

Clean Water Act (CWA) Hazardous Substances Spill Prevention

Public Input Summary

EPA held three public sessions to listen to stakeholders provide their views relevant to the prevention of discharges of hazardous substances, and the containment of such discharges, from onshore facilities, including methodologies and technologies for preventing such discharges. This document summarizes the comments received during all three sessions:

November 2, 2016 – Charleston, WV
November 29, 2016 – Virtual meeting
December 1, 2016 – Virtual meeting

A more detailed summary of comments received during each meeting will be included in the docket for the proposed rulemaking.

Summary of Public Comments

- In addition to strong regulations, establishing mechanisms to ensure those regulations are enforced is vital (citing the example of the Freedom Industries Elk River chemical spill in West Virginia in 2014 in which a tank that was supposed to have been inspected for viable secondary containment was not.)
- Even good laws can be disobeyed. A strong enforcement mechanism, such as third party audits with published results, is recommended to discourage criminal behavior. This could include spot checks, as it is not realistic to check all facilities. Freedom Industries had not been inspected in 10 years.
- The public counts on the government to protect it from bad actors. EPA is the “backstop” for ensuring that water quality standards are enforced. It is important that industry not be allowed to regulate itself.
- Without sufficient personnel and political will to focus on enforcement, the public is still at risk. Swift, sure consequences for facilities are needed that rise above a slap on the wrist. Currently, operating illegally is more profitable than complying with the law.
- It is unreasonable to assume that industry will self-regulate.
- Keep the rule simple and easy to implement to increase compliance.
- Establish a chemical spill center to provide a knowledge infrastructure for data collection, analysis and publications.
- An educated and engaged public helps avoid spills. Such education could occur through watershed signage, or simply by making the public aware of the dangers of pouring out household chemicals.
- Although industry resists the disclosure of chemical trade secrets, the public deserves to have knowledge of health hazards, including flammability and stability, of chemicals stored at a facility. Specific chemicals do not need to be disclosed for this to be possible.
- Honor the public’s right to know what facilities are storing in their tanks and what the health impacts of incidents are.

- Commenters who made recommendations should be included in the rulemaking process.
- Protect water sources and provide publically available information about where threats are located. For example, a map or database could be developed through which the public could query which facilities have spill insurance. Pipeline and rail releases should also be considered, including potentially mapping sections of pipelines or rails that are upstream from water intakes.
- West Virginia Department of Environmental Protection has an online mapping application to identify which intake is downstream from any facility in the state. This tool can be used by emergency response organizations, but should also be used by facilities to determine downstream intakes.
- If chemicals are patented, there is no reason for secrecy and the impacts these chemicals might have on citizens should be made public.
- Inspectors should take digital photographs of secondary containment infrastructure, apply a global positioning system (GPS) coordinate and a time stamp, and add that image to a database.
- Secondary containment systems should be required, and the volumes in which chemicals are stored should be reduced in order to reduce the size of potential spills, should they happen. Require the use of safer chemicals when available and feasible.
- Require facilities that store hazardous chemicals in quantities large enough to cause harm to people and communities to prepare plans for responding to a worst case discharge (WCD) in accordance with the Oil Pollution Act of 1990 (OPA).
- EPA’s proposed rule should require: secondary containment; periodic inspections of primary and secondary containment; and robust disclosure, monitoring, and notifications.
- Not only should all above ground storage tanks be subject to the previously listed requirements, they also should be required to have a plan for responding to a WCD of a hazardous substance, as required under OPA. This directive for issuing facility response plans (FRPs) is codified in the CWA and EPA was delegated this responsibility to implement within 24 months. Use this rulemaking process as an opportunity. Developing these rules in concert makes sense as they would apply to many of the same facilities.
- Mandate buffer zones between chemical facilities that store or use hazardous chemicals near waterways or water intakes (e.g., mandate a buffer zone for drinking water, similar to buffer zones for certain species such as trout).
- Tier requirements based on risk of the chemical reaching waterway or receptors.
- Define “substantial harm” based on volume and toxicity of materials stored. Facilities that pose substantial harm should have to comply with 40 CFR 112, Appendix C.
- Classify chemicals based on their toxicity and develop a standard to regulate the size of storage tanks to prevent large releases, such as the one that occurred on the Elk River.
- Require installation of leak detection or monitoring devices, as required for underground tanks, in order to allow for early detection of leaks.
- Require that accurate and updated safety data sheets (SDS) be shared not only with response organizations, but with relevant water facilities and health organizations.

- Require regular external and internal inspections of above ground storage tanks to identify early signs of problems.
- Develop plans to ensure critical water infrastructure has the capacity to treat contaminated water.
- Federalize water source protection near above ground storage tanks.
- Require facilities to use inherently safer design, similar to the 2015 revised underground storage tank standards.
- Require addition of secondary containment mechanisms when installing or replacing tanks.
- Ensure that single-walled tanks and piping have containment systems large enough to contain the contents of a storage tank in case of a catastrophic release.
- Require that all regulated tanks and piping have leak detection systems such as tank gauging and continuous in-tank leak detection.
- Require monitoring for the presence of contamination in air, soil, and groundwater surrounding chemical handling and storage.
- Require tanks to have overfill detection devices such as flow restrictors and alarms.
- Ensure that all metal tank system components that come into contact with the ground are protected from corrosion.
- Mandate that installers carefully follow correct installation procedures according to industry and manufacturer codes.
- Require compliance demonstration certification, as well as require owners and operators to maintain records of leak detection testing and corrective actions taken.
- Develop manuals for owners and operators containing best management practices for above ground storage tanks.
- Recently there has been news about lawsuit settlements (\$151 million) related to the Freedom Industries spill. Insurance companies are now working to figure out their financial obligations. Facilities have gaps in insurance coverage. Many insurance companies exclude chemical releases from common policies, and companies need specific spill insurance (i.e., environmental liability insurance). Every above ground storage facility that could affect downstream water supplies should be required to obtain this insurance. These requirements should extend to, or protect, downstream water supplies.
- The proposed rule should mandate that facilities maintain emergency contact information for every public water utility that is 25 miles downstream or closer, and should require notification to these stakeholders of a release.
- Any entity that violates above ground storage tank regulations should not be permitted to store hazardous substances above ground.
- Examine underground storage tank regulations for best practices, such as inventory controls, pressure integrity testing, design standards, and secondary containment controls.
- Use the above ground storage tank legislation drafted in Pennsylvania as a starting point and then make EPA's new regulations more stringent.
- Use Resource Conservation and Recovery Act (RCRA) surface impoundment regulations as a model to follow.

- Develop regional response teams to respond to chemical spills that threaten drinking water supplies. Ohio River Valley Water Sanitation Commission (ORSANCO) is an example that could be replicated throughout the country.
- The best way to protect communities from spills is to prevent spills in the first place. The best protection against spills is to prevent leaks in the first place.
- Require development of communication plans that ensure the timely dissemination of information to emergency response organizations, public health agencies, and other entities.
- Emergency notifications should be made within 2 hours - it costs nothing for facilities to make a phone call. American Water Works Association recommends one hour.
- Consider whether a new rule is necessary, as the State of West Virginia has already taken steps to address issues highlighted by the Freedom Industries spill. States can provide significant protection, and EPA should be cognizant of the burden put on manufacturers by additional regulation. Complement rather than duplicate existing rules.
- West Virginia did respond to the Freedom Industries incident and passed the Aboveground Storage Tank Act (Bill 373), which covered most tanks in the state. A year later, however, the percentage of tanks regulated has been reduced to just 17 percent. As a result of this loophole, all tanks will effectively be eliminated from being regulated within the next five years.
- When Bill 373 was introduced to the West Virginia state legislature, it was a very strong bill. However, now the strength of the bill has been taken out.
- One commenter could not believe that anyone would suggest that existing regulations are sufficient. While there might be laws on the books, it is evident they are not working.
- Prevent onerous reporting requirements, as the Tier II reporting system under the Emergency Planning and Community Right-to-Know Act (EPCRA) already satisfies this need and provides EPA with significant information related to the storage of hazardous substances.
- One commenter provided a list of current regulations under which industry conducts spill or accident prevention activities: the Mine Safety and Health Administration Surface Mining Control and Reclamation Act (MSHA SMCRA), RCRA, the National Pollutant Discharge Elimination System (NPDES), State water quality standards, the Toxics Release Inventory (TRI) program, Department of Transportation (DOT) regulations, Department of Homeland Security (DHS) reporting, and state regulations in Indiana (2-6, 2-10) and Wyoming (Chapters 4, 17 and guidance documents 1 and 7). Please consider these requirements to avoid duplication or confusion. Consider improvements as well.
- Use existing Spill Prevention, Control, and Countermeasure (SPCC) framework to build on. Keep spill prevention/response requirements under one roof and in one binder.
- Make reasonable regulations. The rule should be targeted, focused, and specific to address gaps. EPA should take full stock of the web of existing requirements, including: NPDES, Source Water Assessment Program (SWAP), EPCRA, Occupational Safety and Health Administration (OSHA) hazardous communication and flammable liquids program, and state regulations (Indiana, West Virginia). If there's no risk to navigable waters, there's no risk. Calculate costs and benefits accurately. Provide flexibility where possible.

- Change the mentality regarding storage locations. Protections are needed for population centers, marginalized communities, and water resources. There are some 50,000 above ground storage tanks in West Virginia, and most of them are within 1,000 feet of waterways.
- Establish reasonable applicability thresholds, with de minimis levels. Secondary containment and spill liners are important; RCRA standards for surface impoundment could serve as an example of a good regulation.
- This rule should cover additional chemicals. Many toxic chemicals – including 4-Methylcyclohexanemethanol (MCHM) – are not included in the existing list.
- Play as strong of a role as possible in supporting and promoting regulations related to the inspection of storage tanks, shipping containers, and pipelines carrying chemicals; spills are a significant economic burden to the entire community.