



July 26, 2022

**MEMBER COMPANIES**

Clean Harbors Environmental Services  
Eastman Chemical Company  
Heritage Thermal Services  
INV Nylon Chemicals Americas, LLC  
Ross Incineration Services, Inc.  
The Dow Chemical Company  
Veolia ES Technical Solutions, LLC

U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OLEM-2021-0585

**GENERATOR MEMBERS**

Eli Lilly and Company  
Formosa Plastics Corporation, USA  
3M

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on the *Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulations*; Proposed rule. 87 FR 17,890 (March 28, 2022). CRWI is a trade association comprised of 26 members representing companies that own and operate hazardous waste combustors and companies that provide equipment and services to the combustion industry.

**ASSOCIATE MEMBERS**

AECOM  
Alliance Source Testing LLC  
B3 Systems  
Civil & Environmental Consultants, Inc.  
Coterie Environmental, LLC  
Eurofins TestAmerica  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
Montrose Environmental Group, Inc.  
Ramboll  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
SYA/Trinity Consultants  
TEConsulting, LLC  
TRC Environmental Corporation  
Wood, PLC

In this proposed rule, EPA recognized there was no need to include underground storage tanks that are regulated under 40 CFR 280 or 281 and proposed an exception for this group of facilities. CRWI supports that exception. We submit that treatment, storage, and disposal facilities that are currently regulated under RCRA Subtitle C have the same basic reasons to also be given an exception. As such, we request that in the final rule, the Agency add an exception for facilities that are regulated under 40 CFR 264 and/or 265. Our logic for this request is presented below.

**INDIVIDUAL MEMBERS**

Ronald E. Bastian, PE  
Ronald O. Kagel, PhD

Thank you for the opportunity to comment. If you have any questions, please contact me at (703-431-7343 or [mel@crwi.org](mailto:mel@crwi.org)).

**ACADEMIC MEMBERS**

(Includes faculty from:)

Clarkson University  
Colorado School of Mines  
Lamar University  
Louisiana State University  
Mississippi State University  
New Jersey Institute of Technology  
University of California – Berkeley  
University of Dayton  
University of Kentucky  
University of Maryland  
University of Utah

Sincerely yours,

Melvin E. Keener, Ph.D.  
Executive Director

cc: R. Broussard – EPA

43330 Junction Plaza, Suite 164-641  
Ashburn, VA 20147

Phone: 703-431-7343  
E-mail: [mel@crwi.org](mailto:mel@crwi.org)  
Web Page: <http://www.crwi.org>

## Introduction

EPA is proposing to require planning for worst case discharges of Clean Water Act (CWA) hazardous substances (HS) for on-shore non-transportation related facilities that could reasonably be expected to cause substantial harm by release of HS into or on the navigable waters, adjoining shorelines, or exclusive economic zones.

## 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 the rules for oils in 1974. They proposed to develop similar measures for hazardous substances in 1978 but those regulations were never finalized. In their 2019 rulemaking,<sup>1</sup> EPA determined that additional spill containment requirements under section 311(j)(1) of the Clean Water Act were not required. The agency specifically stated that “further regulation would provide only minimal incremental value.”<sup>2</sup>

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. In reviewing current programs, EPA states “RCRA hazardous waste regulations are comprehensive for CWA hazardous substances present as waste.”<sup>3</sup> The Agency goes on to specifically create an exception for underground storage tanks covered under 40 CFR 280 or 281 (proposed 118.8(a)(4)). However, they do not propose any exceptions for any facility regulated under 40 CFR 264 or 265.

## What is under consideration in this rule?

Section 311(j)(5) requires EPA to issue regulations “which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”

## 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;

---

<sup>1</sup> 84 FR 46,100, September 3, 2019

<sup>2</sup> 84 FR 46,103

<sup>3</sup> 87 FR 17,896

- 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.

Does CWA allow plans from other environmental statutes to meet these requirements?

In the September 3, 2019, final rule, EPA determined there was no need for additional requirements to satisfy the spill containment requirements under 311(j)(1). Specifically, the Agency<sup>4</sup> stated

“In the 40 years since CWA section 311(j)(1)(C) was enacted by Congress, multiple statutory and regulatory requirements have been established under different Federal authorities which serve, both directly and indirectly, to prevent and contain CWA HS discharges. While the Agency has the authority to regulate CWA HS under CWA section 311(j)(1)(C), it has determined that at this time CWA 311(j)(1)(C) has been satisfied as to CWA HS by the existing EPA regulatory framework. It is important to note that this action is not guided by a cost-benefit analysis. Rather, the action is based on the determination that further regulation would provide only minimal incremental value.”

As a part of this rulemaking, the Agency is proposing to create an exception for underground storage tanks regulated under 40 CFR 280 or 281 and states that RCRA regulations are comprehensive for hazardous substances present as waste.

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

Treatment, Storage, and Disposal Facilities (TSDF) are governed under 40 CFR Parts 264 and 265. 40 CFR Part 264 Subpart D requires the development of contingency plans and emergency procedures for all covered facilities. In addition, the Part B permit application (40 CFR 270) requires facility to show how they meet these requirements on a day-to-day basis. Initial RCRA Part B permits are reviewed by the permitting agency. In addition, Part B permits must be renewed every five years.

To make this point clear, below is a discussion of how current RCRA regulations satisfy the statutory requirements in section 311(j)(5)(D).

---

<sup>4</sup> 84 FR 46,103

- Be consistent with the National Contingency Plan and Area Contingency Plans.
  - 40 CFR 264.52(a) requires a “contingency plan must describe the actions facility personnel must take to comply with §§ 264.51 and 264.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.”
  - 40 CFR 264.52(b) allows the use of one contingency plan to cover all statutory requirements. TSDFs already have such a contingency plan. Additional requirements will not add to environmental protection.
- Identify the individual having full authority to implement removal actions and require immediate communications with authorities and persons providing removal services.
  - 40 CFR 264.52(d) requires “The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see 40 CFR 264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”
- Develop contracts with personnel and equipment necessary to remove to the maximum extent possible a “worst case” discharge.
  - 40 CFR 264.52(d) requires “The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.”
  - 40 CFR 264.55 requires an emergency coordinator to be on site or available to respond within a short period of time.
- Describe training, equipment testing, periodic unannounced drills, and response actions.
  - Personnel training requirements are in 40 CFR 264.16.
  - An outline of initial and continuous training is included as a part of the Part B application (270.14(b)(12)).
  - TSDFs that are subject to 40 CFR 68.96 already have emergency response exercise requirements.
- Be updated periodically.
  - 40 CFR 264.54 requires that “The contingency plan must be reviewed, and immediately amended, if necessary, whenever:
    - (a) The facility permit is revised;
    - (b) The plan fails in an emergency;
    - (c) The facility changes - in its design, construction, operation, maintenance, or other circumstances - in a way that materially increases the potential for

- fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;
- (d) The list of emergency coordinators changes; or
- (e) The list of emergency equipment changes.”
- Be resubmitted for approval of each significant change.
  - A copy of the contingency plan is required as a part of the RCRA Part B permit application 40 CFR 270.14(b)(7). This is reviewed by the permitting authority when initially submitted and when the permit is renewed.

In addition, TSDFs 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). The plans under the Clean Air Act Risk Management Plans must include “worst case” scenarios. 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.

In proposed paragraph 118.8(a)(4), the Agency makes an exception for underground storage tanks regulated under 40 CFR 280 or 281. CRWI supports that action. EPA’s logic is proper in making that exception. CRWI suggests that the same logic should be extended to TSDFs that are regulated under 40 CFR 264 and/or 265. Specifically, CRWI suggests adding a paragraph (5) to proposed 118.8(a) that would read as follows.

- (5) Any treatment, storage, or disposal facility that is subject to the technical requirements of parts 264 or 265 of this chapter or a state program approved under parts 264 or 265 of this chapter.

Should the Agency decline to add suggested paragraph (5) above, an alternative approach would be to add regulatory language that allows facilities to provide documentation that show how the requirements under section 311(j)(5)(D) are being met by regulatory requirements under other environmental statutes.

There is no good reason to require duplicate requirements. It does not increase environmental protection but simply adds to cost and complexity for the permitting authorities and all stakeholders.