

23RD ANNUAL AIRPORT LAW WORKSHOP

Basics of Environmental Management

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Understanding the Big Picture

- Complex and specialized issues
- Requires legal and technical experts
- Risk management
 - Enforcement exposure
 - Civil/Criminal penalties
 - Debarment from federal grants
 - Public relations

Our goal today: Don't fear the
alphabet soup!

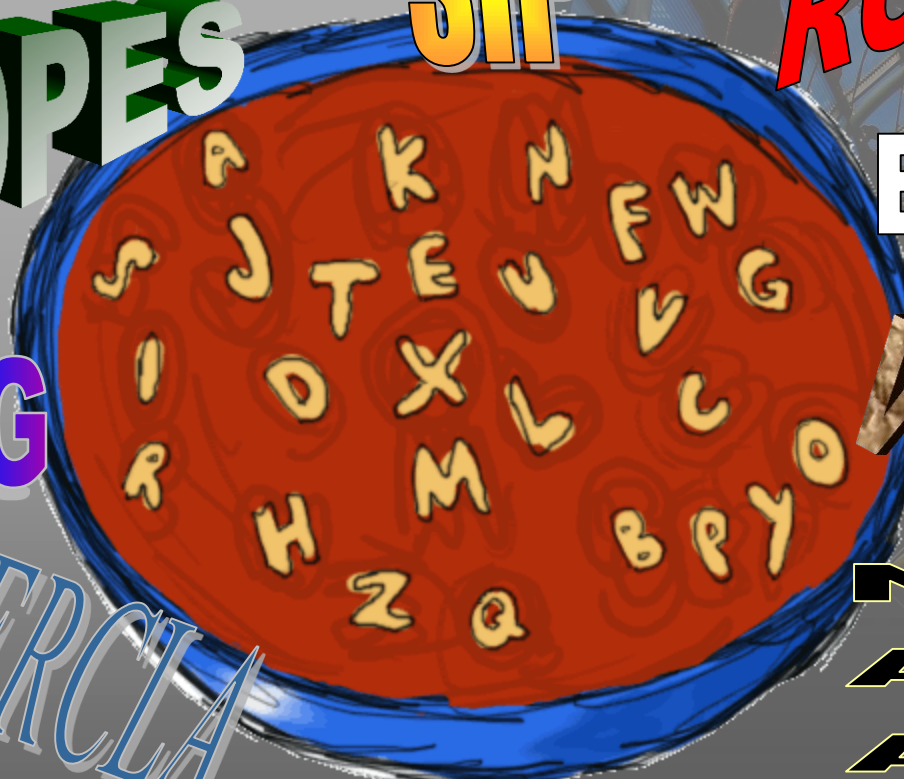
NDPES

SIP

RCRA

ELG

CESQG



UST

VOGS

CERCLA

N
A
A
Q
S

NOX

PSD

SPCC

This Presentation

Overview of Key Environmental Requirements for Airports

- Air
- Water
- Hazardous Substances
- Effluent Limitation Guidelines (ELGs)



Part 1 - Air

Understanding the Clean Air Act

- **EPA** sets National Ambient Air Quality Standards (NAAQS) for 6 “criteria pollutants”
- **States** propose a State Implementation Plan (SIP) to implement, maintain and enforce the NAAQS.
- **EPA** reviews the SIPs
 - If SIP is approved, the state and local regulations in the SIP are enforceable as Federal law
 - If SIP is rejected, EPA creates a Federal Implementation Plan (FIP) and takes over administration of the state program.

Attainment vs. Nonattainment

- Areas where air pollution levels meet the NAAQS are in “attainment”
- Areas where air pollution levels exceed the relevant NAAQS are in “nonattainment”
- Why is this relevant?
 1. More stringent emissions controls required in nonattainment areas
 2. Different permit requirements
 3. Conformity rules only apply in nonattainment areas



→ Construction

- New Source Review (NSR) Preconstruction Permits
- General Conformity Determination

→ Operation

→ Permits:

1. Title V Federal Permits
 2. State and Local Permits
- NSR Permit Conditions
 - Reporting and Recordkeeping

New Source Review (NSR)

- New major stationary sources and major modifications to major stationary sources must obtain a preconstruction permit.

NSR Permits

- Prevention of Significant Deterioration (PSD) permits for attainment or unclassified areas
 - Best Available Control Technology (BACT)
 - Emissions will not cause air pollution levels above maximum allowable increases
- Nonattainment area permits
 - Lowest Achievable Emissions Rate (LAER) technology.
 - Compliance certification

How does NSR apply to airports?

- Preconstruction permit requirement
- Day-to-day operating conditions
 - Emissions limits
 - Operating controls / technology
 - Reporting
- Minor source permits

General Conformity

→ CAA § 176(c):

“No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan after it has been approved or promulgated ...”

→ This is a *substantive* requirement

Conformity Process

- Is it a federal action?
- Is it in a nonattainment area?
- Is there an exclusion?
- Estimate emissions for portion of action not excluded.
- Are emissions above *de minimis* thresholds?
- Address criteria for conformity.
- Prepare Conformity Determination and conduct public process.

Conformity and Airport Proprietors

- The Conformity Rule applies to federal agencies.
 - FAA must make the conformity determination.
- Airport proprietors still play a crucial role.
 - Supplying background data and planning information needed to support successful conformity analysis.

So when do I need to worry?

- Conformity rule does apply:
 - Approval or revision of part or all of an ALP
 - AIP grant approvals
 - Use of PFCs for specific project(s)
 - Issuance of operations specifications
 - Many actions that also trigger NEPA requirements
- Conformity rule does not apply:
 - No federal approval or funding involved

Air Permits

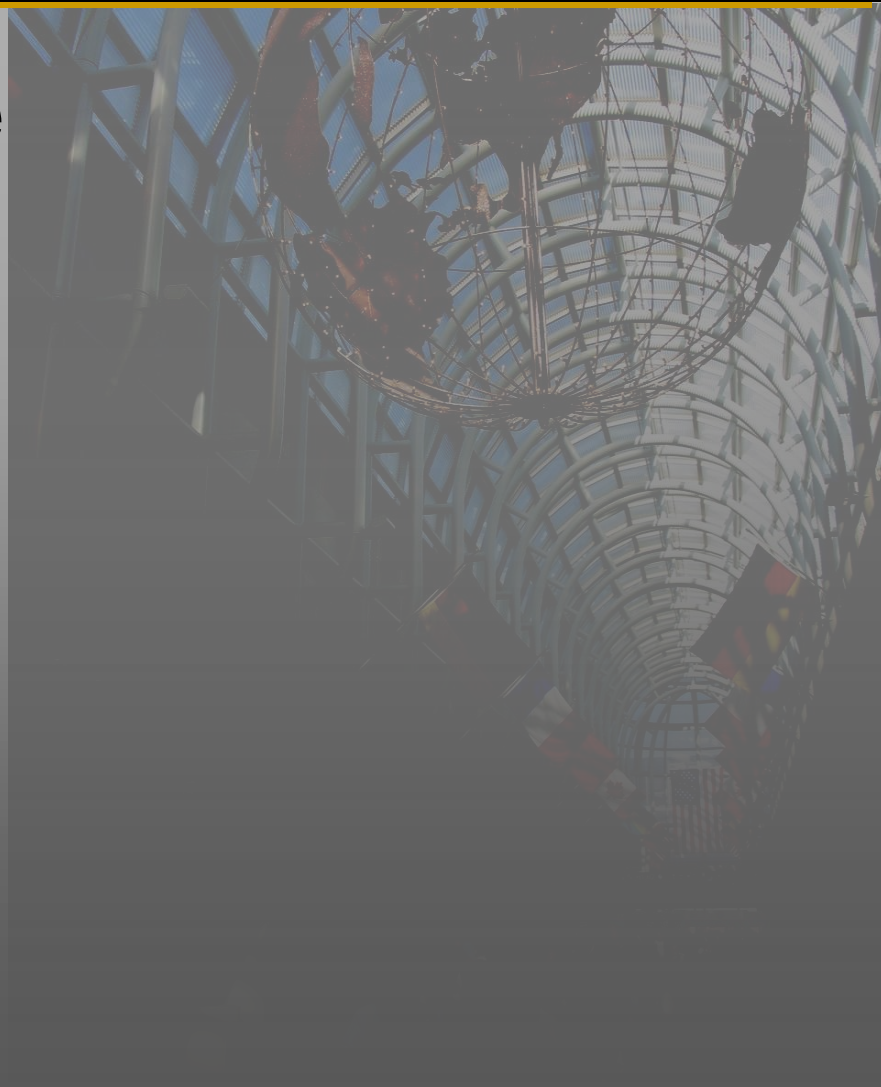
- Title V Operating Permits – Not usually required for Airports
 - Major Sources only
 - Comprehensive Permit
 - Monitoring, recordkeeping, and enforcement requirements
- State and Local Permits – More often applicable for Airports
 - Dust control
 - Mobile Sources
 - Paint fumes



Part 2 - Water

Clean Water Act Basics

- Regulatory Structure
- Limits
- Permitting
- Enforcement
- POTW Issues



Clean Water Act Regulatory Structure

- Purpose: Maintain chemical, physical, and biological integrity of the Nation's waters
- Goals:
 - Eliminate discharge of pollutants to surface waters
 - “Fishable / Swimmable” where attainable
 - Protection and propagation of fish, shellfish, and wildlife
 - Recreation in and on the water

CWA Regulatory Structure

Major Elements

- Discharges prohibited except in accordance with CWA requirements
- NPDES Permits authorize certain discharges
- Limits control authorized discharges
- Federal and/or state implementation
- Spill response, reporting, and prevention
- Permits for dredged and fill materials
- Enforcement

CWA Limits

Technology Based Limits

- Effluent Limitation Guidelines (ELGs): BPT/BCT/BAT/PSES/NSPS requirements for industry categories and classes (more in Part 4 below)
- Best Professional Judgment (BPJ)
- Backsliding prohibited

CWA Limits

Water Quality Based Limits

- Applicable when technology based limits not sufficient to maintain
- Water Quality Standards
 - Designated uses
 - Water quality criteria (numeric and narrative)
 - Antidegradation policy
- TMDL Program
 - Evaluating and listing impaired waters
 - Developing and implementing TMDLs in permits

CWA Permit Contents Pretreatment Program

- Sewer use ordinance
- Local limits
- Permit/control indirect dischargers
- Slug control plans
- Industrial user compliance monitoring
- Enforcement

Clean Water Act Enforcement

- Penalties for noncompliance
- Significant noncompliance
- Special state or federal enforcement initiative
- EPA overfiling
- Consent decrees / enforcement orders
- Citizen suits

Stormwater Program Overview

- EPA included vehicle maintenance (and deicing) in its definition of “stormwater associated with industrial activity” – Nov. 1990 (40 CFR § 122.26 (b)(14))
- EPA’s Multi-Sector General Permit serves as a *de facto* national model
- EPA preparing to publish revised MSGP

Key Issues

→ MSGP

- Benchmarks

- Monitoring (generally)

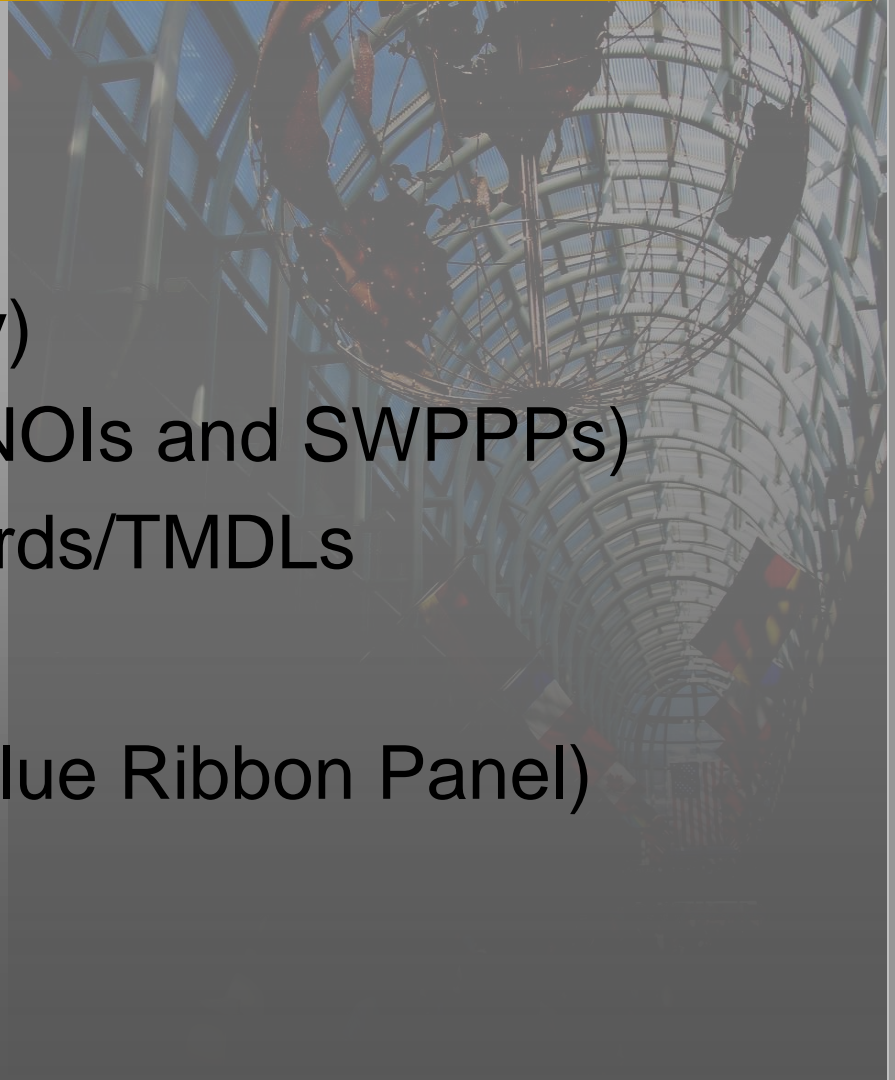
- Public/ESA review (NOIs and SWPPPs)

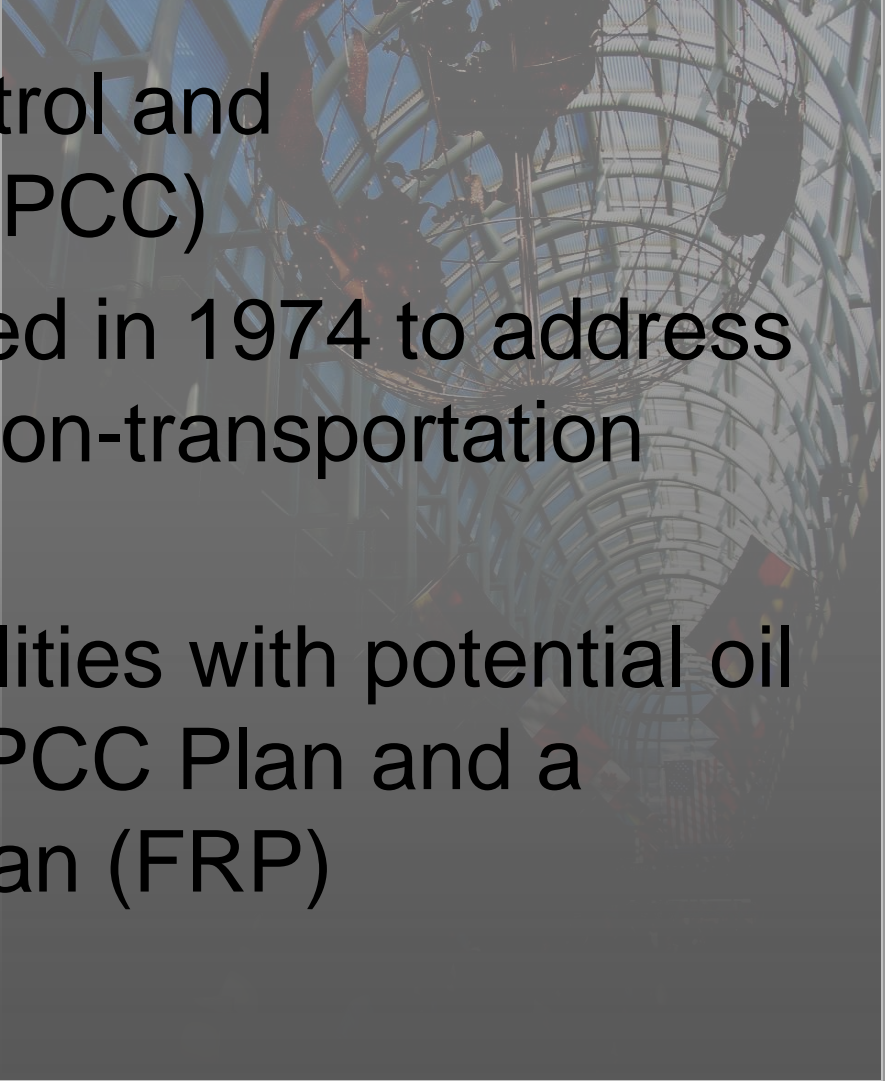
- Water quality standards/TMDLs

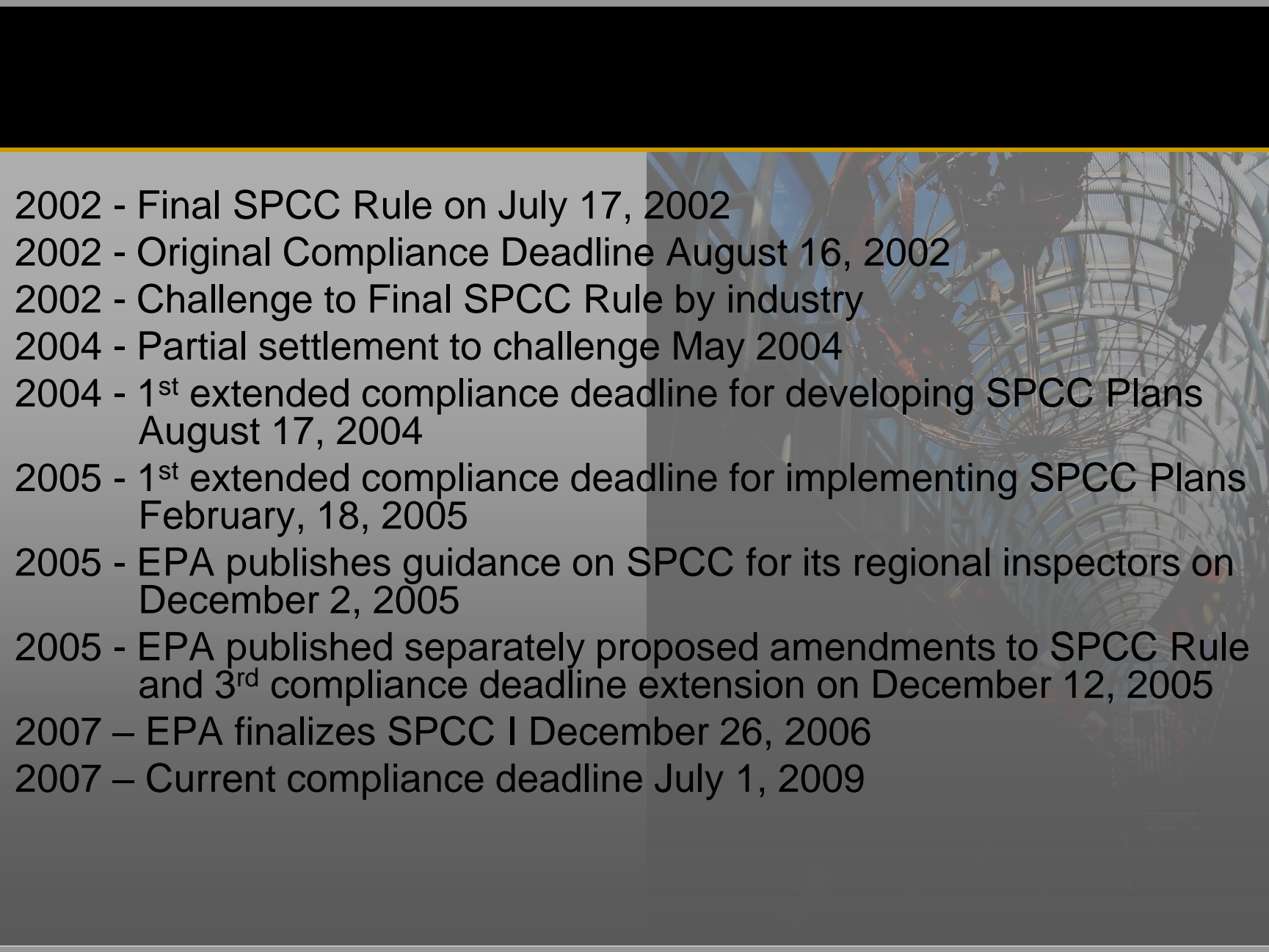
→ Other

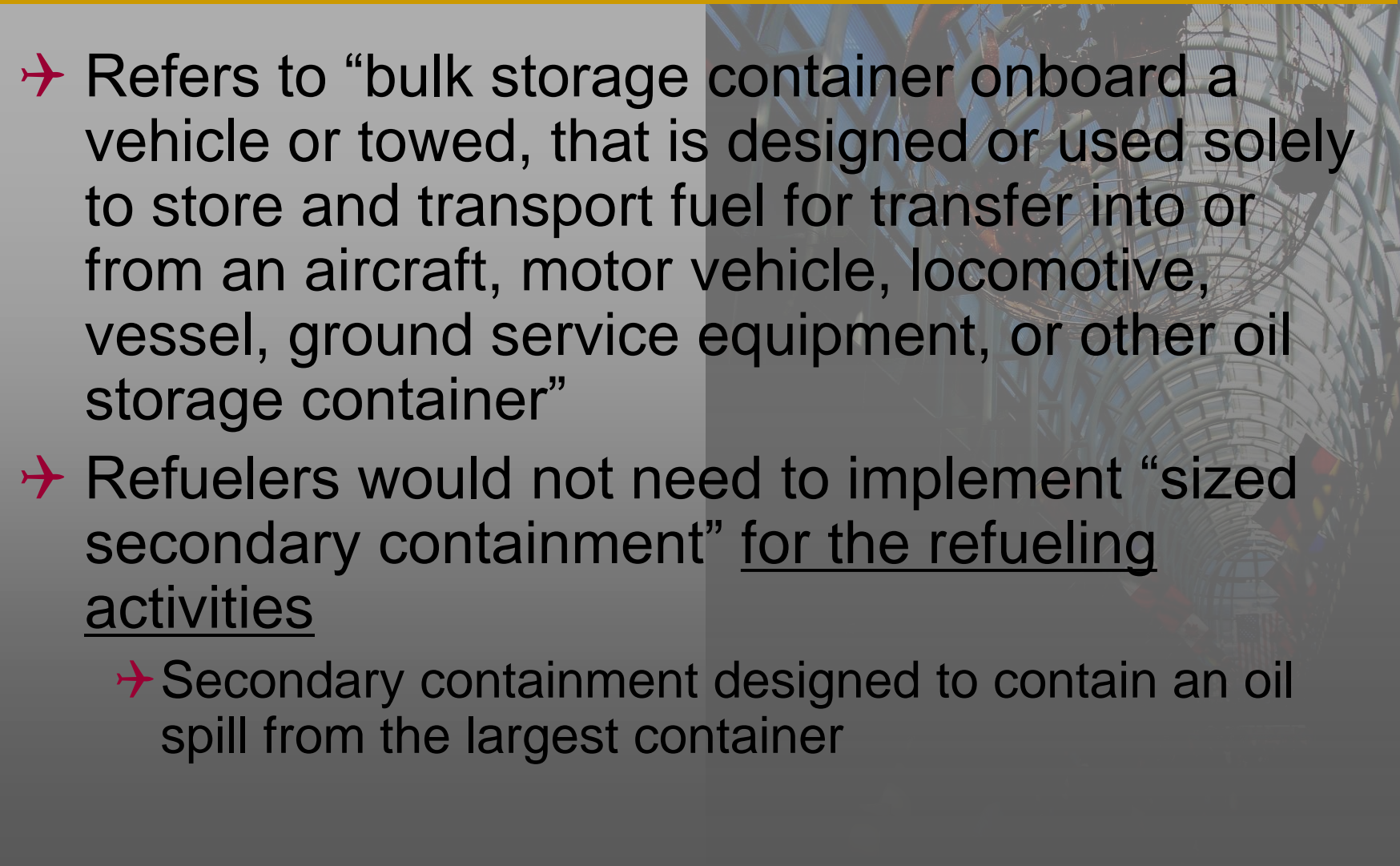
- Numeric limits (CA Blue Ribbon Panel)

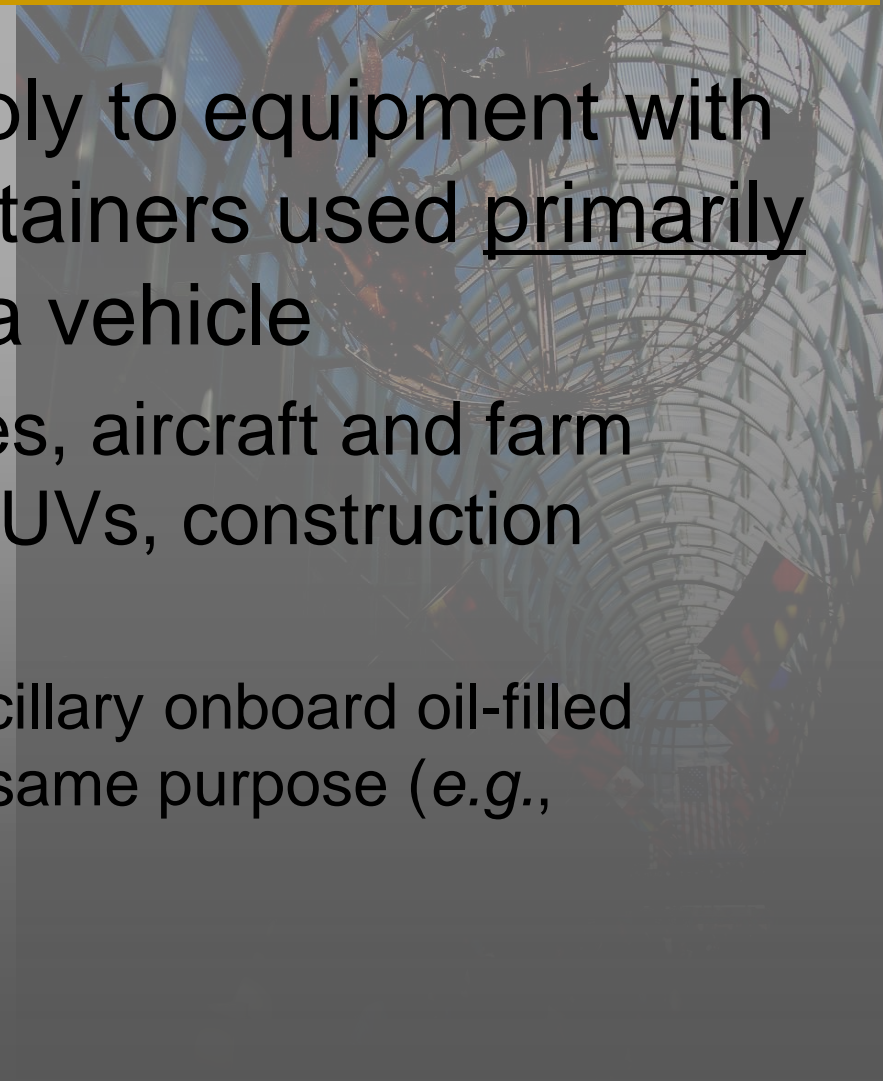
- NAS Study



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- Spill Prevention Control and Countermeasures (SPCC)
 - Originally promulgated in 1974 to address oil discharges from non-transportation facilities
 - Requires certain facilities with potential oil spills to develop a SPCC Plan and a Facility Response Plan (FRP)

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- 2002 - Final SPCC Rule on July 17, 2002
 - 2002 - Original Compliance Deadline August 16, 2002
 - 2002 - Challenge to Final SPCC Rule by industry
 - 2004 - Partial settlement to challenge May 2004
 - 2004 - 1st extended compliance deadline for developing SPCC Plans August 17, 2004
 - 2005 - 1st extended compliance deadline for implementing SPCC Plans February, 18, 2005
 - 2005 - EPA publishes guidance on SPCC for its regional inspectors on December 2, 2005
 - 2005 - EPA published separately proposed amendments to SPCC Rule and 3rd compliance deadline extension on December 12, 2005
 - 2007 – EPA finalizes SPCC I December 26, 2006
 - 2007 – Current compliance deadline July 1, 2009

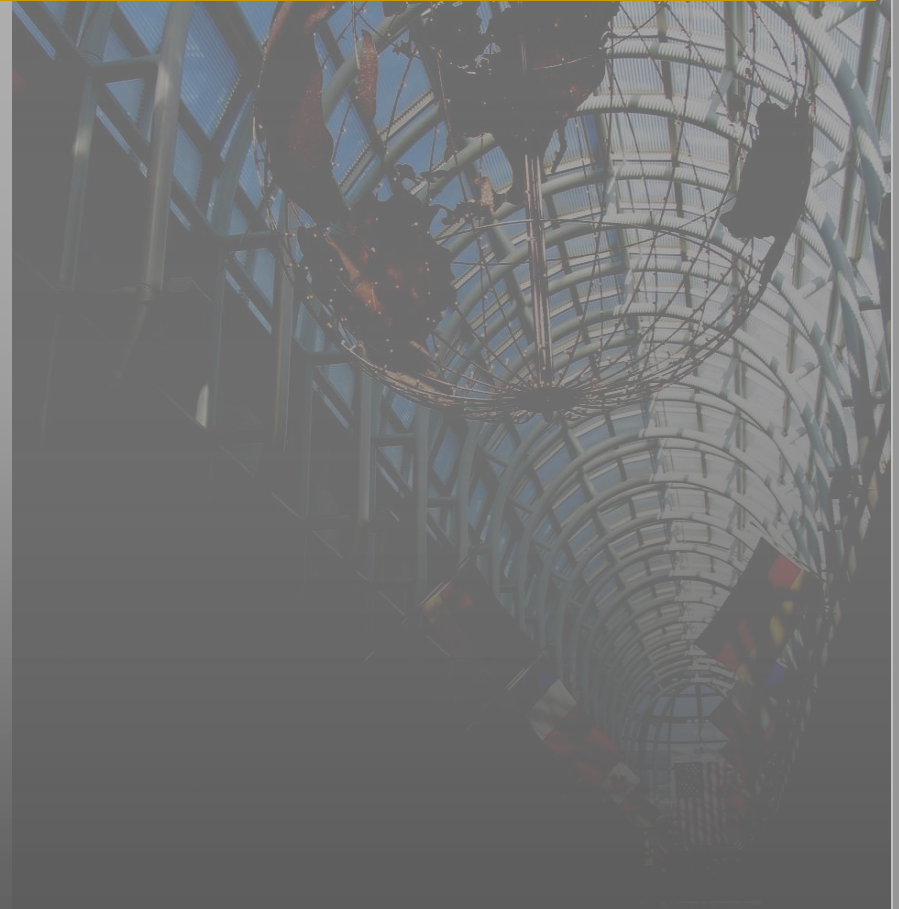
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- ➔ Refers to “bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container”
 - ➔ Refuelers would not need to implement “sized secondary containment” for the refueling activities
 - ➔ Secondary containment designed to contain an oil spill from the largest container

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- SPCC would not apply to equipment with large oil storage containers used primarily to provide power of a vehicle
 - Examples are buses, aircraft and farm equipment, large SUVs, construction equipment, etc.
 - Also applies to ancillary onboard oil-filled equipment for the same purpose (e.g., hydraulics)



Part 3 – Hazardous Substances

- Management
- Disposal
- Due Diligence



Waste Management Obligations

- Determine generator status
- Identify applicable requirements
 - Storage and Accumulation limits
 - Recordkeeping
 - Labeling
 - Training
- Watch for housekeeping issues

Generator Status

- Large Quantity Generators
> 1,000 kg per month
- Small Quantity Generators
>100 kg but < 1,000 kg per month
- Conditionally Exempt Small Quantity Generators
< 100 kg per month

Generator status is determined on month-to-month basis.

What kinds of hazardous wastes occur at airports?

- Parts washers
- Sludge from Engine Cleaners
- Painting / Paint stripping processes
- Solvents/Cleaners
- Dirty Rags

Do you know what your tenants are doing?

Waste Disposal

- Send waste to a licensed Treatment, Storage and Disposal (TSD) Facility
- Comply with Land Ban regulations
 - Certification
 - Notice to TSD
- Identify whether used oil or universal waste regulations apply.

Due Diligence

- Airport owners should conduct proper due diligence before acquiring new property.
- Risk: CERCLA liability
 - CERCLA Liability for environmental contamination is strict, joint and several.
 - Airports can be liable as owners / operators.
- Solution: conduct “all appropriate inquiry”

“All Appropriate Inquiry”

- Phase I Environmental Site Assessment according to the American Society of Testing and Materials (ASTM) E1527-05 standard
- Key components of AAI
 - Site reconnaissance
 - Records review
 - Interviews
 - Documentation of recognized environmental conditions (RECs)
- Timing: Within 6 months prior to acquisition.

Releases and Cleanup

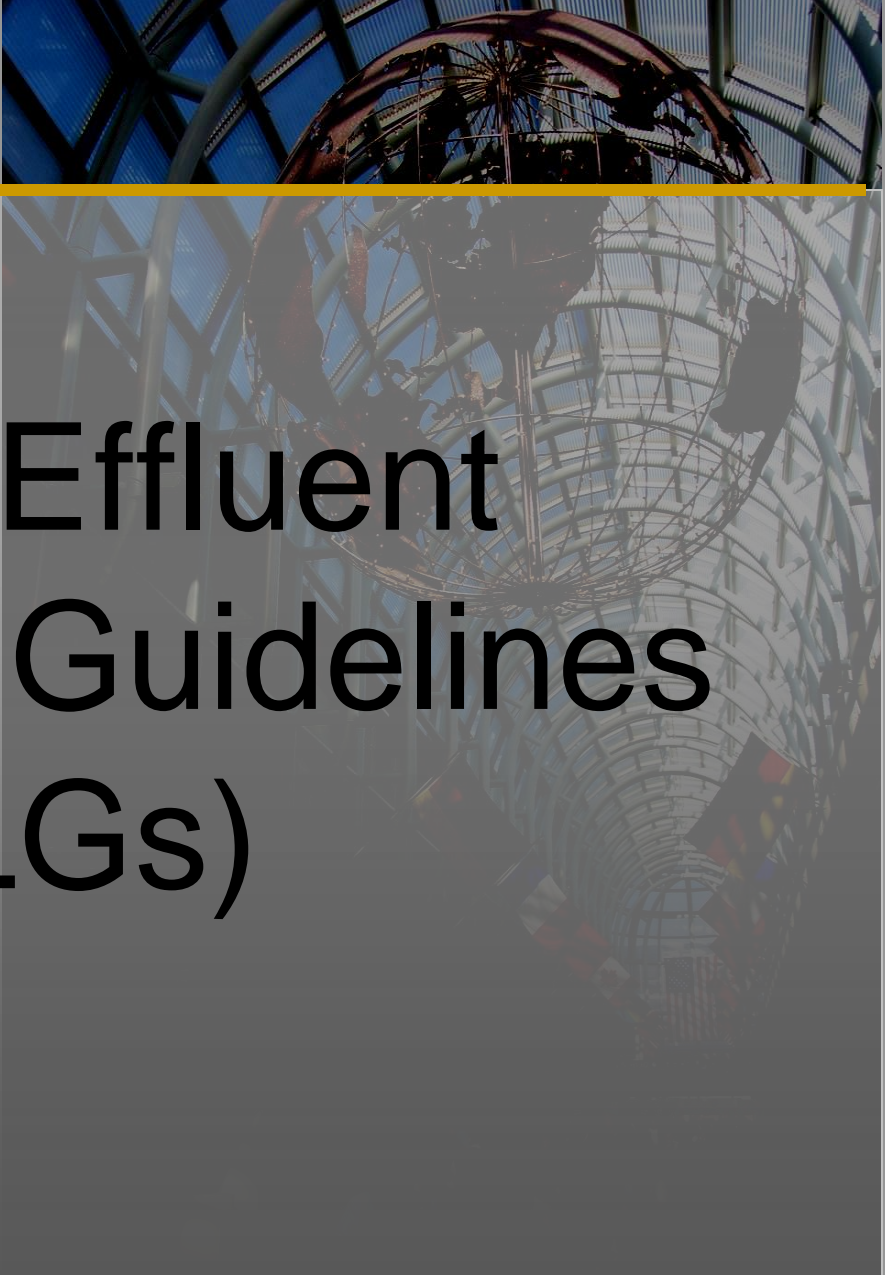
What do I do when things go wrong?

→ Reporting Requirements

1. Was it hazardous?
2. Was it a reportable quantity?

→ Cleanup

1. Federal standards
2. State voluntary clean-up programs



Part 4 – Effluent Limitation Guidelines (ELGs)

ELG Overview

- What is an ELG?
- Who might it affect?
- What's the big deal?
- What's the status of EPA's rulemaking?



What is an ELG?

- Technology-based effluent guidelines are established nationally by EPA within an industry category.
- Once established, these “best available technology” requirements replace the permit writer’s “best professional judgment.”
- Key: ELGs set the permitting minimum requirements with BAT. Water quality issues then are addressed on a permit-specific basis.

What is an ELG? (cont.)

- CWA § 304(m)(1)(B) requires EPA to identify categories of sources discharging “non-trivial” amounts of toxic or non-conventional pollutants for which EPA has not published ELGs under § 304(b)(2) or new source performance standards (“NSPS”) under § 306.
- See 69 Fed. Reg. 53,705 (September 2, 2004).

Who might it affect?

- Short Answer = any airport with the potential to conduct deicing or anti-icing operations of any type. Ask yourself if it has ever happened or might happen...
- BUT – EPA typically creates subcategories within ELGs in order to more closely tailor final compliance mandates.

Who might it affect? (cont.)

- How many subcategories? Who knows?
- Basis for differentiation: Weather? Size? Fluid use? Configuration?
- Does EPA really vary requirements from one subcategory to the next? YES
- One might expect few or no requirements for some airport types and potentially strict numeric limits for others.

What's the big deal?

- This rulemaking could alter the way your airport approaches winter operations and could require significant investments.
- Goal of airport representatives is to get a flexible best management type approach.

What's the status of EPA's rulemaking?

- EPA committed to Deicing ELG rulemaking in September 2004.
- EPA conducted site visits and limited sampling (DIA, PIT, ALB, MSP, DTW) in 2005/early 2006.
- EPA developed airport questionnaire, sent out in April 2006.
- EPA sent out screener survey to airlines about the same time.
- EPA sent out airline statistical survey questionnaire in March 2007.

What's the status of EPA's rulemaking?

(cont)

- EPA is analyzing data from questionnaires and working on its economic and other statistical models.
- EPA's official pronouncement is to propose the rule by June 2008.

What's the status of EPA's rulemaking?

(cont)

- CWA § 304(m)(1)(B) states that EPA must promulgate ELGs for “new categories” within 3 years of listing on 304(m) plan.
- Remember – original 304(m) listing was September 2004.
- EPA now vulnerable to possible citizen suit.



Questions?



Other Environmental Issues for Airports

- Reporting
- OSHA and Worker Safety



Reporting

- Permits (Federal, State and Local)
- Emergency Planning and Community Right to Know Act (EPCRA)
 - Emergency planning (§ 301 – 303)

One time notice for certain listed chemicals at or above threshold planning quantities.
 - Emergency release notification (§ 304)

Immediate notice if release above minimum reportable quantity thresholds.
 - Community Right-to-Know (§§ 311, 312)

Annual submission of inventory of certain on-site hazardous chemicals.
 - Toxic chemical release inventory (§ 313)

Annual submission of Toxic Chemical Release Inventory Form (releases and waste management during past year)

OSHA and Worker Safety

- Hazard Communication Standard Regulations
 - Hazard determinations
 - Labeling
 - Material Safety Data Sheets (MSDSs)
 - Employee Training and Information
 - Written Hazard Communication Program
- Airports need to focus on the last three



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