



July 13, 2022

Comment Clerk  
Docket ID: EPA-HQ-OLEM-2021-0585-0001  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

**RE: [EPA Clean Water Act Hazardous Substance Worst Case Discharge Planning Rule](#)  
Docket ID: EPA-HQ-OLEM-2021-0585-0001**

The Association of State Drinking Water Administrators (ASDWA) is the professional association representing the collective interests of the 57 state and territorial drinking water programs serving as the primacy agencies who administer the Safe Drinking Water Act (SDWA). ASDWA's members are coregulators with EPA for ensuring safe drinking water and continuing to improve public health protection every day.

ASDWA appreciates the opportunity to provide these supportive comments on EPA's proposed rule to require Facility Response Plans (FRPs) for worst case discharges of Clean Water Act (CWA) hazardous substances during extreme weather events to protect communities from leaks and spills that can contaminate drinking water sources. This proposal is a step in the right direction and ASDWA recommends that the Agency expand the regulatory requirements in the future to include all chemical facilities that are in source water protection areas and that have had previous spills regardless of the hazardous substance threshold quantity, as well as more robust planning efforts.

These comments do not necessarily represent the specific views and concerns of individual states or consensus from all states and territories. ASDWA recommends that EPA consider individual state's comments, in addition to ASDWA's, to gain further perspective.

### ***Overarching Comments***

ASDWA commends EPA for developing this long overdue proposed rule that can further protect drinking water supplies from becoming contaminated by hazardous substance discharges under the CWA. ASDWA has provided multiple comment letters to EPA that recommend the use of a holistic lifecycle approach, such as the Agency's actions on per- and polyfluoroalkyl substances (PFAS). ASDWA continues to recommend the use of this type of approach to assess, address, and remove or prevent contaminants from entering the environment (and drinking water sources), which includes preparing for and responding to spills and discharges.

Preparation and response for spills and discharges requires close coordination with Federal, state, and local agencies, and stakeholders to ensure that planning and communication account for the worst-case discharges that could cause substantial harm to the environment or navigable water (including both surface water and ground water sources of drinking water) from extreme weather events, accidents, or disasters.

This proposed rule is particularly necessary to enhance the responsibility of facilities to assess and address risks from onsite hazardous substances and other contaminants, and plan for and respond to potential impacts to drinking water sources, rather than leaving the sole responsibility on community water systems. This rule will help to ensure that these facilities are taking action and coordinating efforts with community water systems, which were already required to prepare for these types of potential events and conduct emergency response planning actions in accordance with the 2018 America's Water Infrastructure Act (AWIA).

### ***Initial Screening and Substantial Harm Criteria Should Be Expanded***

ASDWA recommends that EPA revise the initial screening and substantial harm criteria for onsite threshold quantities, distance to navigable water, and reportable discharge history to account for drinking water impacts, and add more criteria as follows.

- **Initial Screening Determination Factors:** EPA should add the two initial screening criteria together to create a combined determination factor based on both criteria, instead of having the threshold be the first determination factor unto itself, before considering the distance to a navigable water (or source water protection area as noted in the following comments).
- **Threshold Quantities:** The initial screening criteria to determine whether a facility has the container capacity for a CWA hazardous substance onsite at or above a threshold quantity does not account for multiple tank discharges of all the onsite hazardous substances at one time. The initial screening criteria also does not account for potentially exacerbated public health and environmental risks and dangers from mixtures of hazardous and other onsite non-hazardous substances released at the same time, or for discharges from multiple facilities at the same time. EPA should instead consider maximum volumes and aggregate storage capacity for each onsite hazardous substance and all other substances at each facility (and at nearby facilities) where an extreme weather event such as flooding, hurricanes, earthquakes, or other natural disasters may cause multiple discharges of different substances from one or more facilities at the same time.
- **Distance to Navigable Water and Source Water Protection Areas:** In the final rule, EPA should expand the initial screening criteria to determine whether the facility is within one-half mile to navigable water or a conveyance to navigable water to consider discharges within source water protection areas that may amount to further than one-half mile distances to surface water sources of drinking water and additional impacts from spills on land to ground water sources of drinking water. This screening criteria should also include coordination with the state drinking water program and/or water

system to incorporate the location of intakes or wells that are planned but not yet online, including riverbank and riverbed filtration wells. ASDWA recommends that the final rule require any facility within a source water protection area, or within a distance that could impact a planned intake, well, or riverbank or riverbed infiltration well, to prepare an FRP.

- **Facility Discharge History:** In the final rule, EPA should expand the substantial harm criteria for facility discharge history to include a history of repeated spills and any spills within the last ten years, instead of just the last five years.
- **Additional Climate and Environmental Justice Criteria:** In the final rule, EPA should add specific substantial harm criteria to account for site-specific climate risks, such as if the facility is located within a floodplain or wildfire risk area and assess hazardous substance discharge risks that have the potential to disproportionately affect environmental justice communities.

### ***Proposed Approach for Adverse Impacts to Public Water Systems and Coordination is Essential***

ASDWA commends EPA for the proposed approach to:

- Evaluate whether a CWA hazardous substance discharge would adversely impact a public water system based on distance to, and concentrations in, drinking water sources regardless of the need for drinking water treatment;
- Require facilities to coordinate and document efforts to coordinate with water systems and yet acknowledge how this may be a burden to some water systems, especially small water systems, to voluntarily participate in coordination activities with an unknown number of upstream facilities; and
- Suggest consultation with state drinking water primacy agencies to consider potential downstream impacts and adhere to 2018 AWIA Section 2018 spill notification requirements under EPCRA or CERCLA.

Regarding coordination with water systems, ASDWA recommends that if a water system declines to participate or respond, that at a minimum, the facility should be required to provide the water system with emergency contact information for the facility, along with access to data and information about all onsite substances (including characteristics and potential health effects) in case of discharges and spills. This provision of basic contact information would effectively enhance the AWIA Section 2013 requirements for water systems to include contact information for upstream facilities in their emergency response plans and go beyond the AWIA Section 2018 requirements for water system access to EPCRA Tier II chemical inventory data.

### ***CWA Hazardous Substance Facility Response Plans and Training Exercises Should Be Expanded and Coordinated with Water Systems***

In the proposal, the plans are to be updated “periodically” and revised within 60 days of a facility change. Additionally, each facility response plan (FRP) is to be updated “periodically” on

a schedule established by the Regional Administrator. To match up with other regulatory requirements, ASDWA recommends that EPA expand the rule to require facilities to review and, if necessary, update their FRPs every five years and recommends that facilities coordinate with water systems, who have similar requirements for emergency response plans in accordance with AWIA Section 2013. This should also include facilities that are conducting drills and exercises with emergency response officials and other essential stakeholders, such as these facilities. ASDWA recommends that EPA provide guidance for and help facilitate coordination of existing and planned workshops and training opportunities between the facilities and water systems. These exercises should include specific scenarios that include climate risks and CWA hazardous substance discharges.

### ***Spill Prevention***

In addition to the facility CWA worst-case discharge planning and FRP components in the rule, EPA should develop spill prevention regulations to require facilities to implement inherently safer practices related to above ground tank and hazardous substance storage, spill-prevention, and onsite spill response.

In closing, ASDWA emphasizes that EPA should coordinate across federal and state drinking water and clean water programs, between the Office of Water and Office of Land and Emergency Management, and with water systems and stakeholders to ensure that this rule considers opportunities for collaborative planning, engagement, and exercises that can benefit local communities (and particularly environmental justice communities) by addressing potential hazards from facility discharges. Protecting drinking water sources and preventing contamination is essential for sustaining safe drinking water supplies, and protecting public health, the environment, and the economy.

If you have questions or would like to discuss these comments in more detail, please contact Alan Roberson at [aroberson@asdwa.org](mailto:aroberson@asdwa.org) or (703) 812-9507 or Deirdre White at [dwhite@asdwa.org](mailto:dwhite@asdwa.org).

Sincerely,



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