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Spill Prevention, Control, and Countermeasure (SPCC) Regulations: Background and Legislation in the 113th Congress

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Summary

In 1970, Congress enacted legislation directing the President to promulgate oil spill prevention and response regulations. This presidential authority was delegated to the Environmental Protection Agency (EPA) by President Nixon in 1970. In 1973, EPA issued Spill Prevention, Control, and Countermeasure (SPCC) regulations that require applicable facilities to prevent, prepare, and respond to oil discharges that may reach navigable waters of the United States or adjoining shorelines. Among other obligations, SPCC regulations require secondary containment (e.g., dikes or berms) for certain oil-storage units. In addition, SPCC plans must generally be certified by a licensed Professional Engineer.

In recent years, the SPCC regulations have received considerable interest from Congress. Most of this interest has involved the applicability of SPCC regulations to farms, which account for approximately 25% of SPCC regulated entities, second only to oil and gas production facilities. Farms may be subject to the SPCC regulations, because they store oil onsite for agricultural equipment use.

In 2002, EPA issued a final rule that made changes and clarifications to its SPCC regulations. The compliance date for this rule was extended on multiple occasions. For most types of facilities subject to SPCC requirements, the compliance deadline was November 10, 2011. However, EPA extended this compliance date for farms to May 10, 2013. Related to this deadline, Congress enacted P.L. 113-6 on March 26, 2013, which included a provision prohibiting EPA from using appropriations to enforce SPCC provisions at farms for 180 days after enactment (i.e., through September 22, 2013).

In addition, some Members in the 113th Congress have offered multiple proposals that include provisions that would alter the scope and applicability of the SPCC regulations. All of these provisions would revise the applicability to farms under the SPCC regulations. In general, the bills' provisions would alter the aggregate oil storage threshold that triggers compliance with SPCC regulations. Such provisions are included in the House version of the farm bill (H.R. 2642) and the Senate version of the Water Resources Development Act of 2013 (S. 601).

The argument in support of recent SPCC legislation often concerns the financial impact of the SPCC regulations to farms. For example, a 2012 House report stated that the “mandated infrastructure improvements—along with the necessary inspection and certification by a specially licensed Professional Engineer will cost many farmers tens of thousands of dollars.” However, others have argued that EPA has considered the costs and benefits of its SPCC regulations during multiple rulemaking processes.

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Introduction

The Environmental Protection Agency (EPA) Spill Prevention, Control, and Countermeasure (SPCC) regulations include requirements for facilities subject to the regulations to prevent, prepare, and respond to oil discharges that may reach U.S. navigable waters or adjoining shorelines. Requirements include secondary containment (e.g., dikes or berms) for certain storage units and the need for a licensed Professional Engineer to certify a facility's SPCC plan.

In recent years, the SPCC program has received considerable interest from Congress. Most of this interest has involved the SPCC program's applicability to farms. Because farms may store oil onsite for agricultural equipment use, they may be subject to the SPCC regulations. Recent legislation would alter the scope and applicability of SPCC regulations to exclude farms that store and use oil below specific volumes or thresholds.

The first section of this report provides background information on EPA's SPCC regulations. The second section identifies legislation in the 113th Congress that has addressed and would address provisions in the SPCC regulations.

SPCC Regulations – Background

Statutory Authority

The Federal Water Pollution Control Act Amendments of 1970¹ included a provision directing the President to promulgate oil spill prevention and response regulations.² Two years later, Congress amended that provision³ with the enactment of the Federal Water Pollution Control Act Amendments of 1972⁴—commonly referred to as the Clean Water Act (CWA). The relevant provision from the 1972 Clean Water Act (CWA)⁵ remains the same today and reads as follows:

Consistent with the National Contingency Plan ... the President shall issue regulations consistent with maritime safety and with marine and navigation laws ... establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.⁶

In 1970, President Nixon reorganized the executive branch delegations of various presidential authorities. Presidential authority for regulations addressing oil discharges from nontransportation-related onshore and offshore facilities was delegated to the Environmental Protection Agency (EPA).⁷ Subsequent executive orders and interagency agreements altered the

¹ P.L. 91-224 (April 3, 1970).

² Section 11(j) of the 1970 statute.

³ The primary change was the addition of hazardous substances.

⁴ P.L. 92-500 (October 18, 1972).

⁵ Codified generally at 33 U.S.C. §§1251-1387.

⁶ CWA §311(j)(1)(C); 33 U.S.C. §1321(j)(1)(C).

⁷ Reorganization Plan No. 3 of 1970, 35 *Federal Register* 15623, October 6, 1970. Prior to this delegation, the Secretary of the Department of the Interior had implementation authority (Executive Order 11548, 35 *Federal Register* (continued...))

implementation authority framework. As of a 1994 interagency agreement,⁸ EPA has jurisdiction over nontransportation-related onshore and offshore facilities, which includes facilities located “landward of the coast line.”

Pursuant to the 1994 agreement, the Department of Transportation has jurisdiction over vessels, transportation-related onshore facilities, deepwater ports, and transportation-related facilities located landward of coast line, and the Department of the Interior has jurisdiction over offshore facilities, including associated pipelines, located seaward of the coast line. A detailed discussion of these jurisdictions is beyond the scope of this report.

In addition, Section 311(o) of the CWA states, “Nothing in this section [CWA Section 311] shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to removal activities related to such discharge.”

Many states have their own oil spill programs. A discussion of these state programs is beyond the scope of this report.

Existing Regulations

EPA issued the first SPCC regulations in 1973,⁹ and they became effective January 10, 1974. Following the enactment of the Oil Pollution Act of 1990,¹⁰ EPA proposed changes and clarifications to the SPCC regulations that were made final in July 2002 and effective in August 2002.¹¹ Subsequently, EPA extended the 2002 rule’s compliance date (on multiple occasions) and made further amendments to the 2002 rule. For most types of facilities subject to SPCC requirements, the deadline for complying with the changes made in 2002 was November 10, 2011.¹² However, an EPA rulemaking extended this compliance date for farms¹³ to May 10, 2013.¹⁴ On March 26, 2013, Congress enacted P.L. 113-6, which prohibited EPA from using appropriations to enforce SPCC provisions at farms for 180 days after enactment (i.e., through September 22, 2013).

Notwithstanding these recent deadlines, the July 2002 final rule and subsequent revisions did not alter the requirement for owners or operators of facilities, including farms, to maintain and to continue implementing their SPCC plans in accordance with the SPCC regulations that have been in effect since 1974.

(...continued)

11677, July 22, 1970).

⁸ Memorandum of Understanding (MOU) among EPA, the Department of the Interior (DOI), and the Department of Transportation (DOT), which became effective February 3, 1994 (59 *Federal Register*, 34102, July 1, 1994). This MOU is codified at 40 C.F.R. Part 112, Appendix B.

⁹ 38 *Federal Register*, 34164, December 11, 1973.

¹⁰ P.L. 101-380; 33 U.S.C. §2701 et seq.

¹¹ 67 *Federal Register* 47041, July 17, 2002.

¹² 75 *Federal Register* 63093, October 14, 2010.

¹³ The regulations defined the term farm as “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” (40 C.F.R. §112.2).

¹⁴ 76 *Federal Register* 72120, November 22, 2011.

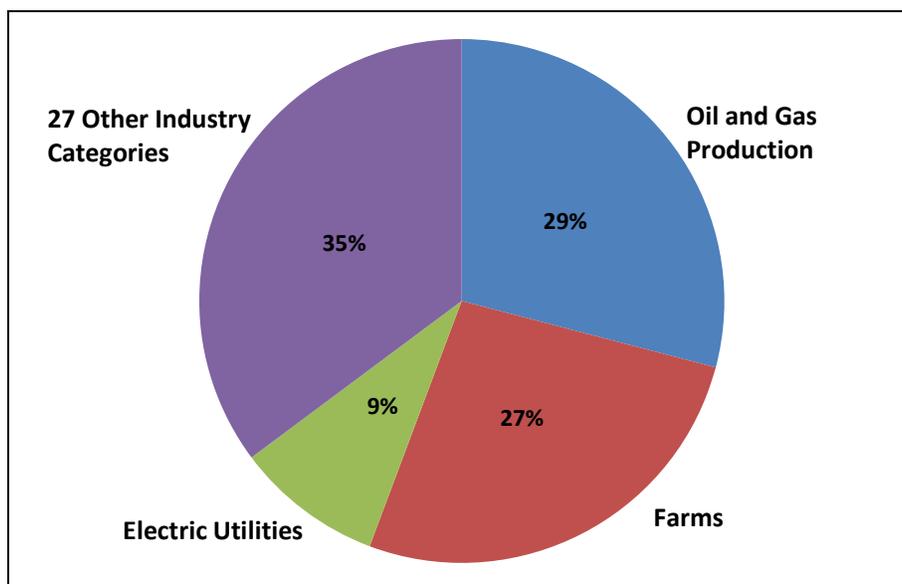
Applicability

The EPA SPCC plan requirements apply to nontransportation-related facilities that produce, store, use, or consume oil or oil products;¹⁵ and that could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines.¹⁶ Facilities, including farms, are subject to the rule if they meet at least one of the following capacity thresholds:

1. an aboveground aggregate oil storage capacity greater than 1,320 gallons,¹⁷ or
2. a completely buried oil storage capacity greater than 42,000 gallons.

In 2009, EPA estimated that approximately 640,000 facilities are subject to the SPCC requirements.¹⁸ **Figure 1** illustrates the breakdown of these facilities by industry categories. Facilities involved in oil and gas production represent the largest percentage (29%) of facilities subject to the SPCC regulations, with farms coming in a close second (27%).¹⁹ EPA estimated that the SPCC requirements apply to approximately 152,000 farms, which represents approximately 8% of all farms nationwide.

Figure 1. EPA Estimated Universe of SPCC Facilities by Industry



Source: Prepared by CRS; data from EPA, *Regulatory Impact Analysis for the Final Revisions to the Oil Pollution Prevention Regulations* (40 C.F.R. Part 112), September 2007.

¹⁵ Per EPA SPCC regulations, “oil,” means oil of any kind or in any form, including, but not limited to: petroleum; fuel oil; sludge; oil refuse; oil mixed with wastes other than dredged spoil; fats, oils or greases of animal, fish, or marine mammal origin; vegetable oils, including oil from seeds, nuts, fruits, or kernels; and other oils and greases, including synthetic oils and mineral oils (40 C.F.R. §112.2).

¹⁶ The definition of “navigable waters” has been a subject of litigation in recent years. See CRS Report RL33263, *The Wetlands Coverage of the Clean Water Act (CWA) Is Revisited by the Supreme Court: Rapanos v. United States*.

¹⁷ Aboveground storage includes partially buried tanks. In addition, aggregate storage capacity only applies to containers greater than 55 gallons (40 C.F.R. §112.1(d)).

¹⁸ 74 *Federal Register* 58806, November 13, 2009.

¹⁹ Based on estimates from EPA, *Regulatory Impact Analysis for the Final Revisions to the Oil Pollution Prevention Regulations* (40 C.F.R. PART 112), September 2007.

Requirements

Most regulated facilities must prepare and implement, but are not required to submit, SPCC plans. (However, a subset of high-risk facilities must submit Facility Response Plans to EPA.)²⁰ Among other obligations, SPCC regulations require secondary containment (e.g., dikes or berms) for certain oil-storage units. In addition, SPCC plans must be certified by a licensed Professional Engineer unless a facility owner/operator meets the conditions that allow for self-certification. In general, facilities with a clean spill history that store 10,000 gallons or less, in aggregate, can choose to self-certify their SPCC plans. EPA estimated that approximately 145,000 farms—about 95% of all farms subject to SPCC requirements—have an oil storage capacity less than or equal to 10,000 gallons, and would thus be able to self-certify their plans.²¹

Enforcement

According to a 2012 EPA Inspector General report, EPA regional offices inspected approximately 3,700 facilities for compliance with SPCC requirements; approximately 55% of the facilities were deemed to be out of compliance for various reasons.²²

Unlike EPA regulations promulgated under some other statutes, SPCC regulations have not been delegated to states for implementation or enforcement. Section 311 of the CWA does not provide authority to delegate SPCC authority to the states. Therefore, enforcement of the program is performed by the EPA regional offices. As noted earlier, many states have their own regulatory programs that address oil storage units.

Legislation in the 113th Congress

SPCC regulations have garnered considerable attention in the 113th Congress. Some Members have offered multiple proposals that would alter the scope and applicability of the regulations. **Table 1** identifies legislation that has been enacted, passed either the Senate or the House, or been reported out of committee. All of these bills involve the treatment of farms in the SPCC regulations. In general, the bills would alter the aggregate oil storage threshold that triggers compliance with SPCC regulations. Such an approach has some precedent in federal environmental law and policy. For example, Congress modified the scope of the liability scheme of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA; P.L. 96-510) on several occasions to exclude particular parties. These parties may have contributed only very small quantities of waste (or less toxic wastes) to a contaminated site, or conducted activities, such as recycling, that Congress did not wish to discourage.²³ Legislation identified in **Table 1** similarly would exclude farms from SPCC requirements based on oil storage capacity. The argument in support of such legislation often concerns the financial impact of the SPCC regulations. For example, a 2012 House report stated that the “mandated infrastructure

²⁰ 40 C.F.R. §112.20).

²¹ EPA, *Regulatory Impact Analysis for the Final Revisions to the Oil Pollution Prevention Regulations* (40 C.F.R. PART 112), November 2006

²² EPA Office of Inspector General, *EPA Needs to Further Improve How It Manages Its Oil Pollution Prevention Program*, 2012.

²³ For more information, see CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*, by (name redacted).

improvements—along with the necessary inspection and certification by a specially licensed Professional Engineer will cost many farmers tens of thousands of dollars.”²⁴ However, others have argued that EPA has considered the costs and benefits of its SPCC regulations during multiple rulemaking processes.²⁵

²⁴ H.Rept. 112-643. This report was from the House Committee on Transportation and Infrastructure in the 112th Congress. The report addressed H.R. 3158, which passed the House on August 1, 2012. This legislation is similar to H.R. 311 from the 113th Congress, listed in the table below.

²⁵ See, e.g., Senate debate over S.Amdt. 29 (listed in table below) in *Congressional Record*, March 13, 2013, pp. S1774-S1775.

Table I. Legislation from the 113th Congress with SPCC Provisions

Includes, Enacted, Passed, or Reported Legislation

Bill or P.L. Number	Short Title	Major Activity	SPCC Provisions
P.L. 113-6	Consolidated and Further Continuing Appropriations Act, 2013	Introduced on March 4, 2013 (H.R. 933); passed House March 6, 2013; passed Senate March 20, 2013; enacted March 26, 2013	Section 1416 prohibited EPA from using appropriations to enforce SPCC provisions at farms for 180 days after enactment (i.e., through September 22, 2013); provision added by S.Amdt. 29, which was agreed to on March 14, 2013
H.R. 311	Farmers Undertake Environmental Land Stewardship Act (FUELS Act)	Introduced on January 18, 2013; ordered reported from the House Committee on Transportation and Infrastructure on October 29, 2013	<p>Would amend the scope and applicability of SPCC regulations in the following manner:</p> <ul style="list-style-type: none"> • farms with an aggregate oil storage capacity of 10,000 gallons or less and a clean spill history would be exempt from all requirements; • a Professional Engineer certification would be needed only at farms with individual aboveground storage tanks larger than 10,000 gallons, aggregate aboveground storage of greater than 42,000 gallons, or a history of spills; • when calculating aboveground storage capacity, containers of less than 1,320 gallons on separate parcels would be exempt
H.R. 2642	<p>Federal Agriculture Reform and Risk Management Act of 2013</p> <p><i>Commonly referred to as the "farm bill"^a</i></p>	<p>Introduced on July 10, 2013; passed the House on July 11, 2013; formal conference began on October 30, 2013</p> <p><i>The Senate version of the farm bill (S. 954) passed the Senate on June 10, 2013, but it does not contain SPCC provisions</i></p>	<p>Would amend the scope and applicability of the SPCC program in the following manner:</p> <ul style="list-style-type: none"> • farms with less than 10,000 gallons aggregate storage capacity and no spill history would be exempt from all SPCC requirements; • a Professional Engineer certification would be needed only at farms with individual aboveground storage tanks larger than 10,000 gallons, aggregate aboveground storage of greater than 42,000 gallons, or a history of spills; • farms with aggregate aboveground storage of more than 10,000 gallons, but less than 42,000 gallons, and no spill history would be allowed to self-certify their SPCC plans; • when calculating aboveground storage capacity, containers of less than 1,320 gallons on separate parcels and containers approved by FDA for livestock feed would be exempt

Bill or P.L. Number	Short Title	Major Activity	SPCC Provisions
S. 601	Water Resources Development Act of 2013 ^b	<p>Introduced on March 18, 2013; reported by the Senate Committee on Environment and Public Works on April 22, 2013 (S.Rept. 113-13); passed the Senate on May 15, 2013</p> <p><i>The House version (H.R. 3080) passed the House on October 23, 2013, but it does not contain SPCC provisions</i></p>	<p>Would amend the scope and applicability of SPCC regulations in the following manner:</p> <ul style="list-style-type: none"> • farms with an aggregate aboveground storage of 6,000 gallons or less would not require a “certification of a statement of compliance with the rule”;^c • a Professional Engineer certification would only be needed at farms with individual aboveground storage tanks greater than 10,000 gallons, aggregate aboveground storage of greater than 20,000 gallons, or a history of spills; • farms with aggregate aboveground storage of 20,000 gallons or less and no spill history would be allowed to self-certify their SPCC plans; • when calculating aboveground storage capacity, containers on separate parcels of 1,000 gallons or less and containers approved by FDA for livestock feed would be exempt.

Source: Prepared by CRS.

- a. For more information on this legislation, see CRS Report R43076, *The 2013 Farm Bill: A Comparison of the Senate-Passed (S. 954) and House-Passed (H.R. 2642, H.R. 3102) Bills with Current Law*, coordinated by (name redacted).
- b. For more information, see CRS Report R41243, *Army Corps of Engineers: Water Resource Authorizations, Appropriations, and Activities*, by (name redacted) and (name redacted).
- c. This particular provision was added by S.Amdt. 801. According to EPA (in a personal correspondence with CRS on June 6, 2013), the effect of this provision would be unclear, because certification of compliance is not currently required by regulation. Moreover, EPA stated that the requirement to create an SPCC plan would remain.

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