

**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;

*Aquatic flora* means plant life associated with the aquatic eco-system including, but not limited to, algae and higher plants;

*Contiguous zone* means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone;

*Discharge* includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems;

*LC50* means that concentration of material which is lethal to one-half of the test population of aquatic animals upon continuous exposure for 96 hours or less.

*Mixture* means any combination of two or more elements and/or compounds in solid, liquid, or gaseous form except where such substances have undergone a chemical reaction so as to become inseparable by physical means.

*Navigable waters* is defined in section 502(7) of the Act to mean "waters of the United States, including the territorial seas," and includes, but is not limited to:

(1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term *wetlands* as used in this regulation shall include those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalance of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include

swamps, marshes, bogs and similar areas; the term *adjacent* means bordering, contiguous or neighboring;

(2) Tributaries of navigable waters of the United States, including adjacent wetlands;

(3) Interstate waters, including wetlands; and

(4) All other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

*Offshore facility* means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

*Onshore facility* means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

*Otherwise subject to the jurisdiction of the United States* means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

A discharge *in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of*

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1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), means: (1) A discharge into any waters beyond the contiguous zone from any vessel or on-shore or offshore facility, which vessel or facility is subject to or is engaged in activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, and (2) any discharge into any waters beyond the contiguous zone which contain, cover, or support any natural resource belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

*Public vessel* means a vessel owned or bareboat-chartered and operated by the United States, or a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

*Territorial seas* means the belt of the seas measured from the line of ordinary low water along that portion of

the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

*Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

[43 FR 10474, Mar. 13, 1978; 43 FR 27533, June 26, 1978, as amended at 44 FR 10266, Feb. 16, 1979; 58 FR 45039, Aug. 25, 1993]

**§ 116.4 Designation of hazardous substances.**

The elements and compounds appearing in Tables 116.4 A and B are designated as hazardous substances in accordance with section 311(b)(2)(A) of the Act. This designation includes any isomers and hydrates, as well as any solutions and mixtures containing these substances. Synonyms and Chemical Abstract System (CAS) numbers have been added for convenience of the user only. In case of any disparity the common names shall be considered the designated substance.

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES

Common name	CAS No.	Synonyms	Isomers	CAS No.
Acetaldehyde .....	75070	Ethanal, ethyl aldehyde, acetic aldehyde .....	.....	.....
Acetic acid .....	64197	Glacial acetic acid, vinegar acid .....	.....	.....
Acetic anhydride .....	108247	Acetic oxide, acetyl oxide .....	.....	.....
Acetone cyanohydrin .....	75865	2-methylactonitrile, alpha-hydroxyisobutyronitrile. ....	.....	.....
Acetyl bromide .....	506967	.....	.....	.....
Acetyl chloride .....	79367	.....	.....	.....
Acrolein .....	107028	2-propenal, acrylic aldehyde, acrylaldehyde, acraldehyde. ....	.....	.....
Acrylonitrile .....	107131	Cyanoethylene, Fumigrain, Ventox, propeneitrile, vinyl cyanide. ....	.....	.....
Adipic acid .....	124049	Hexanedioic acid .....	.....	.....
Aldrin .....	309002	Octalene, HHDN .....	.....	.....
Allyl alcohol .....	107186	2-propen-1-ol, 1-propenol-3, vinyl carbinol .....	.....	.....
Allyl chloride .....	107051	3-chloropropene, 3-chloropropylene, Chlorallylene. ....	.....	.....
Aluminum sulfate .....	10043013	Alum .....	.....	.....
Ammonia .....	7664417	.....	.....	.....
Ammonium acetate .....	631618	Acetic acid ammonium, salt .....	.....	.....
Ammonium benzoate .....	1863634	.....	.....	.....
Ammonium bicarbonate .....	1066337	Acid ammonium carbonate, ammonium hydrogen carbonate. ....	.....	.....
Ammonium bichromate .....	7789095	.....	.....	.....
Ammonium bifluoride .....	1341497	Acid ammonium fluoride, ammonium hydrogen fluoride. ....	.....	.....
Ammonium bisulfite .....	10192300	.....	.....	.....
Ammonium carbamate .....	1111780	Ammonium aminofomate .....	.....	.....
Ammonium carbonate .....	506876	.....	.....	.....
Ammonium chloride .....	12125029	Ammonium muriate, sal ammoniac, salmiac, Amchlor. ....	.....	.....
Ammonium chromate .....	7788989	.....	.....	.....
Ammonium citrate dibasic .....	3012655	Diammonium citrate, citric acid diammonium salt. ....	.....	.....