



# Hodgens Engineering Service

*"Treating others the way we like to be treated"*

## **Does EPA have a right to enter a site regulated by 40 CFR Part 112 (SPCC Plan site) without a warrant?**

Authorization for 40 CFR Part 112 does not include 33 U.S.C § 1318 which is the authority for EPA entry for inspections for other types of facilities.

### 40 CFR PART 112—OIL POLLUTION PREVENTION

1. The authority for part 112:

[33 U.S.C. 1251](#) et seq.; (Congressional declaration of goals and policy)

[33 U.S.C 2720](#); (Differentiation among fats, oils, and greases)

[E.O. 12777](#) (October 18, 1991) (The National Contingency Plan shall provide for a National Response Team ...)

[3 CFR](#), 1991 Comp., p. 351. (Title 3 -- Presidential Documents)

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils § 112.1 General applicability.

(a)(1) This part establishes procedures, methods, equipment, and other requirements to **prevent the discharge of oil** from non-transportation- related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

### **CWA, Section 308 (33 U.S.C § 1318. Records and reports; inspections)**

(a) Maintenance; monitoring equipment; entry; access to information

Whenever required to carry out the objective of this chapter, including but not limited to

- (1) developing or assisting in the development of any **effluent limitation**, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter;
- (2) determining whether any person is in violation of any such **effluent limitation**, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
- (3) any requirement established under this section; or
- (4) carrying out sections

[1315](#) (State reports on water quality),

[1321](#) ([Oil and hazardous substance liability](#)),

[1342](#) (National pollutant discharge elimination system)

[1344](#) (relating to State permit programs for Permits for dredged or fill material),

[1345](#) (Disposal or use of sewage sludge), and

[1364](#) (Coastal recreation water quality monitoring and notification) of this title—

(A) the Administrator shall require the owner or operator of any point source to

(i) establish and maintain such records,

(ii) make such reports,

(iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods),



- (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and
- (v) provide such other information as he may reasonably require; and
- (B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials—
  - (i) shall have a right of entry to, upon, or through any premises in which an **effluent source** is located or in which any records required to be maintained under clause (A) of this subsection are located, and
  - (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

This identifies EPA authority to enter into facilities that discharge to the environment. Containers of oil have no point of discharge; just points of transfer and were not intended to be covered by the law. Bulk oil sites typically do not have wastes, and if they do, they are not typically discharged on-site. They are not regulated by NPDES permit, but are categorically excluded. This does not apply to them.

As indicated below, the oil and hazardous substance liability applies to "removal of a discharge, and mitigation or **prevention of a substantial threat of a discharge.**" It is clear that this is intended to identify conditions that are not the norm for oil storage. To say otherwise, would be to say that the government would routinely be incurring expense for the removal and mitigation and prevention of the threats. 40 CFR Part 112 regulates oil products, which due to their location, could "reasonably be expected to discharge oil..." "Reasonably be expected" is not synonymous with "substantial threat" and as such, this citation does not provide authorization to inspect SPCC facilities without appropriate warrant.

#### § 1321. Oil and hazardous substance liability

##### (c) Federal removal authority

##### (1) General removal requirement

- (A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or **prevention of a substantial threat of a discharge**, of oil or a hazardous substance—
  - (i) into or on the navigable waters;
  - (ii) on the adjoining shorelines to the navigable waters;
  - (iii) into or on the waters of the exclusive economic zone; or
  - (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.
- (B) In carrying out this paragraph, the President may—
  - (i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;
  - (ii) direct or monitor all Federal, State, and private actions to remove a discharge; and
  - (iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

**Nothing contained herein is intended to provide legal opinion.**