



CRWI suggestions on developing “worst case” discharge plans under section 311(j)(5) of the Clean Water Act for the treatment, storage and disposal facility sector

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Introduction

In their 2019 rulemaking (84 FR 46,100, September 3, 2019), EPA determined that additional spill containment requirements under section 311(j)(1) of the Clean Water Act were not required. The agency specifically stated (84 FR 46,103) that “further regulation would provide only minimal incremental value.” The Agency is now working on requirements under section 311(j)(5) of the Clean Water Act to develop a plan for responding to a “worst case” discharge of a hazardous substance. CRWI believes that for the hazardous waste treatment, storage and disposal facility (TSDF) sector, all of the requirements in section 311(j)(5) of the Clean Water Act are already being met. As such, we see no need for this industry sector to be included in the upcoming proposed rule requiring “worst-case” plans under section 311(j)(5).

History

The Clean Water Act requires the Administrator to develop regulations to prevent discharges from onshore and offshore facilities of oil and hazardous substances. These statutory requirements show up in two places: section 311(j)(1); and section 311(j)(5). EPA promulgated rules for oils under these two sections in 1974. They proposed to develop similar measures for hazardous substances in 1978 but those regulations were never finalized. In 2018, the Agency proposed that no additional regulations were needed to fulfill the section 311(j)(1) requirement and finalized that finding in 2019. CRWI developed comments supporting EPA’s position. Now EPA has agreed to consider requirements to develop “worst case” plans under section 311(j)(5).

What are the statutory requirements under section 311(j)(5)?

The statutory requirements are listed in paragraph (D). Under this paragraph, a response plan shall:

- Be consistent with the National Contingency Plan and Area Contingency Plans;
- Identify the individual having full authority to implement removal actions and require immediate communications with authorities and persons providing removal services;

- Develop contracts with personnel and equipment necessary to remove to the maximum extent possible a worst case discharge;
- Describe training, equipment testing, periodic unannounced drills, and response actions;
- Be updated periodically; and
- Be resubmitted for approval of each significant change.

What plans do TSDFs already have in place that will satisfy the requirements under paragraph (D)?

TSDFs are subject to a number of requirements under several environmental statutes. For example, RCRA (40 CFR Part 264 Subpart D) requires the development of contingency plans and emergency procedures for all covered facilities. Those plans must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator and this list must be kept up to date. Those plans must include a list of all emergency equipment at the facility and where this equipment is located. RCRA provisions require personnel training. An outline of initial and continuous training is included in a RCRA Part B application. In addition, The Part B permit application (40 CFR 270) requires each facility to show how they meet these requirements on a day-to-day basis. Initial RCRA Part B permits are reviewed and must be renewed every five to ten years.

In addition, TSDFs also have spill control, inspection/monitoring, recordkeeping and reporting requirements under their various air and water permits. These include Spill Prevention Control & Countermeasure Plans (40 CFR 112), Stormwater Pollution Prevention Plans (40 CFR 122), and Clean Air Act Risk Management Plans (40 CFR 68). Many TSDFs also have to comply with the OSHA Process Safety Management Standards under 29 CFR 1910.119, which includes an emergency planning and response component for highly hazardous chemicals. These plans include provisions that meet all of the statutory requirements in section 311(j)(5)(D).

CRWI’s suggestion on additional requirements for TSDFs under section 311(j)(5)

TSDFs currently have “worst case” plan requirements under RCRA, the Clean Water Act, the Clean Air Act, and/or OSHA that meet the statutory requirements under section 311(j)(5)(D) of the Clean Water Act. Additional requirements “would provide only minimal incremental value.” EPA determined this for spill containment requirements under section 311(j)(1) in 2019 and the same set of facts apply to “worst-case” plan requirements under 311(j)(5). We see no reason the TSDF sector should be included in the upcoming Clean Air Act rulemaking on “worst case” plans.

Thank you for considering this suggestion. If additional details are desired, please contact CRWI at 703-431-7343 or mel@crwi.org.