

**CALIFORNIA
ABOVEGROUND PETROLEUM
STORAGE ACT (APSA)**

**FREQUENTLY ASKED QUESTIONS
November 23, 2009**

**PROGRAM IMPLEMENTATION
&
COMPLIANCE**

Table of Contents

I. General Administration Page 9

1. What is the relationship between APSA and the Federal Oil Spill Prevention Program?
2. Who is responsible for the implementation and administration of the APSA Program?
3. What are the release reporting requirements for petroleum spills/releases at an APSA regulated tank facility?
4. Who is responsible for cleanup and abatement of releases from ASTs under APSA?
5. How will the APSA program be incorporated into the existing CUPA evaluation process?

II. Applicability Page 12

1. Who is subject to the requirements of APSA?
2. What is a tank facility?
3. What is petroleum?
4. Is biodiesel regulated under APSA?
5. Is propane, liquefied petroleum gas, or liquefied natural gas regulated under APSA?
6. What tank facilities are conditionally exempt from the APSA requirement to prepare and implement an SPCC Plan?
7. Does the federal SPCC exemption for wastewater treatment systems/facilities apply to tank facilities regulated under APSA?
8. What tanks are excluded from the definition of “aboveground storage tank?”
9. Does any percentage of petroleum oil content in a mixture (no matter how small) bring the mixture into APSA regulation as 'petroleum'?
10. Are hazardous waste tanks regulated under APSA?
11. Are businesses with aboveground storage tanks containing vegetable and/or animal oil, which are regulated under the federal SPCC plan rule, also included under the APSA program?

12. Are aboveground petroleum storage tanks located on oil production facilities exempt from APSA?
13. Does the phrase “construction site” as used in section 25270.4.5 (b) of the Health and Safety code include quarries and construction “yards?”
14. Construction activities are being performed on a portion of a manufacturing, commercial or maintenance facility with aboveground tanks. Is the entire facility considered a “construction site?”
15. Are federal facilities regulated under APSA?
16. Could circumstances exist that would cause an UST to be regulated under APSA?
17. Should farms follow California law?
18. Does the term “farm,” as used in Health and Safety Code section 25270.4.5 (b) include dairies?
19. If a tank facility has multiple ASTs that are *owned and operated* by different persons, and if the total capacity of the tank(s) for each business is less than 1,320 gallons, but the total for all tanks at this single location exceeds 1,320 gallons, is each business subject to APSA?
20. If a single location houses multiple ASTs that are *owned* by different businesses but *operated* by the same business, and if the total capacity of the tank(s) owned by each business is less than 1,320 gallons, but the aggregate total for all tanks operated by the same operator at this single location exceeds 1,320 gallons, is each business subject to APSA?
21. The revised definition of ‘facility’ in the November 2008 EPA amendments to the federal SPCC rule is far more flexible than the definition of ‘tank facility’ under APSA. Can I follow the federal definition in determining whether I am regulated as a tank facility under APSA?
22. When a tank subject to the APSA requirements is owned and operated by two different entities, who do we charge for enforcement purposes, for example when they have not submitted a storage statement or completed an SPCC Plan? Do we take enforcement against both the owner and the operator?
23. Is the term “logging site” defined?
24. Would “sawmills” and logging truck operations (yards and shops) fit the meaning of logging site?
25. What types of ASTs are included under the transportation-related tank facility’s exclusion as referenced in HSC section 25270.2(a)(6)?
26. Are tank facilities regulated under APSA exempt from federal (EPA) regulation under federal SPCC rules?

III. Aboveground Storage Tanks Page 25

1. What is a storage tank?
2. What is the minimum tank size considered when calculating a tank facility's total storage capacity?
3. What is storage capacity?
4. How is a tank facility's storage capacity determined?
5. Are petroleum storage tanks in vaults or basements considered to be aboveground storage tanks under APSA?
6. Is the following description of a tank considered an underground storage tank or is it an aboveground storage tank? The tank's bottom rests on a single-pour concrete pedestal covered with a stainless steel sheet in such a manner that the tank bottom cannot be visually inspected. The tank is located in an open-vaulted area where no portion of the tank is buried but more than 10 percent of the volume of the tank is located below the common surrounding soil level.
7. Are tanks or containers for hydraulic fluid considered to be ASTs and therefore subject to regulations?
8. Are containers with a minimum storage capacity of 55 gallons of petroleum (such as 55-gallon drums) regulated under APSA?
9. Are oil-filled operational equipment and/or oil-filled manufacturing equipment regulated under APSA?
10. Does the term "equipment" in HSC section 25270.2(a)(4)(A) and (B) refer to singular or plural tanks?
11. If an AST is "empty," is that still an AST?
12. Are there regulations for underground piping systems associated with ASTs?
13. How is underground piping outside the first flange or valve of the containment area associated with ASTs regulated?
14. Are there requirements for integrity testing of regulated piping? If so, what is the leak detection threshold?
15. Since HSC section 25270.7 of the previous version of APSA has been repealed, are there still requirements to develop and implement a monitoring plan/program for ASTs?
16. Are below grade oil/water clarifiers regulated by APSA?

IV. SPCC Plans Page 30

1. By what date must a tank facility that is subject to the Act have their SPCC Plan prepared and implemented?
2. Is it a requirement for tank facilities to submit, file or provide their SPCC Plans to the UPA, or for the UPA to 'approve' the Plan?
3. Is it a requirement to have a California PE stamp the SPCC?
4. Who can sign or certify an SPCC Plan?
5. Can a facility use an SPCC Plan template?
6. Who reviews the SPCC Plan and how often is the SPCC Plan reviewed?
7. When must an SPCC Plan be amended by the facility operator?
8. Are transformers covered under the SPCC regulation?

V. APSA Fees Page 33

1. Are federal facilities required to pay the APSA fee set forth in section 25270.6 of the Health and Safety Code?
2. Are tank facilities with an aggregate total of petroleum equal to 1,320 gallons but less than 10,000 gallon still subject to an UPA's APSA fees?
3. Do UPAs base fees on the categories as shown on the State AST List? How about spending fees in these categories?
4. We currently charge a fee for ASTs that meet the 1,320-gallon aggregate total. That fee was part of our approved single fee program approved by Cal/EPA. Do we have to stop charging that fee effective January 1, 2008?
5. Is there a surcharge on this program for oversight?

VI. Tank Facilities Inspections Page 35

1. How often must the owner or operator perform visual inspections of their ASTs?

2. Are owners or operators of unattended tank facilities required to conduct daily inspections?
3. How often can a tank facility expect an UPA compliance inspection?
4. What type of activities can a tank facility expect to occur during an UPA compliance inspection?
5. How should the CUPA inspector identifying various violations of SPCC Plan implementation, plan quality or content, etc., at a tank facility prepare the specific citation?
6. Are exempt facilities required to be inspected?
7. Are there any files of past AST inspections or any history available for the sites listed on the SWRCB Tank Facility list?
8. For the purposes of APSA, is an aggregate storage of 10,000 gallons or more the trigger for triennial UPA APSA inspections?
9. What are the “integrity testing” requirements for ASTs? Are these different from the required frequent inspections?

VII. Annual Tank Facility Statement Page 38

1. Who determines the format and content of the Annual Tank Facility Statement that the owner or operator of a regulated tank facility is required to submit to the UPA?
2. Although it states that the business plan can be used in lieu of the annual tank facility statement, it would be easier for us to require the regulated businesses to submit an annual statement instead of a complete business plan (which is not required to be submitted every year). Can we make that determination for our UPA’s businesses? All of our business submittals at some point will be electronic, so a one-page tank statement is easier than a business plan.

VIII. Secondary Containment Page 39

1. Is a tank facility’s secondary containment required to be constructed of non-permeable material?
2. Are double-walled containers and other alternative aboveground storage containers satisfactory to meet the secondary containment requirements for SPCC?
3. Must each tank, drum, or other oil storage containers have individual secondary containment?
4. What are the secondary containment requirements under APSA?

5. What is an impracticability determination?

IX. APSA Training Program Page 42

1. What is the APSA Training Program?

2. Is the Training ICC certified?

3. Will there be training available to regulated tank facilities or other interested parties?

DISCLAIMER

This Frequently Asked Questions (FAQ) document provides guidance to UPA staff and inspectors, as well as to owners and operators of facilities that may be subject to the requirements of the Aboveground Petroleum Storage Act (APSA). The statutory provisions described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. In the event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling. Thus, it does not impose legally binding requirements on the State, UPAs or the regulated community, and might not apply to a particular situation based upon certain circumstances. The word "should" as used in this document is intended solely to recommend or suggest, in contrast to "must" or "shall" which are used when restating regulatory requirements. While this guidance document indicates the State's strongly preferred approach to assure effective implementation of legal requirements, the State retains the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular facility will be made based on the statute. This is a living document and may be revised periodically without public notice. This document will be revised, as necessary, to reflect any relevant future statutory amendments.

This document does not intend to give guidance on the U.S. EPA Spill Prevention Control and Countermeasure (SPCC) requirements. Any questions or clarifications on the SPCC program should be directed to the U. S. EPA. A website to learn more on the SPCC requirements is: <http://www.epa.gov/emergencies/content/spcc/>.

I. General Administration

1. What is the relationship between APSA and the federal Oil Spill Prevention Program?

The Unified Program Agencies are required to implement and enforce the California Aboveground Petroleum Storage Act, adopted in chapter 6.67 of the California Health and Safety Code. The Unified Program Agencies for the APSA program are not authorized to implement and enforce the federal Spill Prevention, Control, and Countermeasure (SPCC) rule, adopted in section 112 of title 40 of the federal code of regulations. However, APSA requires owners and operators of tank facilities to prepare and implement an SPCC Plan in accordance with part 112 of title 40 of the federal code of regulations. Therefore, all the standards adopted in part 112 of title 40 of the federal code of regulations pertaining to the preparation and implementation of an SPCC Plan are applicable to all California tank facilities subject to APSA and thus enforceable by the UPAs. These facilities may be conditionally exempt from SPCC requirements under state law, but may be captured by the federal SPCC rule. However, the UPA may only evaluate and enforce compliance with the state Act.

2. Who is responsible for the implementation and administration of the APSA program?

The Unified Program Agencies are responsible for implementing the requirements of the Act and therefore should follow the state law. The state APSA sets forth standards and requirements that reference the federal standards. Specifically, the Act mandates that the SPCC Plans be prepared and implemented in accordance with the provisions in 40CFR112. In some jurisdictions a Participating Agency (PA) may be authorized. The CUPA, in consultation with the PA, will be responsible for determining whether or not the PA will be authorized and responsible for implementation of the APSA Program within their jurisdiction. If it is determined that the PA will implement the program, the applicable agreements (MOU) and other related Unified Program documents will need to be revised and updated. The PAs and CUPAs are provided with specific authority to implement the APSA program, pursuant to Section 25270.4 of Chapter 6.67 of the Health and Safety Code, which states "This chapter shall be implemented by the Unified Program Agency."

3. What are the release reporting requirements for petroleum spills/releases at an APSA regulated tank facility?

With regard to spill, release or discharge reporting, under California and federal laws/regulations, there are five distinct and different reporting requirements and thresholds as summarized below. All five are applicable to a tank facility:

- HSC 25507(a) and 19 CCR 2703 [California's basic hazardous materials release reporting requirements]: A handler must, upon discovery, immediately report to the CUPA and OES any release or threatened release of a hazardous material if there is a reasonable belief that the release or threatened release poses a significant present or potential hazard to human health and safety, property, or the environment. There is no quantitative reportable quantity stated, and this threat/hazard-based reporting requirement applies regardless of whether the release enters a waterway or escapes the facility.
- CWC 13272 and CGC 8670 requires reporting to OES or the RWQCB of discharges into or onto waters of the state and marine waters of 'any amount' of oil (a 42 gallon threshold is stated in the statutes, but the statute-referenced California Oil Spill Contingency Plan requires any amount be reported).
- HSC 25270.8 (APSA) requires reporting to OES and the UPA of a spill of 42 gallons of petroleum or greater that would be required to be reported under CWC 13272. This APSA requirement simply adds the UPA and OES to the already required reporting of petroleum spills into waters of the state. Note that pursuant to CWC 13272, as the Calif. Oil Spill Contingency Plan contains a lower spill reporting threshold ("any amount") than that stated in the statute (42 gallons), the lower threshold is the enforceable threshold.
- Federal Clean Water Act section 311 and 40 CFR 110.10 requires reporting to the National Response Center of any discharge of oil to navigable waters that causes a sheen upon the water, deposits a sludge upon the shoreline or violates a water quality standard. Essentially, any amount of petroleum could cause a sheen, and in California, the SWRCB has determined that due to the drain discharge locations, storm drains generally are considered navigable waters.
- 40 CFR 112.4 (federal SPCC rule) requires facility owners/operators to report specified information to the USEPA Regional Administrator within 60 days if the facility has discharged more than 1,000 gallons of oil to navigable waters in a single discharge or discharged more than 42 gallons of oil to navigable waters in each of two discharges occurring within any twelve month period.

4. Who is responsible for cleanup and abatement of releases from ASTs under APSA?

The State Water Resources Control Board (SWRCB) is responsible for the oversight of the cleanup and abatement. Coordination should occur between the Unified Program Agencies and the SWRCB. The UPAs should use the following link to access the list of regional water board contacts: <http://www.calepa.ca.gov/CUPA/Aboveground/RWQCBContacts.pdf>

5. How will the APSA program be incorporated into the CUPA evaluation process?

Beginning in January 2009, the CUPA evaluations will include an assessment of the CUPA's implementation status of the APSA program. The state will evaluate the CUPAs based on their implementation of the APSA as stated in the CUPA's work plan contained in their APSA Grant Agreement. Deficiencies may be identified under certain circumstances. During the grant period and initial implementation of the APSA program, the state will

assess the CUPA's overall performance of the APSA program according to their tasks, activities, timeline and (semi-annual) implementation status reports. However, if a CUPA does not implement the APSA program, the CUPA will be given a deficiency. During the evaluations of CUPAs, Cal/EPA does not intend to conduct oversight inspections for the APSA program at this time

II. Applicability

1. Who is subject to the requirements of APSA?

A tank facility is subject to APSA if:

- the “tank facility” is subject to the oil pollution prevention regulations specified in part 112 (commencing with section 112.1) of subchapter D of chapter I of title 40 of the Code of Federal Regulations; or
- the tank facility has a storage capacity of 1,320 gallons or more of petroleum.

Important Note: The California APSA only regulates tank facilities that store petroleum and not other oils, as does the federal SPCC Rule (subject to 40CFR112). The Act’s definition of petroleum and tank facility must first be applied before considering the first applicability criteria above.

2. What is a tank facility?

For the purposes of APSA, a “tank facility” is defined as any one, or combination of, 55-gallon or greater aboveground storage containers or tanks, including any piping that is integral to the tank, **that contains petroleum** and that is used by a single business entity at a single location or site.

Aboveground storage containers or tanks include oil-filled equipment (such as hydraulic systems/reservoirs and heat transfer systems) which have a petroleum storage capacity of 55 gallons or greater.

3. What is petroleum?

The Act defines “petroleum” to mean crude oil, or a fraction thereof, that is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure (normal atmospheric pressure at sea level). Some examples of petroleum products that would be subject to APSA if stored in aboveground storage tanks are as follows:

- Petroleum-based liquid fuels, including:
 - Aviation fuels (including jet, turbine, and piston fuels)
 - Automotive and other petroleum-based internal combustion engine fuels
 - Fuel oils and distillate fuels (turbine, boiler, and other types)
 - Heating oil and distillates
 - Illuminating (e.g., lamp) oils
- Gasoline and other fuel blending stocks
- Petroleum-based lubricating, tapping, seal, penetrating, machining, and road oils and greases (including waste oils)
- Petroleum distillates

- Petroleum- or petroleum-distillate based additives (including fuel, oil, ink and paint additives)
- Petroleum solvents
- Petroleum spirits (e.g., mineral spirits, Stoddard solvent, paint thinners, etc.)
- Hydrocarbon liquids
 - Naphthas and naphthalenes of all types
- Olefins, alkanes, alkylates, aromatics
- Petroleum-based inks and ink extenders
- Oil-based paints, coatings, thinners and solvents
- Petroleum extender oils
- Mineral oils (derived from petroleum)
- Crude oil

4. Is biodiesel regulated under APSA?

Yes. However, 100 percent biodiesel is not considered petroleum and, therefore, is not regulated under APSA.

5. Is propane, liquefied petroleum gas, or liquefied natural gas regulated under APSA?

No. Propane or natural gas, including LNG and LPG, is not a liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure (normal atmospheric pressure at sea level) and is therefore not regulated under APSA.

6. What tank facilities are **conditionally exempt from the APSA requirement to prepare and implement an SPCC Plan**?

A tank facility located on a farm, nursery, logging site, or construction site, while still regulated under APSA, is conditionally exempt from the APSA requirement to prepare and implement an SPCC Plan if:

- no storage tank at the location exceeds 20,000 gallons; **and**,
- the cumulative storage capacity of the tank facility does not exceed 100,000 gallons.

The owner or operator of an exempted tank facility located on a farm, nursery, logging site, or construction site, is required to take the following actions:

- Conduct a daily visual inspection of any aboveground tank storing petroleum.
- Allow the UPA to conduct a periodic inspection of the tank facility.
- If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.

These APSA-regulated tank facilities, while conditionally exempt from the APSA requirement to prepare and implement an SPCC Plan, are still subject to APSA program fees, Tank Facility Statement/Business Plan submission, and UPA inspection.

If the farm, nursery, logging or construction site does not meet the conditions of the exemption (and has a facility aggregate petroleum storage capacity of 1,320 gallons or greater in tanks or containers 55 gallons or greater capacity), an SPCC Plan must be prepared and implemented.

Please note that while farms, nurseries, logging sites, or construction sites are conditionally exempt from the requirement to prepare an SPCC Plan under APSA, these facilities are not exempt from federal SPCC requirements enforced by US EPA.

7. Does the federal SPCC exemption for wastewater treatment systems/facilities apply to tank facilities regulated under APSA?

No. APSA provides no exemptions for wastewater treatment systems or facilities similar to the exemption contained in the federal SPCC regulations. Aboveground wastewater treatment systems (such as oil/water separators and other oil filled equipment) with a petroleum storage capacity of 55 gallons or greater are APSA regulated aboveground storage tanks.

For your information, the federal SPCC rule contains two types of exemptions for wastewater treatment:

- According to U.S. EPA, wastewater treatment facilities are facilities that treat wastewater and discharge the treated effluent under an NPDES or similar state permit (such as an RWQCB Waste Discharge Requirements (WDR) permit). An example would be a County Sanitation District treatment plant. Although this exemption is broad and appears to be facility wide, EPA has stated that it does not apply to the recovery or recycling of oil, or the portions of the facility used to store oil, such as fuel tanks, generator tanks, waste oil tanks, etc., used for facility operations or maintenance. Under the federal exemption, only the actual wastewater treatment system itself would be excluded from EPA SPCC capture, including oil/water separators or retention basins used for oil separation prior to wastewater discharge.
- The federal SPCC regulations also state that the capacity of tanks used exclusively for wastewater treatment does not count toward oil storage capacity determination.

8. What tanks are excluded from the definition of "aboveground storage tank?"

There are several tanks and structures excluded from the definition of "aboveground storage tank." These include:

- A pressure vessel or boiler subject to part 6 of division 5 of the California Labor Code;
- A tank containing hazardous waste as defined in H&SC 25316(g), if the Department of Toxic Substances Control (DTSC) has issued the owner/operator a hazardous waste facilities permit. The tank must be specifically included in the permit authorization (hazardous waste facility permit or Tiered Permit). The hazardous waste facility permit issue is further discussed in FAQ Section II #10;

- An aboveground oil production tank subject to section 3106 of the California Public Resources Code. The oil production tank issue is further discussed in FAQ Section II #12;
- Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:
 - The equipment contains less than 10,000 gallons of dielectric fluid.
 - The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.
- A tank regulated as an underground storage tank under chapter 6.7 of the HSC and chapter 16 of division 3 of title 23 of the California Code of Regulations (CCR);
- Any transportation-related tank facility, subject to the authority and control of the U.S. Department of Transportation as defined in the 1971 Memorandum of Understanding in appendix A to part 112 of subchapter D of chapter I of title 40 of the Code of Federal Regulations. Transportation related facilities are further discussed in FAQ Section II #25.

9. Does any percentage of petroleum oil content in a mixture (no matter how small) bring the mixture into APSA regulation as 'petroleum?'

Yes, all mixtures that contain any amount of petroleum are considered to be petroleum and therefore must be included when determining the tank facility's total storage capacity.

10. Are hazardous waste tanks regulated under APSA?

It depends on whether the aboveground tank or container containing waste petroleum is specifically listed or included on the permit or authorization. As previously stated in FAQ Section II #8, APSA excludes tanks containing hazardous waste as defined in H&SC 25316(g), if DTSC has issued the owner/operator a hazardous waste facilities permit. Waste tanks are excluded from APSA only if they are specifically included in the DTSC/UPA grant of authorization (hazardous waste facility permit or the "Permit by Rule" tier of the Tiered Permit program). Other aboveground tanks containing petroleum at DTSC permitted facilities or lower tiered facilities (Conditional Authorization or Conditional Exempt), such as fuel tanks or tanks not listed on the permit/authorization, are regulated under APSA.

11. Are businesses with aboveground storage tanks containing vegetable and/or animal oil, which are regulated under the federal SPCC plan rule, also included under the APSA program?

No. The California APSA program only regulates petroleum and only applies to tank facilities that have ASTs that contain petroleum products. For empty containers/tanks refer to FAQ Section III #11.

Facilities should be aware, however, that EPA's SPCC rule regulates facilities with ASTs that contain other non-petroleum based oils, and that although the non-petroleum oils are not captured under APSA, they may be subject to federal regulation and US EPA oversight. For tank facilities with both petroleum and non-petroleum oils subject to both APSA and the federal SPCC rule, a single integrated SPCC Plan can be prepared; a separate SPCC Plan is not required for APSA.

12. Are aboveground petroleum storage tanks located at oil production facilities exempt from APSA?

Not all tanks at oil production facilities are excluded. APSA specifically excludes an aboveground oil production tank subject to section 3106 of the California Public Resources Code. Therefore, only those tanks or that portion of a tank facility directly associated with the production of oil are exempt if those tanks are under the supervision of the California Division of Oil, Gas and Geothermal Resources (DOGGR) within the Department of Conservation. These include the tanks holding or transferring the crude oil or crude products or used in the treatment or separation of the crude oil; such tanks are not subject to the APSA requirements.

However, aboveground tanks used for refined petroleum product storage and supporting use at an oil production facility (such as fuel tanks, generator tanks, solvent tanks and containers) are defined as aboveground storage tanks under APSA and are not exempt.

13. Does the phrase "construction site" as used in section 25270.4.5 (b) of the Health and Safety code include quarries and construction "yards?"

No, quarries and construction "yards" are not considered to be included in the meaning of a "construction site." Although not specifically defined in APSA, with the aid of reference to the Code of Federal Regulations, the phrase "construction site" should be construed as "any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures." A yard is a place where construction equipment is stored and maintained and is subject to the requirements of APSA.

14. Construction activities are being performed on a portion of a manufacturing, commercial or maintenance facility with aboveground tanks. Is the entire facility considered a "construction site?"

No, only the portion of the facility actually undergoing construction would be considered a "construction site."

15. Are federal facilities regulated under APSA?

Yes. Per APSA, all (petroleum) tank facilities subject to 40 CFR part 112 are subject to the requirements of APSA. 40 CFR part 112.1 (c) states "as provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to this part to the same extent as any person."

16. Could circumstances exist that would cause a UST to be regulated under APSA?

We believe that it is the intent of the legislature that petroleum tanks be regulated as either a UST or an AST. If the tank is permitted or otherwise regulated as a UST, it is considered a UST and is not covered under APSA. If the tank is not permitted or regulated as a UST, then it is covered under APSA.

US EPA excludes from the federal SPCC rule only 'completely buried' underground storage tanks (that are compliant with all federal and state UST regulations). If not completely buried, the tank is regulated under the federal SPCC regulations.

17. Should farms follow California law?

Under APSA, farms are conditionally excluded from the APSA requirement for tank facilities to prepare an SPCC Plan. However, APSA-excluded farms are not exempt or excluded from regulation under federal SPCC rules. In both the December 2006 and December 2008 amendments to the Federal SPCC rule, EPA has provided specific instructions to farms in complying with the SPCC Plan requirements, which are:

| <i>Farms starting operation...</i> | <i>Must...</i> |
|---|--|
| On or before August 16, 2002 | Maintain its existing SPCC Plan, make any necessary amendments to the Plan and fully implement it by November 10, 2010 |
| After August 16, 2002 | Prepare and implement a Plan on or before November 10, 2010. |

Specific information on the federal SPCC rule, including fact sheets for farms, can be found at: <http://www.epa.gov/emergencies/content/spcc/index.htm>

18. Does the term "farm," as used in Health and Safety Code section 25270.4.5 (b) include dairies?

Yes. Although not specifically defined in APSA, the term "farm" may be construed, with the aid of reference to the Food and Agricultural Code, as including dairies. According to the California Seed Law, section 52262 of the Food and Agricultural Code defines a "farm" as a place of agricultural production that has annual sales of agricultural products of one thousand dollars (\$1,000) or more. The Food and Agricultural Code does not contain a specific definition of the terms "agricultural production" or "agricultural products" that are used in the definition of the word "farm." Section 54004 of the Food and Agricultural Code, however, has a section dealing with the marketing of agricultural products, and the definition of "product" includes any horticultural, viticulture, forestry, dairy, livestock, poultry, bee, or

farm product. Therefore, a dairy would be included in the definition of farm and would be regulated as a farm under APSA.

19. If a tank facility has multiple ASTs that are *owned and operated* by different persons, and if the total capacity of the tank(s) for each business is less than 1,320 gallons, but the total for all tanks at this single location exceeds 1,320 gallons, is each business subject to APSA?

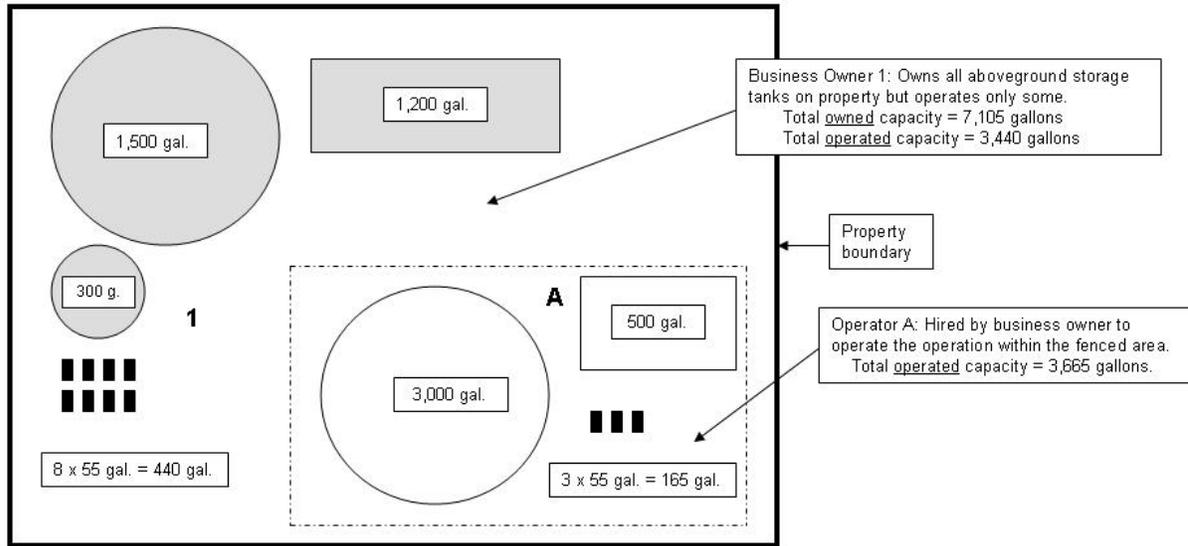
No. HSC section 25270.3 states that a “tank facility” that has a storage capacity of 1,320 gallons or more of petroleum is subject to regulation under APSA. However, section 25270.2 of the HSC defines “tank facility” as a single business entity at a single location or site. Therefore, the storage capacity would not be the cumulative amount of petroleum on site, but rather the cumulative amount of petroleum that is owned or operated by the same business entity.

Accordingly, a site with multiple ASTs that are owned and operated by different persons may be considered to be several different individual ‘tank facilities.’ Please see the examples provided after question #II-20.

20. If a single location houses multiple ASTs that are *owned* by different businesses but *operated* by the same business, and if the total capacity of the tank(s) owned by each business is less than 1,320 gallons, but the aggregate total for all tanks operated by the same operator at this single location exceeds 1,320 gallons, is each business subject to APSA?

No. Because each individual business *owner* does not exceed the 1,320 gallon threshold, no single business *owner* meets the threshold and therefore is not subject to APSA. However, the business that operates the site would be subject to APSA since the total storage capacity of the tanks operated by that business exceeds the 1,320 gallon threshold. Please see the following examples.

Example 1



Who is subject to APSA?

Owner 1: Because capacity owned OR operated is 1,320 gals. or greater.
 Operator A: Because capacity operated is 1,320 gals. or greater.

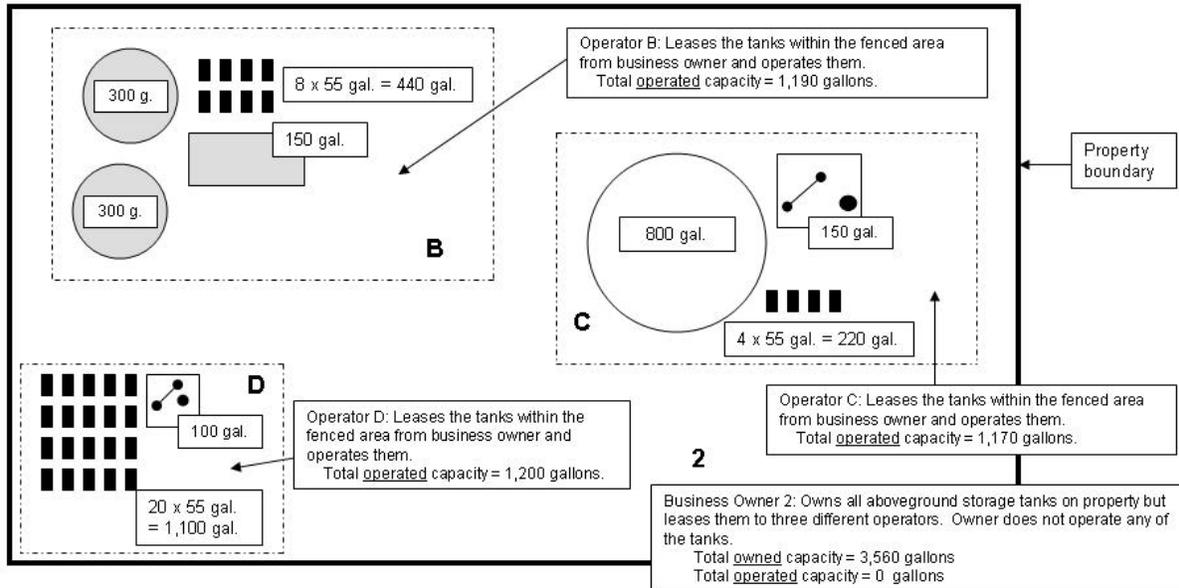
Who must prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees?

Owner 1: MUST: For the tanks the owner operates (3,440 gal. capacity being operated).
 POSSIBLY: For the tanks the owner owns but Operator A operates (the 3,665 gal. capacity) – *if* Operator A does not prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees for the tanks Operator A operates.
 If this is the case, the entire property is the Tank Facility (and may have one integrated SPCC Plan covering all tanks within the property boundary owned by the owner – regardless of who operates them).

Operator A: MUST: *if* Owner 1 does not prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees for the 3,665 gal. of capacity Owner 1 owns but Operator A operates.
 If this is the case, the fenced area operated by Operator A is one Tank Facility, and the property and tanks owned and operated by business Owner 1 (excluding Operator A's fenced area and tanks) is another, separate Tank Facility.

If neither Owner 1 or Operator A complies... BOTH entities can be cited/charged for APSA violations.

Example 2



Who is subject to APSA?

Owner 2: Because capacity owned is 1,320 gals. or greater.

Neither Operators B, C or D are subject to APSA because no operators' capacity reaches or exceeds 1,320 gals.

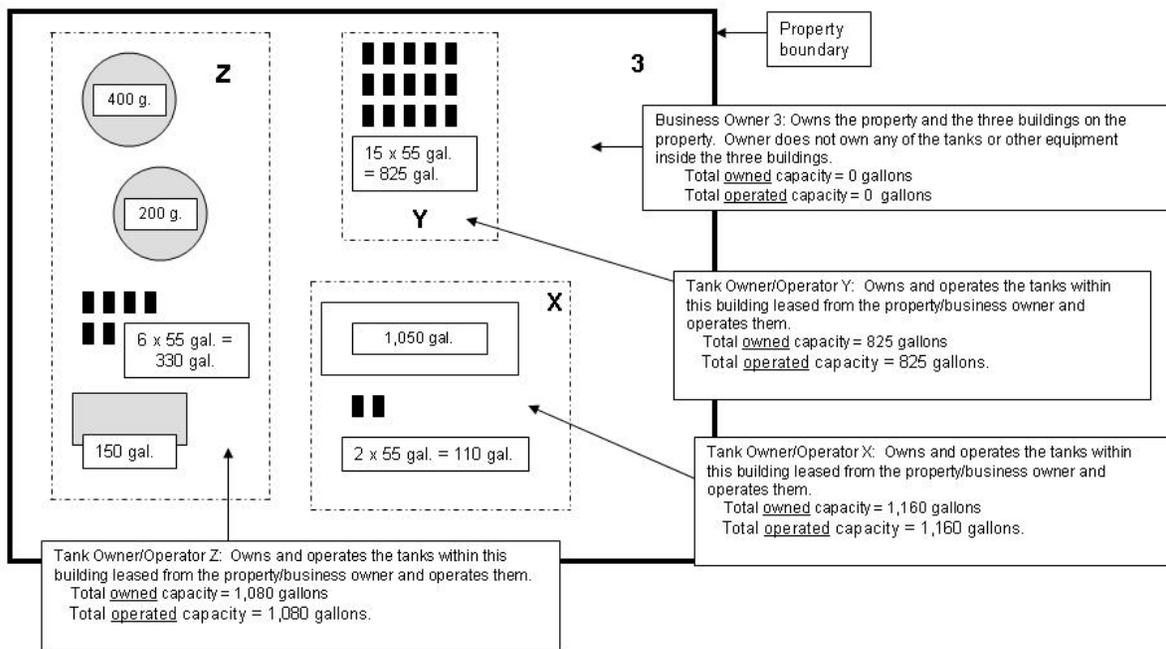
Who must prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees?

Owner 2: Because capacity owned is 1,320 gals. or greater.

The entire property owned by Owner 2 is considered one Tank Facility.

Neither Operators B, C or D are subject to APSA because no operators' capacity reaches or exceeds 1,320 gals.

Example 3

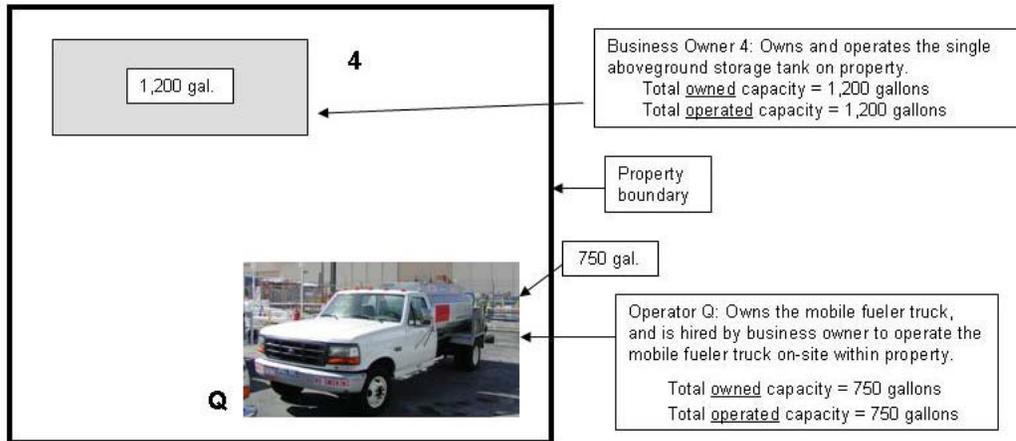


Who is subject to APSA?
 No one. Owner 3 neither owns nor operates any of the tanks within the property. The tanks must be owned or operated to be subject to APSA – not the property not the building. None of the tank owners/operators are subject because no tank owner/operators petroleum storage capacity equals or exceeds 1,320 gallons.

Neither Operators X, Y or Z are subject to APSA because no operators' capacity reaches or exceeds 1,320 gals.

Who must prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees?
 No one.

Example 4



Who is subject to APSA?

No one. Neither the Owner 4 nor Operator Q are subject because no tank owner/operator's petroleum storage capacity equals or exceeds 1,320 gallons.

Who must prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees?

No one.

BUT!! What if Business Owner 4 does periodically operate the Operator Q's mobile fueler ??

NOW who is subject to APSA?

Owner 4: Because capacity operated is 1,320 gals. or greater.... Even if the operated capacity exceeds 1,320 gallons only for isolated, temporary periods.

NOW who must prepare an SPCC Plan and/or submit Tank Facility Statement (or Business Plan) & pay fees?

Owner 4: Because capacity operated is 1,320 gals. or greater.... Even if the operated capacity exceeds 1,320 gallons only for isolated, temporary periods.

21. The revised definition of "facility" in the December 2008 EPA amendments to the federal SPCC rule is far more flexible than the definition of "tank facility" under APSA. Can I follow the federal definition in determining whether I am regulated as a tank facility under APSA?

No. HSC section 25270.2(m) defines "tank facility" as any one or more aboveground storage tanks that contains petroleum and that are used by a single business entity at a single location or site, and HSC section 25270.4.5 requires that (unless otherwise exempted or excluded) each owner or operator of a storage tank at a tank facility subject to APSA prepare an SPCC Plan. Tank owners and/or operators must follow California law for determining whether they are regulated under APSA. The federal definition of facility should only be used for determining whether a "facility" is federally regulated under federal SPCC rules by US EPA.

22. When a tank subject to the APSA requirements is owned and operated by two different entities, who do we charge for enforcement purposes, for example when they have not submitted a storage statement or completed

an SPCC plan? Do we take enforcement against both the owner and the operator?

Enforcement may be taken on either the owner, or the operator, or both the owner and operator.

23. Is the term “logging site” defined?

No. The term “logging site” is not defined in APSA. Since the statute uses the term “logging site,” the Legislature apparently intended to limit the term to the actual location where timber is harvested.

24. Would “sawmills” and logging truck operations (yards and shops) fit the meaning of logging site?

No, since the term “logging site” refers to the actual location where the timber is harvested, sawmills and logging truck operations (yards and shops) would not be considered a logging site.

25. What types of ASTs are included under the transportation-related tank facilities exclusion as referenced in HSC section 25270.2(a)(6)?

The term ‘transportation-related tank facilities’ is somewhat of a misnomer. The term and exclusion applies to not only certain types of facilities as a whole, but also to specific types of tanks/containers – depending upon how those tanks/containers are used.

The following types of facilities as a whole can be considered “transportation-related” and therefore excluded from APSA and SPCC regulation:

- Breakout facilities for US DOT-regulated interstate pipelines (with no transfer into cargo tankers [trucks] or rail cars);
 - If transfer into cargo tankers or railcars occurs, the transfer and loading racks and directly associated product tanks *would* be regulated and are *not* considered “transportation-related”.
- For marine terminals and vessels: the pier structures, transfer hoses, hose-piping connection, containment, controls, and transfer piping associated with the transfer of oil between a marine vessel and an onshore facility, and the vessel itself. Also considered transportation-related are the storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels.
 - The tanks, internal piping, and loading racks, and operations that are completely within the non-transportation part of the terminal facility *are* regulated under APSA and SPCC.

The above criteria are a summary of the split in jurisdiction between US EPA and US DOT. Additional details and examples/diagrams are contained in the February 4, 2000, EPA/DOT joint memo “Jurisdiction over Breakout Tanks/Bulk Oil Storage Tanks (Containers) at Transportation-Related and Non-Transportation-Related Facilities.”

Except as noted above, for other facilities the “transportation-related” exemption is applicable to individual tanks, containers and other equipment (i.e., cargo vehicles and mobile tankers, etc.) operating at the facility - not the facility as a whole.

Transportation-related (and therefore excluded from counting or capture under APSA or in an SPCC Plan) would include:

- Fuel or oil trucks/cargo tankers (such as from fueling or product vendors/contractors) who drive into the facility and fill up one or more fixed fuel or oil tanks, or fill the fuel tanks of vehicles on the facility and then drive out when done;
- Highway vehicles (including cargo tankers) engaged primarily in highway or over-the-public road transportation activities;
- Waste oil or other hazardous waste haulers driving into the facility to pick up, load or pump on board wastes, and then drive out when done;
- The fuel tanks (i.e., saddle tanks) used for motive power on vehicles or equipment;
- Aircraft at an airport;
- Railroad cars from the time the oil is offered for transportation to a carrier until the time it reaches its destination and is accepted by the consignee; and
- Railroad cars located on a siding, but not at their final destination location.

Non-transportation (and therefore regulated under APSA and for SPCC purposes) include:

- Fuel trucks/oil cargo tankers and portable tanks which are generally used for in-facility operation (such as a facility-owned/operated fueler or oiler which mainly drives around and is used inside the facility, and usually is parked at the facility overnight), and not primarily used for over-the-road use (regardless of whether the vehicles are licensed to do so);
- Airport mobile fuelers which are staged at the airport on the ramp area;
- The fixed petroleum-containing aboveground tanks at the facility - even if the general facility ‘use’ is associated with transportation (such as a bus yard or terminal, bulk cargo loading terminal, airport, mobile equipment storage or maintenance yard, vehicle or other transportation equipment maintenance or storage yard, etc.);
- The loading/unloading area at the fixed fuel/oil tanks where the transportation-exempt cargo trucks unload into the fixed tanks or airport fuelers;
- Railroad cars located at their destination facility after the cargo has been accepted by the consignee or those staged at the shipping facility prior to being offered in transportation to a carrier.

26. Are tank facilities regulated under APSA exempt from federal (EPA) regulation under federal SPCC rules?

No. There is no federal delegation of the federal SPCC program, and APSA has no impact on federal regulation or enforcement of SPCC requirements at California facilities.

III. Aboveground Storage Tanks

1. What is a storage tank?

An “aboveground storage tank” or “storage tank” means a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground.

2. What is the minimum tank size considered when calculating a tank facility’s total storage capacity?

The minimum tank size used to calculate the storage capacity for a tank facility is 55 gallons.

3. What is storage capacity?

Storage capacity is the shell or design capacity of the aboveground tank. Shell or design capacity may be greater than the actual amount of petroleum a facility routinely stores in that tank. However, it is the rated design or shell capacity of a tank that must be counted, not the amount of petroleum actually contained.

4. How is a tank facility’s storage capacity determined?

The aggregate design/shell capacities of all non-transportation related aboveground tanks containing petroleum at the tank facility (owned or operated by the same business or person) with a design/shell capacity equal to or greater than 55 gallons should be added together. If the total aggregate capacity is equal to or greater than 1,320 gallons, the tank facility is likely captured under APSA.

5. Are petroleum storage tanks in vaults or basements considered to be aboveground storage tanks under APSA?

We believe that it is the intent of the legislature that petroleum tanks be regulated as either a UST or an AST. If the tank is permitted or otherwise regulated as a UST, it is considered a UST and is not covered under APSA. If the tank is not permitted or regulated as a UST, then it is covered under APSA.

US EPA excludes from the federal SPCC rule only ‘completely buried’ underground storage tanks (that are compliant with all federal and state UST regulations). If not completely buried, the tank is regulated under the federal SPCC regulations.

6. Is the following description of a tank considered an underground storage tank or is it an aboveground storage tank? The tank’s bottom

rests on a single-pour concrete pedestal covered with a stainless steel sheet in such a manner that the tank bottom cannot be visually inspected. The tank is located in an open-vaulted area where no portion of the tank is buried but more than 10 percent of the volume of the tank is located below the common surrounding soil level.

The tank is considered to be an underground storage tank. Pursuant to HSC section 25281, a UST is defined as any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. Title 23 of the California Code of Regulations further defines a UST as being "substantially beneath the surface of the ground" and at least 10 percent of the underground tank system volume (including the volume of any connected piping) is below the ground surface or enclosed below earthen materials. Since more than 10 percent of the total volume stored is below "common surrounding soil level" (grade-level), then the system is considered to be a UST system. Under APSA a tank regulated as a UST cannot be defined as an aboveground storage tank (HSC section 25270.2(a)(5)). Consequently, the tank system would be regulated under chapter 6.7 of the HSC and title 23 of the California Code of Regulations.

7. Are tanks or containers for hydraulic fluid considered to be ASTs and therefore subject to APSA regulations?

Below grade tanks which are considered an 'underground storage tank' under 23 CCR and regulated by the UPA as an underground storage tank are exempt from regulation under APSA.

If the hydraulic tank is not an UPA-regulated underground storage tank, and if the hydraulic tanks or containers have a capacity 55 gallons or greater, and the hydraulic oil is a petroleum product, the containers are considered an AST and are regulated under APSA.

8. Are containers with a minimum storage capacity of 55 gallons of petroleum (such as 55-gallon drums) regulated under APSA?

Yes, for purposes of the act, a "storage tank" is defined as any aboveground tank or container that has the capacity to store 55 gallons or more of petroleum, except as specified. Therefore, containers of 55-gallons capacity or greater are regulated by APSA.

9. Are oil-filled operational equipment and/or oil-filled manufacturing equipment regulated under APSA?

Under APSA, oil-filled **electrical** equipment, including, but not limited to, transformers, circuit breakers, and capacitors, are not regulated as ASTs, and therefore not APSA regulated if the oil-filled electrical equipment meets either of the following conditions:

- The equipment contains less than 10,000 gallons of dielectric fluid.

- The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

As oil-filled electrical equipment is the only type of oil-filled equipment excluded from APSA regulation, other oil-filled equipment, such as oil-filled manufacturing and operational equipment is regulated as an AST under APSA, provided that each piece of equipment has 55 gallons or greater of petroleum storage capacity. Also note that oil-filled electrical equipment is regulated as “oil-filled operational equipment” under the federal SPCC regulations.

As detailed in relevant EPA SPCC regulations, “oil-filled operational equipment” is equipment that includes an oil storage container (or multiple containers and associated piping intrinsic to the operation of the equipment) in which the oil is present solely to support the function of the apparatus or the device. Some examples include, but are not limited to:

- Hydraulic systems, lubricating systems (e.g., those for pumps, compressors, and other rotating equipment including pumpjack lubrication systems), gear boxes, machining coolant systems, heat transfer systems, transformers, circuit breakers, electrical switches, and other systems containing oil solely to enable the operation of the device.

As detailed in relevant EPA SPCC regulations, “oil-filled manufacturing equipment” stores oil only as an ancillary element of performing a mechanical or chemical operation to create or modify an intermediate or finished product. Examples of oil-filled manufacturing equipment may include:

- Reaction vessels, fermentors, high pressure vessels, mixing tanks, dryers, heat exchangers, and distillation columns. Flow-through process vessels are generally considered oil-filled manufacturing equipment.

10. Does the term “equipment” in HSC section 25270.2(a)(4)(A) and (B) refer to singular or plural tanks?

For the purpose of the “oil-filled electrical equipment” defined in HSC section 25270.2(a)(4)(A) and (B), equipment is considered to be in the singular tense and refers to a tank.

11. If an AST is “empty,” is that still an AST?

Yes, unless it is closed in a specific manner. If an aboveground storage tank is “empty” but will still or can readily be used to store a petroleum product (usually the same product that it previously contained), then this “empty” AST is still considered an AST, and is regulated under APSA. However, if the “empty” AST container meets the federal SPCC rule definition of “permanently closed,” it is not captured under APSA.

“Permanently closed,” as defined in 40 CFR 112.2, refers to containers “for which (1) All liquid and sludge has been removed from each container and connecting line; and (2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.”

If the AST can and will no longer be used to store a petroleum product, that AST is no longer subject to APSA, but the AST must be completely emptied, cleaned of all petroleum residuals, completely physically disconnected from all petroleum-containing piping, and the tank remarked/labeled appropriately. However, should this tank be used in the future for petroleum, it would become fully regulated again as a petroleum storage tank immediately upon any amount of petroleum being placed into the tank, and all SPCC-related requirements apply at that time.

The SPCC plan should be maintained and updated as necessary to reflect the status of all regulated tanks.

12. Are there regulations for underground piping systems associated with ASTs?

Yes. APSA contains the requirement for SPCC Plans to be prepared and implemented in accordance with part 112 of title 40 of the federal Code of Regulations. The federal SPCC regulations contain requirements for buried piping at an SPCC regulated facility (corrosion protection, inspection whenever uncovered and certain other requirements). However, if the below grade percentage of the portion of the entire AST/underground piping system exceeds 10 percent, the AST/piping system may potentially be regulated as an underground tank system under chapter 6.7 of the HSC, and would therefore be excluded from APSA (but not necessarily federal SPCC rules). Title 23 of the California Code of Regulations further defines a UST as being "substantially beneath the surface of the ground" and at least 10 percent of the underground tank system volume (including the volume of any connected piping) is below the ground surface or enclosed below earthen materials.

13. How is underground piping outside the first flange or valve of the containment area associated with ASTs regulated?

Pursuant to the definition of "tank facility," (HSC section 25270.2 (m)), for purposes of the Act, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

- (1) The pipe is within the dike or containment area.
- (2) The pipe is between the containment area and the first flange or valve outside the containment area.
- (3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

However, under federal SPCC rules, all petroleum piping within a captured facility is regulated, must be addressed in the SPCC Plan and falls under the requirements for 'general containment' per 40 CFR 112.7(c).

14. Are there requirements for integrity testing of regulated piping? If so, what is the leak detection threshold?

Yes. If the piping is related to an aboveground storage tank, as described in section 25270.2 (m), it is captured under APSA. Accordingly, the facility's SPCC Plan must address the frequent inspection, periodic integrity and leak testing of the piping system as required in 40 CFR 112.7 and 112.8 (and as determined appropriate by the certifying Professional Engineer in consideration of relevant industry standards). While there may be leak detection thresholds or other criteria in the relevant industry standards, there is no regulatory threshold in APSA or federal SPCC rules.

15. Since HSC section 25270.7 of the previous version of APSA has been repealed, are there still requirements to develop and implement a monitoring plan/program for ASTs?

Not as was specified in that former section of APSA. However, APSA contains the requirement for SPCC Plans to be prepared and implemented in accordance with 40 CFR 112. The federal SPCC regulations at 40 CFR 112.7 and 112.8 contain requirements for (and the facility's SPCC Plan must address) the frequent inspection and periodic integrity testing of aboveground tanks (and containers and oil-filled equipment), and overfill protection/monitoring as determined appropriate by the certifying Professional Engineer in consideration of relevant industry standards.

16. Are below grade oil/water clarifiers regulated by APSA?

No, below grade clarifiers are not above ground storage tanks or containers. Clarifiers do not meet the definition of a UST or an AST and therefore are not regulated as a UST or an AST.

IV. SPCC Plans

1. By what date must a tank facility that is subject to the Act have their SPCC plan prepared and implemented?

Pursuant to the requirements of 40CFR112 the deadlines for the preparation and implementation of SPCC Plans are as follows:

| <i>A facility (including farms) starting operation...</i> | <i>Must...</i> |
|--|---|
| On or before August 16, 2002 | Maintain their SPCC Plan, make any necessary amendments to the Plan and fully implement it by November 10, 2010 |
| After August 16, 2002 through November 10, 2010 | Prepare and implement a Plan no later than November 10, 2010 |
| After November 10, 2010 | Prepare and implement a Plan before beginning operations |

2. Is it a requirement for tank facilities to submit, file or provide their SPCC Plans to the UPA, or for the UPA to 'approve' the Plan?

No. The APSA only requires a tank facility to submit/file a Tank Facility Statement with the UPA. There is no requirement in APSA for a tank facility to submit or file its SPCC Plan itself. However the UPA may require a copy of the SPCC Plan to be submitted as part of the UPA's city/county ordinance or policy. There is also no requirement in APSA for a tank facility's SPCC Plan to be approved by the UPA. Federal regulations (40 CFR 112) also do not require the routine submittal, filing or approval of an SPCC Plan (although a Plan may be required to be submitted to USEPA after certain significant oil spills into navigable waters).

3. Is it a requirement to have a California PE stamp the SPCC?

The APSA statute contains no specific requirements or restrictions related to the registration/licensing type or state for certifying engineers, only that the SPCC Plan be prepared in accordance with federal SPCC regulations (40 CFR 112). The federal regulations also do not specify the type or state of the certifying engineer. There is also no requirement either in APSA or federal rules that the certifying engineer be independent (i.e., a non-employee of the facility).

The issue of the type of certifying engineer (e.g., civil vs. chemical) or registration state may be evaluated in the future by Cal/EPA as it relates to APSA in light of the general California regulations governing the practice of engineering contained in California Business and Professions Code, section 6704.

4. Who can sign or certify an SPCC Plan?

Either a registered Professional Engineer or the owner or operator of a qualified tank facility may certify a tank facility's SPCC Plan. The tank facility must meet the qualifications as a "qualified facility" in order for the owner or operator of the tank facility to be permitted to self-certify the SPCC Plan. Pursuant to the definition of a "qualified facility" in section 112.3(g) of title 40 of the Code of Federal Regulations, in order to qualify as a "qualified facility," the facility must meet **all** the following criteria:

- have a total facility storage capacity that is 10,000 gallons or less; and
- within the past three years, have had no single discharge to navigable waters exceeding 1,000 gallons or no two discharges to navigable water each exceeding 42 gallons within any rolling twelve month period over the past three years. (In California, storm drains are generally considered navigable waters.)

5. Can a facility use an SPCC Plan template?

In general, an SPCC Plan must be prepared in accordance with good engineering practice. No specific format is required, but if the Plan is not organized to follow the sequence of the requirements in 40 CFR 112, it must have a cross-reference. As long as the Plan contains all the required 40 CFR 112 elements, is facility-specific and is prepared in accordance with good engineering practice, any format may be used.

In the December 2008 revision to the federal SPCC rule, which becomes effective on January 14, 2010, EPA created two subcategories of qualified facilities, Tier I and Tier II:

| Tier I | Tier II |
|--|---|
| 10,000 gallons or less of aggregate (total) aboveground storage capacity | |
| Within any 12 month period, three years prior to Plan certification date, has been: | |
| <ul style="list-style-type: none"> • No single discharge of oil to navigable water or adjoining shoreline exceeding 1,000 gallons; and • No two discharges of oil to navigable water each exceeding 42 gallons | |
| No individual/single aboveground storage tank greater than 5,000 gallon capacity | Has individual/single aboveground storage tank greater than 5,000 gallon capacity |
| Then...SPCC Plan Requirements: | |

| | |
|---|--|
| Complete, self-certify and implement the SPCC Plan template (Appendix G to 40 CFR 112) in lieu of a full PE-certified Plan. | Prepare and implement a self-certified SPCC Plan in accordance with all applicable requirements of 40 CFR 112.6 and 112.7 and subpart B. |
|---|--|

6. Who reviews the SPCC Plan and how often is the SPCC Plan reviewed?
The owner or operator is required to review the SPCC Plan at least once every five years. Every review must be documented.

7. When must an SPCC Plan be amended by the facility operator?
There are two triggers for SPCC Plan amendments by the facility: Technical changes, and the 5-year review.

- Technical changes are any change to the facility, tanks, procedures, materials (e.g., type of petroleum), construction, design or maintenance that ‘materially’ increases or decreases the facility’s potential for oil discharge into navigable waters of the United States or adjoining shorelines. Per 40 CFR 112.5, the Plan must be amended within six months of the change and the actual amendment / change must be implemented as soon as possible, but not later than six months following preparation of the amendment. Except as provided in §112.6 (Qualified Facilities Plan Requirements), technical amendments must be certified by a licensed Professional Engineer in accordance with 40 CFR 112.3(d).
- The facility must conduct a review of the SPCC Plan at least once every five years from the date of Plan certification or the previous five year review (if the certification is over five years old). The facility is required to amend the Plan within six months following a review to incorporate more effective control and prevention technologies if the technology will significantly reduce the likelihood of a release, and the technology has been field-proven at the time of review. Even if no such control/prevention technologies are identified or incorporated, following the review, the facility also typically would make administrative and other non-technical changes to the Plan. Unless the five year review results in a technical change to the plan, a new PE certification is not required following a five year review. However, there are specific facility management statement/ documentation requirements for the five year review.

8. Are transformers covered under the SPCC regulation?

Electrical transformers and similar equipment are covered by the Federal SPCC regulation provided that they contain sufficient quantities of oil, and, due to location, can reasonably be expected to discharge their oil into navigable waters or adjoining shoreline.

V. APSA Fees

1. Are federal facilities required to pay the APSA fee set forth in section 25270.6 of the Health and Safety Code?

Yes. Under California state law, the definition of a “business” includes the federal government, “to the extent authorized by law” (Health and Safety Code, section 25501.4). Therefore, federal facilities are regulated under APSA. Additionally, federal facilities are required to pay the APSA fee. Under section 313 of the Clean Water Act, federal agencies are subject to state requirements related to the control of water pollution including any requirement to pay reasonable fees. Section 313 of the Clean Water Act (33 U.S.C.A. 1323) provides that “(a) each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property of facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, ... shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity *including the payment of reasonable service charges.*” The UPAs are required to establish a fee for APSA that is “sufficient to pay the necessary and reasonable costs incurred by the” UPA to implement APSA. The fees are permissible service charges rather than non-permissible taxes. Also, the fees are clearly non-discriminatory. Therefore, based on the three-prong *Massachusetts* test, the fees are unquestionably permissible service charges rather than non-permissible taxes.

2. Are tank facilities with an aggregate total of petroleum equal to or greater than 1,320 gallons but less than 10,000 gallon still subject to an UPA’s APSA fees?

Yes, these facilities are still subject to the requirements of APSA and therefore subject to the fees established by an UPA’s governing body. The UPA, in implementing and enforcing the requirements of APSA on these facilities, will most likely incur some level of costs that are to be recovered through the single fee system.

3. Do UPAs base fees on the categories as shown on the State AST List? How about spending fees in these categories?

Not necessarily. The UPAs need to look at all necessary and reasonable costs they will incur as they administer, implement, and enforce the requirements of the Act. This will include direct and indirect costs, level of services to be provided, etc.

4. We currently charge a fee for ASTs that meet the 1,320-gallon aggregate total. That fee was part of our approved single fee program

approved by Cal/EPA. Do we have to stop charging that fee effective January 1, 2008?

Yes. Fees can be charged starting on January 1, 2010.

5. Is there a surcharge on this program for oversight?

Not at this time.

VI. Tank Facilities Inspections

1. How often must the owner or operator perform visual inspections of their ASTs?

The owner or operator of a tank facility that is required to prepare and implement an SPCC Plan pursuant to the Act is required by HSC 25270.4.5(a) to perform periodic inspections of storage tanks containing petroleum to determine compliance with 40 CFR 112. There is no specific requirement in the Act for a subject tank facility to conduct a specific, separate 40 CFR 112 compliance inspection. There are several requirements within the 40 CFR 112 SPCC rules for conducting inspections of storage tanks, containers, containment areas, piping, accumulated water discharge, etc. Provided that a tank facility's SPCC Plan is complete, the facility is properly implementing their SPCC Plan and conducting all of the inspections required by 40 CFR 112 and as described in their SPCC Plan, the tank facility would meet the HSC 25270.4.5(a) requirement to perform periodic inspections of storage tanks containing petroleum to determine compliance with 40 CFR 112.

The frequency of these various inspections is not specified in the SPCC rule – just that they be frequent (or periodic or routine, etc.). The facility (and/or the reviewing/certifying Professional Engineer) must determine the appropriate frequency (in consideration of relevant industry standards).

The owner or operator of a tank facility that is exempt, pursuant to the Act (HSC 25270.4.5(b)), from the preparation and implementation of an SPCC Plan are required to conduct a daily visual inspection of any storage tank storing petroleum.

2. Are owners or operators of unattended tank facilities required to conduct daily inspections?

No, not unless the certifying PE and/or the relevant industry standards or best management practices recommend a daily frequency. The requirement to conduct daily visual inspections of petroleum tanks is a condition of an APSA exemption, which is only required at a tank facility that is a farm, nursery, logging site, or construction site and if that facility meets specific criteria to be exempted. If the unattended facility is a farm, nursery, logging or construction site, the fact that the facility is unattended does not eliminate the obligation of the owner or operator to ensure these visual inspections are conducted daily, which is required in order for the facility to be exempted. Therefore, in this case, the exemption would not apply if the daily visual inspections cannot be feasibly conducted, in which case the tank facility is subject to the ASPA requirements to prepare and implement an SPCC plan.

3. How often can a tank facility expect an UPA compliance inspection?

Tank facilities with 10,000 gallons or more of petroleum will be inspected by the UPA at least once every three years. Tank facilities that have less than 10,000 gallons of petroleum may be inspected periodically. A tank facility should confirm with its UPA to determine the exact inspection frequency.

4. What type of activities can a tank facility expect to occur during an UPA compliance inspection?

A tank facility inspection may include visual inspection of the tanks, piping, and secondary containment; review of inspection and integrity testing records of the tanks, valves, piping, and instrumentation; inspection of petroleum handling and transfer areas; inspection of petroleum loading/unloading areas; interviews of personnel, and verification of any other requirements listed in 40 CFR 112 for the preparation and implementation of the SPCC plan.

5. How should the UPA inspector identifying various violations of SPCC Plan implementation, plan quality or content, etc., at a tank facility prepare the specific citation?

The California statute governing aboveground petroleum storage is codified in HSC, division 20, chapter 6.67, section 27270.4.5(a), which requires owners or operators of tank facilities to prepare an SPCC Plan and conduct inspections in accordance with part 112 of subchapter D of chapter I of title 40, of the Code of Federal Regulations. The UPA inspector should cite the appropriate section from chapter 6.67 of HSC and the subsection of part 112 of CFR by reference when necessary to capture appropriate detail.

6. Are exempt facilities required to be inspected?

The UPAs are not required to inspect the tank facilities that meet the criteria for exemption. However, the UPA may conduct an inspection and the owner or operator of the exempted facility shall allow the UPA to conduct a periodic inspection of the tank facility as a condition of the exemption.

7. Are there any files of past AST inspections or any history available for the sites listed on the SWRCB Tank Facility list?

According to the SWRCB, APESA-related facility records and inspection records no longer exist. However, Cal/EPA encourages the UPAs to contact their respective Regional Boards and request that they forward any and all APESA related facility information, including inspection records. The SWRCB has contacted the Regional Boards to obtain files (facility records, inspection reports, etc.) related to aboveground storage tanks. Many of the Regional Boards indicated that they do not have records that would be useful.

8. For the purposes of APESA, is an aggregate storage of 10,000 gallons or more the trigger for triennial UPA APESA inspections?

Yes, the UPAs are required to inspect each storage tank or a representative sampling of the storage tanks at each tank facility with an aggregate storage capacity of 10,000 gallons or more of petroleum.

9. What are the 'integrity testing' requirements for ASTs? Are these different from the required frequent inspections?

Bulk storage containers (such as storage tanks and portable containers such as drums and totes) are required by 40 CFR 112.8(c)(6) to be routinely integrity tested of a type/method and at a frequency in consideration of relevant industry standards – considering the size and type of tank or container, installation, etc. Depending upon the industry standard and the type of testing stated in the standard, integrity testing could range from a monthly and annual visual inspection by trained facility personnel (which essentially are the same as the frequent inspections required by the rule) to a very detailed series of physical tests (such as acoustic, ultrasonic, radiographic, etc.) of tank exterior and interiors by an industry standard-certified outside inspector every two years to every 20 years (depending upon the tank, conditions, etc.). The federal SPCC rule leaves the type and frequency of these integrity tests to the facility and/or the Professional Engineer reviewing/certifying the SPCC Plan. The type and frequency of the tests, and the qualifications of the personnel conducting the tests, must be described in the SPCC Plan. Records of integrity testing must be kept for at least three years, with a copy of the last test kept on file for comparison purposes regardless of when the previous test was performed.

VII. Annual Tank Facility Statement

1. Who determines the format and content of the Annual Tank Facility Statement that the owner or operator of a regulated tank facility is required to submit to the UPA?

The required information that must be included in the Annual Tank Facility Statement is provided in HSC section 25270.6 of the Act. However, the Act does not provide a format for the statement. The owner or operator may either develop their own format or use one developed by their UPA, if their UPA has developed a standard format for the Annual Tank Facility Statement.

2. Although it states that the business plan can be used in lieu of the annual tank facility statement, it would be easier for us to require the regulated businesses to submit an annual statement instead of a complete business plan (which is not required to be submitted every year). Can we make that determination for our UPA's businesses? All of our business submittals at some point will be electronic, so a one page tank statement is easier than a business plan.

The facility is not required to submit an annual statement if they are already in compliance with the business plan program. Although a completed business plan must be submitted once every three years, the chemical inventory is required to be updated annually (whether a submittal of a completed inventory or the annual certification of 'no change'). At the discretion of the UPA, additional information required by the UPA may be collected on the "locally collected information" box of the Business Plan.

VIII. Secondary Containment

1. Is a tank facility's secondary containment required to be constructed of non-permeable material?

Yes. The requirement as stated in 40 CFR 112.7 and 112.8 is for the containment to be "sufficiently impervious" (the term non-permeable or impermeable is not used). Pursuant to section 112.7(c) of title 40 of the federal Code of Regulations (40CFR112), the entire secondary containment system, "including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system will not escape containment before cleanup occurs and before the discharge reaches navigable waters and adjoining shorelines." The containment system includes retaining walls or dike/berm, including the walls and floors.

With respect to bulk storage containers at onshore facilities (except production facilities), 40 CFR, sections 112.8(c)(2) and 112.12(c)(2) state that diked areas must be "sufficiently impervious to contain oil." The purpose of the secondary containment requirement is to prevent discharges to navigable waters or shorelines as described in 40 CFR, section 112.1(b); therefore, effective secondary containment methods must be able to contain oil until the oil is cleaned up. USEPA does not specify permeability or retention time performance criteria for these provisions. Instead, USEPA gives the owner/operator and the certifying PE flexibility in determining how best to design the containment system to prevent a discharge as described in section 112.1(b). This determination is based on a good engineering practice evaluation of the facility configuration, product properties, and other site-specific conditions. Ultimately, the determination of imperviousness should be verified by the certifying PE.

2. Are double-walled containers and other alternative aboveground storage containers satisfactory to meet the secondary containment requirements for SPCC?

Double-walled containers and tanks may provide adequate secondary containment; however, the valves and plugs must be designed and operated so that accidental releases from the inner container (from such occurrences as an inadvertent valve opening or a failure) are completely contained within the outer container. The inner container should be an Underwriter's Laboratory-listed steel container, the outer wall should be constructed in accordance with nationally accepted industry standards (e.g., those codified by the American Petroleum Institute, the Steel Tank Institute, and American Concrete Institute), the container should have an overfill alarm or other overfill prevention system and an automatic flow restriction or flow shut-off, and all product transfers should be constantly monitored.

Other "alternative aboveground storage containers," such as small containers with an attached shop-fabricated containment dike, may be satisfactory in meeting the secondary containment requirements for SPCC. An example is the use of an adequately sized

secondary containment pallet for drums and totes. If "alternative aboveground storage containers" are utilized, an SPCC Plan must still be prepared and certified by a registered PE. If the engineer does not certify that these containers will provide adequate secondary containment, other containment systems must be implemented.

3. Must each tank, drum, or other oil storage containers have individual secondary containment?

Not necessarily. A single dike may be used for a group of containers. A dike for a tank battery is required to contain the volume of the largest single container within the battery plus sufficient freeboard to allow for precipitation. The dike should be sufficiently impervious to contain any discharged oil from the tank battery.

4. What are the secondary containment requirements under APSA?

For tank facilities that must prepare and implement an SPCC Plan per 40CFR112, all areas with the potential for a petroleum discharge are subject to the general secondary containment provision in accordance with section 112.7(c) of title 40 of the Code of Federal Regulations. These areas must be designed with appropriate containment and/or diversionary structures to prevent a discharge that may be harmful. Activities and tanks which must meet the 40 CFR 112.7(c) 'general' containment requirements include oil filled operational and manufacturing equipment, facility petroleum piping, petroleum loading and unloading areas, on-site mobile refuelers, and overall petroleum handling areas. 'General' containment per 112.7(c) may be active or passive in design, use or operation, and must be sufficient to contain a release from the 'typical' failure mode and likely release volume (i.e. most likely release - not full sized containment).

Bulk storage tanks, containers and certain equipment/areas (such as tanker or tank car loading racks) are subject to additional, more stringent containment requirements, including specifications for 100% full tank/container volume containment capacity (see 40 CFR 112.8(c)(2), 40 CFR 112.8(c)(11), and 40 CFR 112.7(h)). However, if a tank facility owner/operator makes a specific determination that secondary containment methods are "impracticable," alternative modes of protection to prevent and contain oil discharges are allowed by the rule (40 CFR 112.7(d) - see FAQ Section VIII #5 below).

5. What is an impracticability determination?

The impracticability provision found in section 112.7(d) of title 40 of the Code of Federal Regulations allows facility owners/operators to substitute a combination of other measures in place of secondary containment for a specific tank or group of tanks if the owner/operator makes a specific 'impracticability determination' in the SPCC Plan. This determination is allowed only in SPCC Plans which are reviewed and certified by a licensed Professional Engineer. The determination (including the specific reasons why secondary containment is not practicable) must be clearly explained in the Plan for each tank or container. Although

US EPA states that cost may be one of several reasons why secondary containment may be impracticable, a facility may not use cost as the only or primary reason.

Once an impracticability determination has been made (and clearly explained/documentated in the PE-certified SPCC Plan), the facility must comply with the following requirements:

(1) Perform periodic integrity testing of bulk storage tanks or containers and periodic integrity and leak testing of the valves and piping associated with the tanks or containers. This applies to the tanks or containers for which the impracticability determination has been made.

(2) Either submit to US EPA for review and approval a Facility Response Plan (FRP) compliant with the FRP requirements of 40 CFR 112.20, or include in the SPCC Plan both an "oil spill contingency plan" compliant with the requirements of 40 CFR 109, and a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged to navigable waters that may be harmful. It should be noted that a Business Emergency Plan prepared to meet the UPA's hazardous materials disclosure program requirements generally does not meet the requirements of 40 CFR 109.

IX. APSA Training Program

1. What is the APSA Training Program?

As per Section 25270.5(c) of the California Health and Safety Code, UPA inspectors shall complete an aboveground storage tank training program and satisfactorily pass an examination on SPCC provisions and safety requirements for aboveground storage tank inspections. Cal/EPA, in cooperation with the California Specialized Training Institute (CSTI), coordinated a series of 16 three-day Aboveground Petroleum Storage Act (APSA) training courses that ran from April 2009 through October 2009.

An on-line training course is being developed to assist new APSA inspectors to be trained and tested prior to inspecting APSA facilities. Refer to Cal/EPA website for updates.

2. Is the training ICC certified?

No, the APSA training is not ICC-certified. There are no ICC-certified courses or exams related to APSA or SPCC requirements.

3. Will there be training available to regulated tank facilities or other interested parties?

Although not intended for the regulated community or the general public, the materials developed for the APSA training program, including the examination, will be incorporated into a computer-based training course that will be available to all interested persons via the Cal/EPA Web site. NOTE: The computer-based training course is specific to APSA and may not include all of the SPCC and federal requirements. To find out more on the federal requirements go to <http://www.epa.gov/emergencies/content/spcc/>.