

Please see p. 47113 – column on the right...comments and response regarding ‘Innovative devices’...



# Federal Register

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Part II

## Environmental Protection Agency

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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 requirement 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](mailto: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](mailto: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](http://www.epa.gov/oilspill).

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

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- II. Introduction

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- B. Background of This Rulemaking
- III. Summary of Major Rule Provisions
- IV. Discussion of Issues
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  - A. Executive Order 12866—OMB Review
  - B. Executive Order 12898—Environmental Justice
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  - D. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
  - E. Executive Order 13132—Federalism
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  - G. Regulatory Flexibility Act
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  - 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 Codes**

Crop and Animal Production .....	111-112.
Crude Petroleum and Natural Gas Extraction .....	211111.
Coal Mining, Non-Metallic Mineral Mining and Quarrying .....	121/2123/213114/213116.
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	

"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 *Introduction to Section 112.8*

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.

*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

*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

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 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 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. 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 valves.

*PE certification.* One commenter suggested that a section should be added to the rule requiring that Professional Engineers be required certify the design and construction the stormwater drainage system and 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 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, 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 already required for the design of