

Industry's Perspective on the New Clean Water Act Hazardous Substance Facility Response Plans Final Rule

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WITT O'BRIEN'S

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response

Regulated: Threshold Quantity



Clear:

- 1,000x multiplier (different from the proposed rule of 10,000x)

Foggy:

- Not just containers like oil OPA90, can be:
 - Containers, systems, interconnected piping/containers, etc., must be evaluated

Exemptions: Exclusions - Clear



Clear:

- USCG Transportation Modes - *33 U.S.C. 1321(j)(5)(C)*
- DOT Transportation Modes - *49 CFR parts 171-180*
- Equipment/Operations MOU - *40 CFR part 112, Appendix B*
- USTs/Piping – *Under 280 or 281*
- Articles – *Endpoint Design*
- Uses (*a term*) – *As defined in the new rule*

Exemptions: Foggy



Foggy (Will take a lot of time/effort):

- Known mixtures – use the highest range
 - Will require calculations per mixture
- Unknown mixtures – assume HS in 100% of the known portion
 - Will require calculations per mixture

Exemptions: Beware



Beware:

- Process/cooling water – limited, not all-inclusive
 - Natural and Municipal only
- Gases/Solids – Left to best judgment – revolving door
 - Not exempt outright
- POTW/Municipal versus Industrial – Exempt or not?
- Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (40 CFR part 264 and part 265) and RCRA Generators (40 CFR part 262 subpart M)

Exemptions: Omission?



Confusing:

- Preamble excludes 40 CFR 112.20 OPA90 Oil
 - Rule doesn't include preamble statement
 - If meant for the rule, what about non-OPA90 oil = SPCC Oil? The preamble states 112.20 (OPA90), not 112.

Applicability – New Process



- **Appeals and Petitions**

- Refer to Troy's presentation – Key takeaways:
 - a process to appeal an EPA determination of applicability
 - a process for the public to argue your applicability

Applicability – Planning Distance



Foggy: Conveyance to Navigable Water

- No time frames like OPA90 Oil
- Distance limitations/cutoffs/...????

Applicability – Make Note!



Learning curve:

- *(i) Violates any National Primary Drinking Water Standard or State Drinking Water Regulation, such as an exceedance of a Maximum Contaminant Level;*
- *(ii) Compromises the ability of the public water system to produce water that complies with any National Primary Drinking Water Standard or State Drinking Water Regulation;*
- *(iii) Results in adverse health impacts in people exposed to the maximum concentration that could enter a drinking water distribution system;*
- *(v) Impairs the taste, odor, or other aesthetic characteristic of the water entering a drinking water distribution system to a degree that could make the water unacceptable to consumers and that could prompt the public water system to issue use restrictions;*

WCD – More than one!



- WCD per regulated HS
 - Will require multiple reviews/calculations
 - Not just a volume statement – impact considerations based on HS on the environment, too!
- Not largest container; largest capacity capable onsite
 - Not black and white
 - Container(s), systems, interconnected piping/containers, etc., must be evaluated

Planning Distance – Devl. Needed



- Must use models – currently non-existent for application
 - Overland considerations – *similar to OPA90*
 - Distance considerations – *similar to OPA90*
 - CWA HS properties – many variables – dependent on HS
 - Evaporation
 - Solubility
 - Speciation in water
 - Polarity
 -

Response Resources



- **Resources:** At plan holders' discretion based on HS
 - Open to interpretation – revolving door
- **Contracts**
 - Equipment – Like OPA90
 - Fire/explosion – New evidence
 - Must now have an internal fire liaison
- **New consideration:** Air and Water monitoring equipment

Training and Drills



- **Training:** At plan holders' discretion
 - No current PREP amendment – can lead to confusion
 - EPA is working on updating PREP
- Shall coordinate with gov. officials – or document attempts

Two Key Responses Timeframes



- ***i) One hour of discharge detection:*** Complete notifications; mobilize facility response personnel for immediate response actions; identify the scale of the incident and coordinate with SRO on appropriate response actions; complete cross-check of worst case discharge scenarios and resulting potential effects to begin tactical planning based on the scale of the incident; ensure containment and neutralization systems are operational; coordinate evacuation of facility, if necessary; coordinate with drinking water authorities; mobilize response equipment, as appropriate; and coordinate with local police and fire officials. Initiate community evacuation plan, if necessary, and evaluate if downstream (or upstream, if tidally influenced waterbody) public receptors that could be impacted and may require evacuation.
- ***(ii) Two hours of discharge detection:*** As appropriate, deploy response resources identified in the response plan, including containment and recovery devices (such as containment dams, culvert plugs, underflow dams, containment booms, skimmer equipment or acid/base neutralization resources); and initiate any water, soil, and air monitoring as outlined in the response plan.

Disposal Plan



- Mainly mirrors OPA90
 - **New item:** Management of spent chemicals, including firefighting runoff management.

Coordination Activities



- Coordinate with LEPC and TEPC – Documented – **Initially and Annually**
 - Proof
 - Agreements
 - Attempts
- Coordinate with downstream public water systems – **Initially during plan development**

- Format mainly mirrors oil OPA90
 - ACP/NCP alignment (where/when available, not always current: being updated-When?)
 - ERAP
 - Facility descriptions/overview/contacts/etc.
 - QIs
 - Planning discussions/resources
 - Evacuation Plans
 - Disposal Plans
 - Hazard Evaluation (more in-depth, but not complicated)
 - Training/Drills

FRP Development - New



- A signed affirmation that the owner or operator has reviewed relevant plans during facility response plan development and resubmission
- QI responsibilities: align with new requirements in HS rule
 - Must understand HS characteristics to make proper notifications and determinations
- Discharge Detection Systems: Emphasis on air and water monitoring capabilities – equipment/process/plan

- Hazard Evaluation Additions
 - *impacts to communities with environmental justice concerns; and impacts of climate change, including but not limited to the increased frequency and intensity of extreme weather events, temperature fluctuations, rising seas, storm surges, inland and coastal flooding, drought, wildfires, and permafrost melt in northern areas. Illustrative diagrams of the hazard evaluation should be included.*
 - Risk identification matrix – *Similar to OPA90*
 - Risk characterization matrix
 - Risk control – *Similar to OPA90*
 - Risk communication – *Similar to OPA90*