



JULY 1998

# Region III Oil Program Activities

Volume 5, Issue 3

## ***FRP INFORMATION***

### **CHECKLIST FOR KEY ELEMENTS OF A MODEL FACILITY RESPONSE PLAN**

- ✓ Emergency Response action Plan (an easily accessible stand-alone section of the overall plan).
- ✓ Facility name, type, location, owner, and operator information.
- ✓ Diagrams of facility and surrounding layout, topography, and evacuation information.
- ✓ Emergency notification, equipment, personnel, and evacuation information.
- ✓ Identification of small, medium, and worst case discharge scenarios and subsequent response actions.
- ✓ Description of discharge detection procedures and equipment.
- ✓ Detailed implementation plan for containment and disposal.
- ✓ Facility and response resource self-inspection training, exercises and drills; and meeting logs.
- ✓ Security (fences, lighting alarms, guards, emergency cut-off valves and locks, etc).

### **PLANNING DISTANCES FOR COASTAL AREAS**

There has been some question as to the planning distance required for FRP facilities in coastal (tidal influenced) areas. As most operation managers know, FRP facilities must include in their FRP plan, all fish, wildlife, and sensitive environments, as well as the public, that would be effected by a discharge from the facility. The appropriate planning

distance for this evaluation depends on whether or not the oil in question is a persistent or non-persistent substance.

For non-persistent oils discharged into tidal waters, the planning distance is 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide. Non-persistent oils include gasoline, #2 diesel, and home heating oils. They also include (from Appendix E, section 1.2.2):

- Any petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:
  - (A) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and
  - (B) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F);

#### AND

- Has a specific gravity less than 0.8.

Persistent oils are of primary concern because they can potentially cause harm over a greater distance. For persistent oils discharged into tidal waters, the planning distance is 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide. Persistent oils are those which do not meet the criteria for non-persistent oils. Examples of persistent oils include #6 fuel oil and paraffin.

The above planning distances can be found in 40 CFR 112 Attachment C-III Section 4.0. Please keep them in mind next time you update your FRP plan (and are located in a coastal region) or your company plans to begin oil-related operations in a coastal region.

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## ***QUESTION AND ANSWERS***

### **SPCC QUESTIONS AND ANSWERS**

*When the SPCC Plan is completed and certified, is it sent to EPA for review?*

No. A certified copy of the SPCC Plan must be available at the facility for EPA on-site review if the facility is attended at least eight hours a day. If the facility is attended less than eight hours a day, then the SPCC plan must be kept at the nearest company office. However, if the facility has a single discharge of more than 1,000 gallons or two discharges of harmful quantities in any twelve month period, the Plan IS REQUIRED to be sent to EPA for review.

*If a tank is taken out of service, what measures must a facility take in order to be exempt from SPCC regulations?*

Any tank taken out of service must have all pipes and fittings disconnected and sealed and all contents removed from the tank. If a tank is taken out of service and this results in the facility's oil storage capacity to drop below SPCC thresholds, then the facility is no longer SPCC regulated. However, EPA evaluates a facility's storage capacity based on 100% of tank capacities, regardless of the quantities a facility "normally" stores in the tank. Partial filling of a tank would not count towards exempting a facility from the regulations.

### **OIL SPILL QUESTIONS AND ANSWERS**

*Who should we report an oil spill to?*

When a discharge of oil involving waters of the U.S. occurs, it must be reported immediately to the National Response Center (NRC) at 800-424-8802 by the person in charge of the vessel, facility or vehicle from which the spill occurs. Threats of discharges or releases to the waters of the U.S. should also be reported. Under some circumstances, it may be impracticable to report immediately to the NRC. In these cases, the U.S. Coast Guard or EPA predesignated On-Scene Coordinator (404-347-4062) should be notified immediately. In any event, the NRC should be notified as soon as possible. Criminal sanctions may be sought for failure to report discharges of oil to the NRC.

*Is every loss of oil or oil product subject to a penalty?*

A discharge is defined in the Federal Water Pollution Control Act as including, but not limited to any spilling, leaking, pumping, pouring, emitting, emptying, or dumping that enters the waters of the U.S. or the adjoining shorelines in harmful quantities. If a discharge occurs and enters the water, a penalty **may** be assessed.

Penalties are determined using the following factors:

- Seriousness of violation
- Economic benefit to violator resulting from violation
- Degree of culpability involved
- Penalties for same incident from other agencies
- Violation history
- Efforts by the violator to minimize effects of discharge
- Economic impact of the penalty on violator
- Any other matters as justice may require

### **FRP QUESTIONS AND ANSWERS**

*What facilities need to have a certification form showing that they do not meet the FRP substantial harm criteria?*

The owner or operator of any facility that meets the criteria of 40 CFR 112.1 must develop an SPCC plan and conduct an initial screening to determine whether he or she is required to develop an FRP. Only those facilities that meet the criteria of 112.1, are onshore facilities, and could cause substantial harm, as defined by 112.20(f)(1), must develop an FRP. Under 112.20(e), facilities that do not meet the substantial harm criteria must document this determination by completing the Certification of Substantial Harm Determination Form, provided in Appendix C of Part 112 (62 Fed.Reg. 7770; February 20, 1997).

*Does the completed facility response plan need to be submitted to the state as well as to the RA?*

Pursuant to OPA and 40 CFR 112.20, the facility response plan only needs to be submitted to the RA. Facilities should check with the state to see if there are any applicable state laws.

## ***SPCC INFORMATION***

### **CONTAINMENT FOR MANIFOLDED TANKS**

Tanks which are permanently manifolded together or have piping configurations with normally open valving that make the tanks permanently manifolded need to have containment for the volume of all connected tanks plus an allowance for precipitation. A leak from one of the tanks or their combined piping would cause the draining of all tanks and piping. Only tanks with a combined volume less than the containment volume plus an allowance for precipitation may be left open during normal operations. Filling of or leveling between tanks may be accomplished with constant surveillance of tanks, piping and other appurtenances.

## ***ENFORCEMENT***

## **\$30,000 SPCC PENALTY ASSESSED**

On May 28, 1998 Administrative Law Judge Edward J. Kuhlmann assessed a \$30,078 penalty against the Philadelphia Macaroni Company (PMC) located in Bucks County, PA for failing to prepare a Spill Prevention Control & Countermeasures (SPCC) Plan (see § 40 CFR 112.7).

The penalty given by Judge Kuhlmann was 90% of the assessment sought by EPA in the suit. EPA originally proposed a penalty to be assessed for \$33,420, in consideration of the fact that PMC was a pasta maker and not in the "oil" business, among other reasons.

The judge noted that PMC could have become subject to the requirement to prepare an SPCC plan in either of two ways: if it has discharged a harmful quantity of oil into the navigable waters, or if it could be reasonably be expected to cause a spill. Since PMC did have a spill it should have prepared an SPCC Plan within six (6) months of the spill date. As for the reasonable foreseeability of a spill occurring, the judge dismissed PMC arguments. PMC argued at hearing that a spill was not "reasonably foreseeable" since the 10K tank was in a basement, inside a fireproof cinder block vault, and more than a quarter mile from a stream. The judge, however, gave credence to EPA's view that a spill was possible based on the geography of the facility's location, the exclusion of manmade features (i.e the vault) and the existence of an automatic sump pump ten feet from the tank. In dismissing PMC argument of the "extraordinary" events that led to their spill, the judge stated that the "extraordinary" events leading up to the spill demonstrate the importance of preparing and implementing an SPCC Plan since it help facilities determine their weak points.

The judge viewed the violation as one of the most serious possible violations of the SPCC regulations since it thwarts both objectives of the oil pollution prevention rule: prevention of spills and minimization of the impact of spills that unfortunately do occur. However, the Judge considered mitigating factors such as PMC's primary business, the secondary containment vault, and some preventive actions PMC took after the spill event. These mitigating factors allowed the ten (10) percent reduction from the pleaded amount of \$33,420 to \$30,078.

The decision viewed PMC's failure to make itself aware of the environmental regulations as highly culpable. This was emphasized by PMC's continued ignorance despite actually having the spill event. The judge also factored into culpability the fact that PMC is a multi-million dollar corporation with the resources to determine its environmental

responsibilities. At hearing PMC argued that EPA SPCC inspectors swooped in like a stealth bomber and dropped the SPCC bomb on PMC, a naive pasta maker. This "ignorance" argument failed simply because the Federal Register is considered adequate notice, not to mention EPA sponsored SPCC seminars, info guides, web site, and this newsletter. This ignorance argument will make more sense if the 10K tank was installed in the forgotten past of the 1960's, but the tank was installed a mere 3 years ago! What is troublesome is that no one at PMC stopped to consider how this 10,000 gallon tank may impact the environment (not to mention their pockets).

EPA hopes this decision will encourage other facilities to use a little common sense when handling oil, and if warranted or required prepare and implement an SPCC Plan. (Copies of this decision may be obtained by faxing a request with mailing address to (215)814-3254. Attn: SPCC Coordinator)

## **RECYCLING**

### **EARTH'S 911 FOR THE ENVIRONMENT**

The Environmental/Recycling Hotline, dubbed the "earth's 911 for the Environment," is a public/private partnership between EPA, the U.S. Postal Service, and several private sector businesses. A state-of-the-art computerized, interactive phone and Internet system, the Environmental/Recycling Hotline is expanding nationwide to allow everyone in the U.S. to have access to environment and recycling information. The hotline's mission is to provide geographically specific environmental and recycling information at no cost. Through a single 800 number, callers can access several sections of information, including the nearest recycling center. By calling (800) CLEANUP or accessing the Hotline's web site at <http://www.1800cleanup.org>, and entering a zip code, callers can determine the nearest recycling center for up to 15 different types of recyclable materials. Callers can also obtain other environmental information including educational materials on reducing, reusing, recycling, managing household hazardous waste, and buying recycled-content products.

## **UPCOMING EVENTS**

### **INTERNATIONAL ENVIRONMENTAL CONFERENCE**

International Environmental Conference - New Orleans, LA September 10 - 11, 1998. This conference will bring together senior-level executives from the chemical industry to discuss international regulatory issues. For more information contact Anita O'Boyle of Chemical Week at (212)621-4978 or their web site at "www.chemweek.com".

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**REGION III RRT MEETING**

The next regularly scheduled Region III RRT meeting will be September 1-3, 1998, in Pittsburgh, PA.

**ATTENTION**

**AS OF JULY 17 1998**

US EPA Region IIIs Regional Response Center is moving. The new address is:

**1650 Arch Street  
Philadelphia, PA 19103-2029**

The new 24 hour hotline is:

**(215) 814-9016**

**Region III Oil Program Contacts:**

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-Secretary

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-On-Scene Coordinator  
-Inland Area Committee, Chair

**Linda Ziegler** (215) 566-3277  
-Oil Program Coordinator  
-Facility Response Plan (FRP) Coordinator  
-Oil Pollution Act  
-RRT, Area Committees, Port Area Committee  
-Spill Response Countermeasure (Dispersants)  
-Outreach

**Jean Starkey** (215) 566-3292  
-SPCC Coordinator  
-OPA Spill Penalty Program  
-SPCC Enforcement  
-Multi-Media Enforcement  
-Outreach

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-Oil Enforcement Coordinator  
-OPA Spill Penalty Program  
-Spill Investigations  
-Oil Program Activities Newsletter  
-Outreach

**Neeraj Sharma (Raj)** (215)566-3260  
- SPCC Inspections  
- FRP Inspections  
- Outreach

**Bernie Stepanski** (215) 566-3288  
-Spill Investigations

**Frank Cosgrove** (215) 566-3284  
-SPCC/FRP Inspections and Plan Review  
-SPCC Enforcement Support  
-Outreach

**EPA REGION III OFFICE MOVING**

The Region III EPA Office will also be relocating this summer. The new address will be 1650 Arch Street, Philadelphia, PA 19103. Phone numbers will change to (215) 814-XXXX (extensions will stay the same).