

Chapter 2 SPCC Rule Applicability

2.1 Introduction

The SPCC rule establishes requirements to prepare and implement SPCC Plans. SPCC Plans complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety, fire prevention, and oil pollution prevention. The purpose of an SPCC Plan is to form a comprehensive oil 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.

The rule applies to the owners and operators of non-transportation-related onshore and offshore facilities that could reasonably be expected to discharge oil into navigable waters of the United States or adjoining shorelines in quantities that may be harmful. This chapter clarifies which facilities, activities, and equipment are subject to the SPCC rule. The facility owner/operator is responsible for determining whether the facility is subject to the SPCC rule, however, this determination is subject to review by the Regional Administrator or his delegated representative.

2.1.1 Summary of General Applicability

Section 112.1 establishes the general applicability of the SPCC rule. The SPCC rule applies to facilities that:

- Are non-transportation-related;
- Have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S.; and
- Could reasonably be expected to discharge oil to navigable waters or adjoining shorelines in quantities that may be harmful.

Facilities that are owned and operated by federal, state, local government or tribal entities are equally subject to the regulation²⁰ as any other facility (although the federal government is not subject to civil penalties). Unlike some other federal environmental programs, the Clean Water Act does not authorize EPA to delegate the SPCC program implementation or enforcement to State, local, or tribal representatives.

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...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...

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

²⁰ The SPCC rule requires an owner or operator to develop an SPCC Plan. Under the CWA the definition of owner or operator includes "person" which includes federal, state and local government or tribal entities (33 USC 1362(4) (CWA Section 502(4))).

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Specifically, EPA exempts:

- Any facility where the completely buried oil storage capacity is 42,000 U.S. gallons or less and the aggregate aboveground oil storage capacity is 1,320 U.S. gallons or less;
- Completely buried oil tanks and associated piping and equipment that are subject to all of the technical requirements under 40 CFR part 280 or 281;
- Underground oil storage tanks, including below-grade vaulted tanks that supply emergency diesel generators at a nuclear power generation facility licensed by the Nuclear Regulatory Commission (NRC) and subject to any NRC provision regarding design and quality criteria, including but not limited to 10 CFR part 50;
- Permanently closed oil containers;
- Any container with an oil storage capacity less than 55 U.S. gallons;
- Any facility or part thereof used exclusively for wastewater treatment;
- Motive power oil containers;
- Hot-mix asphalt or any hot-mix asphalt container;
- Containers storing heating oil used solely at a single-family residence;
- Pesticide application equipment or related mix containers (with adjuvant oil);
- Intra-facility oil gathering lines subject to the regulatory requirements of 49 CFR part 192 or 195; and
- Any milk and milk product container and associated piping and appurtenance.

Do not include exempt oil containers or oil equipment when calculating the total oil storage capacity of the facility. (see §112.1(d))

Section 112.1(d) describes facilities subject to EPA jurisdiction (i.e., that are non-transportation-related) and the activities and equipment that are exempt from the SPCC rule and from the facility total oil storage capacity calculations. The section also describes the types of facilities that are outside EPA jurisdiction and therefore not subject to the SPCC rule. Notwithstanding the exemptions provided in §112.1(d), under §112.1(f) the Regional Administrator has discretion to require the owner or operator of any facility, subject to EPA's jurisdiction under §311(j) of the Clean Water Act (CWA), to prepare and implement an SPCC Plan, or part of an SPCC Plan.

This chapter further explains each of the applicability criteria listed in §112.1 and provides examples of how these criteria are applied. The remainder of this chapter is organized as follows:

- **Section 2.2** discusses the definition of “oil” and the regulated activities.
- **Section 2.3** discusses activities involving oil.
- **Section 2.4** explains what a “facility” is and provides examples of how a facility can be determined.

- **Section 2.5** discusses the difference between “transportation-related” and “non-transportation-related” facilities in determining jurisdiction of regulatory agencies.
- **Section 2.6** discusses the criteria for a facility to have a “reasonable expectation of a discharge to navigable waters in quantities that may be harmful.”
- **Section 2.7** addresses storage capacity thresholds and methods of calculating storage capacity.
- **Section 2.8** addresses the exemptions to the SPCC rule.
- **Section 2.9** discusses the process for a Regional Administrator to determine applicability, outside of the exemptions listed in §112.1(d).
- **Section 2.10** addresses the applicability of the rule requirements to different kinds of containers.
- **Section 2.11** discusses the applicability of Facility Response Plan (FRP) requirements.
- **Section 2.12** describes the role of the EPA inspector.

2.2 Definition of Oil

The SPCC rule applies to the owners and operators of facilities with the potential to discharge oil in quantities that may be harmful to navigable waters or adjoining shorelines. The SPCC rule’s definition of oil derives from §311(a)(1) of the Clean Water Act (CWA) which defines oil as “*oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.*”

OPA §1001 defined oil separately to exclude any substance which is specifically listed or designated as a hazardous substance under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and which is subject to provisions of that Act.²¹ Although oil is defined separately under OPA, that definition did not amend the original CWA definition of oil in §311(a)(1) and therefore was not incorporated into the definition of oil under 40 CFR part 112.2 that applies to both SPCC and FRP regulatory requirements.

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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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

²¹ Under OPA, “oil” means “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.”

In response to Edible Oil Regulatory Reform Act (EORRA) of 1995 (33 U.S.C. 2720) requirements, the oil definition under §112.2 was revised to include the categories of oil in EORRA. Those categories are: (1) petroleum oils, (2) animal fats and vegetable oils; and, (3) other non-petroleum oils and greases.²²

Section 112.2 of the SPCC rule defines oil as “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.”

The U.S. Coast Guard (USCG) maintains a separate list of substances it considers oil for its regulatory purposes. The list is available on the USCG Web site and may be used as a guide when determining if a particular substance is an oil.²³ However, it is important to note that for purposes of EPA’s regulations, the USCG list is not comprehensive and does not include all oils that are subject to 40 CFR part 112. The sections below discuss whether or not specific substances are considered oils for purposes of SPCC regulation.

2.2.1 Petroleum Oils and Non-Petroleum Oils

The SPCC rule applies to both petroleum oils and non-petroleum oils. Petroleum oils include, but are not limited to, crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Nonpetroleum oils and greases include coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils. (67 FR 47075, July 17, 2002).

Subpart B of 40 CFR part 112 covers both “petroleum oils and non-petroleum oils...” Petroleum oils and non-petroleum oils, including synthetic oils, share common physical properties and produce similar environmental effects. Petroleum and non-petroleum oils can enter all parts of an aquatic system and adjacent shoreline, and similar methods of containment, removal and cleanup are used to reduce the harm created by spills of both types of oils.

2.2.2 Synthetic Oils

Synthetic oils are used in a wide range of applications, including as heat transfer fluids, engine fluids, hydraulic and transmission fluids, metalworking fluids, dielectric fluids, compressor lubricants, and turbine lubricants. Synthetic oils are created by chemical synthesis rather than by refining petroleum crude or extracting oil from plant seeds. Oils that are derived from plant material may be considered animal fats and vegetable oils under subpart C of 40 CFR part 112.

²² EPA provided notice in 1975 that affirmed that animal fats and vegetable oils (AFVOs) were subject to the SPCC rule (40 FR 28849, July 9, 1975). For more information see *Chapter 1: Introduction*.

²³ See the “List of Petroleum and Non-Petroleum Oils” on the USCG Web site at <http://www.uscg.mil/vrp/faq/oil.shtml> under “Additional References.”

2.2.3 Animal Fats and Vegetable Oils (AFVO)

Animal fats and vegetable oils are covered under the SPCC regulation. Animal fats include but are not limited to 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 but are not limited to 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. (67 FR 47075, July 17, 2002).

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Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

2.2.4 Asphalt

Asphalt is a thermoplastic material, composed of unsaturated aliphatic and aromatic compounds, that softens when heated and hardens upon cooling. Within a certain temperature range, it exhibits viscoelastic properties with viscous flow behavior and elastic deformation. All types of asphalt are petroleum oil products, and its composition depends on the source of the crude oil and the process used to manufacture it.

The SPCC rule applies to asphalt cement (AC), as well as to asphalt derivatives such as cutbacks and emulsions. Because of the operational conditions under which AC, cutbacks and emulsions are used and stored, they do pose a risk of being discharged into navigable waters or adjoining shorelines. Although AC is semi-solid or solid at ambient temperature and pressure, it is generally stored at elevated temperatures. Hot AC is liquid—similar to other semi-solid oils, such as paraffin wax and heavy bunker fuels—and therefore is capable of flowing. Cutbacks and emulsions are liquid at ambient temperature, and because of their low viscosity, they may flow when discharged onto the ground. All of these oils are regulated under the SPCC rule to prevent discharges to navigable waters or adjoining shorelines.

However, hot-mix asphalt (HMA) and HMA containers are exempt from the SPCC rule. HMA is a blend of AC and aggregate material, such as stone, ground tires, sand, or gravel, which is formed into final paving products for use on roads and parking lots. HMA is unlikely to flow as a result of the entrained aggregate, such that there would be very few circumstances, if any, in which a discharge of HMA would have the potential to reach navigable waters or adjoining shorelines.

2.2.5 Natural Gas and Condensate

The SPCC rule does not apply to natural gas (including liquid natural gas and liquid petroleum gas). EPA does 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 (67 FR 47076, July 17, 2002). Furthermore, EPA has stated that hydrocarbons in a

gaseous phase under ambient pressure and temperature, such as natural gas, present at SPCC regulated facilities are not regulated under the SPCC rule (73 FR 74271, December 5, 2008).

However, natural gas liquid condensate (often referred to as “natural gasoline” or “drip gas”) is an oil subject to the SPCC rule. Condensate can accumulate in tanks, containers, or other equipment. For the purposes of determining SPCC applicability, containers with 55 gallons or more in capacity storing condensate must be included in a natural gas facility’s total oil storage capacity calculation.

More information on specific types of facilities handling both natural gas and oil and how they are regulated under the SPCC rule can be found in *Section 2.4.7*.

2.2.6 Oil and Water Mixtures

Oil and water mixture containers are subject to the SPCC rule. A mixture of wastewater and oil 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). A discharge of wastewater containing oil to navigable waters or adjoining shorelines in a “harmful quantity” (40 CFR part 110) is prohibited (see July 17, 2002, 67 FR 47069). One example of an oil and water mixture is produced water.

2.2.7 Produced Water

The SPCC rule applies to produced water from an oil well. Produced water is the oil and water mixture resulting from the separation of crude oil or gas from the fluids or gases extracted from the oil/gas reservoir, prior to disposal, subsequent use (e.g., re-injection or beneficial reuse), or further treatment. Produced water’s chemical and physical characteristics vary considerably depending on the geologic formation, usually being commingled with oil and gas at the wellhead, and changing in composition as the oil or natural gas fraction is separated and sent to market.

Produced water is typically collected in produced water containers at the end of the oil and gas treatment process, and often accumulates emulsified oil not captured in the separation process. Under normal operating conditions, a layer of oil may be present on top of the fluids. The amount of oil by volume observed in produced water storage containers varies, but based on EPA’s assessment, is generally estimated to range from less than one to ten percent by volume, and can be greater. Oil may be present not only in free phase, but also in other forms, such as in a dissolved phase, emulsion or a sludge at the bottom of the produced water container.

Oil discharges to navigable waters or adjoining shorelines from an oil/water mixture in a produced water container may cause harm. Such mixtures²⁴ are regulated as oil under the SPCC rule. Therefore, the capacity of

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Produced water container means a storage container at an oil production facility used to store the produced water after initial oil/water separation, and prior to reinjection, beneficial reuse, discharge, or transfer for disposal.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

²⁴ Refers to mixtures in the produced water container.

produced water containers counts toward the facility aggregate oil storage capacity. Produced water containers at oil production, oil recycling or oil recovery facilities are not eligible for the wastewater treatment exemption in §112.1(d)(6).

2.2.8 Hazardous Substances and Hazardous Waste

The definition of “oil” in §112.2 includes but is not limited to “oil mixed with wastes other than dredged spoil.” Oils covered under the SPCC rule include certain hazardous substances or hazardous wastes that are oils, as well as certain hazardous substances or hazardous wastes that are mixed with oils. Containers storing these substances may also be covered by other regulations, such as the Resource Conservation and Recovery Act (RCRA) or CERCLA (also known as Superfund). For example, the definition of oil under §112.2 includes “used oil” because it is an oil mixed with wastes. “Used oil,” as defined in EPA’s *Standards for the Management of Used Oil* at 40 CFR 279.1, means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

Inspectors should evaluate whether containers storing hazardous substances or mixtures of wastes contain oil. Hazardous substances or hazardous wastes that are neither oils nor mixed with oils are not subject to SPCC rule requirements. For purposes of 40 CFR part 112, the CWA §311(b)(2) hazardous substances as identified under 40 CFR part 116 are not considered oils. However, an oil mixture that includes a CWA hazardous substance is subject to 40 CFR part 112 when it meets the definition of oil in the regulation. For example, benzene is a CWA hazardous substance and therefore does not meet the definition of oil in §112.2; however, benzene is a constituent of gasoline which is a mixture that includes other oils. Gasoline is an oil as defined under 40 CFR part 112.2.

Although the rule contains an exemption for completely buried tanks that are subject to all underground storage tank (UST) technical requirements of 40 CFR part 280 and/or a state program approved under part 281 under §112.1(d)(2)(i) or (4), tanks containing RCRA hazardous wastes are not subject to the UST rules. Therefore, when RCRA hazardous wastes tanks located at a facility subject to the SPCC rule also contain oil, they are subject to the SPCC rule requirements.

2.2.9 Denatured Ethanol used in Renewable Fuels

Renewable fuels, such as E85 or “flex fuel” (15% unleaded gasoline and 85% ethanol) are produced in a blending process.²⁵ Ethanol used for fuel often contains a denaturing additive (typically gasoline, natural gasoline, diesel fuel or other oil petroleum product) which is oil. Therefore, the final denatured ethanol is also considered an oil, and facilities handling or storing denatured ethanol may be subject to the SPCC requirements. An EPA letter dated November 7, 2006 details the Agency’s position on denatured ethanol (see *Appendix H*).

²⁵

For more information on ethanol renewable fuels see:
http://epa.gov/region07/priorities/agriculture/pdf/ethanol_plants_manual.pdf

2.2.10 Biodiesel and Biodiesel Blends

Biodiesel and biodiesel blends are other types of renewable fuels that are often stored and handled at facilities regulated under 40 CFR part 112.²⁶ Biodiesel, designated B100, is a domestic, renewable fuel for diesel engines derived from natural oils like soybean oil. Biodiesel is comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

Biodiesel can be used in any concentration with petroleum-based diesel fuel in existing diesel engines with little or no modification. Biodiesel is not the same as raw vegetable oil. It is produced by a chemical process which removes the glycerin from the oil. Biodiesel is typically produced by a reaction of a vegetable oil or animal fat with an alcohol such as methanol or ethanol in the presence of a catalyst to yield mono-alkyl esters and glycerin, which is removed.

Biodiesel blends are a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Both biodiesel (B100) and biodiesel blends are considered oil for the purposes of 40 CFR part 112.

2.3 Activities Involving Oil

Section 112.1(b) specifies the following oil-related activities are regulated under the SPCC rule: “drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products.” These activities are subject to SPCC provided the facility meets the other applicability criteria in §112.1. *Table 2-1* provides examples of these activities.

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...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....

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule. ***Emphasis added.***

²⁶

For more information on biodiesel renewable fuels see:
http://epa.gov/region07/priorities/agriculture/pdf/biodiesel_manual.pdf

Table 2-1: Examples of some oil-related activities that may be regulated under 40 CFR part 112.²⁷

Activity	Examples of Oil-related Regulated Activities
<i>Drilling</i>	Drilling a well to extract crude oil or natural gas and associated products (such as wet natural gas) from a subsurface field
<i>Producing</i>	Extracting product from a well and separating the crude oil and/or gas from other associated products (e.g., water, sediment)
<i>Gathering</i>	Collecting oil from numerous wells, tank batteries, or platforms and transporting it to a main storage facility, processing plant, or shipping point
<i>Storing</i>	Storing oil in containers prior to use, while being used, or prior to further distribution in commerce
<i>Processing</i>	Treating oil using a series of processes to prepare the oil for commercial use, consumption, further refining, manufacturing, or distribution
<i>Refining</i>	Separating crude oil into different types of hydrocarbons through distillation, cracking, reforming, and other processes; separating animal fats and vegetable oils from free fatty acids and other impurities
<i>Transferring</i>	Transferring oil between containers, such as between a railcar or tank truck and a bulk storage container, or between stock tanks and manufacturing equipment
<i>Distributing</i>	Selling or marketing oil for further commerce or moving oil using equipment such as highway vehicles, railroad cars, or pipeline systems in the confines of a non-transportation-related facility. Note that businesses commonly referred to as oil distributors and retailers are also “storing” oil, as described above
<i>Using</i>	Using oil for mechanical or operational purposes in a manner that does not significantly reduce the quantity of oil, such as using oil to lubricate moving parts, provide insulation, or for other purposes in electrical equipment, electrical transformers, and hydraulic equipment
<i>Consuming</i>	Consuming oil in a manner that reduces the amount of oil, such as burning as fuel in a generator

2.4 Facilities

2.4.1 Definition of Facility

The definition of “facility” governs the overall applicability of 40 CFR part 112, and thus is used to determine the scope of a facility’s boundaries in order to determine if the facility is subject to the SPCC and/or FRP requirements. The boundary or extent of a “facility” depends on site-specific circumstances. Factors that may be considered relevant in delineating the boundaries of a facility under 40 CFR 112 may include, but are not limited to:

- Ownership, management, and operation of the buildings, structures, equipment, installations, pipes, or pipelines on the site;
- Similarity in functions, operational characteristics, and types of activities occurring at the site;

²⁷ The examples listed in this table are not exhaustive and are for illustrative purposes only.

- Adjacency; or
- Shared drainage pathways (e.g., same receiving water bodies).

The facility owner or operator, or a Professional Engineer (PE) on behalf of the facility owner/operator, must make a judgment of what constitutes the “facility.”

Once the owner or operator determines the facility boundaries for purposes of the SPCC rule, then the same boundaries apply for FRP applicability. Note that generally, an SPCC-regulated facility excludes components that are not subject to EPA’s jurisdiction, but are instead subject solely to the jurisdiction of other agencies, such as the Department of Transportation (DOT) or the United States Coast Guard (USCG).

Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities for SPCC purposes. For example, a single facility may be composed of various oil-containing areas spread over a relatively large campus, such as multiple operational areas within a military base. Each operational area may be considered a separate facility. The military base may not necessarily include single-family homes occupied by military personnel as part of the facility if these are considered personal space similar to civilian single-family residences. However, larger military barracks for which a branch of the military controls, operates, and maintains the space would be included as part of a facility.

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Facility means any mobile or fixed, onshore or offshore building, property, parcel, lease, 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 oil 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 types of activity at the site. Contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. Only this definition governs whether a facility is subject to this part.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

While the facility owner/operator has some discretion in defining the parameters of the facility, the boundaries of a facility may not be drawn to solely avoid regulation under 40 CFR part 112. For example, two contiguous operational areas, each with 700 gallons in aboveground storage capacity, that have the same owner, perform similar functions, are attended by the same personnel, and are in other ways indistinguishable from each other, would reasonably be expected to represent a single facility under the SPCC rule, and would therefore be required to have an SPCC Plan, since the capacity of this facility is above the 1,320-gallon aboveground threshold. These two operational areas would not be defined as two separate facilities under the definition of “facility” in §112.2. EPA reserves the right to make its own facility boundary determination after reviewing the Plan or inspecting the facility.

The facility owner and operator is responsible for ensuring that an SPCC Plan is prepared. A single site may have multiple owners and/or operators, and therefore may be divided into multiple facilities. Factors to

consider in determining which owner or operator should prepare the Plan include who has control over day-to-day operations of the facility or particular containers and equipment, who trains the employee(s) involved in oil handling activities, who will conduct the required inspections and tests, and who will be responsible for responding to and cleaning up any discharge of oil. EPA expects that the owners and operators will cooperate to prepare one or more Plans, as appropriate, to be kept at each facility when attended more than four hours per day.

SPCC facilities include not only permanent facilities with fixed storage and equipment, but also those that have only standby, temporary, and seasonal storage as described under §112.1(b)(3), as well as construction facilities. The owners and operators of mobile facilities (addressed in §112.3(a)) can create a general Plan, instead of developing a new Plan each time the facility is moved to a new location. Types of operations (mobile facilities) using a mobile plan include, but are not limited to, mobile fueling operations, road construction projects, drilling operations, and workover operations.

Because the physical surroundings of mobile facilities are subject to change, §112.3(a)(2) of the SPCC rule indicates that the owner or operator of a mobile facility may have a “general” Plan and need not prepare a new Plan each time the mobile 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 its Plan. In accordance with §112.3(a)(2), the Plan is only required to be implemented “while the facility is in a fixed (non-transportation) operating mode” (67 FR 47081, July 17, 2002).

2.4.2 Definitions of Onshore and Offshore Facility

EPA was delegated the authority to regulate non-transportation-related onshore and offshore facilities that could reasonably be expected to discharge oil into navigable waters of the United States or adjoining shorelines. Section 112.2 defines an “onshore facility” as “any facility of any kind located in, on, or under any land within the United States, other than submerged lands.” Requirements under Subparts B and C are divided based on the location of the facility and the type of operations. Sections 112.8 and 112.12 apply to all onshore facilities (excluding oil production facilities). Section 112.9 applies to all onshore oil production facilities and §112.10 applies to all onshore oil drilling and workover facilities.

“*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. Section 112.11 applies to all offshore oil drilling, production, or workover facilities.

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Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands.

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

Some facilities may be comprised of both onshore and offshore components. In these instances, facilities may be considered “hybrid” facilities and subject to more than one set of requirements under either Subpart B or C of the rule. For example, an oil production facility located along a coastline that has a tank battery located onshore and associated wellheads and flowlines that are located offshore may be subject to the requirements of §112.9 (for onshore oil production facilities) and §112.11 (for offshore oil drilling, workover and production facilities).

2.4.3 Definition of Production Facility

A “production facility” is a type of “facility” as defined in §112.2. A “production facility” includes all the structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or intra-facility 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 treatment of oil (including condensate) and associated storage or measurement and is located in an oil or gas field, at a facility.

The definition of “production facility” in §112.2 is narrower than the definition of facility and is used to determine which sections of the rule may apply at a particular facility. This definition governs whether such structures, piping, or equipment are subject to §112.9 of the rule. That is, if a facility meets the definition of a production facility, the owner or operator must comply with §112.9, or §112.11 (depending on the characteristics of the facility). Additionally, the sections for administrative and general rule requirements under 40 CFR part 112 apply as well (except for the security requirements under §112.7(g)).

The definition of “production facility” is consistent with the definition of “facility” in emphasizing flexibility in how a facility owner or operator can determine facility boundaries.

§112.2

Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or intra-facility 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 (including condensate) and associated storage or measurement and is located in an oil or gas field, at a facility. This definition governs whether such structures, piping, or equipment are subject to a specific section of this part.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

 Tip – Production facility

A production facility for purposes of 40 CFR part 112 is one that is involved with producing or extracting petroleum crude oil from a reservoir and not any other type of oil production, such as animal fat and vegetable oil (AFVO) production.

- The definition of production facility addresses petroleum crude oil production, extraction, recovery, lifting, stabilization, separation or treatment and associated storage or measurement.
- The definition also includes terms associated with petroleum crude oil production, such as gathering lines and flowlines which are exclusively associated with upstream petroleum crude oil/gas production, not AFVO production or processing facilities. The term “oil or gas field” is used exclusively in upstream crude oil and gas production, not in AFVO production.

2.4.4 Drilling and Workover Facilities

Under the SPCC rule, the term “production facility” can encompass drilling and workover activities, as well as oil production operations. However, different specific provisions of the rule apply to these different activities. Drilling activities typically involve the initial establishment of an oil well: drilling the borehole, inserting, running, and cementing the casing, and completing the well to start the flow of well fluids to the surface. Workover operations involve maintenance or remedial work that may be necessary to improve productivity during the life of the well. Workover operations may also include activities associated with the initial well completion process. Both drilling and workover activities tend to be temporary in nature and are performed using mobile rigs and associated equipment. Thus a drilling and/or workover facility is considered a mobile facility. Mobile facilities may use a general Plan so that a new Plan need not be prepared each time the mobile facility is moved to a new site. For example, it is not necessary to amend the Plan for a drilling rig every time the operator moves the rig to drill a well in a field containing multiple wells (see 67 FR 47084, July 17, 2002). The same approach for mobile facilities applies to workover operations and activities.

For drilling and workover operations, the owner or operator is required to develop an SPCC Plan under §112.3(c) because a drilling or workover facility is considered a mobile facility. The administrative and general requirements of the SPCC rule (§§112.1 through 112.7), as well as the specific requirements in §112.10 (for onshore facilities) or §112.11 (for offshore facilities) apply to the facility.

Once the well is completed and the well fluids are flowing, the completion (workover) and/or drilling rig is removed from the site and production equipment, such as a pump or valve assembly, is set up to extract or control the flow of oil from the well. At this point, drilling and or workover activities have ceased and production has begun; the facility is considered an oil production facility. The processes performed at a typical oil production facility include extraction, separation and treatment, storage, and transfer. The owner or operator of an oil production facility is subject to the administrative and general requirements of the SPCC rule (§§112.1

through 112.7) as well as the specific requirements in §112.9 (for onshore facilities) or §112.11 (for offshore facilities). Typically, a gas plant is not considered an oil production facility.²⁸

During the life of an oil well, maintenance or remedial work may be necessary to improve productivity. A specialized workover rig, equipment, and associated containers are brought on-site to perform maintenance or remedial activities. Workover activities are a distinct operation and may be conducted by a separate owner or operator, therefore, a workover operation may be considered a separate mobile facility and be described in a different SPCC Plan, separate from the oil production facility. Although production activities may temporarily cease during workover, if the production equipment and containers (such as those found in a tank battery) remain operable then the oil production facility owner/operator must maintain his own SPCC Plan during workover activities.

2.4.5 Definition of Farm

EPA defines “farm” in the SPCC rule 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.

§112.2

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

EPA also considered the “farm tank” definition 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 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 nonagricultural activities. Additionally, the definition of farm does not include agribusinesses because these businesses, e.g., oil marketing and distribution to farmers, are distinctly different from farms.

The definition of “farm” is narrower than the definition of “facility” and was originally promulgated to identify a subset of SPCC facilities subject to a compliance date extension. The definition of “facility” governs the overall applicability of 40 CFR part 112, and thus is used to determine whether the owner or operator (e.g., a

²⁸ EPA addressed this issue in a letter from R. Craig Matthiessen, Office of Emergency Management, to Roger Claff of the American Petroleum Institute (2010). See *Appendix H*.

farmer) is subject to the SPCC and/or FRP requirements of the rule and to determine the scope of his or her facility.

2.4.6 Examples of Aggregation or Separation

The following factors to determine the boundaries of a facility are not exclusive and simply serve as examples:

- Ownership, management, and operation of the buildings, structures, equipment, installations, pipes, or pipelines on the site;
- Similarity in functions, operational characteristics, and types of activities occurring at the site;
- Adjacency; or
- Shared drainage pathways (e.g., same receiving water bodies)

A lease may, at the owner or operator's discretion, constitute a facility, but does not necessarily create a facility. According to the definition of facility, contiguous or noncontiguous buildings, properties, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may be considered separate facilities. A facility may also consist of parcels that are smaller or larger than an individual lease.

A facility may or may not be subject to the SPCC and FRP rule requirements depending on how the facility owner or operator aggregates buildings, structures or equipment and associated storage or type of activity. However, once the owner/operator determines the facility boundaries for SPCC applicability, then the same boundaries apply for determining applicability of the FRP rule requirements. An owner or operator may not characterize a facility so as to simply avoid applicability of the rule (for example, defining separate facilities around oil storage containers that are located side-by-side or within close proximity, and are used for the same purpose).

Following are six example scenarios of how a facility owner or operator may determine what is considered a "facility" for the purposes of an SPCC Plan. Each of these scenarios is hypothetical and is not intended to provide a policy interpretation for any specific existing facility.

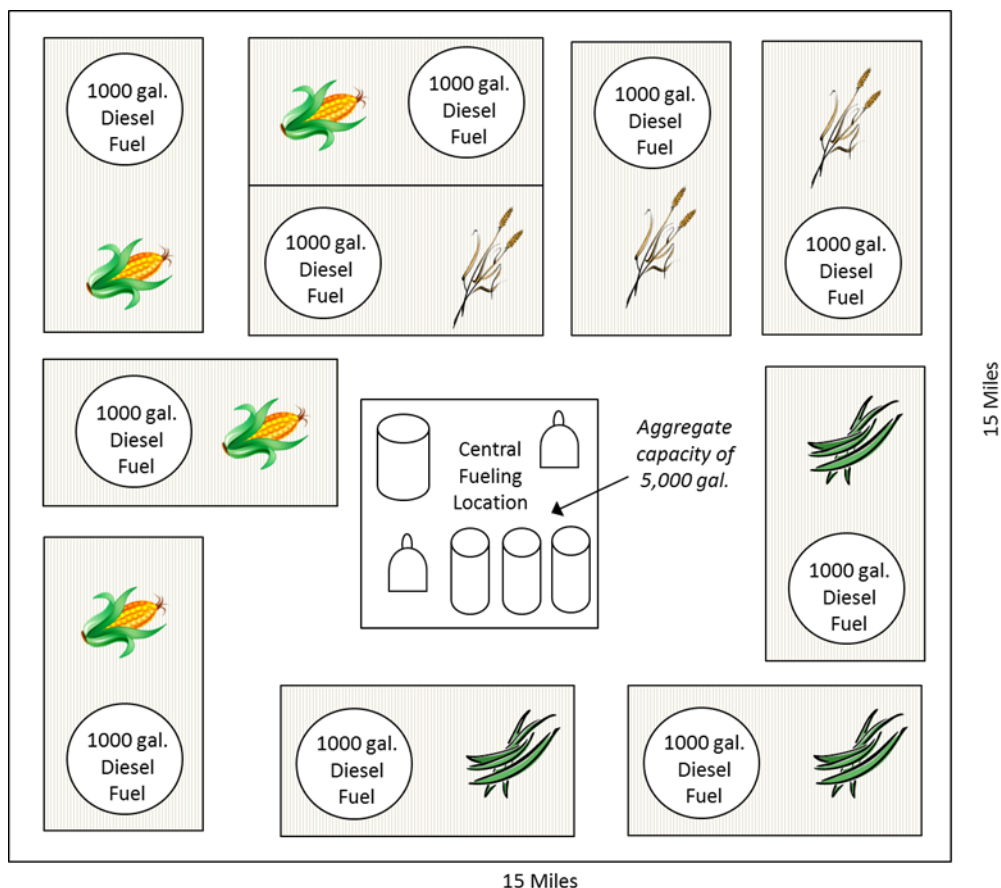
- **Scenario A.** Separation of Tracts at a Farm
- **Scenario B.** Separation of Leases at an Oil Production Facility
- **Scenario C.** Aggregation of Equipment at an Oil Production Facility
- **Scenario D.** Separation of Areas at a Military Base (or Other Large Facility)

- **Scenario E.** Separation of Functions at a Dual-Purpose Facility
- **Scenario F.** Separation of Equipment on Private Property

Scenario A. Separation of Tracts at a Farm

A farmer has one central fueling location and ten separate (either contiguous or non-contiguous) tracts of land (inclusive of owned and leased tracts) where various types of crops are grown. The central fueling location has several oil containers, with an aggregate storage capacity of 5,000 U.S. gallons of diesel fuel, gasoline, and hydraulic/lubrication oils. Each tract has one 1,000-gallon aboveground container of diesel fuel, used for fueling only the equipment operated on the tract. The tracts are located such that the containers are each several miles from each other. Each tract produces various types of crops, and thus the equipment is operated seasonally according to crop type and irrigation needs.

Figure 2-1: Separation of tracts at a farm.



Determination: Given the distance between containers, and the clear distinction between the operations that they support, each tract and the central fueling location can be considered a separate facility for the purposes of calculating oil storage capacity and determining the applicability of the SPCC rule. The fact that the tracts may be contiguous would be only one factor in the facility determination, and may allow the designation of the separate contiguous tracts as separate facilities, given the great distance and operational differences. In this example, each tract does not individually meet the aboveground storage capacity threshold for applicability of the SPCC rule (1,320 U.S. gallons). Therefore, no SPCC Plan is required for these containers. However, the central fueling location exceeds the SPCC rule aboveground storage capacity threshold. Assuming the farm is located such that a discharge of oil could reasonably pose a threat to navigable waters or adjoining shorelines, the farmer must prepare and implement an SPCC Plan for the central fueling area.

Under Section 311 of the Clean Water Act, the farmer, as an owner or operator of each facility, may still be liable for response costs and damages associated with any harmful quantities of oil discharged from the containers on the separate tracts into navigable waters or adjoining shorelines, even if an SPCC Plan is not required for these separate facilities.²⁹

Alternative: To provide general protection and prevention measures against an oil discharge, the farmer may instead choose to include the ten diesel containers on the separate tracts in his Plan. The farmer may also choose to aggregate individual tracts of land that share similarities in operation and prepare SPCC Plans for those separate facilities. For example, combine the tracts of land that are used to grow the same crop and develop an SPCC Plan for each distinct facility.

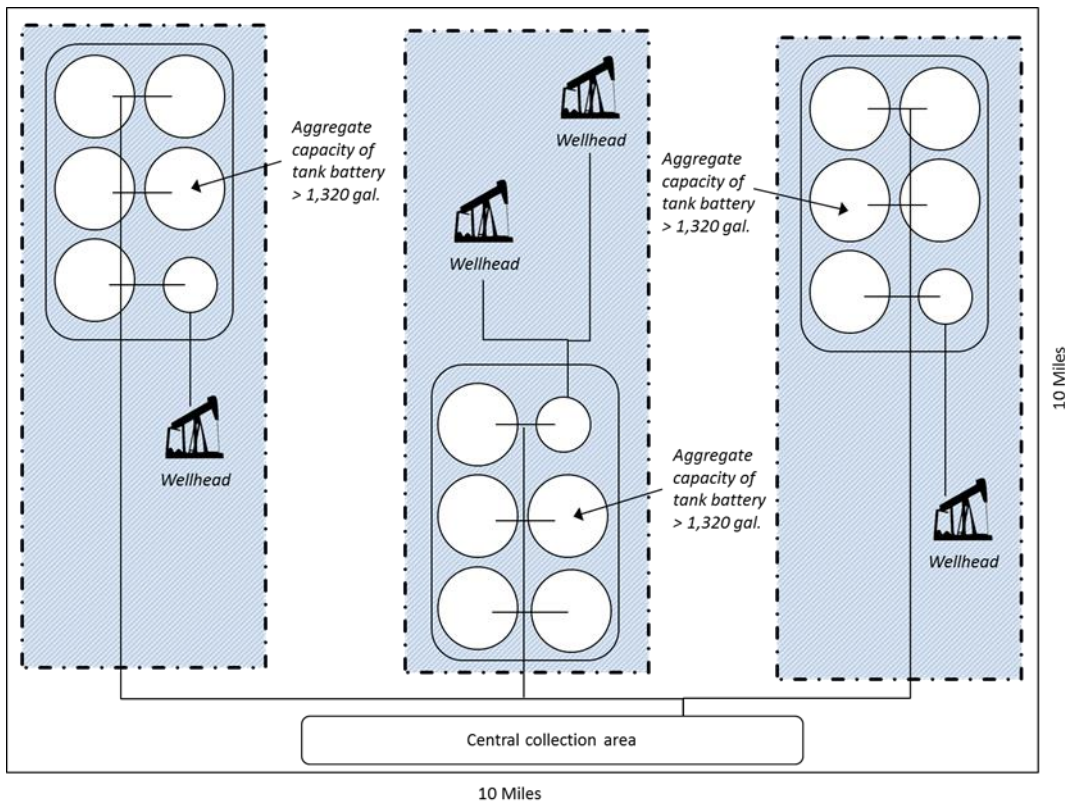
Scenario B. Separation of Leases at an Oil Production Facility

An oil production facility operator leases the right to extract oil from three parcels of land separated by large distances within one oil production field. The parcels may be contiguous or non-contiguous. Each of the parcels (or lease) is subject to a distinct lease agreement, consistent with all applicable state and local oil and gas laws and regulations. Each lease contains a tank battery storing more than 1,320 U.S. gallons of oil and one or more wellheads. Well fluids are separated and oil is stored in containers at each tank battery. Gathering lines from each tank battery flow to a central collection area that serves as a gathering station³⁰ and is managed by the same operator.

²⁹ The owner/operator may also be subject to liability under OPA and other statutes or regulations.

³⁰ This gathering station may also include an injection point to a transportation-related pipeline.

Figure 2-2: Separation of parcels at an oil production facility.



Determination: Given their geographic separation and the nature of the individual lease agreements, each lease could be considered a separate facility. Each tank battery stores a total aboveground capacity of oil greater than 1,320 U.S. gallons, so under such a scenario the operator must prepare and implement a separate SPCC Plan for each tank battery and its associated wellheads, flowlines, and equipment, as individual facilities. Any gathering lines that transport oil from these individual facilities into a centralized collection area involve the transportation of oil between facilities (“inter-facility”) and are therefore not within EPA jurisdiction. These “inter-facility” gathering lines do not need to be included in the SPCC Plans. In this example, the central collection area is a separate facility and may be subject to SPCC requirements. If the central collection area facility meets the SPCC rule applicability criteria, then a separate SPCC Plan must be developed.

Alternative: Because the definition of facility is flexible, the operator could alternatively choose to consider all three parcels and the central collection area as one facility, based on his common ownership or operation of all of them. Under this approach, the operator would only need to prepare one SPCC Plan that covers the components of all parcels. Any gathering lines connecting the tank batteries of each parcel are then considered “intra-facility” gathering lines and must be included in the SPCC Plan.³¹ It is also important to note

³¹ Except when the intra-facility gathering lines are subject to the regulatory requirements of 49 CFR part 192 or 195. In that case,

that if an owner/operator aggregates oil storage so as to develop one SPCC Plan, he must then determine the facility boundaries the same way for the purposes of determining the applicability of the FRP rule requirements. Also note that an oil production facility may consist of parcels that are smaller or larger than an individual lease.

Scenario C. Aggregation of Equipment at an Oil Production Facility

An oil production facility owner operates one wellhead. Oil is treated in a 10-barrel (bbl) capacity heater-treater to separate the oil from produced water; the treated oil is then stored in several stock tanks that separately or combined would be subject to SPCC requirements until it is sold and transported off-site. The heater-treater separation equipment is located several feet away from the stock tanks, which hold both the oil and produced water.

These two areas may be physically separate and are protected by separate secondary containment berms, but the heater-treater is an integral component of an oil production facility, connected by piping, and under the control of the same operator. The heater-treater is a component of a larger process that would be incomplete without the ability to separate oil and produced water. Thus, all of these components should be aggregated together to comprise the oil production facility. In this circumstance, the heater-treater should not be considered a separate facility.

Similarly, an owner/operator could not separate a wellhead from the associated flowline or tank battery to call them distinct facilities. For example, an oil production facility owner operates one wellhead connected to the tank battery by a mile-long flowline. Despite the length of the flowline, the facility operator may not have a reasonable basis for separating the wellhead, flowline, and tank battery as distinct facilities with individual SPCC Plans. Similar to the heater-treater, the wellhead and tank battery are considered integral components of the larger process, and an oil production facility would be incomplete without including these two components. The flowline, whether several feet or several miles in length, is a necessary connection between the wellhead and tank battery, and all of these components must be included in one SPCC Plan.

the intra-facility gathering lines are exempt from the SPCC rule; however, the location of the exempt intra-facility gathering lines must be identified and marked as "exempt" on the facility diagram.

Figure 2-3: Aggregation of equipment at an oil production facility.

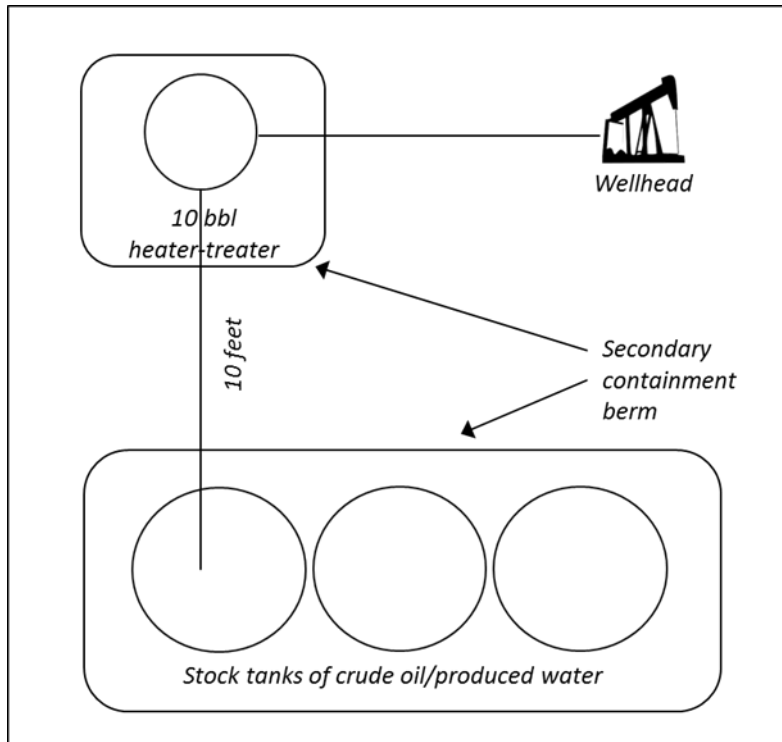
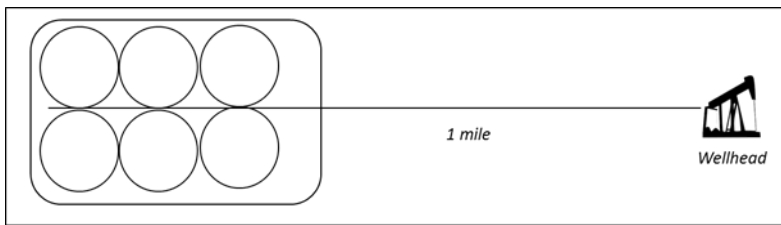


Figure 2-4: Mile-long flowline at an oil production facility.



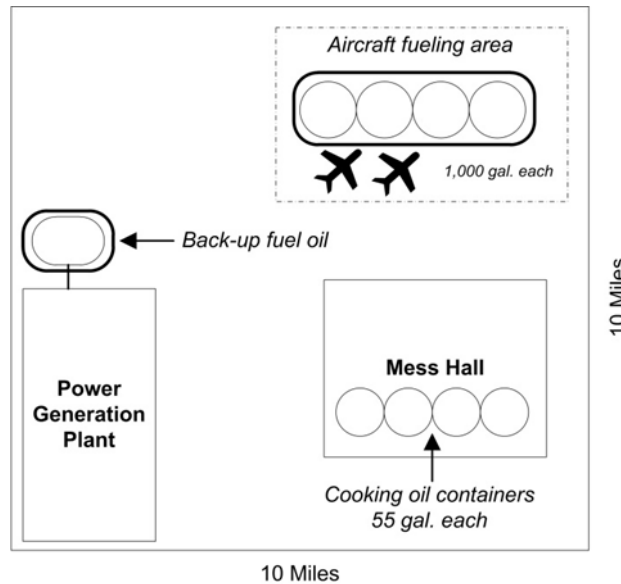
Determination: An SPCC Plan must include all of the components that together comprise a typical oil production facility. There may be no reasonable basis to determine that either of the facilities in these examples could be divided into separate, smaller facilities. While a facility owner or operator has some discretion in describing the parameters of his facility, he may not describe the boundaries of a facility unreasonably in an attempt to avoid regulation. The processes performed at a typical oil production facility include extraction, separation and treatment, storage, and transfer.

Scenario D. Separation of Areas at a Military Base (or Other Large Facility)

A military base is spread out over 10 square miles. Within the base, there are several areas where oil containers are located: a tank farm associated with an aircraft fueling area, back-up fuel oil for a small power generation plant, and a mess hall with several drums of cooking oil. Because different groups service, manage, or maintain the various tank farms and oil storage areas, these operators have agreed to calculate the aggregate

storage capacity of each of their operations separately to determine their SPCC rule applicability. The operations vary across these oil container locations, each with unique or specific characteristics.

Figure 2-5: Separation of areas at a military base (or other large facility).



Determination: In this example, different groups service, manage, or maintain the various tank farms and oil storage areas. The operations vary across these oil container locations, each with unique or specific characteristics; therefore, the operators can choose to calculate the aggregate storage capacity of each of their operations separately to determine SPCC rule applicability.

Alternative: However, the operators may also determine that it would be more efficient to prepare one SPCC Plan for the entire base. This determination would also be appropriate.

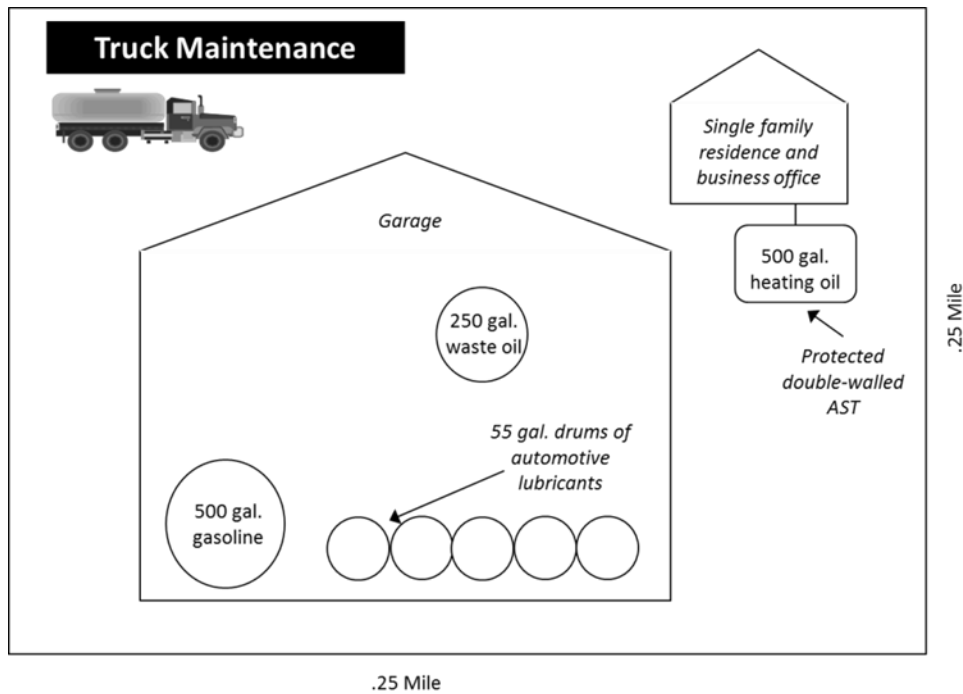
The same principles apply at other large facilities such as universities or airports. While a facility owner or operator has some discretion in describing the parameters of his facility, he may not unreasonably describe the boundaries of a facility to avoid regulation.

Regardless of how the facility boundaries are defined, heating oil containers associated with single-family residences within a military base (or other large-footprint facility) are exempt from the SPCC rule.

Scenario E. Separation of Functions at a Dual-Purpose Facility

The owner of a truck maintenance company operates his business from a site that also includes his single-family residence. The business office is located in his residence. The entire building is heated with one 500-gallon heating oil container. In an adjacent garage, he has one 500-gallon gasoline container, one 250-gallon waste oil container, and five 55-gallon drums of various automotive lubricants.

Figure 2-6: Separation of functions at a dual-purpose facility.



Determination: In considering whether the facility is subject to the SPCC rule, this business owner can conclude that the heating oil container is exempt from the rule because it is associated with his home, and the function of heating his home is necessary regardless of the presence of his business operations. Because the total storage capacity of the remaining containers does not meet the aboveground storage capacity threshold for applicability of the SPCC rule (1,320 U.S. gallons), the owner is not subject to the SPCC rule.

Tip – Containers owned or operated by someone else

One commonly asked question is how an owner/operator should address a container located at the facility that is owned or operated by someone else.

The owner or operator of a facility that includes a container being used by another person that is not under his or her operational control should coordinate with that person to determine who will prevent spills from that container.

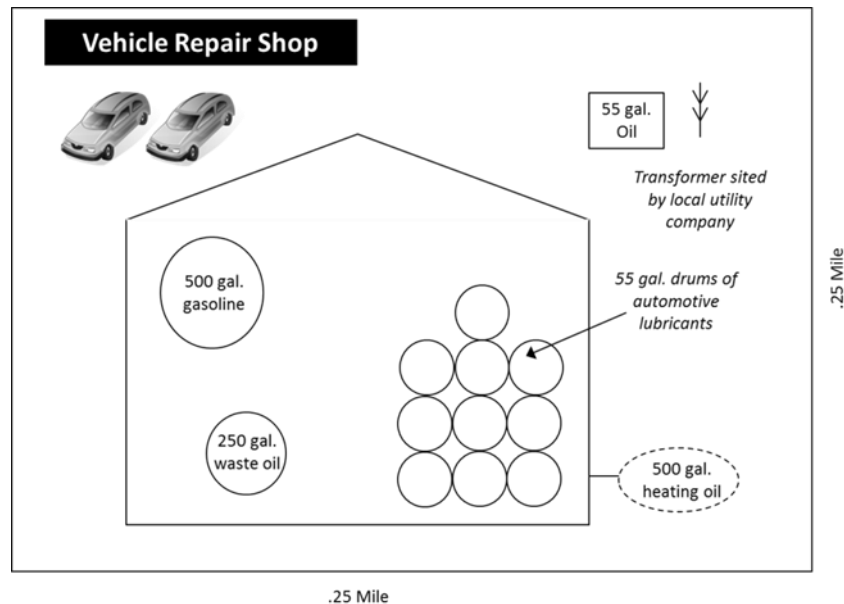
For example, transformers, or other energized electrical equipment, that are located on an easement and are under the operational control of the local electrical utility may be addressed separately by the utility. The owner/operator of the facility would typically not be required to include these containers in the SPCC Plan or on the facility diagram. The owner/operator should coordinate with the electric utility on how to address spill prevention procedures for this equipment.

This determination by the plan holder must be based on site-specific factors.

Scenario F. Separation of Equipment on Private Property

The owner of a vehicle repair shop maintains one 500-gallon gasoline container, one 250-gallon waste oil container, ten 55-gallon drums of various automotive lubricants, and one 500-gallon completely buried heating oil container for use at the facility. The local utility company has also sited a transformer, with a capacity to hold 55 U.S. gallons of transformer oil, on the repair shop property.

Figure 2-7: Separation of equipment on private property.



Determination: In calculating total facility oil storage capacity, the property owner is not required to consider the volume of the transformer because it is owned and operated by another entity, and the transformer may be covered under the utility company's Plan. However, because it is located on the repair shop property, the facility owner/operator should coordinate with the utility company on how to address oil discharges from the transformer. Under Section 311 of the Clean Water Act, the repair shop owner/operator, in addition to the transformer owner/operator, may be liable for any harmful quantities of oil discharged from the transformer when it is located on his property.

The total aboveground oil storage capacity of the repair shop is less than 1,320 U.S. gallons when the transformer is not included in the calculation. The heating oil container counts separately toward the facility's completely buried storage capacity because it is not used "solely at a single-family residence." However, the facility aggregate completely buried capacity is less than the 42,000 gallons threshold. Therefore, the facility is not subject to the SPCC rule.

2.4.7 Natural Gas Production/Treatment Facilities and Pipelines

As described in *Section 2.2.5* above, EPA does not regulate natural gas under the SPCC rule. However, natural gas condensate is considered an oil and is regulated under the SPCC rule. For the purposes of

determining SPCC applicability, containers with 55 gallons or more in capacity storing condensate must be included in a natural gas facility's total oil storage capacity calculation. Ancillary oil storage in other areas of the facility, such as fuel or lubrication oil, and oil-filled equipment, is also counted. Natural gas production or treatment facilities and pipeline systems commonly have associated oil storage, including oil-containing equipment such as compressors, drip tanks, and separators that may store motor oil, lubricants, crude oil impurities removed from the gas stream, and liquid condensate. Equipment that compresses or pumps the natural gas is not regulated unless there is oil-filled operational equipment associated with it that meets the applicability requirements of the rule.

The definition of "production facility" in §112.2 specifies that an oil production facility involves the "...production, extraction, recovery, lifting, stabilization, separation or treating *of oil.*" (emphasis added.) Therefore, any natural gas treatment facility that does not produce oil or condensate is not regulated as a *production* facility under the SPCC requirements, but may be regulated as a bulk oil storage facility because of aboveground ancillary oil storage, including oil-filled equipment. For the following scenarios, the general and administrative provisions of the rule (§§112.1 through 112.7) apply, as well as the more specific requirements described.

Following are five example scenarios of facilities that are involved in producing or treating natural gas and how the SPCC rule would apply for each. Each of these scenarios is hypothetical and is not intended to provide a policy interpretation for any specific existing facility.

- **Scenario A** Oil and Gas Production Facility
- **Scenario B** "Wet Gas" Production Facility
- **Scenario C** "Dry Gas" Production Facility
- **Scenario D** Gas Processing/Treatment Facility/Plant
- **Scenario E** Facility Supporting a Gas Pipeline

Scenario A Oil and Gas Production Facility

The wellhead at this type of facility produces a mixture of oil, gas, and produced water. Because this facility produces oil from the wellhead, it is considered an oil production facility according to the SPCC rule and must comply with the requirements at §112.9.

Oil production facilities can include piping with both oil and gas phases. In this instance, such a facility's dual-phase flowlines and intra-facility gathering lines (i.e., those carrying both gas and liquid phase hydrocarbon)

are subject to the SPCC requirements³² because if the lines were to rupture or leak, they may discharge oil to navigable waters or adjoining shorelines in quantities that may be harmful as defined in 40 CFR part 110.

Scenario B “Wet Gas” Production Facility

The wellhead at this type of facility produces a mixture of gas, produced water, and condensate. Condensate that is liquid at atmospheric pressures and temperatures is considered an oil, and the facility could be subject to the SPCC rule if it meets the SPCC rule applicability criteria. Because the facility produces oil, this facility is considered an oil production facility and must comply with the requirements at §112.9 if subject to the SPCC rule. The presence of any gas treatment at the facility prior to the point of custody transfer (e.g., meter) into a gas pipeline would not affect the determination that this facility is an oil production facility.

Scenario C “Dry Gas” Production Facility

The wellhead at this facility produces a mixture of gas and produced water only. A dry gas production facility that produces natural gas from a well (or wells) but does not also produce condensate or crude oil that can be drawn off the tanks, containers, or other production equipment at the facility is not subject to the SPCC rule. EPA has clarified that a dry gas production facility does not meet the description of an “oil production, oil recovery, or oil recycling facility.” Therefore, a dry gas facility may be eligible for the wastewater treatment exemption under §112.1(d)(6).³³ See the excerpt “*Notice concerning certain issues pertaining to the July 2002 Spill Prevention, Control, and Countermeasure (SPCC) rule*” below.

However, if the aboveground ancillary storage of oil at a dry gas production facility is greater than 1,320 U.S. gallons, and the facility otherwise meets the applicability of the rule, the facility is regulated under the SPCC rule and must comply with the requirements for onshore facilities at §112.8. Because the well does not produce recoverable oil or condensate, the facility does not meet the definition for an oil production facility under the SPCC rule.

³² Intra-facility gathering lines subject to DOT regulation under 49 CFR parts 192 or 195 are exempt from SPCC rule requirements (§112.1(d)(11)).

³³ “Notice Concerning Certain Issues Pertaining to the July 2002 Spill Prevention, Control, and Countermeasure (SPCC) Rule,” 69 FR 29728, May 25, 2004.

Notice concerning certain issues pertaining to the July 2002 Spill Prevention, Control, and Countermeasure (SPCC) rule

The Agency has been asked whether produced water tanks at dry gas facilities are eligible for the SPCC rule's wastewater treatment exemption at 40 CFR 112.7(d)(6). A dry gas production facility is a facility that produces natural gas from a well (or wells) from which it does not also produce condensate or crude oil that can be drawn off the tanks, containers or other production equipment at the facility.

The SPCC rule's wastewater treatment exemption excludes from 40 CFR part 112 "any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part." However, for the purposes of the exemption, the "production, recovery, or recycling of oil is not wastewater treatment." In interpreting this provision, the preamble to the final rule states that the Agency does "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."

It is our view that a dry gas production facility (as described above) would not be excluded from the wastewater treatment exemption based on the view that it constitutes an "oil production, oil recovery, or oil recycling facility." As discussed in the preamble to the July 2002 rulemaking, "the goal of an oil production, oil recovery, or oil recycling facility is to maximize the production or recovery of oil. * * *" 67 FR 47068. A dry gas facility does not meet this description.

(See 69 FR 29729, 29730, May 25, 2004.)

Scenario D Gas Processing/Treatment Facility/Plant

This type of facility receives gas after it is separated from oil and produced water. The gas typically contains condensate, which is removed from the gas stream at this facility. Petroleum distillate that is produced by natural gas wells and stored at atmospheric pressures and temperatures is considered an oil. If the total aboveground storage capacity for condensate tanks and all other ancillary oil storage is greater than 1,320 gallons, and the facility otherwise meets the applicability of the rule, then this facility is considered a bulk storage facility subject to the requirements under §112.8. EPA has addressed this issue in a letter³⁴ to API, dated December 10, 2010, that details the Agency's position on how SPCC requirements apply to gas plants/compression stations.

However, when gas plant or compression activities are co-located at an SPCC-regulated oil production facility with a tank battery, then the containers associated with gas separation that store or process oil (i.e., separation vessels containing oil/ liquid condensate) are typically considered part of the oil production facility operations and therefore subject to the onshore oil production facility requirements under 40 CFR part 112.9 (or §112.11 for offshore facilities).

Scenario E Facility Supporting a Gas Pipeline

At a facility supporting a gas pipeline, EPA regulates compressors or equipment containing oil (including condensate when it turns into liquid at atmospheric temperatures and pressures), but not gas-filled portions of

³⁴ See *Appendix H* for the letter from R. Craig Matthiessen, Office of Emergency Management, to Roger Claff of the American Petroleum Institute (2010).

equipment. If the aboveground oil storage capacity is greater than 1,320 gallons, and the facility otherwise meets the applicability of the rule, the facility is considered a bulk storage facility under the SPCC rule subject to the requirements under §112.8.

2.5 “Non-Transportation Related” – EPA/DOT Jurisdiction

Facilities regulated under 40 CFR part 112 are divided into three categories: transportation-related facilities, non-transportation-related facilities, and complexes. The delineation between transportation-related and non-transportation-related facilities has been established through a series of Executive Orders (EOs) and Memoranda of Understanding (MOUs) as described below. Onshore and certain offshore non-transportation-related facilities (and portions of a complex) are subject to the SPCC regulation, provided they meet the other applicability criteria set forth in §112.1.

A 1971 MOU between EPA and DOT clarifies the types of facilities, activities, equipment, and vessels that are meant by the terms “transportation-related onshore and offshore facilities” and “non-transportation-related onshore and offshore facilities.” DOT delegated authority over vessels and transportation-related onshore and offshore facilities to the Commandant of the U.S. Coast Guard.³⁵ Sections of the MOU between EPA and DOT are included in Appendix A of 40 CFR part 112. Section 112.1(d)(1)(ii) specifically exempts from SPCC applicability any equipment, vessels, or facilities subject to the authority and control of the DOT as defined in this MOU.

A 1994 MOU among the Secretary of the Interior, the Secretary of Transportation, and the Administrator of EPA establishes the jurisdictional responsibilities for offshore facilities, including pipelines. This MOU can be found in Appendix B of 40 CFR part 112. Section 112.1(d)(1)(iii) specifically exempts from SPCC applicability any equipment, vessels, or facilities subject to the authority of the DOT or DOI as defined in this MOU.

Table 2-2 provides examples of transportation-related and non-transportation-related facilities as the concepts apply to the SPCC rule applicability. Some equipment, such as loading arms and transfer hoses, may be considered either transportation-related or non-transportation-related depending on their use.

§112.2

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

³⁵ The USCG was reorganized under the Department of Homeland Security in March 2003.

Table 2-2: Examples of transportation-related and non-transportation-related facilities from the 1971 DOT-EPA MOU.

Transportation-related Facilities (DOT Jurisdiction)	Non-Transportation-related Facilities (EPA Jurisdiction)
<ul style="list-style-type: none"> – Onshore and offshore terminal facilities, including transfer hoses, loading arms, and other equipment used to transfer oil in bulk to or from a vessel, including storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels – Transfer hoses, loading arms, and other equipment appurtenant to a non-transportation-related facility used to transfer oil in bulk <i>to or from a vessel</i> – Interstate and intrastate onshore and offshore pipeline systems – Highway vehicles and railroad cars that are used for the transport of oil – Equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. 	<ul style="list-style-type: none"> – Fixed or mobile onshore and offshore oil drilling and oil production facilities – Oil refining and storage facilities – Industrial, commercial, agricultural, and public facilities that use and store oil – Waste oil treatment facilities – Loading racks, transfer hoses, loading arms, and other equipment used to transfer oil in bulk <i>to or from highway vehicles or railroad cars</i> – Highway vehicles, railroad cars, and pipelines used to transport oil exclusively within the confines of non-transportation-related facility

A facility with both transportation-related and non-transportation-related activities is a “complex” and is subject to the dual jurisdiction of EPA and DOT or USCG. 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. The 1971 DOT-EPA MOU defines the activities that are subject to either EPA or DOT jurisdiction. *Appendix H* includes drawings that show EPA’s regulatory jurisdiction at complexes.³⁶

The sections below describe common scenarios that have raised jurisdictional questions regarding the distinction between transportation-related and non-transportation-related containers or facilities for applicability of SPCC requirements. EPA inspectors should evaluate the intended activity carefully because the determination of jurisdiction is not always straightforward.

³⁶ See EPA Jurisdiction at Complexes in *Appendix H*.

FYI – EPA/DOT jurisdiction

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those same facilities are also engaged in activities subject to EPA jurisdiction (such facilities are considered a “complex”), such activities would subject the equipment, operation, or facility to EPA jurisdiction, as well. During the development of the FRP rule, EPA and other federal agencies with jurisdiction under the Oil Pollution Act (OPA) and Executive Order 12777 (including DOT) met to create an implementation strategy that minimized duplication, wherever practicable and recognized State oil pollution prevention and response programs. One of the critical outgrowths of these efforts was the development of a definition for, and a consistent approach to regulate “complexes.”

The jurisdiction over a component of a complex is determined by the activity involving that component. An activity at one time might subject a facility to one agency’s jurisdiction, while a different activity at the same facility using the same structure, container or equipment might subject the facility to the jurisdiction of another agency.

(see 74 FR 58804, November 13, 2009)

2.5.1 Tank Trucks

EPA regulates tank trucks (or mobile refuelers) as “mobile/portable containers” under the SPCC rule if they operate exclusively within the confines of a non-transportation-related facility. For example, a tank truck that moves within the confines of a facility and only leaves the facility to obtain more fuel (oil) would be considered to distribute fuel exclusively at one facility. This tank truck would be subject to the SPCC rule if it, or the facility, contained above the regulatory threshold amount (see *Section 2.7*) and there was a reasonable expectation of discharge to navigable waters or adjoining shorelines. Similarly, a mobile refueler that fuels exclusively at one site, such as at an airport or construction site, would be subject to the SPCC rule. However, if the tank truck only distributed fuel to multiple off-site facilities and did not perform fueling activities at the home base, the tank truck would be transportation-related, and regulated by DOT. Additionally, EPA regulates containers which were formerly used for transportation, such as a truck or railroad car, and are now used to store oil (i.e., no longer used for a transportation purpose) as a bulk storage container (see 67 FR 47075, July 17, 2002).

Tank trucks that are used in interstate or intrastate commerce can also be regulated if they are operating in a fixed, non-transportation mode. For example, if a home heating oil truck makes its deliveries, returns to the facility, and parks overnight with a partly filled fuel tank, it is subject to the SPCC rule if it, or the facility has a capacity above the threshold amount (see *Section 2.7*), and there is a reasonable expectation of discharge to navigable waters or adjoining shorelines.³⁷ However, if the home heating oil truck’s fuel tank contains no oil when it is parked at the facility, other than any residual oil present in an emptied vehicle, it would be regulated only by DOT.³⁸ For more information on the secondary containment requirements for

³⁷ In this case, the facility would include the truck storage capacity in its aggregate capacity determination in order to determine whether it is above the 1,320 gallon aboveground threshold for SPCC applicability.

³⁸ EPA addressed this scenario in a letter from Stephen Heare, Office of Emergency and Remedial Response, to Melissa Young of Petroleum Marketers Association of America (2001). See *Appendix H*.

mobile refuelers and other non-transportation-related tank trucks, refer to *Chapter 4: Secondary Containment and Impracticability*.

2.5.2 Railroad Cars

DOT regulates railroad cars used for the transport of oil in interstate or intrastate commerce and the related equipment and appurtenances. DOT jurisdiction includes railroad cars that are passing through a facility or are temporarily stopped on a normal route. EPA regulates railroad cars under the SPCC rule if they are operating exclusively within the confines of a non-transportation-related facility. EPA regulates both transfers to or from railroad cars and when the railroad cars serve as non-transportation-related storage at an SPCC-regulated facility.

When the railcar is serving as non-transportation-related storage, if the railroad car has a storage capacity above the regulatory threshold amount of oil, and there is a reasonable expectation of discharge to navigable waters or adjoining shorelines, the railroad car itself may become a non-transportation-related facility, even if no other containers at the property would qualify it as an SPCC-regulated facility.³⁹

2.5.3 Loading/Unloading Activities

DOT regulates equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. EPA regulates the activity of loading or unloading oil in bulk into storage containers (such as those on tank trucks or railroad cars), as well as all equipment involved in this activity (e.g., a hose or loading arm attached to a storage tank system). Different requirements apply to oil transfer areas and to loading/unloading racks at a regulated facility. A transfer area is any area of a facility where oil is transferred between bulk storage containers and tank trucks or railroad cars. These areas are subject to the general secondary containment requirements in §112.7(c). If a “loading/unloading rack” (as defined in §112.2) is present, the requirements of §112.7(h) apply to the loading/unloading rack area. For more information, refer to *Chapter 4: Secondary Containment and Impracticability* which discusses secondary containment requirements for loading/unloading areas and racks.

2.5.4 Marine Terminals

A marine terminal is an example of a “complex” subject to both U.S. Coast Guard (USCG) and EPA jurisdiction. The jurisdictional boundary of a complex facility for both USCG and EPA is defined in 33 CFR part 154, *Facilities Transferring Oil or Hazardous Material in Bulk* under the definition of a marine transportation-related facility (MTR facility) in §154.1020. The USCG regulates the pier structures, transfer hoses, hose-piping connection, containment, controls, and transfer piping associated with the transfer of oil between a vessel and an onshore facility. EPA regulates the tanks, internal piping, loading racks, and vehicle/rail operations that are completely within the non-transportation portion of the facility. EPA jurisdiction begins at the first valve inside secondary containment. If there is no secondary containment, EPA jurisdiction begins at the valve or manifold

³⁹ EPA addressed the applicability of the SPCC rule to railroad cars by addressing specific scenarios in a letter to the Safety-Kleen Corporation in July 2000. See *Appendix H*.

adjacent to the storage tank. *Appendix H* includes drawings that show EPA's regulatory jurisdiction at complexes, including an example of a marine terminal.⁴⁰

2.5.5 Vessels (Ships/Barges)

The U.S. Coast Guard regulates the loading or unloading of oil in bulk from a vessel to an onshore facility, as well as the oil-carrying vessel and the connecting piping (33 CFR part 155, Oil or Hazardous Material Pollution Prevention Regulations for Vessels). In this scenario, a vessel is a ship or a barge. The oil passes from the USCG's jurisdiction to that of the EPA when it passes the first valve inside the secondary containment for the storage container at an otherwise regulated facility. If there is no secondary containment, EPA's jurisdiction begins at the first valve or manifold closest to the storage container. Storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels are under USCG jurisdiction.

Vessels themselves are specifically exempt from 40 CFR part 112 under §112.1(d)(1)(iii). EPA also clarified that barges or other watercraft that 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 (67 FR 47075, July 17, 2002).

2.5.6 Breakout Tanks

Although breakout tanks can be 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, they are sometimes used for bulk storage (i.e., non-transportation-related storage). Thus, breakout tanks may be regulated by EPA, DOT, or both depending on how the tank is used. Breakout tanks used solely to relieve surges in a pipeline, not used for any non-transportation-related activity (i.e., pipeline-in and pipeline-out configuration, and with no transfer to other equipment/mode of transportation such as a tank truck), are not subject to EPA jurisdiction. Bulk storage containers used to store oil while also serving as a breakout tank for a pipeline or other transportation-related purposes may be subject to both EPA and DOT jurisdiction.⁴¹ Determining agency jurisdiction can be difficult and should be treated on a case-by-case basis. However, additional information can be found in *Appendix H* which includes drawings that show EPA's regulatory jurisdiction at complexes.⁴²

⁴⁰ See EPA Jurisdiction at Complexes.

⁴¹ See the 1971 MOU between DOT and EPA (Appendix A of 40 CFR part 112).

⁴² See EPA Jurisdiction at Complexes for specific examples.

2.5.7 Motive Power

Motive power containers are located in or on a motor vehicle and serve as an onboard bulk storage container used primarily to power the movement of a motor vehicle or ancillary onboard oil-filled operational equipment. Motive power containers on vehicles used solely at non-transportation-related facilities fall under EPA jurisdiction but are exempt from the SPCC rule. See *Section 2.8.6* for more information.

§112.2

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

2.5.8 Flowlines and Gathering Lines

Any pipeline or piping that transports oil between facilities or from a facility to a vessel is considered transportation-related, and is therefore outside the jurisdiction of EPA and not subject to the SPCC rule. EPA recognizes that gathering lines are often outside of the Agency's jurisdiction because they transport oil outside of an oil production facility.

However, EPA has jurisdiction over non-transportation-related facilities, including pipelines that transport oil within a facility. The definition of "facility" as it applies to the SPCC rule is flexible; depending upon how an owner/operator defines his facility, an oil production facility may also include gathering lines. A typical oil production facility includes a wellhead, a tank battery (including, but not limited to, separation equipment, stock oil containers and produced water containers), and the flowlines that transfer the oil and well fluids from the wellhead to the tank battery. A flowline may also connect a tank battery to an injection well. If multiple tank batteries are included as part of the same facility for purposes of developing one SPCC Plan, then any gathering lines that connect the tank batteries, or flow to a central collection or gathering area or centralized tank battery within the facility boundaries, must also be included in the SPCC Plan. EPA considers any gathering lines within the boundaries of a facility to be "intra-facility gathering lines" and within EPA's jurisdiction for the purposes of SPCC rule applicability (72 FR 58406 to 58407, October 15, 2007). *Appendix H* includes drawings that show EPA's regulatory jurisdiction at complexes, including an example of an oil production facility with gathering lines.⁴³

The exemption of certain intra-facility gathering lines from SPCC rule requirements is discussed in *Section 2.8.10*.

⁴³ See EPA Jurisdiction at Complexes.

FYI – Flowlines and gathering lines

Flowlines are the piping that transfer crude oil and well fluids from the wellhead to the tank battery where separation and treatment equipment are typically located. A flowline may also connect a tank battery to an injection well. Flowlines are relatively small diameter steel or fiberglass piping (generally less than four inches). Depending on the size of the oil field, flowlines may run for hundreds of feet to a tank battery.

Gathering lines are the piping or pipelines that transfer the crude oil product between tank batteries, within or between facilities. Gathering lines often originate from an oil production facility's lease automatic custody transfer (LACT) unit, which transfers oil to other facilities involved in gathering, refining or pipeline transportation operations.

2.6 Reasonable Expectation of Discharge to Navigable Waters in Quantities That May Be Harmful

2.6.1 Definition of “Discharge” and “Discharge as Described in §112.1(b)”

According to §112.1(b), the SPCC rule applies to certain facilities that could “reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter...” The Discharge of Oil regulation at 40 CFR part 110 (also referred to as the “sheen rule”) defines a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in quantities that may be harmful under the CWA as that which:

- Causes a sheen or discoloration on the surface of the water or adjoining shorelines;
- Causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines; or
- Violates an applicable water quality standard.⁴⁴

A discharge meeting any of the above criteria triggers requirements to report to the National Response Center (NRC). The failure to report such a discharge may result in criminal sanctions under the CWA. The appearance of a “sheen” on the surface of the water is often used as a simple way to identify harmful discharges of oil that should be reported. However, the presence of a sludge or emulsion or of another deposit of oil beneath the water surface, or the violation of an applicable water quality standard also indicates a harmful discharge regardless of whether there is a sheen on the water surface.

Section 311 of the CWA defines and prohibits certain “discharges” of oil. This definition is also codified in 40 CFR part 112. A “discharge” as defined in §112.2 includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of any amount of oil no matter where it occurs. It excludes certain discharges associated with §402 of the CWA and §13 of the River and Harbor Act of 1899. The primary

⁴⁴ Water Quality Standards define the goals for a waterbody by designating its uses, setting criteria to protect those uses, and establishing provisions such as antidegradation policies to protect waterbodies from pollutants. For more information on water quality standards see http://water.epa.gov/scitech/swguidance/standards/upload/WQS_basic_factsheet.pdf

distinction between the §112.2 and §112.1(b) definitions of discharge is that a discharge as described in §112.1(b) is a violation of §311 of the Clean Water Act, whereas a §112.2 discharge includes discharges that do not reach navigable waters or adjoining shorelines. For example, if a tank leaks a puddle of oil into a building's basement, this would be considered a discharge of oil under §112.2, but is not necessarily a violation of the CWA because the oil did not reach a navigable water or adjoining shoreline (and would not be a discharge as described in §112.1(b)).

The SPCC regulation includes requirements for corrective action as well as additional reporting requirements. For example, in §112.8(c)(10), the owner or operator of a facility is required to promptly correct visible discharges that result in a loss of oil from a container. A discharge of any amount would need to be cleaned up, but would not be considered a violation of the spill prohibition (a discharge as described in §112.1(b)), unless it reaches a navigable water or adjoining shorelines. Additionally, if a facility discharged more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b) over a 12-month period, the owner or operator would be required to report each spill to the NRC, clean up the spill, and submit a report to the Regional Administrator, and may be required to amend its Plan. The same is true if the facility has a single discharge as described in §112.1(b) of more than 1,000 U.S. gallons. For more information on these reporting requirements, see §112.4 of the rule.⁴⁵

2.6.2 Reasonable Expectation of Discharge

The SPCC rule applies only to facilities that, due to their location, can reasonably be expected to discharge oil as described in §112.1(b). The rule does not define the term "reasonably be expected." The owner or operator of each facility must determine the potential for a discharge from his/her facility. According to §112.1(d)(1)(i), this determination must be based solely upon consideration of the geographical and locational aspects of the facility. An owner or operator should consider the location of the facility in relation to a stream, ditch, gully, or storm sewer; the volume of material likely to be spilled; drainage patterns; and soil conditions. An owner or operator may not consider constructed features, such as dikes, equipment, or other manmade structures that prevent, contain, hinder, or restrain a discharge as described in §112.1(b), when making this determination.⁴⁶

§112.1(b)

...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...**

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule. **Emphasis added.**

⁴⁵ When determining the applicability of this SPCC reporting requirement, the gallon amount(s) specified (either 1,000 or 42) refers to the amount of oil that actually reaches navigable waters or adjoining shorelines not the total amount of oil spilled. EPA considers the entire volume of the discharge to be oil for the purposes of these reporting requirements.

⁴⁶ Certain man-made features, such as building walls, basement structures, and drainage systems may be taken into consideration in determining *how to comply* with the SPCC requirements.

A facility owner or operator, however, should consider the presence of manmade structures that may serve to transport discharged oil to navigable waters, such as sanitary or storm water drainage systems, even if they lead to a publicly owned treatment work (POTW) prior to ultimate discharge into navigable waters. The presence of a treatment system such as a POTW cannot be used to determine that the facility is not reasonably expected to discharge to navigable waters or adjoining shorelines. POTWs can fail to contain oil. They are not designed to handle oil discharges and are on occasion forced to bypass to receiving waterbodies during extreme weather events or when upsets occur in the treatment system.

The following factors⁴⁷ may be useful to consider in determining whether there is a reasonable expectation of a discharge:

- **Past discharges** of oil from the facility or a neighboring facility that reached a navigable water or adjoining shoreline may indicate that another could be reasonably expected;
- **Facility location** relative to navigable waters, a watercourse and/or intervening natural drainage could cause a discharge to the navigable waters to be reasonably expected;
- **On-site conduits and certain underground features**, such as sewer lines, storm sewers, power or cable lines, or groundwater could facilitate the transport of discharged oil off-site to navigable waters;
- **Unique geological or geographic features** could facilitate the transport of discharged oil off-site to navigable waters;
- **Precipitation runoff** could transport oil into navigable waters; and
- **Quantity and nature of oil stored.**

If an owner or operator makes a determination that, due to the location, the facility cannot reasonably be expected to discharge oil as described in §112.1(b), he should be prepared to provide the rationale and any supporting documentation to an EPA inspector that explains why the facility does not have an SPCC Plan.

FYI – Tools to determine reasonable expectation of discharge

While EPA does not endorse or recommend any particular modeling programs, the Agency recognizes that there are software tools available to aid in making the reasonable expectation of discharge determination, which have been used by various industry sectors. Such tools may combine data concerning the location of facilities with respect to navigable waters, geographical features, type of oil stored, soil type, and other factors as described above, to make site-specific estimations. The SPCC Plan preparer and/or certifying PE may determine whether any software tool is appropriate for his or her specific circumstances, and should adequately document the input variables in the SPCC Plan.

⁴⁷ These are examples of factors to provide guidance and are not mandatory. However, a facility owner/operator may wish to take a conservative approach and consider all of these factors when determining reasonable expectation of a discharge from the facility.

2.6.3 Geographic Scope


EPA revised the geographic scope described in §112.1(b) of the SPCC regulation in 2002 to be more consistent with the CWA. Formerly, the geographic scope of the rule extended to navigable waters of the United States and adjoining shorelines. The current rule reflects the full geographic scope of EPA's authority to include a discharge:

- Into or upon the waters of the contiguous zone;
- 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).

The rule's scope includes discharges harmful not only to the public health and welfare, but also to the environment through the protection of natural resources. Such protection would apply to resources under the Magnuson Fishery Conservation and Management Act, a statute that establishes exclusive U.S. management authority over all fishing within the exclusive economic zone (inner boundary coterminous with the seaward boundary of each coastal state), and all anadromous fish throughout their migratory range except when in a foreign nation's waters, and all fish on the continental shelf.

2.6.4 Definition of "Navigable Waters"

Section 112.2 provides the SPCC rule's definition of "navigable waters." This definition has been revised on several occasions, most recently in 2008. The current definition of navigable waters for the SPCC rule is the definition promulgated by EPA in 1973 (73 FR 71941, November 26 2008).

EPA and the U.S. Army Corps of Engineers have issued guidance on implementing Supreme Court decisions that affect CWA jurisdiction over navigable waters.⁴⁸ 

§112.2

"Navigable waters" of the United States means "navigable waters" as defined in section 502(7) of the FWPCA, and includes:

- (1) All navigable waters of the United States, as defined in judicial decisions prior to the passage of the 1972 Amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters;
- (2) Interstate waters;
- (3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and
- (4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁴⁸

In *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001) (referred to as "SWANCC"), the Supreme Court held that the agencies cannot assert CWA jurisdiction over intrastate non-navigable isolated waters based solely on use or potential use by migratory birds, presence of habitat.

In the consolidated cases *Rapanos v. United States* and *Carabell v. United States* (referred to simply as "Rapanos") the Supreme

2.7 Storage Capacity Thresholds

The SPCC rule applies to certain facilities that have more than 42,000 U.S. gallons of completely buried oil storage capacity or more than 1,320 U.S. gallons of aggregate aboveground oil storage capacity, provided it meets the other applicable criteria set forth in §112.1.

Under §112.1(b)(1) through (4), the rule is applicable to eligible facilities that have oil in aboveground containers; completely buried tanks; containers that are used for standby storage, for seasonal storage, or for temporary storage, or are not otherwise “permanently closed;” and “bunkered tanks” or “partially buried tanks” or containers in a vault. Containers include not only oil storage tanks, but also mobile or portable containers such as drums and totes, and oil-filled equipment such as electrical equipment (e.g., transformers, circuit breakers), manufacturing flow-through process equipment, and operational equipment. Under §112.1(d)(2) the rule limits the applicability to facilities with oil capacity above specific threshold amounts.

Once a facility is subject to the rule, *all* aboveground containers and completely buried tanks are subject to the rule requirements (unless these containers are otherwise exempt from the regulation). For example, a facility could have 10,000 U.S. gallons of aggregate aboveground storage capacity in tanks and oil-filled equipment of 55 U.S. gallons or more, and a completely buried tank of 10,000 U.S. gallons that is not subject to all of the technical requirements of 40 CFR part 280 or a state program approved under part 281 (and therefore not exempt). Since the aboveground storage capacity exceeds 1,320 U.S. gallons, all of the tanks and oil-filled equipment, including the buried tank, are subject to the SPCC rule.

2.7.1 Storage Capacity Calculation


Sections 112.1(d)(2)(i) and (ii) clarify which containers are included and excluded when calculating total storage capacity at a facility in determining whether it exceeds the volume limits in the rule. The container capacities to count and not count are discussed below.

2.7.2 Definition of Storage Capacity

Under the SPCC rule, if a container has the requisite capacity, it does not matter whether the container is actually filled to that capacity. The storage capacity of a container is defined as the shell capacity of the container.

Court made two substantive decisions that indicated that a water is a “water of the US” either where the water is:

- “relatively permanent, standing, or continuously flowing bodies of water” connected to traditional navigable waters, and to “wetlands with a continuous surface connection to” such relatively permanent waters; or
- “either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as navigable’ (i.e. whether there is a significant nexus with navigable waters).

 Guidance on SWANCC is available in a joint memorandum between EPA and the U.S. Army Corps of Engineers (Corps) (see 68 FR 1995, January 15, 2003). For more information on navigable waters, including previous statements on Waters of the US, see <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

If a certain portion of a container is incapable of storing oil because of its integral design (e.g., mechanical equipment or other interior components take up space), then the shell capacity of the container is reduced to the volume the container could hold (67 FR 47081, July 17, 2002). Generally, the shell capacity is the rated design capacity rather than the working/operational capacity.

§112.2

Storage capacity of a container means the shell capacity of the container.

Note: The above text is an excerpt of the SPCC rule. See 40 CFR part 112 for the full text of the rule.

Industry standards for certain field-erected and shop-fabricated aboveground vertical storage tanks define the storage capacity of the tank as the physical capacity of the shell to contain liquid, and if present, the capacity can be limited by overflow openings that restrict the liquid level so that the container cannot hold liquid above that point. Thus, for tanks that have floating roofs or internal floating pans where overflow openings or slots are present in the shell, the freeboard volume above the overflow openings or slots is not included in the tank's shell capacity. However, if an existing tank with overflow ports or vents is modified by covering the overflow ports or vents, the container storage capacity reverts to the original shell capacity (see Tank Re-rating section below).

Any modification to the existing port or vent must be performed in accordance with applicable industry standards. Additionally, this container alteration will require a technical amendment to the SPCC Plan certified by a PE in accordance with §112.5. The PE will ensure that the alteration was performed in accordance with applicable industry standards, original design specifications and good engineering practice. Note that many aboveground field erected tanks have cone-down bottoms (the volume of the cone bottom can be significant for larger tanks). This volume is included in the overall storage capacity of the tank.

Devices such as hydraulic overfill valves or high level alarms or procedures, such as operational controls, are not a means of limiting the capacity of a storage container because these systems or procedures can fail or an owner/operator can easily override or remove the controls, increasing the storage capacity of the container.



FYI - What capacities to count and not to count

Do count the following oil containers' capacities:

- All containers of oil with a capacity of 55 U.S. gallons or greater (unless otherwise exempt).

Do not count the following exempt oil containers' capacities:

- Permanently closed containers
- Motive power containers
- Hot-mix asphalt (HMA) or any HMA containers
- Single-family residential heating oil containers
- Pesticide application equipment and related mix containers
- Milk and milk product containers and associated piping and appurtenances
- Completely buried tanks that are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281
- Underground oil storage tanks including below-grade vaulted tanks, that supply emergency diesel generators at nuclear power stations
- Containers used exclusively for wastewater treatment

2.7.3 Tank Re-rating

Shell capacity is used as the measure of storage capacity, unless physical changes are made to the design shell capacity in a permanent, non-reversible, manner that reduces the capacity of the container to contain liquid. An owner or operator may reduce the capacity of a tank by changing the shell dimensions (e.g., by removing shell plate sections, or installing a double bottom in accordance with applicable industry standards). 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 container capacity.

EPA also considers overflow ports or vents installed in accordance with industry standards as an acceptable method of reducing the shell capacity of container.⁴⁹ These properly engineered alterations can be considered permanent when the alteration to the container is performed in accordance with applicable industry standards. However, even when a shell penetration is completed in accordance with industry standards, this does not re-rate the storage capacity of the tank to a lower capacity if the owner or operator overrides the alteration.

⁴⁹ To be considered as overflow ports, the size and number of overflow ports shall be based on filling the tank (i.e., fill rate) without increasing the liquid level above the bottom of the overflow port.

When an overflow nozzle is equipped with a pipe and a valve, and the valve is then closed, the container's capacity reverts to the original shell capacity.⁵⁰ If an overflow opening is closed at a later date, this constitutes a change in service and as such, per API 653, the tank's suitability for service must be reevaluated and the original capacity of the tank to the top of the shell becomes the measure of storage capacity. This and similar actions that reverse or effectively override the prior alteration used to change the original shell capacity of the container may change the shell capacity again and require an amendment to the SPCC Plan.

Any container alteration will require a technical amendment to the SPCC Plan certified by a PE in accordance with §112.5. The PE will ensure that the alteration was performed in accordance with applicable industry standards and in consideration of original design specifications. Relevant industry standards include American Petroleum Institute (API) Standard 653 "Tank Inspection, Repairs, Alteration, and Reconstruction" (API-653). This standard includes requirements for adding shell penetrations (which may be used to reduce container capacity) such as shell penetration (i.e., nozzle) for overflow. Tank alterations which change the original shell capacity may affect secondary containment capacity necessary to comply with SPCC requirements and FRP applicability and requirements under 40 CFR part 112 subpart D. Thus, changes in container storage capacity may affect FRP requirements for calculating the worst case discharge volume and the amount of resources required to respond to a worst case discharge scenario to comply with the FRP requirements.

Simply drilling a hole in the container, so that the container cannot hold liquid above that point, may not be an appropriate method to re-rate tank capacity when this alteration is not in accordance with applicable industry standards. In this case the original capacity of the container has not changed and remains the measure of storage capacity. Finally, devices (e.g. hydraulic overflow valves and high level alarms) and procedures (e.g. administrative controls) may not be used to limit the capacity of a storage container. For more information on how to evaluate a re-rated tank see *Chapter 7: Inspection, Evaluation, and Testing* (see Section 7.6.1).

2.8 Exemptions to the Requirements of the SPCC Rule

In addition to the criteria described above, §112.1(d) describes certain types of additional equipment and facilities that are exempt from SPCC rule requirements.

2.8.1 Permanently Closed Containers

Permanently closed containers are exempt from SPCC regulation. Once permanently closed, a container no longer counts toward the total facility storage capacity, nor is it subject to the other requirements under the SPCC rule. The

§112.2

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 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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁵⁰ A valve is not recommended unless otherwise required by code.

SPCC rule does not require that permanently closed containers be removed from a facility.

In addition, any container brought on to a facility that has never stored oil is not subject to the SPCC rule, nor is it counted toward the facility capacity until it stores oil. Any other container that at one time stored oil but no longer contains oil or sludge, which is brought on to a facility and meets the definition of permanently closed, is not subject to the SPCC rule nor is it counted toward the facility capacity until it stores oil.

Permanent closure requirements under the SPCC rule are separate and distinct from the closure requirements in regulations promulgated under Subtitle C of the Resource Conservation and Recovery Act (RCRA).⁵¹ These regulations establish the requirements for owners and operators of facilities that use tank systems for storing or treating hazardous waste, and include the requirements for tank system closure and post-closure care (§§264.197 and 265.197). These requirements generally do not apply to an oil production facility. According to the applicability provision in §264.1(b),⁵² “the standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or part 261 of this chapter.” In addition, 40 CFR part 261 states that “Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy” are not hazardous waste (§261.4(b)(5)). Therefore, an oil production facility that does not otherwise treat, store, or dispose of hazardous waste would not have to undergo the expense of permanent closure under Part 264 or 265 of RCRA, based on the management of these wastes (i.e., drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil) which are exempt from subtitle C regulations.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(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).

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁵¹ See *Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities* at 40 CFR part 264 and *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities* at 40 CFR part 265.

⁵² The applicability provision under §265.1(b) includes similar language that excludes oil production facilities.

**Permanently closed containers - Is it really permanent?**

The SPCC rule does not include a provision to temporarily close containers to account for seasonal use of tanks or variable economic conditions and production rates at oil production facilities. In order for a container to be exempt from SPCC rule requirements, the container must meet the following criteria for a permanently closed container:

- All liquid and sludge has been removed from each container and connecting line;
- All connecting lines and piping have been disconnected from the container and blanked off,
- All valves (except 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.

A permanently closed container may remain at the facility. However, a facility owner or operator should review state and local requirements, which may require removal of a container when it is taken out service. When a container is removed from the facility, the SPCC Plan must be amended and the technical amendment must be certified.

In the event that a permanently closed container is brought back into use (e.g., to accommodate variations in production rates), the SPCC Plan will need to be amended to reflect the capacity of the permanently closed container if this capacity was previously excluded from the facility total capacity.

2.8.2 Offshore Oil Drilling, Production or Workover Facilities Subject to Minerals Management Service Regulations

Section 112.1(d)(3) excludes offshore oil drilling, production, or workover facilities that are subject to notices and regulations of the Minerals Management Service (MMS). The facilities are regulated by the Department of Interior as specified in the 1994 DOI-DOT-EPA MOU (40 CFR part 112, Appendix B).

The memorandum states that MMS has jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by Executive Order 12777 to DOT. EPA is responsible for non-transportation-related offshore facilities located landward of the coast line. The term “coast line” is defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean “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.”

MMS has been replaced, most recently on October 1, 2011, by the Bureau of Ocean Energy Management

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(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).

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

(BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) as part of a reorganization. BOEM is responsible for managing environmentally and economically responsible development of the nation's offshore resources. Its functions include offshore leasing, resource evaluation, review and administration of oil and gas exploration and development plans, renewable energy development, National Environmental Policy Act (NEPA) analysis and environmental studies.⁵³ BSEE is responsible for safety and environmental oversight of offshore oil and gas operations, including permitting and inspections, of offshore oil and gas operations. Its functions include the development and enforcement of safety and environmental regulations, permitting offshore exploration, development and production, inspections, offshore regulatory programs, oil spill response and newly formed training and environmental compliance programs.⁵⁴

2.8.3 Underground Storage Tanks

Under §112.1(d)(4), the SPCC rule exempts completely buried storage tanks, 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 (also known as the Underground Storage Tank regulations⁵⁵). Although these tanks are exempt from the SPCC requirements, they must still be marked on the facility diagram if the facility is otherwise subject to the SPCC rule (see §112.7(a)(3)).

The regulations at 40 CFR parts 280 and 281 comprise the Underground Storage Tank (UST) Program, which requires owners and operators of new tanks and tanks already in the ground to prevent, detect, and clean up releases. The SPCC rule only recognizes a subset of tanks covered by the UST Program regulations. Specifically, the UST Program defines an underground storage tank as a tank and any underground piping that has at least 10 percent of its combined volume underground. However, under the SPCC rule, only *completely* buried tanks subject to all of the technical UST program requirements are exempt from the rule. Any tanks that are not completely buried are considered aboveground storage tanks and subject to the SPCC rule.

The following completely buried tanks are either excluded from the definition of UST or are exempt from the UST regulations at 40 CFR part 280 (and therefore may be subject to the SPCC rule if they contain oil):

§112.2

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁵³ See www.boem.gov

⁵⁴ See www.bsee.gov

⁵⁵ See Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST) at 40 CFR part 280 and Approval of State Underground Storage Tank Programs at 40 CFR part 281.

- Tanks with a capacity of 110 U.S. gallons or less;
- Farm or residential tanks with a capacity of 1,100 U.S. gallons or less used for storing motor fuel for non-commercial purposes;
- Tanks used for storing heating oil for consumptive use on the premises where stored;
- Tanks storing non-petroleum oils, such as animal fat or vegetable oil;
- Tanks on or above the floor of underground areas (e.g., basements or tunnels);
- Septic tanks and systems for collecting storm water and wastewater;
- Flow-through process tanks;
- Emergency spill and overfill tanks that are expeditiously emptied after use;
- Surface impoundments, pits, ponds, or lagoons;
- Any UST system holding RCRA hazardous waste;
- Any equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
- Liquid trap or associated gathering lines directly related to oil or gas production or gathering operations;
- Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or intrastate pipelines regulated under state laws comparable to the provisions of above laws;⁵⁶ and
- Any UST system that contains *de minimis* concentration of regulated substances.

The following are examples of deferrals from the UST regulations (and therefore may be subject to the SPCC rule):

- Wastewater treatment tank systems;
- Any UST systems containing radioactive materials that are regulated under the Atomic Energy Act of 1954;

⁵⁶ Although exempt from UST regulations, pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or intrastate pipelines regulated under state laws comparable to the provisions of above laws do not generally come within EPA's jurisdiction and are not generally regulated under the SPCC rule. See *Section 2.5*.

- Airport hydrant fuel distribution systems; and
- UST systems with field-constructed tanks.

Note that, at an otherwise SPCC-regulated facility, any transfer to or from completely buried storage tanks is regulated because it is a potential source of discharge of oil into navigable waters or adjoining shorelines. Because a loading/unloading rack, or other transfer area, associated with a UST is not typically part of the UST system, it is not subject to all of the technical requirements of 40 CFR part 280 or 281. Therefore, such a loading/unloading rack is regulated under the SPCC regulations in the same manner as any other transfer equipment or transfer activity located at an otherwise SPCC-regulated facility (73 FR 74250, December 5, 2008).

Additional and/or more stringent requirements may exist in a state-approved program under 40 CFR part 281 and they may also impact SPCC applicability. For example, a state may choose to regulate a UST used for storing heating oil for consumptive use on the premises where stored. Thus, under the state program the UST is subject to all the technical requirements of a 40 CFR part 281 program and therefore exempt from the SPCC rule. Inspectors should consider any state UST program approved under 40 CFR part 281 when addressing applicability issues associated with completely buried tanks.

A list of states with approved 281 UST programs, and their respective *Federal Register* notices, is available at <http://www.epa.gov/oust/fsstates.htm>.

2.8.4 Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

Under §112.1(d)(4), the SPCC rule exempts underground oil storage tanks deferred under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at nuclear power generation facilities licensed by Nuclear Regulatory Commission (NRC) and that meet the NRC design criteria and quality assurance criteria.

This exemption includes both tanks that are completely buried and tanks that are below-grade and vaulted. In order to be eligible for the exemption, the below-grade vaulted tank must meet the definition of an underground storage tank in 40 CFR 280. An underground storage tank or UST is defined in 40 CFR part 280 as “any one or combination of tanks... the volume of which is 10 percent or more beneath the surface of the ground.” A storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) is excluded from the definition when the storage tank is situated upon or above the surface of the floor. Therefore, a below-grade vaulted tank located in a space that an inspector can routinely walk into and view all sides of the tank would not be eligible for the exemption from SPCC requirements.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(4) ...any underground oil storage tanks including below-grade vaulted tanks, deferred under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at a nuclear power generation facility licensed by the Nuclear Regulatory Commission, provided that such a tank is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, including, but not limited to, 10 CFR part 50. Such emergency generator tanks must be marked on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

Under the NRC regulations, a nuclear power generation facility must meet certain design criteria to ensure that the plant will be operated in a manner protective of the public's health and safety (such as 10 CFR part 50, Appendix A). These NRC design criteria cover the design, fabrication, installation, testing and operation of structures, systems, and components important to safety and are considered to be similar to the measures required under the SPCC regulation for completely buried tanks, which include corrosion protection of buried tanks (§112.8(c)(4)) and of buried piping (§112.8(d)(1)), and inspection and testing of buried piping (§112.8(d)(4)).

Although these tanks are exempt from the SPCC requirements, they must still be marked on the facility diagram if the facility is otherwise subject to the SPCC rule (§112.7(a)(3)).

2.8.5 Wastewater Treatment Facilities

The wastewater treatment exemption, outlined in §112.1(d)(6), excludes from the SPCC requirements facilities or parts of facilities that are used exclusively for wastewater treatment, and are not used to meet 40 CFR part 112 requirements. Do not count the capacity of these exempt containers when calculating facility aggregate capacity.

Many of the wastewater treatment facilities or parts thereof are subject to the National Pollutant Discharge Elimination System (NPDES) or state-equivalent permitting requirements that involve operating and maintaining the facility to prevent discharges. The NPDES or state-equivalent process ensures review and approval of the facility's plans and specifications; operation/maintenance manuals and procedures; and Storm Water Pollution Prevention Plans, which may include Best Management Practice (BMP) Plans (67 FR 47068, July 17, 2002).

For the purposes of the exemption, the production, recovery, or recycling of oil is not considered wastewater treatment. These activities generally lack NPDES or state-equivalent permits and thus lack the protections that such permits provide. 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 (67 FR 47068-69, July 17, 2002). Additionally, produced water is not considered wastewater and is therefore not eligible for this exemption. However, produced water containers used exclusively for wastewater treatment at dry gas production facilities are eligible for the wastewater treatment exemption (see 69 FR 29728, May 25, 2004).

The exemption also does not apply to a wastewater treatment facility (or part of that facility) that is used to store oil. In those instances, the oil storage capacity must be counted as part of the total facility storage capacity (see 67 FR 47068, July 17, 2002). For example, if there is a 1,000-gallon storage container that contains oil removed from an exempt oil/water separator and a 500-gallon storage container for an emergency

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

generator, the total aboveground storage capacity for the facility would be 1,500 U.S. gallons, and the facility may potentially be regulated by the SPCC rule.

A wastewater treatment facility (or parts of that facility) used to meet a 40 CFR part 112 requirement, including an oil/water separator used to meet any SPCC requirement, is not exempt. Oil/water separators used to meet SPCC requirements include those used to satisfy the secondary containment requirements of §112.7(c), §112.7(h)(1), and/or §§112.8(c)(2) or 112.8(c)(11). Although not exempt, oil/water separators used to satisfy secondary containment requirements of the rule do not count toward storage capacity. For more information, refer to *Chapter 5: Oil/Water Separators*, which clarifies how the SPCC rule applies to oil/water separators and produced water at dry gas production facilities.

2.8.6 Motive Power

A motive power container is defined as any onboard bulk storage container used primarily to power the movement of a motor vehicle, or ancillary onboard oil-filled operational equipment (§112.2). Section 112.1(d)(7) exempts motive power containers from regulation under the SPCC rule. Section 112.1(d)(2)(ii) excludes the capacity of these containers from facility capacity calculations. Motive power containers include the fuel tanks that are used primarily to power a motor vehicle's movement and the onboard hydraulic and lubrication containers used for ancillary functions of the motor vehicle.

Bulk Storage Container Used for Propulsion

Containers on motor vehicles that provide the vehicle with a means of propulsion are considered motive power containers. Examples of motor vehicles which have containers used to individually provide their own means of propulsion from location to location within a facility or between facilities include:

- Aircraft,
- Cherry pickers,
- Self-propelled cranes,
- Self-propelled aviation ground service equipment vehicles,

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

§112.2

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

- Self-propelled heavy vehicles (e.g., used in forestry, agricultural, mining, excavation and construction applications), and
- Locomotives.

Ancillary On-Board Equipment

Ancillary on-board equipment includes hydraulic and lubrication operational oil-filled containers used for other ancillary functions of a motor vehicle. It also includes 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 that 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.).

Exclusions from the Motive Power Container Definition

The exemption does not include non-self-propelled stationary or towed equipment, such as towed ground service equipment or any type of oil-powered generator (gensets; see *Section 2.10.6*). The following are examples of equipment that are *not* motive power containers because they do not include containers used for propulsion:

- Towed aviation ground service equipment,
- Non-self-propelled construction/cargo cranes,
- Non-self-propelled (forestry, agricultural, mining, excavation or construction) equipment,
- Oil-powered generators,
- Fire pumps, and
- Compressors.

An onboard bulk storage container used to store or transfer oil for further distribution is also not a motive power container. 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 the exemption. This situation includes, for example, a mobile refueler that has an onboard bulk storage container used to distribute fuel to other vehicles on a site and which also draws its engine fuel (for propulsion) from that bulk container.

Oil drilling and workover equipment (including rigs) are not eligible for the motive power container exemption because they are specifically excluded from the definition of a motive power container. 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 exempt.

Oil Transfers to Motive Power Containers

Regardless of the exemption for motive power containers, oil transfer activities occurring within an SPCC-regulated facility are regulated. An example of such an activity would be the transfer of oil from an oil storage container via a dispenser to a motive power container. This transfer activity is subject to the general secondary containment requirements of §112.7(c). See *Chapter 4: Secondary Containment and Impracticability* for more information on secondary containment requirements.

2.8.7 Hot-mix Asphalt and Hot-mix Asphalt Containers

Hot-mix asphalt (HMA) is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, gravel or ground rubber tires, which is formed into final paving products for use on roads and parking lots. Under §112.1(d)(8), the SPCC rule exempts HMA and HMA containers. Section 112.1(d)(2)(ii) excludes the capacity of HMA and HMA containers from facility capacity calculations.

This exemption from SPCC regulation is based on the fact that HMA is unlikely to flow as a result of the entrained aggregate, such that there would be very few circumstances, if any, in which a discharge of HMA would have the potential to reach navigable waters or adjoining shorelines.

However, asphalt cement, as well as asphalt derivatives such as asphalt cutbacks and emulsions remain subject to the SPCC rule (see the discussion in *Section 2.2.4*).

2.8.8 Heating Oil Containers at Single-family Residences

Many regulated facilities, including farms, military installations, colleges and universities, may include single family residence heating oil tanks within the geographical confines of the facility. Residential heating oil containers used to store oil for the sole purpose of heating single-family residences (including a residence at a farm) are exempt from the SPCC rule under §112.1(d)(9). They are also excluded from facility storage capacity calculations in Section 112.1(d)(2). This exemption applies to aboveground as well as completely buried heating oil tanks at single-family residences. Heating oil tanks used for on-site consumptive use of oil are also exempt from underground storage tanks requirements under 40 CFR part 280.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(8) Hot-mix asphalt, or any hot-mix asphalt container.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(9) Any container for heating oil used solely at a single-family residence.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

A single-family residence is a household that has direct ownership of the oil stored in the heating oil container. In addition, if a commercial facility (for example, a university) includes a single-family residence on the premises, then any heating oil container associated solely with this residence is exempt from SPCC rule applicability.

However, the SPCC requirements apply to oil containers used to heat other non-residential buildings within a facility, because the exemption covers only residential heating oil containers at single-family residences. Owners and operators of commercial facilities, such as a multi-family structure (e.g. condominiums and apartment complexes) remain subject to the SPCC rule. These facilities generally store much larger volumes of oil, and if there is a reasonable expectation of an oil discharge to navigable waters or adjoining shorelines, then oil spill prevention measures need to be addressed in an SPCC Plan.

2.8.9 Pesticide Application Equipment and Related Mix Containers

Pesticide formulations may include petroleum- or vegetable-based oils in concentrated formulations or may contain crop oil or adjuvant oil in the mix formulations added just prior to application. Pesticide application equipment and related mix containers are exempt from the SPCC rule, under §112.1(d)(10) and the facility capacity calculations in §112.1(d)(2)(ii).

Pesticide application equipment includes ground boom applicators, airblast sprayers, and specialty aircraft containers/equipment that are used to apply measured quantities of pesticides to crops and/or soil. Related mix containers are those used to mix pesticides with water and, as needed, adjuvant oils, just prior to loading into the application equipment.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to:...

(10) Any pesticide application equipment or related mix containers.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

Containers (55 U.S. gallons or greater in capacity) storing oil prior to blending it with the pesticide, and containers used to store any pesticides after they have been mixed with oil, are considered bulk storage containers and are regulated as such under the SPCC rule.

EPA adopted this exemption because this type of pesticide use and related mix containers are already subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as codified in *Standards for Pesticide Containment Structures* in 40 CFR part 165, to assure the safe use (including discharge), reuse, storage, and disposal of pesticide containers.

2.8.10 Intra-Facility Gathering Lines Subject to Department of Transportation (DOT) Requirements

Intra-facility gathering lines (i.e. gathering lines found within the confines of a non-transportation-related facility) may be under the jurisdiction of both EPA and DOT as described in *Section 2.5.8*. However, certain DOT requirements for pipelines are considered to be similar in scope to SPCC regulations. Therefore, intra-facility gathering lines that are subject to DOT regulatory requirements at 49 CFR part 192 (*Transportation*

of Natural and Other Gas by Pipeline) or 195 (Transportation of Hazardous Liquids by Pipeline) are exempt from the SPCC rule under §112.1(d)(11). If intra-facility gathering lines are not subject to DOT regulatory requirements (i.e., gathering lines that by statute are subject to DOT jurisdiction, yet are not subject to the DOT regulations) they remain subject to 40 CFR part 112. Other equipment and piping at an oil production facility (such as flowlines) remain subject to SPCC requirements. EPA considers intra-facility gathering lines subject to EPA's jurisdiction if they are located within the boundaries of an otherwise regulated SPCC facility. *Appendix H* includes drawings that show EPA's regulatory jurisdiction at complexes, including an example of an oil production facility with gathering lines.⁵⁷

The exemption requires owners or operators of a facility to identify and mark as "exempt" the location of exempt piping on the facility diagram. This requirement will assist both facility and EPA personnel in defining the boundaries of EPA and DOT jurisdiction and provide response personnel with information used to identify hazards during a spill response activity. More information about facility diagram requirements is provided in *Chapter 6: Facility Diagram and Description*.

Issues related to intra-facility gathering lines and their SPCC requirements are covered in detail in *Chapter 3: Environmental Equivalence (Section 3.3.5)* and *Chapter 4: Secondary Containment and Impracticability (Section 4.2.2)*.

2.8.11 Milk and Milk Product Containers

Milk and milk product containers and associated piping and appurtenances are exempt from the SPCC requirements under §112.1(d)(12) and excluded from facility capacity calculations in §112.1(d)(2)(ii). Butter, cheese, and dry milk containers are a few examples of milk product containers subject to the exemption.

All milk and/or milk product transfer and processing activities are included in the scope of this exemption from the SPCC rule. For more information on the final rule exempting milk and milk product containers see 76 FR 21652, April 18, 2011.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(11) Intra-facility gathering lines subject to the regulatory requirements of 49 CFR part 192 or 195, except that such a line's location must be identified and marked as "exempt" on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

§112.1(d)

Except as provided in paragraph (f) of this section, this part does not apply to: ...

(12) Any milk and milk product container and associated piping and appurtenances.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁵⁷ See EPA Jurisdiction at Complexes.

2.8.12 Summary of Exemptions

Table 2-3 provides a summary of containers and equipment, as described in the preceding sections, which are exempt from the requirements of the SPCC rule and therefore excluded from a facility's oil storage capacity calculation.

Table 2-3: Summary of oil storage capacity calculation as described in §112.1(d)(2)(i) and (ii).⁵⁸

Included	Excluded
Capacity of containers (e.g., bulk storage containers, oil-filled equipment, mobile/portable containers) with a capacity of 55 U.S. gallons or greater (unless otherwise exempt)	Capacity of a container that is permanently closed
	Capacity of a motive power container
	Capacity of hot-mix asphalt or any hot-mix asphalt container
	Capacity of a container for heating oil used solely at a single-family residence
	Capacity of pesticide application equipment and related mix containers
	Capacity of any milk and milk product container and associated piping and appurtenances
	Capacity of any completely buried tank and associated underground piping, ancillary equipment, and containment systems subject to all technical requirements of 40 CFR part 280 or a state-approved program under 40 CFR part 281
	Capacity of any underground oil storage tanks including below-grade vaulted tanks, that supply emergency diesel generators at a nuclear power generation facility licensed by the Nuclear Regulatory Commission and subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, including, but not limited to, 10 CFR part 50

2.9 Determination of Applicability by the Regional Administrator

Section 112.1(f) allows the Regional Administrator (RA) to require the preparation and implementation of an SPCC Plan or applicable part from the owner or operator of an otherwise exempted facility that is subject to EPA jurisdiction under §311(j) of the CWA. This provision is designed to address gaps in other regulatory regimes that may be remedied by requiring a facility to have an SPCC Plan. For example, a facility may be exempt from the SPCC

§112.1(f)

Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject 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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁵⁸

Also exclude the capacity of containers used exclusively for wastewater treatment as described in §112.1(d)(6)

rule because its storage capacity is below the regulatory threshold, but the facility may have been the cause of repeated discharges as described in §112.1(b).

Factors the RA may consider in making a determination to require that a facility prepare 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. The RA might require either an entire Plan or a partial Plan addressing a specific rule requirement like secondary containment, for example, to prevent future discharges.

Sections 112.1(f)(1) through (5) describe the process for an RA to determine applicability. The process includes specific deadlines for both the RA and the facility owner or operator, as well as requirements for the type of information and delivery method. *Table 2-4* lists the deadlines and responsibilities of the RA and the facility owner or operator to appeal the RA determination that requires preparing an SPCC Plan.

Table 2-4: Process for an RA determination of SPCC applicability and appeals.

Deadline	Responsibility
Determination	
As needed.	<i>Regional Administrator</i> (RA) makes a preliminary determination. RA must provide a written notice to the owner/operator stating the reasons why an SPCC Plan or applicable part of a Plan is needed. (§112.1(f)(1))
Within <i>30 days</i> of receipt of notice of a potential need to prepare an SPCC Plan (following preliminary determination)	<i>Owner/operator</i> must provide information and data and may consult with EPA about the need to prepare an SPCC Plan, or applicable part. (§112.1(f)(2))
Within <i>30 days</i> of receipt of data	RA makes a final determination regarding whether the owner/operator is required to prepare and implement an SPCC Plan, or applicable part. (§112.1(f)(3))
Within <i>6 months</i> of final determination that facility needs a Plan	<i>Owner/operator</i> must prepare the Plan, or applicable part. (§112.1(f)(4))
Within <i>1 year</i> of final determination that facility needs a Plan	<i>Owner/operator</i> must implement the Plan, or applicable part. (§112.1(f)(4))
Appeals	
Within <i>30 days</i> of receipt of final determination that facility needs a Plan	<i>Owner/operator</i> may appeal final determination to the Administrator of EPA (and send a copy to the RA). (§112.1(f)(5))
Within <i>60 days</i> of receiving the appeal or additional information submitted by owner/operator	<i>The Administrator</i> renders a decision on the appeal. (§112.1(f)(5))

The EPA inspector plays an important role in assisting the RA in determining applicability. For example, an inspector may initially alert the RA of the need for an otherwise exempt facility to have an SPCC Plan. This may result from an inspection prompted by a citizen complaint or state referral, an oil spill, or awareness of

other conditions that warrant closer examination. Following an RA determination of the need for an SPCC Plan, the EPA inspector may perform a targeted inspection of the subject facility to verify compliance with SPCC requirements.

2.10 SPCC Applicability for Different Types of Containers

2.10.1 Bulk Storage Container

A bulk storage container, as defined in §112.2, with a capacity of 55 U.S. gallons or greater, must follow specific requirements, as described under §§112.8(c), 112.9(c), and 112.12(c) for onshore facilities. Examples of these requirements include, but are not limited to, secondary containment and fail-safe engineering (such as high level alarms), inspections, and testing.

2.10.2 Double-walled or Vaulted Tanks or Containers

Double-walled tanks are essentially a tank within another tank, equipped with an interstitial (i.e., annular) space and constructed in accordance with industry standards. The inner tank serves as the primary oil storage container while the outer tank serves as secondary containment. The outer tank of a double-walled tank may provide adequate secondary containment for discharges resulting from leaks or ruptures of the entire capacity of the inner storage tank.

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. Both double-walled tanks and vaulted tanks are bulk storage containers under the SPCC rule. For more information on how double-walled tanks comply with the secondary containment and inspection requirements of the SPCC rule see *Chapter 4: Secondary Containment and Impracticability* and *Chapter 7: Inspection, Evaluation, and Testing*.

2.10.3 Oil-filled 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. See generally 67 FR 47054-47055, July 17, 2002.

While the integrity testing requirements of §§112.8(c)(6) and 112.12(c)(6) are only applicable to bulk storage containers, EPA believes it is good engineering practice to have some form of visual inspection or monitoring for this oil-filled equipment to prevent discharges as described in §112.1(b). For example, it is a challenge to comply with security requirements under

§112.2

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.***

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule. ***Emphasis added.***

§112.7(g) and countermeasures for discharge discovery under §112.7(a)(3)(iv)) without some form of inspection or monitoring program. Additionally, inspection and/or monitoring should be part of an effective contingency plan when secondary containment for this equipment is impracticable.

2.10.4 Oil-filled Operational Equipment

“Oil-filled operational equipment” is defined under §112.2 as 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, wind turbines, and other systems containing oil solely to enable the operation of the device (§112.2). 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 considers the piping to be a component of the oil-filled operational equipment. However, piping not intrinsic to the operational equipment (e.g., flowlines, transfer piping or piping associated with a process) is not considered to be part of the oil-filled operational equipment.

Under §112.7(k), the owner or operator of a facility with oil-filled operational equipment that meets specific qualification criteria may choose to implement the alternate requirements for qualified oil-filled operational equipment in lieu of the general secondary containment required in §112.7(c). *Chapter 4: Secondary Containment and Impracticability (Section 4.2.1)* provides more information about this option.

2.10.5 Oil-filled Manufacturing Equipment

Oil-filled manufacturing equipment is distinct from bulk storage containers in its purpose. 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. 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

§112.2

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.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

considered oil-filled manufacturing equipment since they are not intended to store oil.⁵⁹ Additionally, there may be oil-filled operational equipment (e.g., a hydraulic unit) at this type of facility to support the manufacturing equipment (see generally 67 FR 47080, July 17, 2002). The PE reviewing and certifying the SPCC Plan should be familiar with processes taking place at the facility and should therefore determine whether a given process vessel is considered a bulk storage container or oil-filled manufacturing equipment.

In cases where a container is used for the static storage of oil within a manufacturing or processing area, the PE may determine that the container is in fact a bulk storage container. Examples of oil storage within manufacturing areas include:

- Storing an intermediate product for an extended period of time in a continuous or batch process;
- Storing a raw product prior to use in a continuous or batch process; and
- Storing a final product after a continuous or batch process.

Storage tanks and containers located at the beginning or end of a process and used to store feedstock or finished products generally are considered bulk storage containers. In cases where oil storage is incidental to the manufacturing activity or process (e.g., where it is being transformed in a flow-through process vessel) the Plan preparer may determine that the container is part of the 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. Oil-filled manufacturing equipment is 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). (71 FR 77266, December 26, 2006).

2.10.6 Oil-powered Generators (“Gen-sets”)

Oil powered generators are commonly referred to as “gen-sets.” Gen-sets are a combination of oil-filled operational equipment and a bulk oil storage container. The oil that is consumed to generate electricity is not inherent to the device and is stored in a bulk storage container, which requires transfers of oil because oil is consumed in order to generate electricity. Therefore, although gen-sets include oil-filled operational equipment, such as the lubrication oil reservoir, gen-sets, as a whole unit, do not meet the definition of oil-filled operational equipment.

Newer designs of gen-sets provide for a double-walled tank for the bulk oil storage container. This type of design may meet the sized and general containment requirements of the SPCC rule (112.8(c)(2), 112.8(c)(11) and 112.7(c)) for the bulk storage container, however, this does not address secondary containment for the oil-

⁵⁹ The U.S. Occupational Safety and Health Administration (OSHA)’s Process Safety Management (PSM) regulation (29 CFR 1910.119) considers a single process “any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release.” The PSM definition of process includes storage tanks, while the SPCC rule considers storage tanks as bulk storage containers and not manufacturing equipment.

filled operational equipment on the gen-set. To address the oil-filled operational equipment on these gen-sets, the facility owner/operator can provide secondary containment for the typical failure mode and most likely quantity of oil that would be discharged from the oil-filled operational equipment on the gen-set (in accordance with §112.7(c)) or provide alternative measures as provided for qualified oil-filled operational equipment in §112.7(k).

When it is impracticable to provide appropriate secondary containment for gen-sets (for either the bulk storage containers or oil-filled operational equipment of the gen-set), a PE can make a determination of impracticability in accordance with §112.7(d); and can 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.

2.10.7 Bulk Storage Containers at Tank Battery, Separation and Treating Areas

An oil production facility typically includes, at a minimum, a wellhead, a tank battery, and flowlines connecting the wellhead to the tank battery and in some cases, the tank battery to an injection wellhead. The tank battery includes separation and treating equipment, a crude oil or condensate container (oil stock tank), drums of oil-based products and typically a produced water container, which receives both oil and produced water from the separator. Bulk storage containers at oil production facilities must be:

- Compatible with the materials stored and condition of storage;
- Provided with secondary containment sized for the largest single container and sufficient freeboard to contain precipitation for those containers at the tank battery, separation and treating facility installations;
- Visually inspected periodically and upon a regular schedule for deterioration and maintenance needs, including the foundation and support; and
- Engineered in accordance with good engineering practice to prevent discharges by:
 1. Ensuring adequate container capacity to assure that a container will not overflow if a pumper/gauger is delayed in making regularly scheduled rounds;
 2. Providing overflow equalizing lines between containers so that a full container can overflow to an adjacent container;
 3. Providing adequate vacuum protection to prevent container collapse during a pipeline run or other transfer of oil from the container; or
 4. Providing high level sensors to generate and transmit an alarm signal to the computer where the facility is subject to a computer production control system.

Alternative measures are provided for flow through process vessels and produced water containers in lieu of the secondary containment and inspection requirements of §§112.9(c)(2) and (3) as described below.

Flow-through Process Vessels

Separation and treating installations at an oil production facility typically include equipment whose primary purpose is to separate the well fluid into its marketable or waste fractions (e.g., oil, gas, produced water, and solids), and to treat the crude oil as needed for further storage and shipping. Flow-through process vessels, such as horizontal or vertical separation vessels (e.g., heater-treater, separator, gun barrel, free-water knockout, etc.), have the primary purpose of separating the oil from other fractions (water and/or gas) and sending the fluid streams to the appropriate container.

Flow-through process vessels at separation and treatment installations are bulk storage containers and count toward the facility aggregate oil storage capacity. They are also subject to general secondary containment under §112.7(c) and the bulk storage container requirements of §112.9(c). The facility owner or operator must either provide sized secondary containment for flow-through process vessels in accordance with §112.9(c)(2) and inspect them following §112.9(c)(3) or comply with the general secondary containment under §112.7(c) and alternative measures provided in §112.9(c)(5). More information about the secondary containment requirements and the alternative compliance provision for flow-through process vessels can be found in *Chapter 4: Secondary Containment and Impracticability (Section 4.8.1)*.

Produced Water Containers

Produced water containers are bulk storage containers typically located within the tank battery. Produced water containers are part of the process that separates the oil from other fractions (water and/or gas).

Oil discharges to navigable waters or adjoining shorelines from an oil/water mixture in a produced water container may cause harm. Such mixtures⁶⁰ are regulated as oil under the SPCC rule. Therefore, the capacity of produced water containers counts toward the facility aggregate oil storage capacity. Produced water containers are subject to general secondary containment under §112.7(c) and the bulk storage container requirements in §112.9(c). The facility owner or operator must either provide sized secondary containment for produced water containers in accordance with §112.9(c)(2) and inspect them following §112.9(c)(3) or comply with general secondary containment under §112.7(c) and alternative measures provided in §112.9(c)(6).

The alternative measures require that the facility owner or operator conduct visual inspections; perform maintenance and corrective action; and remove, or stabilize and remediate, oil discharges. Additionally a PE must describe in the SPCC Plan and certify that a practice is established that is designed to remove the amount of free-phase oil from the produced water container on a scheduled and routine basis. More information about

§112.2

Produced water container means a storage container at an oil production facility used to store the produced water after initial oil/water separation, and prior to reinjection, beneficial reuse, discharge, or transfer for disposal.

Note: The above text is an excerpt of the SPCC rule. Refer to 40 CFR part 112 for the full text of the rule.

⁶⁰ Refers to mixtures in the produced water container.

the secondary containment requirements and the alternative compliance provision for produced water containers can be found in *Chapter 4: Secondary Containment and Impracticability (Section 4.8.2)*.

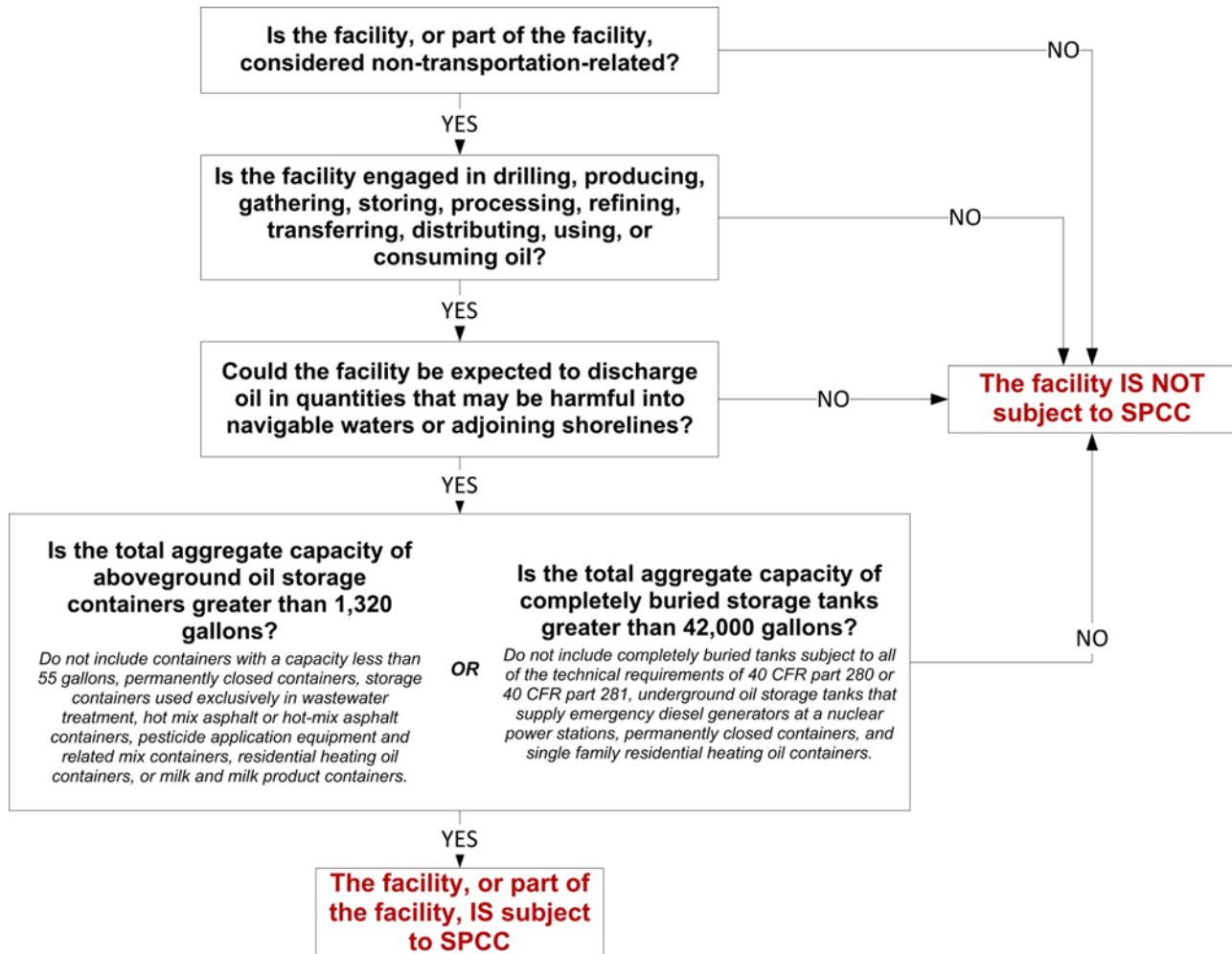
2.11 Determination of Applicability of Facility Response Plans

A portion of the SPCC-regulated community may also be required to prepare a Facility Response Plan (FRP). According to §112.20, an owner or operator of a facility that has the potential to cause substantial harm to the environment in the event of a discharge into or on navigable waters or adjoining shorelines must prepare and submit an FRP. *Owners or operators of SPCC facilities must document whether they meet the FRP applicability criteria (40 CFR 112 Appendix C Section 3.0)*. Owners/operators may refer to the “Flowchart of Criteria for Substantial Harm,” Attachment C-I to Appendix C of 40 CFR part 112, to determine whether they need to prepare an FRP. The owner or operator must document his/her determination of whether the facility has the potential to cause substantial harm by completing the Attachment C-II form, “Certification of the Applicability of the Substantial Harm Criteria,” and maintaining the certification at the facility. Attachments C-I and C-II are included in Appendix C of 40 CFR part 112 (also see *Appendix H* of this guidance).

2.12 Role of the EPA Inspector

The EPA inspector is responsible for gathering information and data to determine compliance with SPCC requirements for those facilities that are regulated by the SPCC rule. During an SPCC inspection, EPA inspectors will check that the measures described in the SPCC Plan are implemented at the facility and will fully document all observations and other pertinent information. The EPA inspector will check that the Plan is kept at the facility if it is attended more than four hours per day. The *Summary of Applicability Flowchart* and *Applicability Assessment Worksheet*, provided as *Figure 2-8* and *Figure 2-9*, are two quick references provided for convenience to aid inspectors in assessing whether a facility is subject to the SPCC rule.

Figure 2-8: Summary of applicability flowchart.

**Definitions (40 CFR 112.2)**

Completely buried tank: 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: 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.

Facility: 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 oil waste treatment, or in which oil is used, as described in Appendix A to the SPCC rule. 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.

Permanently closed: 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.

Storage capacity: Shell capacity of the container.

The intent of this flowchart is to show the general principles of applicability. Inspectors should always consult the *Code of Federal Regulations* and applicable MOUs.

Figure 2-9: Applicability assessment worksheet.

1 Is the facility or part of the facility considered non-transportation-related and engaged in one of the following activities? (Refer to *Section 2.3* of this chapter.)

Drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil.

- Yes. Go to question 2.
- No. The facility is not subject to the SPCC rule.

2 Could the facility reasonably be expected to discharge oil in quantities that may be harmful into navigable waters or adjoining shorelines? (Refer to *Section 2.6* of this chapter.)

Note: 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.

- Yes. Go to question 3a.
- No. The facility is not subject to the SPCC rule.

3a Is the total aggregate capacity of aboveground oil storage containers greater than 1,320 U.S. gallons? (Refer to *Sections 2.7* and *2.8* of this chapter.)

Note: Exclude containers less than 55 gallons, permanently closed containers, motive power containers, storage containers used exclusively in wastewater treatment, hot-mix asphalt containers, pesticide application equipment and related mix containers, single-family residential heating oil containers, milk and milk product containers, and underground storage tanks that supply emergency diesel generators at nuclear power stations.

- Yes. The facility is subject to the SPCC rule.
- No. Go to question 3b.

3b Is the total aggregate capacity of completely buried storage tanks greater than 42,000 U.S. gallons? (Refer to *Sections 2.7* and *2.8* of this chapter.)

Note: Do not include completely buried tanks subject to all technical requirements of 40 CFR part 280 or 281, permanently closed containers, single-family residential heating oil containers, or underground storage tanks that supply emergency diesel generators at nuclear power stations.

- Yes. The facility is subject to the SPCC rule.
- No. The facility is not subject to the SPCC rule.