

gallons and is the facility located at a distance<sup>2</sup> (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake?<sup>2</sup> \_\_\_\_\_

Yes \_\_\_\_\_

No \_\_\_\_\_

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill<sup>2</sup> in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes \_\_\_\_\_

No \_\_\_\_\_

#### CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining information, I believe that the submitted information is true, accurate, and complete.

Signature: \_\_\_\_\_

Name (Please type or print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[59 FR 34122, July 1, 1994; 59 FR 49006, Sept. 26, 1994, as amended at 65 FR 40816, June 30, 2000; 65 FR 43840, July 14, 2000; 66 FR 34561, June 29, 2001; 67 FR 47152, July 17, 2002]

## PART 113—LIABILITY LIMITS FOR SMALL ONSHORE STORAGE FACILITIES

### Subpart A—Oil Storage Facilities

Sec.

113.1 Purpose.

113.2 Applicability.

113.3 Definitions.

113.4 Size classes and associated liability limits for fixed onshore oil storage facilities, 1,000 barrels or less capacity.

113.5 Exclusions.

113.6 Effect on other laws.

AUTHORITY: Sec. 311(f)(2), 86 Stat. 867 (33 U.S.C. 1251 (1972)).

SOURCE: 38 FR 25440, Sept. 13, 1973, unless otherwise noted.

### Subpart A—Oil Storage Facilities

#### § 113.1 Purpose.

This subpart establishes size classifications and associated liability limits

for small onshore oil storage facilities with fixed capacity of 1,000 barrels or less.

#### § 113.2 Applicability.

This subpart applies to all onshore oil storage facilities with fixed capacity of 1,000 barrels or less. When a discharge to the waters of the United States occurs from such facilities and when removal of said discharge is performed by the United States Government pursuant to the provisions of subsection 311(c)(1) of the Act, the liability of the owner or operator and the facility will be limited to the amounts specified in § 113.4.

#### § 113.3 Definitions.

As used in this subpart, the following terms shall have the meanings indicated below:

(a) *Aboveground* storage facility means a tank or other container, the bottom of which is on a plane not more than 6 inches below the surrounding surface.

(b) *Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, *et seq.*

(c) *Barrel* means 42 United States gallons at 60 degrees Fahrenheit.

(d) *Belowground* storage facility means a tank or other container located other than as defined as "Aboveground".

(e) *Discharge* includes, but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(f) *Onshore Oil Storage Facility* means any facility (excluding motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States, other than submerged land.

(g) *On-Scene Coordinator* is the single Federal representative designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan and identified in approved Regional Oil and Hazardous Substances Pollution Contingency Plans.

(h) *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.

**Environmental Protection Agency**

**§ 116.3**

(i) *Remove* or *removal* means the removal of the oil from the water and shorelines or the taking of such other actions as the Federal On-Scene Coordinator may determine to be necessary to minimize or mitigate damage to the public health or welfare, including but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Additionally, the terms not otherwise defined herein shall have the meanings assigned them by section 311(a) of the Act.

**§ 113.4 Size classes and associated liability limits for fixed onshore oil storage facilities, 1,000 barrels or less capacity.**

Unless the United States can show that oil was discharged as a result of willful negligence or willful misconduct within the privity and knowledge of the owner or operator, the following limits of liability are established for fixed onshore facilities in the classes specified:

(a) Aboveground storage.

Size class	Capacity (barrels)	Limit (dollars)
I .....	Up to 10 .....	4,000
II .....	11 to 170 .....	60,000
III .....	171 to 500 .....	150,000
IV .....	501 to 1,000 ..	200,000

(b) Belowground storage.

Size class	Capacity (barrels)	Limit (dollars)
I .....	Up to 10 .....	5,200
II .....	11 to 170 .....	78,000
III .....	171 to 500 .....	195,000
IV .....	501 to 1,000 ..	260,000

**§ 113.5 Exclusions.**

This subpart does not apply to:

(a) Those facilities whose average daily oil throughput is more than their fixed oil storage capacity.

(b) Vehicles and rolling stock.

**§ 113.6 Effect on other laws.**

Nothing herein shall be construed to limit the liability of any facility under State or local law or under any Federal law other than section 311 of the Act, nor shall the liability of any facility for any charges or damages under State or local law reduce its liability to the Federal Government under sec-

tion 311 of the Act, as limited by this subpart.

**PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES**

Sec.

116.1 Applicability.

116.2 Abbreviations.

116.3 Definitions.

116.4 Designation of hazardous substances.

AUTHORITY: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

**§ 116.1 Applicability.**

This regulation designates hazardous substances under section 311(b)(2)(A) of the Federal Water Pollution Control Act (the Act). The regulation applies to discharges of substances designated in Table 116.4.

[43 FR 10474, Mar. 13, 1978]

**§ 116.2 Abbreviations.**

ppm=parts per million

mg=milligram(s)

kg=kilogram(s)

mg/l=milligrams(s) per liter= (approx.) ppm

mg/kg=milligram(s) per kilogram= (approx.) ppm

[43 FR 10474, Mar. 13, 1978]

**§ 116.3 Definitions.**

As used in this part, all terms shall have the meaning defined in the Act and as given below:

*The Act* means the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), and as further amended by the Clean Water Act of 1977 (Pub. L. 95-217), 33 U.S.C. 1251 et seq.; and as further amended by the Clean Water Act Amendments of 1978 (Pub. L. 95-676);

*Animals* means appropriately sensitive animals which carry out respiration by means of a lung structure permitting gaseous exchange between air and the circulatory system;

*Aquatic animals* means appropriately sensitive wholly aquatic animals which carry out respiration by means of a gill structure permitting gaseous exchange between the water and the circulatory system;