

SPCC Regulations/Clean Water Act: U.S. Environmental Protection Agency Proposal Declining Applicability to Hazardous Substances



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Environmental Protection Agency (“EPA”) in June 25th Federal Register notice states that it will establish no additional regulatory requirements under the Clean Water Act 311(j)(1)(C) for hazardous substances discharge prevention. See 83 Fed. Reg. 29499.

This June 19th determination reverses a decision by EPA during the Obama Administration to initiate a rulemaking to impose Spill Prevention, Countermeasure and Control (“SPCC”) requirements for hazardous substances.

By way of background, the Clean Water Act previously required that by 1972 (and from time to time thereafter) regulations should be issued consistent with maritime safety and with maritime navigation laws:

. . . establishing procedures, methods, and equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges. . .

EPA has of course had in place for decades SPCC regulations addressing oil and petroleum products. However, the agency has never promulgated final rules applicable to “hazardous substances.”

The SPCC requirements for oil and petroleum storage address facilities that have the capacity to store certain amount of gallons in aboveground storage tanks (“ASTs”) (1,320 gallons) or underground storage tanks (42,000 gallons). Various requirements have been promulgated to ensure the containment of the oil such as preparation of what are referred to as “SPCC Plans” along with maintenance, facility security, training, review by a registered Professional Engineer, etc. Such plans must be periodically updated.

Environmental groups brought suit against EPA in 2015 for failing to comply with the alleged duty to issue regulations to similarly prevent and contain Clean Water Act hazardous substance discharges. In 2016 the United States District Court for the Southern District of New York entered a Consent Decree that required EPA to sign a Notice of Proposed Rulemaking pertaining to the issuance of such hazardous substance regulations. EPA was also required to take final action after notice and comment on said notice.

EPA has now decided not to promulgate such regulations. The agency states that this decisions is based on a review of existing regulations and an analysis of the frequency and impacts of reported Clean Water Act hazardous substances discharges.

A copy of the [Federal Register notice](#) can be found here.