

EPA Finalizes New Facility Response Plan Requirements for Hazardous Substances

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On March 14, the EPA finalized a rule requiring an estimated 5,400+ industrial facilities to submit comprehensive response plans for certain worst-case chemical discharges into waterways during adverse conditions.

Background. The Clean Water Act (“CWA”) empowers the President to require that an owner or operator of a tank vessel or facility prepare and submit to the EPA “a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of [1] oil or [2] a hazardous substance.” In 1994, EPA promulgated regulations for Facility Response Plans, training, and drills for worst-case discharges of oil. This new rule amends those regulations and adds to the body of CWA regulations by including worst-case discharges of “a hazardous substance” from onshore, non-transportation-related facilities.

Applicability. EPA’s final rule requires response plans to include hazard evaluation, personnel roles and responsibilities, response actions, drills, and exercises. It applies to facilities that meet screening criteria of (1) a maximum onsite quantity of “a hazardous substance” that is at least 1,000 times the Reportable Quantity, (2) location within a 0.5-mile radius of navigable water or conveyance to navigable water, and also meets one or more “substantial harm” criteria:

- Ability to cause injury to fish, wildlife, and sensitive environments.
- Ability to adversely impact a public water system.
- Ability to cause injury to public receptors.
- Has had a reportable discharge of a CWA hazardous substance above the Reportable Quantity within the last five years that reached navigable water.

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