeasures to contain, clean up, and mitigate the effects of an oil spill that has impacted navigable waters or adjoining shorelines.

As you expand the above elements, you will likely touch on many details and facility-specific procedures that are required elements of SPCC plans. These include:

- Facility diagram and description of the facility

- Oil discharge predictions
- Appropriate secondary containment or diversionary structures
- Facility drainage
- Site security
- Facility inspections
- Requirements for bulk storage containers, including inspections, overfill, and integrity testing requirements
- Transfer procedures and equipment (including piping)
- Requirements for qualified oil-filled operational equipment
- Loading/unloading rack requirements and procedures for tank cars and tank trucks
- Brittle fracture evaluations for aboveground field-constructed containers
- Personnel training and oil discharge prevention briefings
- Recordkeeping requirements
- 5-year plan review
- Management approval
- Plan certification (by a professional engineer (PE) or, in certain cases, by the facility owner/operator)

Certification

The final provision above—SPCC Plan certification—was one of the more controversial requirements when the SPCC program was developed. Industry advocates argued that self-certification of the adequacy of plans by the facility owner or operator was sufficient. Others, including professional engineering associations, argued that a PE must be included in the process. The EPA compromised by splitting the responsibilities. Specifically:

- Self-certification is allowed if the facility has a total aboveground oil storage capacity of 10,000 U.S. gal or less; and in the 3 years before the date the SPCC Plan is certified, the facility has had no single discharge of oil to navigable waters or adjoining shorelines exceeding 1,000 U.S. gal, or no two discharges of oil to navigable waters or adjoining shorelines, each exceeding 42 U.S. gal, within any 12-month period.
- If the facility does not meet the above criteria, the SPCC Plan must be certified by a licensed PE. By certifying the SPCC Plan, the PE confirms that:
  - He or she is familiar with the requirements of the rule.
  - He or she or an agent has visited and examined the facility.

- The SPCC Plan has been prepared in accordance with good engineering practices, including consideration of applicable industry standards, and with the requirements of the rule.
- Procedures for required inspections and testing have been established.
- The SPCC Plan is adequate for the facility.

Tips for Choosing and Working with a PE

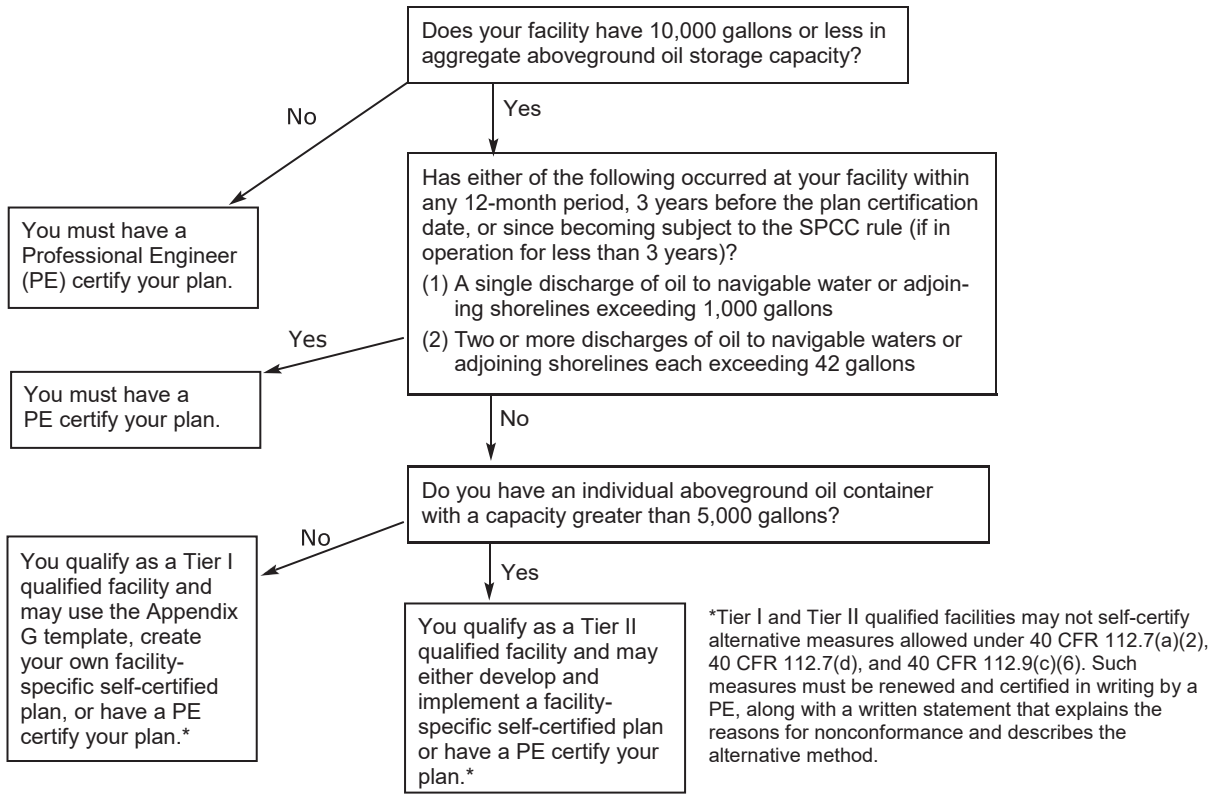
When facility owners or managers decide it's time to hire a PE to certify their SPCC Plan, they should keep several issues in mind. Tips include:

- ✓ Assess various aspects of the Plan and decide what specifically needs to be accomplished.
- ✓ Ascertain how much work can be properly done by the facility's staff.
- ✓ Request proposals from several PEs.
- ✓ Be certain that the proposal clearly identifies the requirements of the PE and the facility's staff regarding any work that must be performed.
- ✓ Review each proposal the PE submits to be certain that it addresses the facility's needs to bring and/or keep the SPCC Plan in compliance.
- ✓ Check with the local Better Business Bureau to see if there have been any comments, both negative and positive, regarding the PE or his or her firm.
- ✓ Ask for background information from the PE regarding work he or she has performed on similar projects.
- ✓ Ask for a list of references from other facilities that have had SPCC work performed by the PE.
- ✓ Ask for a copy of the PE's license.
- ✓ Negotiate a contract with the PE, and carefully review the contract to be sure it meets the facility's and the plan's needs.
- ✓ Spell out in the contract a timetable for the work in order to be certain the facility meets any deadlines.
- ✓ Determine how close the PE's office is to the facility. A long distance may be problematic if the PE is located out of state, for example.
- ✓ Be certain that the PE and/or his or her firm are properly insured for their work.
- ✓ When the decision is made on which PE to hire, be sure he or she or one of his or her agents visits the site. Federal regulations require this; otherwise, the Plan cannot be certified, and the facility owner or operator is not in compliance with 40 CFR 112.

When self-certifying a facility's SPCC Plan, the owner/operator makes a similar statement. Bear in mind that no matter who certifies the SPCC Plan—PE or owner/operator—ultimately, it is the owner/operator who is responsible for complying with the rule. Also, the plan must be amended when there are changes in facility design, construction, operation, or maintenance that materially affect the facility's potential for the discharge of oil; or if there are two or more spills in 12 months, or one spill of at least 1,000 gal.

To see if self-certification is right for you, check out our Flowchart: *Determining Whether SPCC Plan Self-Certification Is an Option*.

Flowchart: Determining Whether SPCC Plan Self-Certification Is an Option



*In May 2014, President Obama signed the Water Resources Reform and Development Act (WRRDA), which included exemption language for farmers. The exemption increased threshold sizes for aboveground storage tank (AST) regulation at farms and allowed more farms to self-certify SPCC plans. The EPA has not yet amended the SPCC regulations to reflect the new law's provisions. If your facility is an agricultural facility, check with the EPA to determine current SPCC applicability.

Next steps

If you are unsure if your facility is subject to the federal SPCC regulations, do not delay in conducting an inventory of your oil storage capacity. If you are still unsure, your best option may be to retain a PE with documented experience in SPCC regulations. While we do not make a habit of advising managers to resort to acquiring outside assistance, we feel this is a particularly risky time to be in noncompliance with the SPCC program, and an expedited strategy to be legally sound is highly recommended.