

EPA Extends the SPCC Compliance Date for Most Oil-Handling Facilities While Retaining the Current Compliance Date for Offshore Operations and Many Onshore Facilities

by Anthony B. Cavender

The Environmental Protection Agency has promulgated a new date by which most oil handling facilities must amend or prepare and implement changes to their Spill Prevention Control and Countermeasure Plans. The new Compliance Date is November 10, 2011, and it is effective on October 14, 2010. The Federal Register notice is published at 75 FR 63093 (October 14, 2010). This action finalizes the Compliance Date extensions proposed by EPA on August 3, 2010 (75 FR 45572).

However, EPA is not extending the current SPCC Plan Compliance date for offshore oil production or exploration facilities or their onshore components, or onshore oil-handling facilities that are required to prepare and submit to EPA Facility Response Plans; their Compliance Date remains November 10, 2010.

In addition, EPA took note of the special requirements of food manufacturing and processing facilities that are subject to both a Pasteurized Milk Ordinance or State dairy regulatory requirement and the SPCC Rules by virtue of the Edible Oil Regulatory Reform Act of 1995 and its application to milk and milk product containers: their SPCC Compliance Date will be delayed for one year after the effective date of a final rule which addresses milk and milk product containers, and their associated piping and appurtenances.

The SPCC Rules are located at 40 CFR Section 112, and the new Compliance Dates can be found at 40 CFR Section 112.3(a)-(c).

Section 311(j)(1)(c) of the Clean Water Act requires the President to issue rules establishing procedures, methods, equipment and other requirements to prevent discharges of oil from vessels and other facilities, and to contain such discharges when they happen. The EPA's SPCC Rules were originally promulgated in 1973, and remained essentially unchanged until 2002, when EPA promulgated a substantial revision and reorganization of the rules. See 67 FR 47042 (July 17, 2002). The EPA rules apply to non-transportation

related facilities that store oil in regulated quantities, and because of their location, could reasonably be expected to discharge oil in "harmful quantities" into navigable waters of the United States or adjoining shorelines. Such facilities have been obliged to prepare SPCC Plans using good engineering practices and in compliance with the requirements of the SPCC Rules. The difficulties encountered by the regulated community in coming into compliance with the revised rules have caused EPA to extend the Compliance Dates several times. This most recent extension will give most of the regulated community additional time to understand the revisions made in December 2008 (See 73 FR 74236, December 6, 2008) and November 2009 (See 74 FR 58784, November 13, 2009).

The agency decided not to extend the Compliance Date of November 10, 2010 for offshore oil exploration and production facilities (or their onshore components) or for large onshore oil-handling facilities already subject to the Facility Response Plan requirements of 40 CFR Section 112.20. Offshore operations work with a constant flow of oil, and as demonstrated by the recent oil spill in the Gulf of Mexico, spills or releases of oil from such facilities can easily exceed their oil storage capacity. These same concerns convinced EPA not to extend the Compliance Date for onshore facilities that must prepare and submit Facility Response Plans; a spill or release of oil from their facilities has the potential to cause substantial harm to the environment. EPA also noted that the owner or operator of any facility excluded from the extension of the new Compliance Date may petition their Regional Administrator in accordance with the procedures set forth at 40 CFR §112.3(f) to obtain additional time to come into compliance. The agency also noted that the Compliance Date amendments will affect only those requirements of the July 2002, December 2006, December 2008 and November 2009 SPCC rule amendments that are new (i.e., requirements that did not exist prior to the 2002 amendments) or more stringent than those that were part of the 1973 rule. The owner or operator of an SPCC – regulated facility must amend the SPCC Plan to include these new or more stringent provisions by the new Compliance Date.

EPA also reiterated its intention to update its SPCC Guidance for Regional Inspectors to address the most recent revisions to the SPCC Rules. Until these revisions are made, the Guidance will remain the most authoritative exposition of the agency's view of the application of the rules, the role of the EPA inspector in reviewing and evaluating a facility's compliance with performance-based SPCC requirements, and the basis of a consistent nation-wide approach to SPCC policy and interpretation.

If you have any questions about the content of this publication, please contact the Pillsbury attorney with whom you regularly work or the author below.

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