

New SPCC Compliance Date – November 10, 2010

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On June 19, 2009, EPA published a final rule extending the Spill Prevention, Control, and Countermeasure (“SPCC”) compliance date for all facilities to November 10, 2010. This final rule affects when a facility that is subject to the SPCC rule must prepare, amend, and implement its SPCC Plan.

The SPCC rule applies to owners or operators of non-transportation related facilities that:

1. have aboveground oil storage capacity greater than 1,320 gallons or completely buried oil storage capacity greater than 42,000 gallons;
2. drill, produce, store, process, refine, transfer, distribute, use, or consume oil or oil products; and
3. could reasonably be expected to discharge oil to navigable waters of the United States, or adjoining shorelines.

There are, however, a number of available exemptions, which range from containers with a storage capacity of less than 55 gallons of oil to intra-facility gathering lines subject to United States Department of Transportation pipeline regulations.

The new SPCC compliance deadline only affects the requirements of the 2002 and 2006 SPCC revisions that impose obligations that are new or more stringent than the 1973 SPCC rule. The November 10, 2010, compliance deadline remains associated with the facility’s commencement of operations, as follows:

1. For those onshore or offshore facilities that are subject to the SPCC rule and in operation on or before August 16, 2002, owners or operators must maintain the facilities’ respective SPCC Plans (as required by the 1973 SPCC rule). Owners and operators have until November 10, 2010, to amend and implement their existing SPCC plans, as necessary, to ensure compliance with the 2002 and later SPCC revisions. 40 C.F.R. § 112.3(a)(1) (2009) (found at 74 Fed. Reg. 29,141 (June 19, 2009)).
2. For those onshore and offshore facilities that are subject to the SPCC rule and are in operation after August 16, 2002, or become operational through November 10, 2010, owners or operators must prepare and implement an SPCC Plan on or before November 10, 2010. These SPCC plans, if prepared and implemented before November 10, 2010, will almost certainly need to be revised once EPA promulgates additional SPCC revisions, which are anticipated to occur in November 2009. 40 C.F.R. § 112.3(a)(2) (2009) (found at 74 Fed. Reg. 29,141 (June 19, 2009)).
3. For those onshore and offshore facilities that are subject to the SPCC rule and become operational after November 10, 2010, owners or operators must prepare and implement an SPCC Plan before beginning operations. These SPCC plans will necessarily incorporate the SPCC revisions from 2002 and later, including any additional SPCC revisions anticipated to occur in November 2009. 40 C.F.R. § 112.3(b)(1) (2009) (found at 74 Fed. Reg. 29,141 (June 19, 2009)).

EPA chose November 10, 2010, as the revised SPCC compliance date to provide industry time “to fully understand the regulatory amendments offered by all of the SPCC revisions since 2002,” including the final, but delayed December 5, 2008 revisions (“SPCC II”). 74 Fed. Reg. 29,137 (June 19, 2009). SPCC II is currently set to become effective as of January 14, 2010.

The new January 14, 2010, SPCC II effective date is the result of two recent EPA final rules in January 2009 and April 2009, which were promulgated to provide EPA an opportunity to properly consider all relevant facts, seek public comment, respond to public comment, and consider additional policy and legal issues associated with SPCC II. 74 Fed. Reg. 14,737 (April 1, 2009). In particular, EPA determined that

it required this additional time to carefully consider the issues raised by the 57 comments it received, and to develop additional revisions to SPCC II, as appropriate. *Id.*

Since EPA specifically solicited comments on optional approaches for produced water containers as well as the criteria for qualified oil production facilities, it is not surprising that many of the EPA comments focused on these two issues. 74 Fed. Reg. 29,137 (June 19, 2009). EPA does not, however, intend to fully discuss the comments or its thoughts on the comments, if at all, until publication of further SPCC II revisions. 74 Fed. Reg. 14,737 (April 1, 2009).

At this time, EPA has not yet decided whether to further amend SPCC II, though it is likely that some revisions will be made to the produced water container and qualified oil production facility provisions. EPA anticipates promulgating final revisions to SPCC II by November 2009. 74 Fed. Reg. 29,138 (June 19, 2009).

In the event EPA does promulgate additional SPCC II revisions in November 2009, the new SPCC compliance date of November 10, 2010, will still provide owners and operators of facilities subject to SPCC a year to make changes to their respective facilities and to develop or revise and implement SPCC plans, as needed. *Id.*