

**§ 154.1016 Facility classification by COTP.**

(a) The COTP may upgrade the classification of:

(1) An MTR facility not specified in § 154.1015 (b) or (c) to a facility that could reasonably be expected to cause substantial harm to the environment; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could reasonably be expected to cause significant and substantial harm to the environment.

(b) The COTP may downgrade, the classification of:

(1) An MTR facility specified in § 154.1015(c) to a facility that could reasonably be expected to cause substantial harm to the environment; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could not reasonably be expected to cause substantial, or significant and substantial harm to the environment.

(3) The COTP will consider downgrading an MTR facility's classification only upon receiving a written request for a downgrade of classification from the facility's owner or operator.

(c) When changing a facility classification the COTP may, as appropriate, consider all relevant factors including, but not limited to: Type and quantity of oils handled in bulk; facility spill history; age of facility; proximity to public and commercial water supply intakes; proximity to navigable waters based on the definition of navigable waters in 33 CFR 2.05-25; and proximity to fish and wildlife and sensitive environments.

**154.1017 Response plan submission requirements.**

(a) The owner or operator of an MTR facility identified only in § 154.1015(b), or designated by the COTP as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1040, 154.1045, or § 154.1047, as appropriate. This applies to:

(1) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(2) A fixed MTR facility specifically designated as a substantial harm facility by the COTP under § 154.1016.

(b) The owner or operator of an MTR facility identified in § 154.1015(c) or designated by the COTP as a significant and substantial harm facility shall prepare and submit for review and approval of the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1035, 154.1045, or 154.1047, as appropriate. This applies to:

(1) A fixed MTR facility capable of transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) An MTR facility specifically designated as a significant and substantial harm facility by the COTP under § 154.1016.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

**§ 154.1020 Definitions.**

Except as otherwise defined in this section, the definition in 33 CFR 154.105 apply to this subpart and subparts H and I.

*Adverse weather* means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include, but are not limited to, significant wave height as specified in §§ 154.1045, 154.1047, 154.1225, or 154.1325, as appropriate; ice conditions, temperatures, weather-related visibility, and currents within the COTP zone in which the systems or equipment are intended to function.

*Animal fat* means a non-petroleum oil, fat, or grease derived from animals, and not specifically identified elsewhere in this part.

*Average most probable discharge* means a discharge of the lesser of 50 barrels or 1 percent of the volume of the worst case discharge.

*Captain of the Port (COTP) Zone* means a zone specified in 33 CFR part 3 and, where applicable, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

*Complex* means a facility possessing a combination of marine-transportation related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

*Exclusive economic zone (EEZ)* means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

*Facility that could reasonably be expected to cause significant and substantial harm* means any MTR facility (including piping and any structures that are used for the transfer of oil between a vessel and a facility) classified as a “significant and substantial harm” facility under § 154.1015(c) and § 154.1216.

*Facility that could reasonably be expected to cause substantial harm* means any MTR facility classified as a “substantial harm” facility under § 154.1015(b) and § 154.1216.

*Fish and Wildlife and Sensitive Environment* means areas that may be identified by either their legal designation or by Area Committees in the applicable Area Contingency Plan (ACP) (for planning) or by members of the Federal On-Scene Coordinator’s spill response structure (during responses). These areas may include: Wetlands, national and state parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, areas of economic importance, recreational areas, national forests, Federal and state lands that are research areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

*Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

*Higher volume port area* means the following ports:

- (1) Boston, MA.
- (2) New York, NY.
- (3) Delaware Bay and River to Philadelphia, PA.
- (4) St. Croix, VI.
- (5) Pascagoula, MS.
- (6) Mississippi River from Southwest Pass, LA. to Baton Rouge, LA.
- (7) Louisiana Offshore Oil Port (LOOP), LA.
- (8) Lake Charles, LA.
- (9) Sabine-Neches River, TX.
- (10) Galveston Bay and Houston Ship Channel, TX.
- (11) Corpus Christi, TX.
- (12) Los Angeles/Long Beach harbor, CA.
- (13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.
- (14) Straits of Juan De Fuca from Port Angeles, WA, to and including Puget Sound, WA.
- (15) Prince William Sound, AK.

*Inland area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

*Marine transportation-related facility (MTR facility)* means any onshore facility or segment of a complex regulated under section 311(j) of the Federal Water Pollution Control Act (FWPCA) by two or more Federal agencies, including piping and any structure used or intended to be used to transfer oil to or from a vessel, subject to regulation under this part and any deepwater port subject to regulation under part 150 of this chapter. For a facility or segment of a complex regulated by two or more Federal agencies under section 311(j) of the FWPCA, the MTR portion of the complex extends from the facility oil transfer system’s connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related

portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate Federal official.

*Maximum extent practicable* means the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the criteria in this subpart or in a specific plan approved by the cognizant COTP.

*Maximum most probable discharge* means a discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

*Nearshore area* means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter.

*Non-persistent or Group I oil* means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions—

(1) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(2) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

*Ocean* means the offshore area and nearshore area as defined in this subpart.

*Offshore area* means the area beyond 12 nautical miles measured from the boundary lines defined in 46 CFR part 7 extending seaward to 50 nautical miles, except in the Gulf of Mexico. In the Gulf of Mexico, it is the area beyond 12 nautical miles of the line of demarcation (COLREG lines) defined in §§ 80.740–80.850 of this chapter extending seaward to 50 nautical miles.

*Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredge spoil.

*Oil spill removal organization (OSRO)* means an entity that provides response resources.

*On-Scene Coordinator (OSC)* means the definition in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

*Operating area* means Rivers and Canals, Inland, Nearshore, Great Lakes, or Offshore geographic location(s) in which a facility is handling, storing, or transporting oil.

*Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

*Operating in compliance with the plan* means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means, and conducting the necessary training and drills.

*Other non-petroleum oil* means a non-petroleum oil of any kind that is not generally an animal fat or vegetable oil.

*Persistent oil* means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

(1) Group II—specific gravity of less than .85.

(2) Group III—specific gravity equal to or greater than .85 and less than .95.

(3) Group IV—specific gravity equal to or greater than .95 and less than or equal to 1.0.

(4) Group V—specific gravity greater than 1.0.

*Qualified individual and alternate qualified individual* means a person located in the United States who meets the requirements of § 154.1026.

*Response activities* means the containment and removal of oil from the land, water, and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the public health or welfare or the environment.

*Response resources* means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

*Rivers and canals* means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that has a project depth of 12 feet or less.

*Specific gravity* means the ratio of the mass of a given volume of liquid at 15 °C (60 °F) to the mass of an equal volume of pure water at the same temperature.

*Spill management team* means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

*Substantial threat of a discharge* means any incident or condition involving a facility that may create a risk of discharge of oil. Such incidents include, but are not limited to storage tank or piping failures, above ground or underground leaks, fires, explosions, flooding, spills contained within the facility, or other similar occurrences.

*Tier* means the combination of required response resources and the times within which the resources must arrive on scene.

[NOTE: Tiers are applied in three categories:

- (1) Higher Volume Port Areas,
- (2) Great Lakes, and
- (3) All other operating environments, including rivers and canals, inland, nearshore, and offshore areas.

Appendix C, Table 4 of this part, provides specific guidance on calculating response resources. Sections 154.1045(f) and 154.1135, set forth the required times within which the response resources must arrive on-scene.]

*Vegetable oil* means a non-petroleum oil or fat derived from plant seeds, nuts, kernels or fruits, and not specifically identified elsewhere in this part.

*Worst case discharge* means in the case of an onshore facility and deepwater port, the largest foreseeable discharge in adverse weather conditions meeting the requirements of § 154.1029.

[CGD 91–036, 61 FR 7917, Feb. 29, 1996, as amended by USCG–1999–5149, 65 FR 40825, June 30, 2000]

#### **§ 154.1025 Operating restrictions and interim operating authorization.**

(a) The owner or operator of an MTR facility who submitted a response plan prior to May 29, 1996, may elect to comply with any of the provisions of this final rule by revising the appropriate section of the previously submitted plan in accordance with § 154.1065. An owner or operator of an MTR facility who elects to comply with all sections of this final rule must resubmit the

plan in accordance with § 154.1060 of this part.

(b) No facility subject to this subpart may handle, store, or transport oil unless it is operating in full compliance with a submitted response plan. No facility categorized under § 154.1015(c) as a significant and substantial harm facility may handle, store, or transport oil unless the submitted response plan has been approved by the COTP. The owner or operator of each new facility to which this subpart applies must submit a response plan meeting the requirements listed in § 154.1017 not less than 60 days prior to handling, storing, or transporting oil. Where applicable, the response plan shall be submitted along with the letter of intent required under § 154.110.

(c) Notwithstanding the requirements of paragraph (b) of this section, a facility categorized under § 154.1015(c) as a significant and substantial harm facility may continue to handle, store, or transport oil for 2 years after the date of submission of a response plan, pending approval of that plan. To continue to handle, store, or transport oil without a plan approved by the COTP, the facility owner or operator shall certify in writing to the COTP that the owner or operator has ensured, by contract or other approved means as described in § 154.1028(a), the availability of the necessary private personnel and equipment to respond, to the maximum extent practicable to a worst case discharge or substantial threat of such a discharge from the facility. Provided that the COTP is satisfied with the certification of response resources provided by the owner or operator of the facility, the COTP will provide written authorization for the facility to handle, store, or transport oil while the submitted response plan is being reviewed. Pending approval of the submitted response plan, deficiencies noted by the COTP must be corrected in accordance with § 154.1070.

(d) A facility may not continue to handle, store, or transport oil if—

(1) The COTP determines that the response resources identified in the facility certification statement or reference response plan do not substantially meet the requirements of this subpart;