



UPDATE: Environmental & Utilities

January 2014

New SPCC Guidance May Be a Helpful Tool for Owners and Operators

The recent large-scale chemical release into a West Virginia drinking water supply—reportedly due to failures of an aboveground storage tank and secondary containment dike—has trained a public and regulatory spotlight on release prevention requirements at bulk storage facilities. Owners and operators of oil and other bulk storage facilities are well-advised to ensure that their facilities are in full compliance with release prevention programs, such as Spill Prevention, Control, and Countermeasures (SPCCs) and Facility Response Plans (FRPs) for larger facilities, and applicable state requirements.

In that effort, the Environmental Protection Agency's (EPA) August 2013 updates to its SPCC Guidance for Regional Inspectors may be particularly useful. The revised guidance is available for download [here](#) or enter http://www.epa.gov/oem/content/spcc/spcc_guidance.htm into your browser.

As background, the SPCC rule sets extensive requirements for oil spill prevention, preparedness, and response to prevent discharges to “navigable waters” (a legal term far broader than a plain-English understanding) and adjoining shorelines. Among other things, the rule requires specific facilities to prepare, amend, and implement SPCC Plans.

The revised guidance incorporates many changes, additions, and elaborations on EPA's interpretation of SPCC requirements, including detailed explanations of the following issues:

- What substances qualify as “oil” subject to the rule (Section 2.2)
- How to determine the scope of a “facility” subject to SPCC Plan requirements, including six example scenarios (Section 2.4)
- How to calculate storage capacity at a facility against various volume triggers in the rule (Section 2.7.1)
- How the SPCC rule applies to various types of containers, including a description of exemptions adopted in recent rule amendments (Section 2.10)
- How to implement “environmental equivalence” alternatives (deviations from specific SPCC requirements that provide equivalent environmental protection) (Sections 3.2 and 3.3)
- Secondary containment sizing and other requirements (Section 4.2)
- SPCC inspection, evaluation, and testing requirements (Section 7.2)
- Use of industry standards to comply with a particular rule requirement (Section 7.3)

The revised guidance addresses the many changes to the SPCC rule that have been adopted since

2002. These changes are summarized in Appendix C of the guidance.

Also available is an updated SPCC Inspection Checklist (Appendix G). Although the SPCC rule in its entirety ultimately determines the full scope of an SPCC inspection, the checklist provides an important reference for facility owners and operators to confirm compliance and prepare for an inspection. Appendix H includes useful policy documents regarding SPCC rule compliance, including a worksheet to aid secondary containment calculations.

The scope and complexity of the SPCC rule can present significant compliance challenges. The chemical release in West Virginia will likely result in an increase in Government-Initiated Unannounced Exercises in which the EPA will arrive and ask facility staff to immediately implement their SPCC protocol and, if applicable, its FRP. A facility without current documentation or that cannot timely implement its SPCC Plan and, if applicable FRP, can expect enforcement action, including significant penalties. Members of Robinson & Cole LLP's Environmental and Utilities Practice Group have worked with petroleum, manufacturing, and other clients in preparing, executing, and defending their release prevention plans.

If you have questions or would like assistance working through these issues, please contact one of the following attorneys:

[Earl W. Phillips, Jr.](mailto:Earl.W.Phillips.Jr@rc.com)
(860) 275-8220
ephillips@rc.com

[Christopher Foster](mailto:Christopher.Foster@rc.com)
(617) 557-5908
cfoster@rc.com

[Brian C. Freeman](mailto:Brian.C.Freeman@rc.com)
(860) 275-8310
bfreeman@rc.com

[Karla L. Chaffee](mailto:Karla.L.Chaffee@rc.com)
(617) 557-5956
kchaffee@rc.com

[Peter R. Knight](mailto:Peter.R.Knight@rc.com)
(860) 275-8387
pknight@rc.com

[Pamela K. Elkow](mailto:Pamela.K.Elkow@rc.com)
203-462-7548
pelkow@rc.com

© 2014 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.