Spill Prevention, Control, and Countermeasure (SPCC) Regulations: Background and Issues for Congress

(name redacted)
Specialist in Environmental Policy

December 27, 2016

Congressional Research Service
7-....
www.crs.gov
R44536

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

In 1970, Congress enacted legislation directing the President to promulgate oil spill prevention and response regulations. President Nixon delegated this presidential authority to the Environmental Protection Agency (EPA) in 1970. In 1973, EPA issued Spill Prevention, Control, and Countermeasure (SPCC) regulations that require certain facilities to prevent, prepare for, and respond to oil discharges that may reach navigable waters of the United States or adjoining shorelines.

In general, a facility must prepare an SPCC plan if the facility has an aboveground aggregate oil storage capacity greater than 1,320 gallons or a completely buried oil storage capacity greater than 42,000 gallons. Among other obligations, SPCC regulations require secondary containment (e.g., dikes or berms) for certain oil-storage units. A licensed professional engineer must certify the plan, although some facilities—depending on storage capacity and spill history—may be able to self-certify.

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 may be subject to the SPCC regulations for oil stored onsite for agricultural equipment use. Farms account for approximately 25% of SPCC regulated entities, second only to oil and gas production facilities.

In 2002, EPA issued a final rule that made changes and clarifications to its SPCC regulations. 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.

The 2013 compliance date generated considerable attention in the 113th Congress. On June 10, 2014, the President signed the Water Resources Reform and Development Act (WRRDA) of 2014 (P.L. 113-121). The act altered the applicability of the SPCC regulations to farms. Two key changes include

1. farms with an aggregate aboveground oil storage capacity less than 2,500 gallons are not subject to SPCC regulations; and
2. farms with an aggregate aboveground oil storage capacity less than 6,000 gallons (or an alternate threshold determined by EPA) and no reportable discharge history are not subject to SPCC regulations.

WRRDA directed EPA to conduct a study to determine whether the interim 6,000 gallon threshold should be decreased (to not less than 2,500 gallons) based on a significant risk of an oil discharge to water. In June 2015, EPA concluded that the appropriate threshold should be 2,500 gallons instead of 6,000 gallons. According to the regulatory agenda, EPA was scheduled to release a proposed rule regarding this change in August 2016, with a final rule scheduled for December 2016. As of the date of this report, EPA has not published a proposed rule.

On December 16, 2016, the President signed the Water Infrastructure Improvements for the Nation Act (WIIN, P.L. 114-322). Section 5001 of WIIN modifies the applicability of the SPCC regulations for farms. In particular, the SPCC regulations would not apply to farm containers on separate parcels with (1) an individual storage capacity of 1,000 gallons or less, and (2) an aggregate storage capacity of 2,000 gallons or less.

The arguments in support of such legislation often concern the financial impact of the SPCC regulations to farms. On the other hand, some Members have argued that EPA has considered the costs and benefits of its SPCC regulations during multiple rulemaking processes and determined that the benefits outweigh the costs. EPA contends that the SPCC compliance costs that help prevent oil spills are much less than the costs of oil spill cleanup and potential civil penalties.

Contents

Figures

Tables

Contacts

Introduction

The Environmental Protection Agency's (EPA's) Spill Prevention, Control, and Countermeasure (SPCC) regulations include requirements for certain facilities to prevent, prepare for, and respond to discharges of oil and oil products—defined broadly—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 if the oil storage capacity exceeds regulatory thresholds. Legislation from the 113th and 114th Congresses altered the applicability of the SPCC regulations for farms.

Stakeholder arguments in support of such legislation often involve the financial impact of the SPCC regulations, particularly for 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."[1] However, some Members have argued that EPA has considered the costs and benefits of its SPCC regulations during multiple rulemaking processes and determined that the benefits outweigh the costs.[2] EPA contends that the SPCC compliance costs that help prevent oil spills are much less than the costs of oil spill cleanup and potential civil penalties.[3] In addition, a 2015 EPA study stated:

> EPA concluded that there was insufficient evidence to provide an exemption specific to farms or make changes to regulatory thresholds since the types of tanks and oil storage conditions at farms were generally similar to those of other facilities, with similar potential for discharge.[4]

The first section of this report provides background information on EPA's SPCC program, including the program's statutory authority and regulatory developments and requirements. The second section identifies legislation in the 114th Congress that addresses provisions in the SPCC regulations.

[1] 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.

[2] See, for example, Senate debate over S.Amdt. 29 (113th Congress) in *Congressional Record*, March 13, 2013, pp. S1774-S1775.

[3] See, for example, EPA, *Economic Analysis for the Final Revisions to the Oil Pollution Prevention Regulation*, 2002; EPA, *Regulatory Analysis for the Proposed Revisions to the Oil Pollution Prevention Regulation*, 2005; and EPA, *Spill Prevention, Control, and Countermeasure Regulation: A Facility Owner/Operator's Guide to Oil Pollution Prevention*, 2010.

[4] EPA, *Oil Storage on U.S. Farms: Risks and Opportunities for Protecting Surface Waters*, 2015, https://www.epa.gov/sites/production/files/2016-02/documents/wrrda_farm_study_2015-06-30.pdf.

Figure 1. Illustrative Example of Oil Storage Units

Source: Reproduced from Purdue University, *Aboveground Petroleum Tanks, A Pictorial Guide*, https://www.extension.purdue.edu/extmedia/PPP/PPP-73.pdf.

SPCC Regulations—Background

Statutory Authority

The Federal Water Pollution Control Act Amendments of 1970 included a provision directing the President to promulgate oil spill prevention and response regulations.[5] Two years later, Congress amended that provision with the enactment of the Federal Water Pollution Control Act Amendments of 1972—commonly referred to as the Clean Water Act (CWA).[6] The relevant provision from the 1972 CWA 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.[7]

In 1970, President Nixon established the Environmental Protection Agency (EPA) and reorganized the executive branch delegations of various presidential authorities.[8] Subsequent executive orders and interagency agreements altered the implementation authority framework. In the context of oil discharge regulations, the Coast Guard has jurisdiction over vessels, and several agencies have jurisdiction over facilities.[9]

[5] P.L. 91-224, §11(j).

[6] P.L. 92-500; 33 U.S.C. §§1251-1387.

[7] CWA §311(j)(1)(C); 33 U.S.C. §1321(j)(1)(C).

[8] President Nixon, "Reorganization Plan No. 3 of 1970," 35 Federal Register 15623, October 6, 1970. See CRS Report RL30798, *Environmental Laws: Summaries of Major Statutes Administered by the Environmental Protection Agency*, coordinated by (name redacted) .

[9] See, for example, Executive Order (EO) 12777 (October 18, 1991). This order was amended by EO 13286 (March 5, 2003), which reorganized Coast Guard duties in response to the creation of the Department of Homeland Security.

As of a 1994 interagency agreement,[10] EPA has jurisdiction over non-transportation-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 transportation-related onshore facilities, deepwater ports, and transportation-related facilities located landward of coast line. The Department of the Interior has jurisdiction over offshore facilities, including associated pipelines, located seaward of the coast line.

In addition, Section 311(o) of the CWA states, "Nothing in this section 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.

SPCC Regulations

General Requirements

EPA's SPCC regulations are in 40 C.F.R. Part 112. The regulations require certain facilities (discussed below) to prepare and implement, but not submit, SPCC plans. (A subset of higher-risk facilities must submit Facility Response Plans to EPA.)[11] 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 no reportable discharge history that store 10,000 gallons or less, in aggregate, can self-certify their SPCC plans. For farms, this particular threshold is 20,000 gallons. EPA estimated that approximately 99% of all farms have an oil storage capacity less than or equal to 20,000 gallons and would thus be able to self-certify their plans if they were subject to SPCC requirements.[12]

Brief History of SPCC Regulations

EPA issued its first SPCC regulations in 1973,[13] which became effective January 10, 1974. EPA made changes and clarifications to the SPCC regulations in 2002.[14] Over the next eight years, 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.[15] However, a subsequent EPA rulemaking extended this compliance date for farms to May 10, 2013.[16] On

[10] Memorandum of understanding among EPA, the Department of the Interior, and the Department of Transportation, which became effective February 3, 1994. This memorandum is codified at 40 C.F.R. Part 112, Appendix B.

[11] 40 C.F.R. §112.20.

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

[13] EPA, "Oil Pollution Prevention; Non-Transportation-Related Onshore and Offshore Facilities," 38 *Federal Register* 34164, December 11, 1973.

[14] EPA, "Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities," 67 *Federal Register* 47042, July 17, 2002.

[15] EPA, "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule-Compliance Date Amendment," 75 *Federal Register* 63903, October 14, 2010.

[16] EPA, "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule-Compliance Date (continued...)

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

General Applicability

The EPA SPCC plan requirements apply to non-transportation-related facilities that produce, store, use, or consume oil or oil products and could reasonably be expected to discharge oil into or upon navigable waters of the United States or adjoining shorelines. The definition of "navigable waters" has been a long-standing controversial topic and subject of litigation in recent years. On May 27, 2015, the Army Corps of Engineers and EPA finalized revised regulations that define the scope of waters protected under the CWA.[17]

The definition of oil has also garnered attention from policymakers and stakeholders in recent years. The CWA Section 311 definition states:

> "oil" means 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.[18]

Since the inception of the SPCC regulations, EPA has interpreted this definition to apply to both petroleum-based and non-petroleum-based oil. In a 1975 *Federal Register* notice, EPA clarified that its 1973 SPCC regulations apply to oils from animal and vegetable sources.[19] EPA's SPCC regulatory definition (40 C.F.R. §112.2) states:

> 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.

Except for farms, which are discussed below, facilities are subject to the rule if they meet at least one of the following capacity thresholds:

- an aboveground aggregate oil storage capacity greater than 1,320 gallons,[20] or
- 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.[21] **Figure 2** illustrates the breakdown of these facilities by industry categories.

(...continued)

Amendment for Farms," 76 *Federal Register* 72120, November 22, 2011.

[17] See CRS In Focus IF10125, *Overview of EPA and the Army Corps' Rule to Define "Waters of the United States"*, by (name redacted) .

[18] 33 U.S.C. §1321.

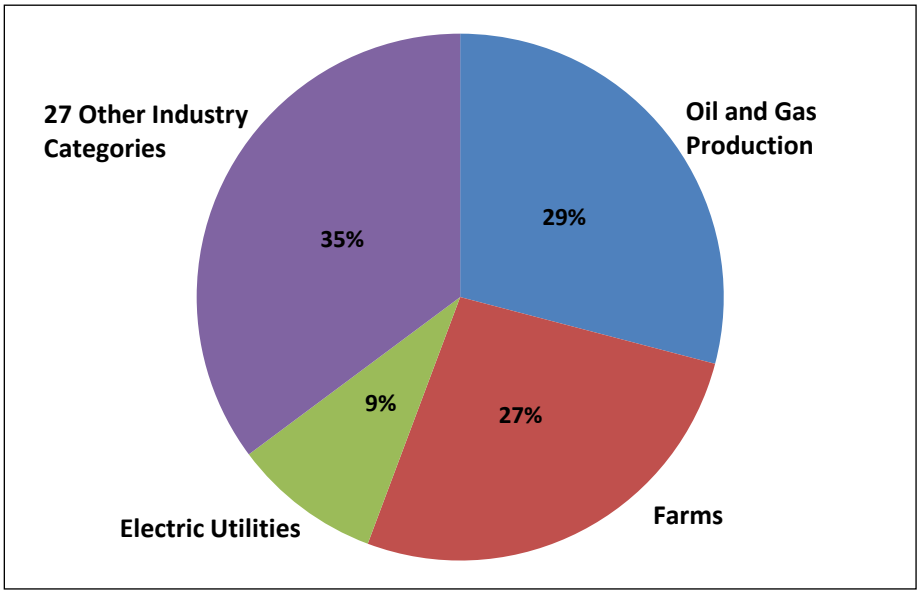
[19] EPA, "Oil Pollution Prevention, Applicability of 40 CFR part 112 to Non-Petroleum Oils; Notice," 40 *Federal Register* 28849, July 9, 1975.

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

[21] EPA, "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Amendments," 74 (continued...)

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%).[22] EPA estimated that the SPCC requirements apply to approximately 152,000 farms, which represents approximately 8% of all farms nationwide.

Figure 2. 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.

Applicability to Farms

Many of the recent SPCC issues have involved program scope and applicability, particularly in the context of farms. The SPCC regulations (40 C.F.R. §112.2) define 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.

The applicability of SPCC regulations to farms garnered considerable attention in the 113th Congress. Members introduced a number of bills to modify the applicability of the SPCC regulations to farms, ultimately resulting in enacted legislation.

WRRDA 2014

On June 10, 2014, the President signed the Water Resources Reform and Development Act (WRRDA) of 2014 (P.L. 113-121). Section 1048 of the act altered the applicability of the SPCC to farms. Selected changes include the following:

(...continued)

Federal Register 58784, November 13, 2009.

[22] 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.

- Farms with an aggregate aboveground storage capacity of less than 2,500 gallons are not subject to SPCC regulations (compared to 1,320 gallons for other facilities);
- Farms with an aggregate aboveground storage capacity of less than 6,000 gallons (or a to-be-determined lower threshold, discussed below) and no reportable discharge history are not subject to SPCC regulations;
- Farms with an aggregate aboveground storage capacity of less than 20,000 gallons (the prior threshold was 10,000 gallons), no individual storage tank greater than 10,000 gallons, and no reportable discharge history may self-certify their SPCC plan in lieu of hiring a professional engineer for certification; and
- Farms can exclude oil containers on separate parcels with capacities less than 1,000 gallons when determining aggregate storage capacity.

WRRDA directed EPA to determine whether the interim 6,000 gallon threshold (mentioned above) should be decreased (to not less than 2,500 gallons) based on a significant risk of an oil discharge to water. If the agency determines that the 6,000 gallon threshold is not appropriate, the act directs EPA to adjust the exemption level through the regulatory process according to the findings in the study.

EPA released the SPCC threshold study in June 2015.[23] "Based on evidence that small discharges cause significant harm and lack of evidence that farms are inherently safer than other types of facilities," EPA concluded that the appropriate threshold should be 2,500 gallons instead of 6,000 gallons.[24] According to the regulatory agenda, EPA was scheduled to release a proposed rule regarding this change in August 2016, with a final rule scheduled for December 2016.[25] As of the date of this report, EPA has not published a proposed rule.

WIIN 2016

On December 16, 2016, the President signed the Water Infrastructure Improvements for the Nation Act (WIIN, P.L. 114-322). Many WIIN provisions are drawn in whole or in part from other legislation in the 114th Congress, including the House or Senate versions of the Water Resources Development Act of 2016—H.R. 5303 and S. 2848.[26]

Section 5001 of WIIN modifies the applicability of the SPCC regulations for farms. In particular, the SPCC regulations would not apply to farm containers on separate parcels with (1) an individual storage capacity of 1,000 gallons or less, and (2) an aggregate storage capacity of 2,000 gallons or less. The phrase "separate parcels" is a key term in the existing statutory language, but it is uncertain how EPA would interpret this phrase. Although the term *parcel* is included in the definition of *facility*, the term *parcel* is not defined in SPCC regulations. EPA modified the definition of facility in 2008,[27] which reads:

---

[23] EPA, *Oil Storage on U.S. Farms: Risks and Opportunities for Protecting Surface Waters*, 2015, https://www.epa.gov/sites/production/files/2016-02/documents/wrrda_farm_study_2015-06-30.pdf.

[24] Ibid., p. iv.

[25] Office of Management and Budget, Unified Regulatory Agenda, SPCC rulemaking schedule, http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=2050-AG84.

[26] See CRS In Focus IF10536, *Water Infrastructure Improvements for the Nation Act (WIIN)*, by (name redacted) et al.

[27] EPA, "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements—Amendments," Final Rule, 73 *Federal Register* 74236, December 5, 2008.

> 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.[28]

Table 1 below compares the SPCC aggregate capacity thresholds before WRRDA, after WRRDA, and after enactment of WIIN in 2016.

Table 1. History of SPCC Requirements for Farms

Aggregate Aboveground Capacity Thresholds

	Before WRRDA 2014	WRRDA 2014	WIIN 2016
Exclusion from all SPCC regulations	1,320 gallons or less	(1) Less than 2,500 gallons, or (2) Less than 6,000 gallons and no reportable discharge history (*EPA is expected to reduce this to 2,500 gallons through a regulatory change*)	Containers *on separate parcels* with (1) an individual storage capacity of 1,000 gallons or less, and (2) an aggregate storage capacity of 2,000 gallons or less
Self-Certification of SPCC plan (i.e., in lieu of a professional engineer)	10,000 gallons or less and no reportable discharge history	Less than 20,000 gallons and no reportable discharge history	No change
Oil containers subject to the aggregate capacity determination	Containers with a capacity of 55 gallons or greater	Containers on separate parcels with a capacity of 1,000 gallons or less	No change

Source: Prepared by CRS.

Notes: EPA's SPCC regulations have specific criteria for what constitutes a "reportable discharge history." The criteria are described in 40 C.F.R. Part 112. Pursuant to WRRDA, the same criteria are in 33 U.SC. 1361.

Enforcement

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, but these programs do not replace EPA's authority or responsibility.

Enforcement of the SPCC program may be an issue for policymakers. According to a 2012 EPA inspector general report, "the Agency remains largely unaware of the identity and compliance status of the vast majority of CWA Section 311 regulated facilities." The report stated that EPA

[28] 40 C.F.R. §112.2.

regional offices inspected approximately 3,700 facilities (between August 2010 to June 2011) for compliance with SPCC requirements and that approximately 55% of the facilities were deemed to be out of compliance for various reasons.[29] CRS is not aware of a more recent report documenting enforcement activities.

Author Contact Information

(name redacted)
Specialist in Environmental Policy
[redacted]@crs.loc.gov, 7-....

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