

Defending Agriculture

Legal, environmental hot button issues that impact U.S. farmers.

Farm Oil Spills!

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Confusion continues among many farmers as to whether they are subject to EPA regulation for oil spills. The Valdez incident which caused Congress to pass the Oil Pollution Act ("OPA") in August, 1990.

The OPA was to help EPA prevent and respond to oil spills which I discussed in an article on December 2006 requirements for contingency planning for industry and agriculture; however, farming operations are exempt from the OPA's response.

Because there is confusion as to what is a farm spill, I want to be clear to those of you reading this.

Your farm is subject to EPA's Spill Prevention, Control and Countermeasure ("SPCC") program if it meets the following criteria:

1. Your farm storage tank must be located in a position or location where "...there must be a reasonable possibility of an oil spill into navigable waters of the United States or adjoining shorelines."
2. "...it must have an aggregate above ground storage capacity greater than 1,320 gallons or a combination of above and below ground storage capacity greater than 42,000 gallons."
3. The facility must be "...non-transportation-related."

These are EPA's requirements – not mine!

First, your farm is non-transportation related. But how do you determine what is a "reasonable possibility of an oil spill into navigable waters of the United States?"

The U.S. Supreme Court cannot tell us what is a navigable water. What is a wetland? EPA has had to determine what are navigable waters of the United States if three separate criteria are met.

I will quote from EPA's Region V definition of a discharge: "This determination is based upon a consideration of all aspects of the facility. The location of the facility must be considered in relation to streams, ponds, lakes, or sanitary sewers, wetlands, mudflats, sandflats or farm tile drains. The distance to navigable waters must be determined under weather conditions, drainage patterns (sic), land contours, soil conditions, etc., must also be taken into account. Under this regulation, this determination shall not include consideration of man-made features such as dikes or levees that may serve to restrain, hinder, contain or prevent an oil discharge."

As you can see from this last sentence, EPA will never consider any steps you may have taken to prevent an oil spill. EPA will only consider whether you have approved your plans. One can hardly expect common sense from an agency that compares farm storage tanks to the Ashland oil spill in 1988.

You probably are curious as to what is a 'non-transportation related' facility. Again, you will see EPA's definition of a non-transportation related facility in the United States.

I quote from EPA Region V once again regarding a non-transportation related facility: "Fixed onshore and offshore oil well drilling platforms, barges, trucks or other mobile facilities; Fixed onshore and offshore oil production facilities; Oil refineries; Commercial, agricultural, or public facilities that use, store, drill for, produce, gather, process, refine, or transport oil; Loading areas/racks, transfer hoses, loading arms and other equipment that are used for the storage, handling, or transport of oil."

facility; Highway vehicles and railroad cars used to transport oil exclusively within the confines of Pipeline systems used to transport oil exclusively within the confines of a non-transportation rela

You can see, if you are running a farming operation, you are lumped in with the oil industry and ; can see why regulation has probably caused the oil industry not to build any new refineries since

The Oil Pollution Act of 1990, which amended the Clean Water Act, defines oil in such a way to ca what is known as "the sheen rule."

Again, this rule helps EPA determine if there has been a spill. EPA can charge you if you have "...c the surface of a body of water." EPA can also come after you if there is a discharge "...that violate

EPA can also charge a violation of the Clean Water Act if there is "...a sludge or emulsion to be de adjoining shorelines."

Farmers probably do not discharge much sludge or emulsions into creeks or waterways on their fa

EPA has broadly defined the term "oil" to both petroleum and non-petroleum oils such as vegetab

EPA is attempting to scare all of agriculture regarding its SPCC rules. As I have said earlier, evalu farming operations have spills similar to Exxon, Ashland or BP.