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ABOVEGROUND PETROLEUM STORAGE ACT (APSA) PROGRAM GUIDANCE DOCUMENT



CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
OFFICE OF THE STATE FIRE MARSHAL

ACKNOWLEDGMENTS

The Department of Forestry and Fire Protection (CAL FIRE) – Office of the State Fire Marshal (OSFM) acknowledges current and previous members of the Aboveground Petroleum Storage Act (APSA) Frequently Asked Questions (FAQ) Workgroup, APSA Advisory Committee and others for their contribution to this project.

List of Abbreviations

API – American Petroleum Institute
APSA – Aboveground Petroleum Storage Act
AST – Aboveground Storage Tank
BPELSG – California Board for Professional Engineers, Land Surveyors, and Geologists
CalGEM – California Geologic Energy Management Division
CAL FIRE – California Department of Forestry and Fire Protection
Cal OES – California Governor’s Office of Emergency Services
CCR – California Code of Regulations
CERS – California Environmental Reporting System
CFC – California Fire Code
CFR – Code of Federal Regulations
CUPA – Certified Unified Program Agency
CWA – Clean Water Act
DOGGR – California Division of Oil, Gas, and Geothermal Resources (now CalGEM)
DTSC – California Department of Toxic Substances Control
FAQ – Frequently Asked Questions
HMBP – Hazardous Materials Business Plan
HSC – California Health and Safety Code
MOA – Memorandum of Agreement
MOU – Memorandum of Understanding
NOAA – National Oceanic and Atmospheric Administration
OSFM – Office of the State Fire Marshal
PA – Participating Agency
PCB – Polychlorinated Biphenyl
PE – Professional Engineer
SPCC – Spill Prevention, Control, and Countermeasure
STI – Steel Tank Institute
TIUGA – Tank in an Underground Area
UPA – Unified Program Agency
US DOT – United States Department of Transportation
US EPA – United States Environmental Protection Agency
UST – Underground Storage Tank

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Disclaimer

This document provides guidance to the public, Unified Program Agencies (UPA) and owners/operators of tank facilities that may be subject to the APSA requirements found in the California Health and Safety Code (HSC), Division 20, Chapter 6.67 (http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=20.&title=&part=&chapter=6.67.&article).

This document, or any specific element of this document does not replace or substitute for any statutory or regulatory provision, nor is this document a regulation itself. In the event of a conflict between this document, or any element of this document and any statute or regulation, this document would not be controlling. Furthermore, nothing in this document should be considered legal advice, nor be considered a substitute for seeking legal guidance regarding the compliance for any statutory or regulatory provision. Thus, this guidance document does not impose legally binding requirements on the State, UPAs, or the regulated community.

References or links to information cited throughout this document are subject to change. This document is a living document and may be revised, as necessary, to reflect any relevant future statutory or regulatory amendments.

This document is not intended to address all potential situations and circumstances that may affect APSA tank facilities.

This guidance document discusses the United States Environmental Protection Agency (US EPA) Spill Prevention, Control, and Countermeasure (SPCC) requirements, but does not intend to provide authoritative guidance on issues related to SPCC rule requirements found in the Code of Federal Regulations (CFR), Title 40, Part 112 (<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=fdfdde7f17e65a8f1c4642336311fb21&mc=true&n=pt40.24.112&r=PART&ty=HTML>).

For information on the SPCC rule, visit the US EPA SPCC website at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations>. In addition, the *SPCC Guidance for Regional Inspectors* document may be viewed at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spcc-guidance-regional-inspectors>, and frequent SPCC questions may be found at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/oil-spill-prevention-and-preparedness-regulations>. Contact US EPA for questions or clarifications regarding the SPCC rule.

Section 1 General Administration

1.1 Which agencies are responsible for implementing APSA?

UPAs are responsible for implementing APSA requirements, consistent with regulations adopted by the OSFM. The Certified Unified Program Agencies (CUPA) and Participating Agencies (PA) (collectively named 'Unified Program Agencies') are provided with specific authority to implement the APSA statute.

A PA may be authorized and responsible for the implementation of the APSA statute within their jurisdiction, in accordance with CUPA agreement. If it is determined that the PA will implement the APSA statute, the applicable agreements (Memorandum of Agreement [MOA] or Memorandum of Understanding [MOU]) and other related Unified Program documents are to be revised and updated.

1.2 Do UPAs have the authority to make determinations of APSA requirements?

No. The OSFM is responsible for providing interpretation of the APSA statute requirements to all UPAs, overseeing APSA implementation of APSA requirements by all UPAs, and adopting APSA regulations.

1.3 How is APSA related to the SPCC rule requirements in 40 CFR Part 112?

The APSA is separate and distinct from the SPCC rule requirements in 40 CFR Part 112. The APSA statute requires the OSFM to adopt APSA regulations that are consistent with the SPCC rule requirements in 40 CFR Part 112 and shall include any more stringent requirements necessary to implement the APSA.

1.4 Does the APSA provide the UPA with authority to review or approve plans for the installation, modification, repair, closure or removal of aboveground storage tanks (AST) from a facility?

No. Building standards codes authority and enforcement are not provided to UPAs by the APSA statute. The California Fire Code (CFC) has specific requirements for the installation, modification or repair, closure and removal of aboveground tanks. The local fire authority generally enforces the fire code within their respective jurisdiction; a facility that is on a State-owned, leased, or occupied property is under the authority of the OSFM.

There are other requirements related to the removal and/or closure of aboveground tanks; the owner or operator of the aboveground tanks is required to comply with the California Code of Regulations (CCR) Title 22, Chapter 32, Management of Tanks.

Note: The SPCC rule requires an amendment to the SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. AST installation, modification, repair, closure and/or removal represent changes that may require SPCC Plan amendment.

Section 2 Applicability

2.1 What is petroleum?

HSC Section 25270.2(h) defines petroleum as crude oil, or any fraction thereof that is a liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure.

More information is provided in the Petroleum FAQ located on the OSFM APSA webpage at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/>.

2.2 Which tank facilities are subject to the requirements of the APSA?

A tank facility is subject to the APSA if any of the three conditions below apply:

- The tank facility is subject to the SPCC rule requirements in 40 CFR Part 112.
- The tank facility has total petroleum storage capacity in ASTs of 1,320 gallons or more.
- The tank facility has total petroleum storage capacity of less than 1,320 gallons, but has one or more TIUGAs that are not excluded consistent with the HSC Section 25270.3(c)(3) exceptions. When the total petroleum storage capacity is less than 1,320 gallons, the following TIUGAs are excluded: tanks storing heating oil, hydraulic fluid used in closed loop mechanical systems, or acting as a sump, separator, clarifier, catch basin or storm drain. Only the non-excluded TIUGAs are APSA regulated.

Information on federal facilities is found in Section 2, Question 2.4.

Also, refer to the California Environmental Reporting System (CERS) help material “Is My Facility Regulated Under APSA?” which may be found at <https://cers.calepa.ca.gov/about-cers/help-materials/>.

2.3 How do I determine if my farm is regulated by the APSA, and what are the requirements?

Refer to the Farm FAQ on the OSFM APSA webpage at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/>.

2.4 Are federal facilities storing petroleum regulated under the APSA?

It depends. Federal facilities are subject to APSA requirements if sovereign immunity is waived. Section 313 of the federal Clean Water Act (CWA), 33 U.S. Code 1323, contains a limited waiver of sovereign immunity that, if established, would subject the facility to State requirements found in APSA. The federal facility must be engaged in an activity that may result in the discharge of pollutants, such as petroleum, to navigable waters to be subject to APSA.

2.5 Is there an exemption for portable emergency generators?

No. There is no APSA exemption for portable emergency generators.

2.6 Are APSA tank facilities exempt from federal SPCC regulations?

No. The APSA has no impact on federal regulation or US EPA enforcement of SPCC rule requirements at California facilities. There is no delegation of the federal SPCC rule requirements to the State of California.

2.7 What is the conditional exemption described in HSC Section 25270.4.5(b)?

A tank facility that is located on and operated by a farm, nursery, logging site or construction site is exempt from the APSA requirement to prepare and implement an SPCC Plan if it meets the following conditions:

- No single petroleum storage tank at the location exceeds 20,000-gallon capacity **and** the cumulative petroleum storage capacity of the tank facility does not exceed 100,000 gallons.
- The owner or operator of the tank facility must also take the following actions to maintain the conditional exemption:
 - 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 plus sufficient freeboard to allow for precipitation.

Daily inspection means a visual inspection of all petroleum storage tanks at a minimum of five days a week (with the frequency reduced by the number of state and federal holidays during the week) for facilities staffed on a regular basis whenever petroleum is added or withdrawn from the tank. For facilities that are not staffed on a regular basis, the UPA can reduce the minimum daily inspection frequency to once every three days, if the inspection is performed every day the facility is staffed.

The UPA may request to see the daily inspection records as part of the process of verifying that the facility is maintaining compliance with the terms of the conditional exemption.

While conditionally exempt from the APSA requirement to prepare and implement an SPCC Plan, the facility owner or operator is still subject to UPA fees, APSA State surcharge, and tank facility statement or hazardous materials business plan submission.

Note: Although a tank facility may not be required to prepare and implement an SPCC Plan under APSA, the facility may still be required under the SPCC rule to prepare an SPCC Plan.

2.8 Can the APSA conditional exemption for a “construction site” within a larger facility be extended to apply to the entire facility?

No. Only the portion of the tank facility with petroleum ASTs utilized in construction activities is considered a “construction site” relative to the APSA conditional exemption requirements.

2.9 When calculating a facility’s total petroleum storage capacity, can the capacity of the oil/water separation system be excluded if it provides secondary containment for petroleum ASTs at the facility?

Yes. Oil/water separators that are exempt from SPCC rule requirements (such as providing secondary containment for tanks) are not regulated by the APSA, so their capacity is excluded when calculating the facility’s total petroleum storage capacity.

US EPA provides guidance on oil/water separators in Chapter 2, Section 2.8.5 and Chapter 5 of the *SPCC Guidance for Regional Inspectors*.

2.10 Are petroleum bulking tanks that are part of an oil/water separation system regulated under the APSA?

Yes. Petroleum bulking tanks (such as tanks that collect skimmed oil as part of the oil/water separation system) are subject to the SPCC rule and are, therefore, APSA regulated and should be included in the petroleum storage capacity.

Section 3 Aboveground Storage Tanks

3.1 What is an aboveground storage tank?

An AST is a tank or container (including equipment) that stores petroleum and is substantially or totally above the surface of the ground, with a capacity to store 55-gallons or more. Some ASTs are excluded consistent with the HSC Section 25270.2(a)(1) to (a)(8) exceptions and are discussed further in the next question (3.2).

A tank in an underground area (TIUGA), as defined by HSC Section 25270.2(o), is also considered an AST. Information is provided in the TIUGA FAQ located on the OSFM APSA webpage at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>.

3.2 Which ASTs are excluded from APSA?

The following tanks are excluded from the definition of an AST consistent with the provisions in HSC Section 25270.2(a)(1) through (a)(8):

- A pressure vessel or boiler that is subject to Part 6 of Division 5 of the California Labor Code.
- A hazardous waste tank for which the owner/operator was issued a hazardous waste facilities permit by the California Department of Toxic Substances Control (DTSC), or a permit by rule authorization from the Unified Program Agency (UPA).
- An oil production tank that is subject to Section 3106 of the California Public Resources Code.
- Oil-filled electrical equipment (transformers, etc.) that meet 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 polychlorinated biphenyls (PCB) levels less than 50 parts per million, and 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 (UST) that does not meet the definition of a TIUGA.
- Tanks located at a U.S. Department of Transportation (US DOT) regulated transportation-related tank facility.
- Tanks located on and operated by a farm that is exempt from SPCC rule requirements pursuant to 40 CFR Part 112.
- A TIUGA that has the capacity to store less than 55 gallons of petroleum, has secondary containment, and is inspected monthly, if the owner or operator maintains a log of inspection records for review by the UPA upon request.

3.3 Are hazardous waste petroleum ASTs regulated under the APSA?

It depends. Some hazardous waste petroleum ASTs are excluded if the owner or operator of the storage tank has a hazardous waste facilities permit from the DTSC or a permit by rule authorization from the UPA for the storage tank, as described in HSC Section 25270.2(a)(2).

A DTSC hazardous waste facilities permit authorizes operation of the facility units and activities listed in the permit. Hazardous waste petroleum ASTs identified in the hazardous waste facility permit are not APSA regulated. Alternatively, hazardous waste petroleum ASTs at a DTSC permitted facility that are not listed in the hazardous waste facility permit may be regulated under the APSA.

An UPA Permit by Rule authorization identifies the Treatment Unit and associated hazardous waste tanks. Hazardous waste petroleum ASTs identified in the Permit-by-Rule authorization are not APSA regulated. On the other hand, hazardous waste petroleum ASTs not identified in the Permit-by-Rule authorization may be regulated under the APSA. Hazardous waste petroleum ASTs identified as Conditionally Authorized or Conditionally Exempt may be regulated under the APSA.

The UPA should verify that hazardous waste petroleum ASTs meet the conditions of the APSA exclusion.

Note: Although certain hazardous waste petroleum ASTs may not be APSA regulated due to the HSC Section 25270.2(a)(2) exclusion, hazardous waste ASTs containing oil are regulated under the federal SPCC rule. When an SPCC Plan is required, hazardous waste petroleum ASTs and hazardous waste ASTs containing oil should be included in the plan.

3.4 Are all petroleum ASTs at onshore oil production facilities excluded from the APSA?

Not always. While most ASTs within oil production facilities are regulated under Section 3106 of the California Public Resources Code (PRC), some ASTs at oil production facilities may be under the jurisdiction of the OSFM, as explained further below.

PRC Section 3106 regulatory oversight is performed by the California Geologic Energy Management Division (CalGEM), formerly known as the Division of Oil, Gas and Geothermal Resources (DOGGR).

PRC Section 3106 regulates the operation, maintenance, and removal or abandonment of tanks and facilities attendant to oil and gas production that are within an oil and gas field, including pipelines that are not under the jurisdiction of the OSFM pursuant to PRC Section 51010. However, statutory language does not clearly delineate the jurisdictional boundaries between the OSFM and CalGEM in relation to tanks and pipelines located within oil fields.

A 2014 MOA between CalGEM and the OSFM clarifies the agency responsibilities. Per the MOA, CalGEM has jurisdiction over all tanks and pipelines that exist on the lease between the wellhead and the point of custody transfer to a common carrier, pipeline company, refinery, or other third-party for purposes of sales, distribution, or further processing. This includes standalone tanks on the lease, not connected to the wellhead by physical pipeline, that are integrally associated with oil and gas production.

The OSFM jurisdiction begins at the point of custody transfer, such as a truck loading dock or lease automatic custody transfer unit. Beyond the custody transfer point, the OSFM Pipeline Safety Division jurisdiction applies to pipelines and breakout tanks, while the APSA regulates applicable petroleum AST tanks and containers.

Should an UPA have jurisdictional authority questions regarding regulation of a specific tank, container or pipeline at an oil production facility, they may contact a CalGEM and/or the OSFM Pipeline Safety Division to determine if either agency claims jurisdictional authority. The UPA can then assess which specific tanks or containers may be APSA regulated.

The OSFM Pipeline Safety Division contacts may be found at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/>. CalGEM contacts may be found at <https://www.conservation.ca.gov/calgem/contacts>.

Note: Onshore oil production facilities, if subject to the SPCC rule, must comply with all applicable 40 CFR Part 112 requirements.

3.5 Can the owner/operator of a facility with transformers storing petroleum omit all oil-filled electrical equipment from their facility's total petroleum storage capacity?

Not necessarily. Although the oil-filled electrical equipment exclusions provided in HSC Section 25270.2(a)(4) apply to transformers, there are conditions.

Per HSC Section 25270.2(a)(4), only *individual* oil-filled electrical equipment storing less than 10,000 gallons of dielectric fluid are excluded.

For *individual* oil-filled electrical equipment storing 10,000 gallons or more of dielectric fluid, all conditions below must be met for the equipment to be excluded as an AST under APSA, consistent with HSC Section 25270.2(a)(4):

- 1) the dielectric fluid contains less than 50 parts per million of PCB (Polychlorinated biphenyls)
- 2) the equipment has appropriate containment, diversionary structures or equipment to prevent discharged oil from reaching a navigable water course
- 3) the equipment is visually inspected in accordance with the usual routine maintenance procedures at the facility

The oil-filled electrical equipment storage capacity can be excluded from the total petroleum storage capacity of the facility.

However, *individual* oil-filled electrical equipment storing 10,000 gallons or more of dielectric fluid that do not meet the HSC Section 25270.2(a)(4) exclusion conditions are considered an AST under APSA, and the oil-filled electrical equipment storage capacity is included in the total petroleum storage capacity of the facility.

The UPA may verify that oil-filled electrical equipment meets the conditions of APSA AST exclusion.

Note: Oil-filled electrical equipment is regulated under the SPCC rule as oil-filled operational equipment. Oil-filled electrical equipment must be included when calculating total facility oil storage capacity relative to SPCC Plan development. When an SPCC Plan is required, oil-filled electrical equipment (such as transformers) must be included in the plan.

3.6 Are motive power containers excluded under the APSA since they are provided an exclusion in the SPCC program?

Yes. The SPCC rule excludes from regulation ‘motive power containers,’ which are defined as any onboard storage containers used primarily to power the movement of a motor vehicle. The motive power container exclusion also applies to ancillary on-board oil-filled equipment on that vehicle or self-propelled equipment (e.g., the hydraulic system reservoir tank on an aircraft or locomotive). It is important to note that this exclusion does not apply to any on-board or towed bulk cargo container (e.g., a tank containing fuel for refueling other vehicles or tanks).

For information on motive power containers, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 2, Sections 2.5.7 and 2.8.6.

3.7 Can an underground storage tank (UST) be used aboveground to store petroleum?

No. The use of an UST for aboveground storage of petroleum does not meet the requirement for bulk storage containers at 40 CFR Part 112 Section 112.8(c)(1) – “Not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.”

USTs are prohibited for aboveground storage of flammable and combustible liquids under the CFC due to safety issues and structural reasons (CFC section 5704.2.7, National Fire Protection Association 30 section 21.3.4). The OSFM has prepared two Information Bulletins on this topic, located within the 2014 list of Information Bulletins at the OSFM Code Development and Analysis Information Bulletins webpage at <https://osfm.fire.ca.gov/divisions/code-development-and-analysis/information-bulletins/>. Refer to Information Bulletin 14-005 titled “Underground Fuel Storage Tanks Prohibited for Use as Aboveground Fuel Storage Tanks” and the Information Bulletin 14-005-A Addendum.

3.8 Are petroleum ASTs that are empty or no longer in service still regulated, and should the tanks continue to be included in a facility's SPCC Plan?

Yes. Neither the APSA nor the SPCC rule define 'empty' or 'no longer in service'. Unless the petroleum tanks have been 'permanently closed' consistent with 40 CFR Part 112 requirements, the tanks remain APSA regulated and must be included in the facility SPCC Plan.

A 'permanently closed' container, as defined in 40 CFR Section 112.2, means: "(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." For more information on 'permanently closed' containers, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 2, Section 2.8.1.

ASTs that are 'permanently closed' based on the SPCC rule requirements are not required to be included in the facility SPCC Plan and are not APSA regulated.

Section 4 SPCC Plans

4.1 Must all tank facilities prepare and implement an SPCC Plan?

Yes, except for facilities that meet the APSA conditional exemption requirements.

If the tank facility is located on and operated by a farm, nursery, logging site, or construction site- and the facility meets the conditions described in HSC Section 25270.4.5(b), then the facility is not required to prepare an SPCC Plan under APSA.

Note: Even though a facility may be exempt from preparing an SPCC Plan under APSA, the facility may be required by US EPA to prepare an SPCC Plan.

4.2 When is an SPCC Plan required to be prepared?

The SPCC rule requires an existing facility to already have an SPCC Plan, while a new facility must have an SPCC Plan in place before beginning regulated operations. All SPCC Plans must comply with the requirements of the most current version of the SPCC rule.

4.3 Are tank facilities required to submit their SPCC Plan to the California Environmental Reporting System (CERS)?

No. APSA facilities should not submit their SPCC Plan to CERS. Refer to the CERS help material titled “Should I file an SPCC Plan in CERS?”, which may be found at <https://cers.calepa.ca.gov/about-cers/help-materials/>.

4.4 Under 40 CFR Part 112 SPCC rule requirements, a facility does not have to prepare and implement an SPCC Plan. Does this mean the facility is exempt from the APSA?

No. It is possible for a tank facility to be APSA regulated, but not required under the SPCC rule to create an SPCC Plan, for example, if there is no reasonable expectation that a discharge would reach navigable water, or the facility has a TIUGA storing petroleum but does not have aboveground storage capacity of more than 1,320 gallons of oil. Consistent with HSC Section 25270.4.5(a), owners and operators of tank facilities not subject to the general provisions in 40 CFR Section 112.1 are still subject to the APSA, including the requirement to prepare an SPCC Plan applying good engineering practices, and implementation of the SPCC Plan in compliance with the latest version of 40 CFR Part 112.

The APSA requirements related to SPCC Plan preparation and implementation are separate from 40 CFR Part 112 SPCC rule requirements.

4.5 Does the APSA provide the UPA with authority to approve SPCC Plans?

No. UPAs routinely review SPCC Plans as part of their inspection process, but there is no authority for UPAs to approve SPCC Plans under APSA.

4.6 Does the APSA provide the UPA with authority to require specific changes to the facility SPCC Plan?

No. However, if the SPCC Plan is missing required content, or if the SPCC Plan has not been fully implemented, then the UPA may cite the facility with relevant violations.

4.7 In the case of a business with multiple facilities/locations, can a single comprehensive master SPCC Plan encompassing all facilities/locations be prepared, or are separate individual SPCC Plans for each facility/location required?

The SPCC rule provides flexibility to the facility owner or operator, or a PE on behalf of the facility owner/operator, relative to the determination of what constitutes the ‘facility’.

Multi-facility SPCC Plans are acceptable so long as the plan addresses the site-specific issues at each facility location. A copy of the plan, with associated records, should be kept at each individual facility location. Typically, the ‘master plan’ has all the general information and narratives, while the site-specific data and descriptions are contained in site-specific appendices.

The creation of an individual SPCC Plan for each facility location is also considered acceptable.

Facility related issues are discussed in Chapter 2 of the *SPCC Guidance for Regional Inspectors*.

4.8 Can facilities use an SPCC Plan template?

Not all facilities can use an SPCC Plan template; only those facilities that meet the “qualified facility” criteria under the SPCC rule can use an SPCC Plan template.

The Tier I Qualified Facility SPCC Plan template is available on the US EPA website at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/tier-i-qualified-facility-spcc-plan-template>.

For additional information on the SPCC Plan template for Tier I Qualified Facilities, refer to Appendix G of 40 CFR Part 112 and Chapter 1 of the *SPCC Guidance for Regional Inspectors*.

The Tier II Qualified Facility SPCC Plan template is available on the OSFM APSA webpage at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/>.

Professional engineer (PE)-certified SPCC Plans are required for facilities that do not meet the qualified facility criteria. The *SPCC Guidance for Regional Inspectors* Appendix D contains a sample Bulk Storage Facility SPCC Plan. While not a template, this may serve as a model of an SPCC Plan.

While tank facilities with one or more TIUGAs and storing less than 1,320 gallons of petroleum are not required by the SPCC rule to create an SPCC Plan, APSA still requires the preparation of an SPCC Plan. Such facilities may use the Tier I Qualified Facility SPCC Plan template, the Tier II Qualified Facility SPCC Plan template, or prepare a PE-certified SPCC Plan.

4.9 Who can certify an SPCC Plan?

The APSA requires facilities to develop and implement SPCC Plans that follow the SPCC rule requirements. For Tier I and Tier II qualified facilities, the owner or operator may choose to self-certify the SPCC Plan. Facilities that do not meet the qualified facility criteria are required to prepare an SPCC Plan that has been reviewed and certified by a licensed PE.

For additional information on PE certification or self-certification of SPCC Plans, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 1, Section 1.3.

4.10 If the PE that certified an SPCC Plan is no longer licensed, does that mean the SPCC Plan is not valid? Where can information related to the license status of California PEs be found?

No. An SPCC Plan certified by a PE whose license was current at the time of certification is valid, even if the PE's license expired later. 40 CFR Part 112 Section 112.3(d) requires that a licensed PE must review and certify an SPCC Plan for it to be valid.

The licensing for a PE in California is under the jurisdiction of the California Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG). Refer to the BPELSG consumer guide posted on their publications website at <https://www.bpelsg.ca.gov/pubs/index.shtml>.

UPAs and tank facility owners/operators are encouraged to utilize and follow the BPELSG complaint process, which may be found on the BPELSG website at https://www.bpelsg.ca.gov/consumers/complaint_licensee.shtml.

Visit the BPELSG website to verify whether a specific PE is currently and properly licensed and find out if there have been any complaints or disciplinary actions taken against the PE's license.

4.11 An emergency generator at my site has a 2,000-gallon sub-base (belly) tank holding diesel fuel, and also contains 60 gallons of motor oil in the engine crankcase. Should these be reported as separate items in the SPCC Plan?

Yes. The diesel fuel tank is a bulk storage container, where diesel fuel is consumed as fuel during the engine operation and subsequently refilled. The engine crankcase, if it contains 55 gallons or more of oil, is considered oil-filled operating equipment as the motor oil is present solely to support the function of the engine for lubrication.

More discussion on this topic is found in Chapter 2, Section 2.10.6 of the *SPCC Guidance for Regional Inspectors*.

4.12 A facility has 4,000 gallons of petroleum storage and 7,000 gallons of edible oil (non-petroleum) storage. Is the owner/operator required to prepare a PE-certified SPCC Plan, even though the APSA regulated petroleum storage amount is less than 5,000 gallons?

Yes. Since the APSA statute (HSC Section 25270.4.5) requires facilities to prepare and implement an SPCC Plan that complies with 40 CFR Part 112, the non-petroleum oil is required to be included in the total storage capacity of the facility and in preparing an SPCC Plan for the facility.

Section 5 Inspections and Integrity Testing

5.1 How frequently can a facility expect an APSA inspection by the UPA?

As often as the UPA determines an inspection is needed. HSC Section 25270.5(a) requires the UPA inspect facilities with petroleum storage capacity of 10,000 gallons or more, at minimum, once every three years.

UPAs may develop an alternative inspection and compliance plan in accordance with HSC Section 25270.5(b). For example, an UPA's alternative inspection plan could establish an annual inspection frequency at facilities with petroleum storage capacity of 10,000 gallons or more, or a triennial inspection frequency at all APSA facilities.

Conditionally exempt APSA facilities [HSC Section 25270.4.5(b)] may expect a periodic UPA inspection [HSC Section 25270.4.5(b)(2)] to verify compliance with the terms of the conditional exemption.

Facilities may contact their UPA related to questions about the UPA inspection frequency and policy.

5.2 What type of activities can a tank facility expect to occur during an APSA inspection by an UPA?

The purpose of the APSA inspection is to determine whether the facility owner/operator complies with the APSA requirements, including verification of appropriate SPCC Plan preparation and implementation. The APSA inspection will include a review of documentation, such as the SPCC Plan, inspection records, integrity testing reports, etc., and a facility walk. The facility walk may include a visual inspection of tanks, equipment, piping, secondary containment, basins, diked areas, valves, transfer areas, spill response equipment, etc. Additionally, the UPA may talk with facility staff and take photos.

For discussion of the types of activities related to the UPA inspection at conditionally exempt facilities, refer to Section 2, Question 2.7.

5.3 What are the kinds of APSA violations that can be cited by an UPA?

To view the APSA Program violations that may be utilized by an UPA, visit the CERS Violation Library website at <https://cersbusiness.calepa.ca.gov/Public/Violations>. Select 'APSA Program' under the 'Violation Program' field and then click on 'Search'. Click on 'View' next to a violation name to see the violation description and citations.

5.4 Our facility has petroleum ASTs and vegetable oil ASTs, which are included in the SPCC Plan. Our facility was recently inspected by the UPA. Could the UPA issue APSA violations related to non-petroleum oil ASTs?

No. UPAs verify compliance relative to SPCC Plan implementation for the tanks, containers, or equipment that contain APSA regulated petroleum products. UPAs do not have the authority to issue APSA violations related to non-petroleum oil AST storage

addressed in SPCC Plans. However, US EPA inspectors have authority for SPCC Plan compliance related to the aboveground storage of all types of oils, including petroleum and vegetable oil, at a facility.

If UPAs observe implementation issues related to non-petroleum oil ASTs, they may provide verbal feedback as a courtesy.

5.5 How often must the owner or operator perform visual inspections of their aboveground tanks, containers, and equipment?

Each tank owner or operator at a tank facility subject to the APSA is required to perform periodic tank inspections that comply with the latest 40 CFR Part 112 requirements. Typically, inspection frequencies for all APSA regulated tanks will be detailed in the facility's SPCC Plan. The facility owner or operator and/or the reviewing or certifying PE must determine the appropriate tank inspection frequency in accordance with good engineering practice and relevant industry standards as part of SPCC Plan creation.

5.6 What industry standards may be used for the integrity testing requirements of 40 CFR Section 112.8(c)(6)?

The two main industry standards for aboveground steel tanks storing flammable and combustible liquids include the Steel Tank Institute (STI) SP001 Standard for the Inspection of Aboveground Storage Tanks and American Petroleum Institute (API) Standard 653 Inspection, Repair, Alteration, and Reconstruction. The STI SP001 Standard also covers portable containers, including steel/plastic drums, totes, and concrete exterior tanks. These industry standards contain the detailed requirements for ensuring that aboveground tanks and containers remain suitable for continued service.

For tanks made of other materials (such as fiberglass), other industry standards may be applicable.

For information on inspections, evaluations, and integrity testing requirements under the SPCC rule, refer to Chapter 7 of the *SPCC Guidance for Regional Inspectors*.

5.7 What are the integrity testing requirements for ASTs?

The SPCC rule requires bulk storage containers to be tested or inspected for integrity on a regular schedule and whenever you make material repairs. These inspections or tests must be developed in accordance with industry standards. As stated in 40 CFR Section 112.8(c)(6), "Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing."

For more information on inspection, evaluation and testing requirements under the SPCC rule, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 7, including Table 7-1 that summarizes the provisions that apply to different types of equipment and facilities.

5.8 If an SPCC Plan specifies that STI SP001 is used as the inspection and test program standard for bulk storage containers, must the monthly and annual inspection checklist forms provided in SP001 be used by the facility?

No. The inspection items covered in the monthly and annual generic industry standard inspection checklists may not apply to all facilities. The STI SP001 checklists are intended as models, and locally developed checklists are acceptable as long as they are substantially equivalent (as applicable). Inspections of multiple tanks may be captured on one form as long as the tanks are substantially the same.

The US EPA provides guidance directing their inspectors to review the inspection checklists used by the facility to verify they are in accordance with the inspection and testing program as certified in the SPCC Plan.

If testing, evaluation, or inspection procedures appear to be in conflict with, or substantially different from, recognized industry standards with no rationale provided, or do not meet the overall objective of oil spill response/prevention, or appear to be inadequate for the facility, then appropriate follow-up action may be warranted.

For more information on inspection, evaluation and testing requirements under the SPCC rule, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 7, Sections 7.6 and Section 7.7.

5.9 Our SPCC Plan includes a requirement for one of our tanks to undergo a formal external inspection by a certified inspector by a specific date. Could our facility be cited for not having this inspection performed?

Yes. Once the SPCC Plan writer identifies an inspection schedule for aboveground containers (based on applicable industry standards), the inspection schedule must be documented in the SPCC Plan, and the owner or operator must conduct inspections according to that schedule. UPAs confirm that the inspection schedule is detailed in the SPCC Plan, and the required inspections have been implemented and properly documented.

US EPA provides guidance on inspection, evaluation and testing programs in Chapter 7 Section 7.6 and Section 7.7 of the *SPCC Guidance for Regional Inspectors*.

5.10 Is a facility required to address mandatory items identified on a formal inspection report generated from the integrity testing requirements of 40 CFR Section 112.8(c)(6)?

Yes. Formal inspections performed by certified/authorized inspectors are conducted to determine the suitability for continued service under the industry standard. When the certified/authorized inspector's report identifies items that are required or mandatory to conform with the industry standard, these items must be appropriately addressed; in the case of some repairs, testing and a final inspection may also be required. Mandatory or required corrective actions must be completed or followed to fully implement the SPCC Plan.

Additional guidance is provided in Chapter 7 Section 7.6 of the *SPCC Guidance for Regional Inspectors*.

Note: The UPA may request documentation to verify a repair, if required on the formal inspection report, has been completed or identifies the rationale why the repair was not performed.

Section 6 Secondary Containment

6.1 What criteria can be used to verify whether a facility meets the secondary containment sizing requirements, including the freeboard requirement?

The SPCC rule requires plan authors to address secondary containment for bulk storage containers as part of SPCC Plan creation. Although the SPCC rule states ‘provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation’, the rule does not specifically define the term ‘sufficient freeboard,’ nor does it describe how to calculate this volume.

Some plan preparers use the 25-year 24-hour rainfall events to determine the appropriate freeboard capacity, while others use a ‘110 percent of storage tank capacity’ rule of thumb, but the SPCC rule does not set any standard as a requirement for freeboard capacity. The certifying PE (or owner/operator of qualified facilities) determines what volume constitutes sufficient freeboard for precipitation for secondary containment.

US EPA provides guidance related to inspector evaluation of sufficient freeboard, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 4, Sections 4.3.2 and 4.3.3.

Although not required under the SPCC rule, it is recommended that the facility owner or operator maintain the secondary containment calculations at the facility for reference.

Note: One source of data for the 25-year, 24-hour rainfall event may be the National Oceanic and Atmospheric Administration (NOAA) National Weather Service at <https://hdsc.nws.noaa.gov/hdsc/pfds/index.html>.

6.2 What criteria can be used to evaluate if a facility’s secondary containment is ‘sufficiently impervious’?

The UPA may determine whether the facility’s secondary containment is sufficiently impervious based on a review of the SPCC Plan, inspection reports, maintenance records, and an observation of site conditions.

The SPCC rule does not specify permeability or retention time performance criteria. Containment structures can be considered sufficiently impervious if they allow for cleanup to occur in time to prevent a discharge to navigable waters or adjoining shorelines.

US EPA provides guidance related to inspector evaluation of sufficiently impervious secondary containment requirements, refer to the *SPCC Guidance for Regional Inspectors*, Chapter 4, Section 4.4.2.

Section 7 Training

7.1 Are UPA inspectors required to complete and pass the APSA Basic Inspector Training program to conduct APSA inspections?

Yes. UPA inspectors must complete and satisfactorily pass the APSA Basic Inspector Training program prior to conducting any APSA inspections at facilities that are required to prepare an SPCC Plan in accordance with the APSA.

Note: UPA inspectors conducting inspections at conditionally exempt tank facilities only are not required to complete and pass the APSA Basic Inspector Training program.

7.2 Is the APSA Basic Inspector Training program available for any interested parties?

The APSA Basic Inspector Training program is only available to UPA staff, not regulated tank facilities or other interested parties.

7.3 Are APSA training resources available to regulated facilities or other interested parties?

Yes. The California CUPA Forum provides the California Unified Program training conference on an annual basis, usually during the month of February. This conference provides various professional training courses in subjects related to California Unified Program implementation, including courses related to the APSA and the SPCC rule.

Facilities and other interested parties are encouraged to attend. Various training courses are open to the industry and regulated community. For more information on the annual California Unified Program conference, visit the California CUPA Forum website at <https://www.calcupa.org/>.

The US EPA developed a train-the-trainer package specifically for the agriculture sector, which is available at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spcc-rule-train-trainer-package-agriculture>.

Section 8 Tank Facility Statement and Release Reporting

8.1 Must a tank facility annually file in the statewide information management system (CERS) either a tank facility statement or a complete Hazardous Materials Business Plan (HMBP), even if there were no changes from the previous submittal?

Yes. Annually filing either the tank facility statement or the complete HMBP in CERS is required in accordance with the APSA, even if there have been no changes in petroleum storage capacity at the facility.

Refer to the CERS help material “Aboveground Petroleum Storage Tank Facility Statement Reporting Requirements”, which may be found at <https://cers.calepa.ca.gov/about-cers/help-materials/>.

Tank facilities that submit a tank facility statement may use the template available for download from the OSFM website at <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/>. A facility can submit its own version of the tank facility statement, but the statement must contain the following required information:

- (1) name and address of the facility,
- (2) a contact person for the facility,
- (3) the total petroleum aboveground storage capacity of the facility, and
- (4) location and contents of each petroleum storage tank that exceeds 10,000 gallons in storage capacity.

Note: The revised aboveground petroleum storage question in the CERS Business Activities section has been in effect since April 1, 2019, and CERS also contains four APSA data fields (conditionally exempt, total aboveground storage capacity of petroleum, the number of TIUGAs, and the date of SPCC Plan certification or date of 5-year review of the SPCC Plan). For more information, refer to the CERS help material titled “Preparing an APSA Submittal”, which may be found at <https://cers.calepa.ca.gov/about-cers/help-materials/>.

8.2 What are the APSA spill/release notification requirements?

HSC Section 25270.8 requires reporting to the California Governor’s Office of Emergency Services (Cal OES) and the UPA or 911 of a spill of 42 gallons or more of petroleum that is required to be reported pursuant to subdivision (a) of Section 13272 of the California Water Code (CWC), which states, “...any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be

provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the California oil spill contingency plan.”

However, there are other release reporting requirements that are more restrictive than the APSA, such as HSC Section 25510. Petroleum spills or releases from facilities should be reported to Cal OES and the UPA, or 911, regardless of release volumes and whether any spill reaches waters of the state, to ensure compliance with the State’s release reporting requirements.

For more information, refer to the Cal OES “California Hazardous Materials Spill / Release Notification Guidance”, which may be found at <https://www.caloes.ca.gov/FireRescueSite/Pages/Spill-Release-Reporting.aspx>.

Note: Federal spill/release notification requirements apply when a discharge to navigable waters or adjoining shorelines occurs. Notification to the National Response Center is required for all releases that equal or exceed federal reporting quantities. More information on federal release reporting requirements is provided at <https://www.epa.gov/emergency-response/when-are-you-required-report-oil-spill-and-hazardous-substance-release>.

Section 9 Fees, Penalties, and Enforcement

9.1 Which facilities are required to pay the APSA State surcharge?

Each owner or operator of a tank facility who is regulated by the APSA, including conditionally exempt facilities, shall pay an APSA State surcharge to the CUPA.

The APSA State surcharge may be waived if a CUPA does not assess any single fee on a tank facility pursuant to the CCR Title 27, Section 15250(a)(3).

9.2 Are federal facilities required to pay the APSA State surcharge?

Yes. Federal facilities that are APSA regulated are required to pay the APSA State surcharge as part of the UPA single fee system, to the extent the fees qualify as “reasonable service charges” in 33 U.S. Code 1323.

APSA regulation of federal facilities is discussed in more detail in Section 2, Question 2.4.

9.3 Who is potentially liable for civil penalties related to violations at a tank facility?

Any owner or operator of a tank facility who fails to prepare an SPCC Plan in compliance with HSC Section 25270.4.5, fails to file a tank facility statement (or hazardous materials business plan) or pay fees as required by HSC Section 25270.6, fails to report spills as required by HSC Section 25270.8, or otherwise fails to comply with the APSA requirements is subject to civil penalties related to each violation. However, there is no waiver subjecting federal government to Clean Water Act fines and penalties in 33 U.S. Code 1323.

9.4 Who is potentially liable for administrative penalties related to APSA violations at a tank facility?

An owner or operator of a tank facility who fails to prepare an SPCC Plan in compliance with HSC Section 25270.4.5, fails to file a tank facility statement (or hazardous materials business plan) or pay fees as required by HSC Section 25270.6, fails to report spills as required by HSC Section 25270.8, or otherwise fails to comply with the APSA requirements is subject to administrative penalties related to each violation.

Note: States and UPAs can issue administrative compliance orders or take civil judicial action against violators of Clean Water Act provisions, including federal facilities. However, states and UPAs cannot recover penalties for APSA violations against federal facilities (refer to 33 U.S. Code 1323). UPAs may use the “re-inspection fee” to recover their costs for verification of corrective action(s) related to APSA violation(s) at federal facilities.

9.5 What are the amounts of the civil or administrative penalties related to APSA violations?

The civil or administrative penalty for the initial APSA violation may be up to five thousand dollars (\$5,000) for each day on which the violation continues.

For second or subsequent violations, a civil or administrative penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

9.6 Can a tank facility owner or operator be liable for both civil and administrative penalties for the same APSA violation?

Yes. An UPA can issue an enforcement order and/or assess an administrative penalty for an APSA violation, and later the facility owner or operator may be charged civilly by a city attorney or district attorney for the same APSA violation.

However, in accordance with HSC Section 25270.12.1(d), if a civil penalty has already been imposed under HSC Section 25270.12 for an APSA violation, the UPA cannot assess an administrative penalty for the same APSA violation.

9.7 When a tank, container or equipment is owned and operated by two different entities, whom does an UPA charge for enforcement purposes?

Enforcement may be taken on either the owner or the operator of the tank facility.

9.8 Are individual persons potentially able to be convicted of a misdemeanor under the APSA?

Yes. A person who knowingly violates HSC Section 25270.4.5, 25270.6, or 25270.8 after reasonable notice of the violation is potentially able to be convicted of a misdemeanor.

Furthermore, other applicable criminal or civil penalties can be pursued.

Section 10 SPCC Rule Reference Materials

Frequent SPCC questions are available on the US EPA website at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/oil-spill-prevention-and-preparedness-regulations>.

Below are descriptions and chapter links to the US EPA *SPCC Guidance for Regional Inspectors* document (<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spcc-guidance-regional-inspectors>).

Chapter 1: Introduction discusses the purpose and scope of 40 CFR Part 112 and the regulatory history, including all SPCC rule amendments. It also includes the Table of Contents, disclaimer, US EPA Oil Program contacts, and acronyms list. Chapter link is at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-3>.

Chapter 2: SPCC Rule Applicability clarifies the facilities, activities, and equipment that are regulated under the SPCC rule by providing an in-depth discussion of the applicability criteria and relevant scenarios. Chapter link is at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-4>.

Chapter 3: Environmental Equivalence discusses the use of the environmental equivalence provision, lists the substantive requirements eligible for environmental equivalence, clarifies certain policy areas, provides examples of proper documentation, and describes the role of the US EPA inspector in reviewing deviations based on environmental equivalence. Chapter link is at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-5>.

Chapter 4: Secondary Containment and Impracticability Determinations describes the various secondary containment requirements and demonstrates how these requirements apply to specific equipment and activities at an SPCC-regulated facility. This chapter also discusses:

- the impracticability determination provision of the rule,
- the additional requirements that accompany an impracticability determination, and
- the documentation needed to support such a determination.

The role of the US EPA inspector in reviewing and evaluating secondary containment requirements and impracticability determinations is also discussed. Chapter link is at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-6>.

Chapter 5: Oil/Water Separators addresses the applicability of the SPCC rule to various scenarios involving oil/water separators and other equipment. Chapter link is at

<https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-7>.

Chapter 6: Facility Diagram and Description provides guidelines on the necessary level of detail for the facility description and facility diagrams included in an SPCC Plan. This chapter also includes example facility diagrams for different types of facilities. Chapter link is at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-8>.

Chapter 7: Inspections, Evaluation, and Testing provides an overview of the SPCC inspection, evaluation, and testing requirements, as well as how environmental equivalence may apply for these requirements. This chapter also discusses the role of the US EPA inspector in determining a facility's compliance with the inspection, evaluation, and testing rule requirements; and a summary of industry standards, code requirements, and recommended practices that apply to different types of equipment. Chapter link is at <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/spill-prevention-control-and-countermeasure-9>.