Coast Guard, DHS

PART 137—OIL SPILL LIABILITY: STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRIES UNDER THE INNOCENT LANDOWNER DEFENSE

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§ 137.5 Disclosure obligations.

(a) In general under the Oil Pollution Act of 1990 (33 U.S.C. 2701, et seq.), an owner or operator of a facility (as defined in §137.10) that is the source of a discharge, or a substantial threat of discharge, of oil into the navigable waters or adjoining shorelines or the exclusive economic zone is liable for damages and removal costs resulting from the discharge or threat. However, if that person can demonstrate, among other criteria not addressed in this part, that they did not know and had no reason to know at the time of their acquisition of the real property on which the facility is located that oil was located on, in, or at the facility, the person may be eligible for the innocent landowner defense to liability under 33 U.S.C. 2703(d)(4). One element of the defense is that the person made all appropriate inquiries into the nature of the real property on which the facility is located before acquiring it. The purpose of this part is to prescribe standards and practices for making those inquiries.

(b) Under 33 U.S.C. 2703(d)(4)(E), this part does not apply to real property purchased by a non-governmental entity or non-commercial entity for residential use or other similar uses where a property inspection and a title search reveal no basis for further investigation. In those cases, the property inspection and title search satisfy the requirements of this part.

(c) This part does not affect the existing OPA 90 liability protections for State and local governments that acquire a property involuntarily in their functions as sovereigns under 33 U.S.C. 2703(d)(2)(B). Involuntary acquisition of properties by State and local governments fall under the provisions of 33 U.S.C. 2703(d)(2)(B), not under the all-appropriate-inquiries provision of 33 U.S.C. 2703(d)(4) and this part.

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§ 137.5 Disclosure obligations.

(a) Under 33 U.S.C. 2703(c)(1), persons specified in §137.1(a), including environmental professionals, must report the incident as required by law if they know or have reason to know of the incident.
§ 137.10 How are terms used in this part defined?

(a) The following terms have the same definitions as in 33 U.S.C. 2701: damages; discharge; incident; liable or liability; oil; owner or operator; and removal costs.

(b) As used in this part—

Abandoned property means a property that, because of its general disrepair or lack of activity, a reasonable person could believe that there is an intent on the part of the current owners to surrender their rights to the property.

Adjoining property means real property the border of which is shared in part or in whole with that of the subject property or that would be shared in part or in whole with that of the property but for a street, road, or other public thoroughfare separating the properties.

Data gap means a lack of, or inability to, obtain information required by subpart B of this part despite good faith efforts by the environmental professional or persons specified in § 137.1(a), as appropriate, to gather the information under § 137.33.

Environmental professional means an individual who meets the requirements of § 137.25.

Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

Good faith means the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one’s obligations in the conduct or transaction concerned.

Institutional controls means non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to oil discharge and/or protect the integrity of a removal action.

Relevant experience means participation in the performance of all-appropriate-inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of the presence or likely presence of oil at the facility and the real property on which the facility is located.

§ 137.15 References: Where can I get a copy of the publication mentioned in this part?

Section 137.20 of this part refers to ASTM E 1527–05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. That document is available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. It is also available for inspection at the Coast Guard National Pollution Funds Center, Law Library, 4200 Wilson Boulevard, Suite 1000, Arlington, VA.

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Subpart B—Standards and Practices

§ 137.18 Duties of persons specified in § 137.1(a).

In order to make all appropriate inquiries, persons seeking to establish the liability protection under § 137.1(a) must conduct the inquiries and investigations as required in this part and ensure that the inquiries and investigations required to be made by environmental professionals are made.

§ 137.20 May industry standards be used to comply with this regulation?

The industry standards in ASTM E 1527–05, (Referenced in § 137.15) may be