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Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter D —Water Programs

Part 118 Clean Water Act Hazardous Substances Facility Response Plans

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Toxicity Endpoints for Calculating Planning Distance for Fish,
Wildlife and Sensitive Environments and Public Receptors

**PART 118—CLEAN WATER ACT HAZARDOUS SUBSTANCES FACILITY
RESPONSE PLANS**

Authority: 33 U.S.C. 1251 *et seq.*, and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

Source: 89 FR 21955, Mar. 28, 2024, unless otherwise noted.

§ 118.1 Purpose.

This part establishes Clean Water Act (CWA) hazardous substance facility response plan requirements for the owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

§ 118.2 Definitions.

For the purposes of this part:

Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or respond to discharged CWA hazardous substances, accounting for impacts due to climate change, such as 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 and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment.

Article means a manufactured item that is formed to a specific shape or design during manufacture, has end use functions dependent in whole or in part upon the shape or design during end use, and does not release or otherwise result in exposure to a CWA hazardous substance under normal conditions of processing and use.

Container means any device or portable device in which a CWA hazardous substance is processed, stored, used, transported, treated, disposed of, or otherwise handled.

Contract or other approved means is defined as:

- (1) A written contractual agreement with a spill response organization that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times;
- (2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times;
- (3) Active membership in a local or regional spill response organization that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic area; or
- (4) Any other specific arrangement approved by the Regional Administrator upon request of the owner or operator.

CWA Hazardous Substance means any hazardous substance designated in 40 CFR part 116.

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a CWA hazardous substance, but excludes: discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; and continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems.

Distance to the endpoint means the greatest distance a CWA hazardous substance in a worst case discharge into or on the navigable waters or a conveyance to navigable waters can travel while still having the ability to cause injury to public receptors or fish, wildlife, and sensitive environments, as determined under § 118.3(c)(1) and (c)(3) using endpoint concentrations enumerated in Appendix B or adversely impact a public water system as in § 118.3(c)(2).

Endpoint means the concentration at which a worst case discharge of a CWA hazardous substance has the ability to cause injury to public receptors or fish, wildlife, and sensitive environments as in Appendix B or adversely impact a public water system as in § 118.3(c)(2).

Exclusive economic zone means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Facility means any mobile or fixed building, property, parcel, lease, structure, installation, equipment, pipe, or in-plant pipeline (other than a vessel or a public vessel), used in CWA hazardous substance handling, production, manufacturing, storage, processing, refining, transfer, distribution, treatment, or in which any CWA hazardous substance is used. The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site. Therefore, contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines under the ownership or operation of the same person may, for legitimate operational and response planning reasons, be considered separate facilities.

Fish, wildlife, and sensitive environments mean areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, national and State parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource or public receptor (including to human health) resulting either directly or indirectly from exposure to a discharge, or exposure to a product of reactions (e.g., more hazardous degradation products, ignition, or reaction) resulting from a discharge.

Interconnected containers mean containers that are connected via pipes, hoses, or other conveyance (either permanent or temporary) to allow movement of a CWA hazardous substance between containers.

Maximum extent practicable means within the limitations used to determine CWA hazardous substance release planning resources for recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It includes the planned capability to respond to a worst case discharge, including a discharge resulting from fire or explosion, as contained in a facility response plan that meets the requirements in § 118.11 or in a specific plan approved by the Regional Administrator.

Maximum quantity onsite means the maximum total aggregate quantity for each CWA hazardous substance present at all locations within the entire non-transportation-related onshore facility at any time.

Mitigation or mitigation system(s) means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input.

Navigable waters mean waters of the United States as defined in 40 CFR 120.2, adjoining shorelines, and the exclusive economic zone.

Non-transportation-related onshore facility means any facility of any kind located in, on, or under any land within the United States and excludes movement of CWA hazardous substances in interstate or intrastate commerce under active shipping papers by rail, pipeline, highway vehicle, or vessel pursuant to 49 CFR parts 171-180.

Offshore facility means any facility of any kind (other than a vessel or public vessel) located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.

Offsite means areas beyond the property boundary of a facility, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

Onshore facility means any facility of any kind located in, on, or under any land within the United States other than submerged land. Furthermore, this extends to in, on, or under any submerged land as delegated to the Environmental Protection Agency (EPA) pursuant to 40 CFR part 112 Appendix B.

Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained the facility immediately prior to such abandonment.

Person means an individual, firm, corporation, association, or partnership.

Planning distance means the distance to an endpoint such that a worst case discharge of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters from a non-transportation-related onshore facility could adversely impact a public water system or cause injury to fish, wildlife, and sensitive environments or public receptors, as described in § 118.10.

Publicly Owned Treatment Works is defined in 40 CFR 403.3 and includes Federally Owned Treatment Works.

Public receptors mean parks, recreational areas, docks, or other public spaces inhabited, occupied, or used by the public at any time where members of the public could be injured as a result of a worst case discharge into or on the navigable waters or a conveyance to navigable waters.

Public vessel as defined by section 311(a)(4) of the CWA means a vessel owned or bareboat-chartered and operated by the United States, or a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Public water system is a system as defined in 40 CFR 141.2. A public water system is either a “community water system” or a “non-community water system.”

Qualified individual (QI) means the individual having full authority to implement response actions and required to initiate immediate communications with the appropriate Federal official and the persons providing personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge and to mitigate or prevent a substantial threat of such a discharge.

Regional Administrator means the Regional Administrator of the EPA, in and for the Region in which the non-transportation-related onshore facility is located.

Reportable quantities mean quantities that may be harmful as set forth in § 117.3, the discharge into the environment during a 24-hour period, which is a violation of Clean Water Act section 311(b)(3) and requires notice as set forth in § 117.21.

Respond or response means containment, removal, remediation, neutralization, source control, mechanical recovery, bioremediation, or other release countermeasures, in accordance with the applicable Regional Contingency Plan and Area Contingency Plan, of the CWA hazardous substances from the water and adjoining shorelines or the taking of such other actions that may be necessary to prevent, minimize, or mitigate damage to the environment, public health, or welfare, including, but not limited to, persons, fish, shellfish, wildlife, public water systems, and public and private property, shorelines, and beaches.

Response equipment means equipment (including firefighting equipment), or other mitigating substances and devices, available to an owner or operator and Federal, State, and local or Tribal agencies, designed or used to ensure an effective and immediate response to a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in the facility response plan required under this part.

Source water protection area means the area delineated by the State for a public water system or including numerous public water systems, whether the source is ground water or surface water or both, as part of the State Source Water Assessment Program approved by EPA under section 1453 of the Safe Drinking Water Act (42 U.S.C. 300j-13).

Spill response organization (SRO) means an entity that provides spill response resources to mitigate or remove CWA hazardous substances from the environment and mitigate associated impacts.

Transportation or transport means the movement of property and loading, unloading, or storage incidental to movement pursuant to 49 CFR part 171-199.

Transportation-related onshore facility means any facility of any kind, in, on, or under any land within the United States which provides movement or conveyances of CWA hazardous substances in interstate or intrastate commerce by rail, pipeline, highway vehicle, or vessel pursuant to 49 CFR parts 171-199.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vessel as defined by section 101(28) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Water distribution system means a system to connect water treatment plants or water sources (in the absence of treatment) to customers via a network of pipes, storage facilities, valves, and pumps.

Wellhead protection area means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

Worst case discharge means the largest foreseeable discharge in adverse weather conditions including a discharge resulting from fire or explosion.

§ 118.3 Applicability.

This part applies to the owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters by meeting the following criteria:

- (a) **Threshold quantity.** The maximum quantity onsite for any CWA hazardous substance listed at 40 CFR 116.4 at any time, meets or exceeds 1,000 times the Reportable Quantity in pounds (kilograms) found at 40 CFR 117.3. Do not include any exceptions or exemptions identified in § 118.8. To calculate the threshold quantities of CWA hazardous substances in mixtures, follow the procedures in § 118.9; and
- (b) **Proximity to navigable waters.** The non-transportation-related onshore facility boundary or nearest opportunity for discharge is located within one-half mile of navigable waters or a conveyance to navigable waters; and
- (c) **Substantial harm criteria.** The non-transportation-related onshore facility meets one or more of the following substantial harm criteria:
 - (1) **Ability to cause injury to fish, wildlife, and sensitive environments.** The non-transportation-related onshore facility is located at a distance to an endpoint as calculated using a planning distance in § 118.10(b) such that a worst case discharge of a CWA hazardous substance or the aqueous products that form when the CWA hazardous substance enters water from the non-transportation-related onshore facility could cause injury to fish, wildlife, and sensitive environments. For identification of fish, wildlife, and sensitive environments, owners or operators shall use the applicable Area Contingency Plan prepared pursuant to section 311(j)(4) of the CWA, in addition to identifying other areas pursuant to the definition in § 118.2;
 - (2) **Ability to adversely impact a public water system.** The non-transportation-related onshore facility is located at a distance to an endpoint such that a worst case discharge could adversely impact a public water system, as described by the five criteria listed under paragraphs (c)(2)(i) through (v) of this section. This assessment should be conducted in collaboration with the downstream public water system(s). If the owner or operator is unable to work with the public water system after good faith efforts to do so, the owner or operator should use the estimated peak concentration of the CWA hazardous substance from a worst case discharge at the water intake to assess the potential to adversely impact a public water system. Ability to adversely impact a public water system includes a concentration of a CWA hazardous substance, or the aqueous products that form when the CWA hazardous substance enters water, reaching a public water system which:
 - (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;

- (iv) Contaminates public water system infrastructure, including but not limited to intake structures, treatment facilities, and drinking water distribution systems, or premise plumbing systems to a degree that requires remediation to restore system components to acceptable performance; or
 - (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;
- (3) **Ability to cause injury to public receptors.** The non-transportation-related onshore facility is located at a distance to an endpoint as calculated using a planning distance in § 118.10(b) such that a worst case discharge into or on the navigable waters or a conveyance to navigable waters could cause injury to a public receptor as defined in § 118.2; or
- (4) **Reportable discharge history.** The non-transportation-related onshore facility has had a reportable CWA hazardous substance discharge under § 117.21 within the last five years that reached navigable waters.

§ 118.4 General requirements.

- (a) **Preparation, submission, and implementation of facility response plans.** The owner or operator of any non-transportation-related onshore facility meeting the applicability requirements of § 118.3 shall prepare, submit, and implement a facility response plan according to the following provisions:
- (1) **Initially regulated facilities.** The owner or operator of a non-transportation-related onshore facility in operation on November 30, 2026 that satisfies the criteria in § 118.3 shall prepare and submit a facility response plan that satisfies the requirements of this section and Appendix A: Substantial Harm Certification Form to the Regional Administrator by June 1, 2027.
 - (2) **Newly regulated facilities.** The owner or operator of a non-transportation-related onshore facility that did not satisfy the criteria in § 118.3 on November 30, 2026, but satisfies the criteria in § 118.3 after November 30, 2026 or that is notified by the Regional Administrator pursuant to § 118.5 shall prepare and submit a facility response plan that satisfies the requirements of this section and Appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of meeting the criteria or notification.
 - (3) **Newly constructed facilities.** For a newly constructed non-transportation-related onshore facility that commences operation after June 1, 2027, and is required to prepare and submit a facility response plan based on the criteria in § 118.3, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator prior to the start of operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.
 - (4) **Facilities regulated as a result of a planned event or change.** For a non-transportation-related onshore facility required to prepare and submit a facility response plan after June 1, 2027, as a result of a planned change in design, construction, operation, or maintenance so that the non-transportation-related onshore facility now meets the criteria in § 118.3 of this part, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator before the portion of the non-transportation-related onshore facility undergoing the planned change commences operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

- (5) **Facilities regulated as a result of an unplanned event or change.** For a non-transportation-related onshore facility required to prepare and submit a facility response plan after June 1, 2027, as a result of an unplanned event or change in facility characteristics that renders the non-transportation-related onshore facility subject to the criteria in § 118.3, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of the unplanned event or change.
- (6) **Recertification.** Owners or operators must review and recertify their facility response plans and Appendix A: Substantial Harm Certification Forms every five years.
- (7) **Updated CWA hazardous substance information in 40 CFR 116.4 or 40 CFR 117.3.** If a CWA hazardous substance is added or removed from the list maintained at 40 CFR 116.4 or a reportable quantity adjusted as listed at 40 CFR 117.3, an owner operator shall update their facility response plan accordingly within six months.

(b) **Facility response plan amendments.**

- (1) The owner or operator of a non-transportation-related onshore facility for which a facility response plan is required under this part shall revise and resubmit revised portions of the facility response plan within 60 days of each change that materially may affect the response to or potential for a worst case discharge, including:
 - (i) A change in the non-transportation-related onshore facility's configuration that materially alters the information included in the facility response plan;
 - (ii) A change in the CWA hazardous substance maximum quantity onsite (i.e., increase or decrease in the maximum quantity stored onsite) that materially alters the required response resources;
 - (iii) A material change in capabilities of the spill response organization(s) that provide equipment and personnel to respond to discharges of CWA hazardous substances described in § 118.11(a)(3);
 - (iv) A material change in the non-transportation-related onshore facility's discharge mitigation and response equipment or emergency response procedures; and
 - (v) Any other changes that materially affect the implementation of the facility response plan.
- (2) Except as provided in paragraph (b) of this section, amendments to information in the facility response plan (such as personnel, contact information, or changes in the spill response organization(s)) that do not result in a material change in response capabilities do not require review and approval by the Regional Administrator. Owners or operators shall provide a copy of such changes to the Regional Administrator as the revisions occur.
- (3) The owner or operator of a non-transportation-related onshore facility that submits changes to a facility response plan as provided in the preceding paragraphs of this section shall provide an EPA-issued facility identification number (where one has been assigned, such as Facility Registry Service number) with the changes.
- (4) The Regional Administrator shall review and approve or disapprove changes to a facility response plan submitted pursuant to the requirements in paragraph (b)(1) of this section for a non-transportation-related onshore facility that he or she has determined pursuant to § 118.5(c) to have the potential to cause significant and substantial harm to human health or the environment.

(c) **Substantial harm certification form submission.** If the non-transportation-related onshore facility meets the criteria in § 118.3(a) and (b) but not (c):

- (1) If the non-transportation-related onshore facility is in operation on March 30, 2027, complete and submit to the EPA Regional Administrator the Substantial Harm Certification Form in Appendix A to this part by June 1, 2027, or, for facilities meeting the criteria in § 118.3(a) and (b) after March 30, 2027, within 60 days. Owner or operators must retain their completed Appendix A and supporting documentation for the duration that the CWA hazardous substance maximum quantity onsite meets or exceeds the threshold quantity and for an additional 10 years.
- (2) Attach to the form documentation, calculations, and any other information necessary to demonstrate the reliability and analytical soundness of the substantial harm determination as well as a review of potential receptors that could be impacted as a result of a CWA hazardous substance discharge.
- (3) Submit to the EPA Regional Administrator a recertification of the Substantial Harm Certification Form every five years, or within 60 days of a change at or outside the non-transportation-related onshore facility that impacts the potential to cause substantial harm to the environment in accordance with the criteria in § 118.3.
- (4) Provide the Substantial Harm Certification Form in Appendix A to this part to local emergency response organizations upon request.

(d) **Assertion of claims of confidential business information.**

- (1) Except as provided in paragraph (2) of this section, an owner or operator of a non-transportation-related onshore facility required to submit a facility response plan or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in § 2.302 of this chapter.
- (2) Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a facility subject to this part may not claim as confidential business information the following information:
 - (i) Data required by § 118.11 (b); and
 - (ii) Data required in Appendix A of this part, excluding the supporting documentation.
 - (iii) Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of confidential business information with respect to information contained in its facility response plan as per § 118.11, shall submit to EPA at the time it submits the facility response plan the following:
 - (A) The information claimed confidential, provided in a format to be specified by EPA;
 - (B) A sanitized (redacted) copy of the facility response plan, with the notation "CBI" substituted for the information claimed confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and
 - (C) The document or documents substantiating each claim of confidential business information, as described in paragraph (e) of this section.

(e) **Substantiating claims of confidential business information.**

- (1) An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in § 2.302 of this chapter.
- (2) Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide sanitized and unsanitized versions of the substantiation.
- (3) The owner, operator, or senior official with management responsibility at the non-transportation-related onshore facility shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

§ 118.5 Regional Administrator determination of substantial harm and significant and substantial harm.

- (a) **Regional Administrator authority to require facility response plans and amendments.** After considering the factors in paragraph (b) of this section, the Regional Administrator may at any time require the owner or operator of any non-transportation-related onshore facility to prepare and submit a facility response plan under this section. If such a determination is made, the Regional Administrator shall notify the owner or operator in writing and shall provide a basis for the determination and the owner or operator shall submit the facility response plan to the Regional Administrator as per the preparation, submission, and implementation guidelines in § 118.4. The Regional Administrator may require amendments to any facility response plan that does not meet the requirements § 118.11.
- (b) **Regional Administrator substantial harm determination.** To determine whether a non-transportation-related onshore facility could, because of its location, reasonably be expected to cause substantial harm to the environment by a discharge, or substantial threat of a discharge, of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters, the Regional Administrator may consider the following:
 - (1) Type of transfer operation(s);
 - (2) CWA hazardous substance quantity and category as determined in 40 CFR 117.3 and characteristics (e.g., ignitability or reactivity) stored onsite;
 - (3) Proximity to fish, wildlife, and sensitive environments and other areas determined by the Regional Administrator to possess ecological value;
 - (4) Ability to adversely impact public water systems as described in § 118.3(c)(ii);
 - (5) Location in a source water protection area;
 - (6) Ability to cause injury to public receptors;
 - (7) Lack of passive mitigation measures or systems, including those that enhance resilience to climate change;
 - (8) Potential to adversely impact communities with environmental justice concerns;

- (9) Potential vulnerability to adverse weather conditions resulting from climate change;
- (10) Density of facilities with CWA hazardous substances onsite in the immediate area;
- (11) Reportable discharge history; or
- (12) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to recovery, shoreline protection, and cleanup.

(c) ***Regional Administrator responsibilities for significant and substantial harm facilities.*** The Regional Administrator shall review facility response plans submitted by facilities meeting the applicability requirements of § 118.3 to determine whether the non-transportation-related onshore facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by a discharge, or a substantial threat of discharge, of CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters based on the factors identified in paragraph (d) of this section. If such a determination is made, the Regional Administrator shall notify the owner or operator in writing and:

- (1) Approve any facility response plan that meets the requirements of § 118.11; and
- (2) Review each facility response plan periodically thereafter on a schedule established by the Regional Administrator.

(d) ***Regional Administrator significant and substantial harm determination.*** To determine whether a non-transportation-related onshore facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging a CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters, the Regional Administrator shall consider the factors in paragraph (b) of this section and § 118.3(c), as well as the following:

- (1) Frequency of past reportable discharges;
- (2) Proximity to navigable waters or a conveyance to navigable waters;
- (3) Age or condition of containers and equipment;
- (4) Potential for hazards such as flooding, hurricanes, earthquakes, or other disasters that could result in a worst case discharge; and
- (5) Other facility- and Region-specific information, including local impacts on public health.

§ 118.6 Appeals process.

(a) ***Owner or operator request to reconsider requirement to prepare a facility response plan.*** In the event the owner or operator of a non-transportation-related onshore facility does not agree that the facility meets the applicability criteria under § 118.3 or with the Regional Administrator's determination under § 118.5 that the facility could, because of its location, reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters, or that amendments to the facility response plan are necessary, such as changes to the worst case discharge planning quantity, the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The request and accompanying information must be submitted to the Regional Administrator within 60 days of receipt of notice of the Regional

Administrator's original decision. The Regional Administrator shall consider the request and render a written decision with the basis for the determination as soon as practicable. The owner or operator shall then follow the preparation, submission, and implementation guidelines in § 118.4.

- (b) ***Owner or operator request to reconsider classification status.*** In the event the owner or operator of a non-transportation-related onshore facility believes a change in classification status is warranted because of an unplanned event or change in the facility's characteristics (i.e., substantial harm or significant and substantial harm), the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The Regional Administrator shall consider the request and render a written decision with the basis for the determination and notify the owner or operator as soon as practicable.
- (c) ***Appeals process following Regional Administrator decision.*** After a request for reconsideration under paragraph (a) or (b) of this section has been denied by the Regional Administrator, an owner or operator may appeal a determination made by the Regional Administrator. The appeal shall be made to the EPA Administrator and shall be made in writing within 60 days of receipt of the decision from the Regional Administrator that the request for reconsideration was denied. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator may request additional information from the owner or operator, or from any other person. The EPA Administrator shall render a written decision with the basis for the determination and notify the owner or operator as soon as practicable. If the EPA Administrator determines a non-transportation-related onshore facility is subject to this regulation, the owner or operator must submit a facility response plan to the Regional Administrator following the preparation, implementation, and submission guidelines in § 118.4.

§ 118.7 Petitions.

Any person, including a member of the public or any representative from a Federal, State, or local agency who has a reasonable basis to believe that a non-transportation-related onshore facility subject to this section could, because of its location, reasonably be expected to cause substantial harm to the environment by a discharge, or substantial threat of a discharge, of CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters may petition the Regional Administrator to determine whether the facility meets the criteria in § 118.3. Such a petition shall include a discussion of how the factors in § 118.3 apply to the non-transportation-related onshore facility and EPA shall make the petition available to the owner or operator in question and provide an opportunity to respond. The Regional Administrator shall consider such petitions and respond as soon as practicable in writing including the basis for the determination. The Regional Administrator may render a decision based solely on the information in the petition but may also gather additional information before rendering a decision.

§ 118.8 Exceptions and exemptions.

- (a) ***Exceptions.*** This part does not apply to the owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the EPA under section 33 U.S.C. 1321(j)(5)(C), as follows:
 - (1) Any non-transportation-related onshore facility, that due to its location, could not reasonably be expected to have a discharge, or substantial threat of a discharge, as described in § 118.3. This determination must be based solely upon consideration of the geographical and location aspects of the non-transportation-related onshore facility (such as proximity to navigable waters, land contour,

drainage, etc.) and must exclude consideration of manmade features such as dikes, equipment, depressions, or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge.

- (2) Any equipment, or operation of a vessel or transportation-related onshore facility which is subject to the authority and control of the U.S. Department of Transportation, and which provides movement or conveyances of CWA hazardous substances in interstate or intrastate commerce by rail, pipeline, highway vehicle, or vessel. For modes other than pipeline, this exception is limited to movement under active shipping papers prior to arrival at a final destination pursuant to 49 CFR parts 171-180.
- (3) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Coast Guard or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA (40 CFR part 112, Appendix B).
- (4) Any underground storage tank and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter.

(b) **Exemptions.** For the purposes of determining whether the maximum quantity onsite meets or exceeds the threshold quantity of a CWA hazardous substance or substances, under § 118.3(a), at the non-transportation-related onshore facility, the following exemptions apply:

- (1) **Articles.** CWA hazardous substances contained in articles need not be considered when determining whether the maximum quantity onsite meets or exceeds the threshold quantity.
- (2) **Uses.** CWA hazardous substances, when in use for the following purposes, need not be included in determining whether the maximum quantity onsite meets or exceeds the threshold quantity:
 - (i) **Structural components.** Use as a structural component of the non-transportation-related onshore facility;
 - (ii) **Janitorial.** Use of products for routine janitorial maintenance;
 - (iii) **Foods, drugs, cosmetics.** Use by employees of foods, drugs, cosmetics, or other personal items containing the CWA hazardous substance;
 - (iv) **Process water or cooling water.** Use of CWA hazardous substances present in process water or non-contact cooling water as drawn from the environment or municipal sources;
 - (v) **Wastewater treated by Publicly Owned Treatment Works.** Use of municipal wastewater entering a publicly owned treatment works prior to treatment under a National Pollution Discharge Elimination System permit;
 - (vi) **Compressed air.** Use of CWA hazardous substances present in air used either as compressed air or as part of combustion;
 - (vii) **Retail and personal uses.** Use for personal, family, or household purposes, or present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a CWA hazardous substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public; and

- (viii) **RCRA hazardous waste.** Storage or accumulation of hazardous waste regulated under the Resource Conservation and Recovery Act Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, 40 CFR parts 264 and 265, and Resource Conservation Recovery Act Standards Applicable to Generators of Hazardous Waste, 40 CFR part 262 subpart M.

§ 118.9 Mixtures.

For the purposes of determining the CWA hazardous substance maximum quantity onsite at the non-transportation-related onshore facility of CWA hazardous substance(s), under § 118.3(a), the following provisions apply to CWA hazardous substances mixtures:

- (a) If the quantity of all of the CWA hazardous substance constituent(s) of the mixture or solution is known, the mixture meets the threshold quantity when the maximum quantity onsite, as defined in § 118.2, meets or exceeds the threshold quantity of any CWA hazardous substance in the mixture.
- (b) If the quantity of one or more of the CWA hazardous substance constituent(s) of the mixture or solution is unknown, the mixture meets the threshold when the maximum quantity onsite of the mixture or solution meets or exceeds the quantity for the CWA hazardous substance established in § 118.3(a) with the lowest threshold quantity.

§ 118.10 Worst case discharge.

Non-transportation-related onshore facility owners or operators are required to model a worst case discharge scenario, determine appropriate endpoints using Appendix B as per § 118.3(c)(1) and (3) from a discharge into or on the navigable waters or a conveyance to navigable waters, calculate the distances to endpoints and CWA hazardous substance planning distances, and compare the distances to endpoints against the CWA hazardous substance planning distances from the non-transportation-related onshore facility. If the CWA hazardous substance planning distances determined are shorter than the distances to endpoints as per Appendix B, the worst case discharge can cause substantial harm. Owners or operators shall also use their worst case discharge scenario(s) to determine if the non-transportation-related onshore facility has the ability to adversely impact public water systems per § 118.3(c)(2) from a discharge into or on the navigable waters or a conveyance to navigable waters. The worst case discharge scenarios must represent each CWA hazardous substance onsite that meets or exceeds the threshold quantity set in § 118.3(a). Each scenario must use the largest quantity following the below parameters:

- (a) **Determination of worst case discharge quantity.** The worst case discharge quantity shall be the greater of the following:
 - (1) For CWA hazardous substances in separate containers, the maximum quantity of a single container, such as a bulk storage tank, process vessel, rail car, or mobile or portable container;
 - (2) For CWA hazardous substances in interconnected containers, the maximum quantity of a group of interconnected containers; or
 - (3) For substances in pipes, the maximum quantity of a pipe or interconnected pipes, and the owner or operator must provide evidence in Appendix A that containers with common piping or piping systems are not operated as one unit.
 - (4) For mixtures of CWA hazardous substances, follow the procedures in § 118.9.

- (b) **Planning distance determinations.** To determine the distance to endpoints for fish, wildlife, and sensitive environments, public water systems, and public receptors as referenced in § 118.3(c), an owner or operator shall use a methodology, model, or other technique that accounts for facility-specific conditions and accounts for the stated requirements in this paragraph. An owner or operator may use proprietary models, provided that the owner or operator allows EPA access to the model, submits documentation that demonstrates the reliability and analytical soundness of the methodology used, and describes the model's features to local emergency planners, upon request. Any models used for planning distance determinations shall be used in exercises conducted per § 118.13.
- (1) Endpoints for fish, wildlife, and sensitive environments are provided in Appendix B of this part.
 - (2) Endpoints for public receptors are provided in Appendix B of this part.
 - (3) In determining CWA hazardous substance planning distance endpoints, owners or operators shall consider the following parameters:
 - (i) Factors affecting overland transport including:
 - (A) Nearest opportunity for discharge into or on the navigable waters;
 - (B) Ground conditions which may include topography of the surrounding area, drainage patterns, land use coverage, impervious cover, soil distribution or porosity, and soil absorption rate or soil saturation during adverse weather conditions; and
 - (C) Properties of the CWA hazardous substance, which may include evaporation rate based on wind speed; atmospheric stability, ambient temperature, pressure, and humidity; reactivity with rainwater and/or other substances along the overland flow path into or on the navigable water; and ignitability and explosive potential;
 - (ii) Factors affecting in-water transport including:
 - (A) Point of entry to navigable waters;
 - (B) Flow rate and duration of the discharge;
 - (C) Direction of the discharge at the point of entry;
 - (D) Surface versus underwater entry; and
 - (E) Conditions of the receiving water including the velocity of the navigable waters which may be affected by: Slope of the river; hydraulic radius; turbulence and potential for cross-channel mixing; Manning's Roughness coefficient; differentiation of still, tidal or moving waters; currents; wave height; tidal influence; and water temperature, pH, alkalinity, and salinity.
 - (iii) Adverse weather conditions, which shall be calculated based on adverse winds, currents, and/or river stages, over a range of seasons, weather conditions, and river stages.
 - (iv) Properties of the CWA hazardous substance such as solubility in water, speciation in water, density (relative to water), polarity, vapor pressure, reactivity with water and common solutes in natural waterbodies, human toxicity, mammalian toxicity, aquatic toxicity, and flammability.

§ 118.11 Facility response plan requirements.

- (a) **General requirements.** A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance ("One Plan") and that includes the elements provided in this section shall satisfy the requirements. The owner or operator may augment an existing plan with these required elements. All facility response plans must include the following:
- (1) **Consistency With National Contingency Plan, Area Contingency Plans, and Regional Contingency Plans.** Plans must be consistent with the requirements of the National Oil and Hazardous Substance Pollution Contingency Plan (40 CFR part 300) and applicable Area Contingency Plans prepared pursuant to section 311(j)(4) of the Clean Water Act and Regional Contingency Plans as per 40 CFR 300.210.
- (i) The owner or operator shall review relevant portions of the National Oil and Hazardous Substances Pollution Contingency Plan and applicable Area Contingency Plan annually and, if necessary, revise the facility response plan to ensure consistency with these plans;
 - (ii) Include a signed affirmation that the owner or operator has reviewed relevant plans during facility response plan development and resubmission and;
 - (iii) Include a list of area plans and sub-area plans reviewed.
- (2) **Qualified individual.** Identify the qualified individual or documented management system having full authority to implement response actions and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment, with a description of duties including:
- (i) Activate internal alarms and hazard communication systems to notify all facility personnel;
 - (ii) Notify all response personnel, as needed;
 - (iii) Identify the character, exact source, amount, and extent of the discharge, as well as the other items needed for notification;
 - (iv) Notify and provide necessary information to the appropriate Federal, State, and local authorities with designated response roles, including the National Response Center, State Emergency Response Commission or Tribal Emergency Response Commission, and Local Emergency Planning Committee or Tribal Emergency Planning Committee;
 - (v) Notify and provide necessary information to public water systems that may be impacted by a discharge;
 - (vi) Assess the interaction of the discharged CWA hazardous substance with water, solutes in water, water treatment chemicals, and/or other substances stored at the facility and notify response personnel at the scene of that assessment;
 - (vii) Assess the possible hazards to human health and the environment due to the worst case discharge. This assessment must consider both the direct and indirect effects of the discharge (i.e., the effects of any toxic, irritating, or asphyxiating gases that may be generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosion) and initiate appropriate monitoring;

- (viii) Implement prompt response actions to contain and respond, to the maximum extent practicable, the CWA hazardous substance discharged;
- (ix) Coordinate rescue and response actions as previously arranged with response personnel;
- (x) Use authority to immediately access company funding to initiate cleanup activities;
- (xi) Direct cleanup activities until properly relieved of this responsibility; and
- (xii) Acquire and maintain incident commander training requirements consistent with 29 CFR 1910.120(q)(6)(v).

- (3) **Response resources.** Identify, and ensure by contract or other approved means, the availability of private personnel and equipment necessary to respond to the maximum extent practicable to a worst case discharge of CWA hazardous substances (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;
- (4) **Training, testing, and drills.** Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility to be carried out under the plan to ensure facility safety and to mitigate or prevent the discharge, or the substantial threat of a discharge; and,
- (5) **Plan updates.** Review and update facility response plan periodically and resubmit to the Regional Administrator for approval of each significant change as required by 118.4(a)(6) and (b)(1).

(b) **Emergency response information.** The facility response plan shall include:

- (1) **Facility information.** Facility details including the facility name; latitude and longitude; street address, with city, State, and zip code; telephone number; facility location information described in a manner that would aid a reviewer and a responder in locating the facility, EPA identification numbers, and indication if the facility is located in or drains into a wellhead protection area as defined by the Safe Drinking Water Act of 1986;
- (2) **Owner or operator information.** Contact information to include name and preferred contact method;
- (3) **Hazard evaluation.** Hazard evaluation for worst case discharge into or on the navigable waters or a conveyance to navigable waters and risk-based decision support system shall include:
 - (i) Chemical-specific information, including the response considerations, health hazards, fire hazards, chemical reactivity, hazard classifications, and physical and chemical properties; potential effects of a CWA hazardous substance worst case discharge as per 118.10; 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.
 - (ii) This section of the plan must outline processes that will help responders make decisions relating to the identification, evaluation, and control of risks to human health and the environment following a CWA hazardous substance discharge. The processes outlined below do not need to be scenario-specific but can be generic in nature. At a minimum, the processes must include all the following:

- (A) **Risk identification** —describe the process that will be used to determine the extent and route of CWA hazardous substance exposure to humans and the environment including location and age of containers and their contents;
 - (B) **Risk characterization** —describe the process that will be used to establish relative degrees of risk and prioritizing risks;
 - (C) **Risk control** —describe the process that will be used to determine feasible response methods to mitigate CWA hazardous substance discharge impacts on human health and the environment; and
 - (D) **Risk communication** —describe the process that will be used to communicate information resulting from paragraphs (A), (B), and (C) of this section to parties internal and external to response activities.
- (4) **Reportable discharge history.** Discharges reported under 40 CFR part 117.21 that reached navigable waters with additional data including date, time, and discharge duration; CWA hazardous substance(s) discharged; estimated quantity discharged in pounds; quantity discharged that reached navigable waters in pounds; the type of discharge event and its source; weather conditions; on-site impacts; offsite impacts; initiating event; description of how the discharge was detected; clean-up actions taken, steps taken to reduce the possibility of recurrence; and contributing factors with all data to be retained for the life of the facility;
- (5) **Response personnel and equipment.** The identity and a description of response personnel, equipment, and response action implementation necessary to respond to the maximum extent practicable to a worst case discharge of a CWA hazardous substance described in § 118.10, and to mitigate or prevent a substantial threat of a worst case discharge;
- (6) **Contracts.** Evidence of contracts or other approved means as per the definition in § 118.2 to ensure the availability of proper response personnel and equipment, including response resources with firefighting capability and the availability of resources if facility or mutual aid resources are not capable of handling a worst case discharge incident resulting from a fire or explosion. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that cannot rely on sufficient local firefighting resources through mutual aid agreements must identify adequate firefighting resources, including contracted resources. The response plan must also identify an individual located at the facility to work with the fire department in a response. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility;
- (7) **Notifications.** A list of the identities, contact information, and preferred communication method(s) of individuals or organizations to be notified in the event of a discharge so that immediate communications and liaising between the qualified individual identified in paragraph (a)(2) of this section and the appropriate Federal officials; State, local, or Tribal response organizations; and persons providing response personnel and equipment can be ensured, and a description of communication methods. Notification shall include but not be limited to the: National Response Center, qualified individual, facility response team, local response team (fire department or cooperatives), fire marshal, State Emergency Response Commission or Tribal Emergency Response Commission, State police, Local Emergency Planning Committee or Tribal Emergency Planning Committee, downstream public water systems, local media for evacuation notification, local hospitals, and any other potential receptor or interested party who could be impacted by a discharge;

- (8) **Discharge information.** A description of information to pass to response personnel in the event of a reportable discharge, including specifics about the event, CWA hazardous substance name and quantity discharged, possible areas and receptors affected, potential routes of transport, distance(s) to nearby waterways and conveyances, any data on the characteristics of the CWA hazardous substance and other hazardous substances in proximity, ignition sources, explosion potential, and any other information that may be helpful to responders and the public, including updates on the scope and nature of the discharge as available;
- (9) **Personnel roles and responsibilities.** A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times, training, and qualifications or a description of documented management system that can perform the stated functions, as appropriate;
- (10) **Response equipment information.** A description of the facility's response equipment, including roles in response actions, location of the equipment, last inspection or response equipment test date, inspection frequency, last deployment drill date, deployment frequency, response times, and equipment testing;
- (11) **Evacuation plans.** Facility-wide plans for evacuation including a diagram. Include identification and documentation of coordination with community evaluation plans, as appropriate, and consider locations of CWA hazardous substances and their risks when discharged; anticipated flow direction; water conditions; emergency response personnel and equipment arrival routes; limitations on evacuation routes; transportation of injured personnel to nearest emergency medical facility; location of alarm/notification systems; check-in areas for evacuation validation; command center location; and location of shelter at the facility as an alternative to evacuation;
- (12) **Discharge detection systems.** Procedures and equipment used to detect discharges, as well as detect and monitor any hazardous air releases resulting from discharges into or on the navigable water or a conveyance to navigable waters as appropriate, including personnel (*i.e.*, routine walk-around visual inspection) or automatic discharge detection for regular and afterhours operations by CWA hazardous substance, reliability checks, and inspection frequency;
- (13) **Response actions.** This section should describe the response actions to be carried out by facility personnel or contracted personnel under the facility response plan to ensure the safety of the facility and to mitigate or prevent worst case discharges described in § 118.10 or the substantial threat of such discharges, including immediate response actions for personnel safety, personal protective equipment use, facility personnel responsibilities by job title, facility personnel actions, facility personnel information gathering assignments for response personnel, and facility responsibilities to mitigate a CWA hazardous substance worst case discharge. Identify the types of environmental monitoring data to be collected, collection methods, techniques for measuring the environmental parameters of interest (including established analytical methods when applicable), a description of the data's utility during a response (including procedures for sharing data with response personnel and the public), and required personal protection requirements and safety procedures during data collection and analysis. Include a description of actions to be taken within:
 - (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.
- (14) **Disposal plans.** Plans to dispose of contaminated cleanup materials, if appropriate to the material, including how and where the facility intends to recover, reuse, decontaminate, treat, and dispose of materials after a discharge has taken place and plans for temporary storage of recovered materials as well as the appropriate permits required to manage recovered materials according to local, State, and Federal requirements. The disposal plan must account for recovered product; contaminated soil and water; contaminated equipment and materials including drums, tank parts, valves, and shovels; personal protective equipment; decontamination solutions; adsorbents; and spent chemicals including firefighting runoff management;
- (15) **Containment measures.** Measures to provide adequate containment and drainage of discharged CWA hazardous substances including containment volumes, draining routes from storage and transfer areas, materials used to construct drainage troughs, number and types of valves and separators used in the drainage system, sump pump capacities, containment capacity of weirs and booms and their locations, and other cleanup materials;
- (16) **Training procedures.** Training procedures as per § 118.13;
- (17) **Exercise procedure.** Exercise procedures as per § 118.13 and the schedule set under § 118.12(c); and
- (18) **Self-inspection.** Written procedures and records of inspections including an inspection checklist and method to record the inspection date and findings, to be retained for five years.

(c) **Emergency response action plan.** The response plan shall include an emergency response action plan that is maintained in the front of the response plan, or as a separate document accompanying the response plan, addresses the first two hours of the incident response followed by an outline of continued operations appropriate for Incident Command, and that includes the following information:

- (i) The identity and telephone number of a qualified individual having full authority, including contracting authority, to implement removal actions;
- (ii) The identity of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (a)(2) of this section and the appropriate Federal officials and the persons providing response personnel and equipment can be ensured;
- (iii) A description of information to provide to response personnel in the event of a worst case discharge;
- (iv) A description of the facility's response equipment and its location;
- (v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

- (vi) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;
- (vii) A description of immediate measures to secure the source of the discharge, including the response actions to be taken in the first two hours of an incident as per paragraph (b)(13) of this section, and to provide adequate containment and drainage of discharged CWA hazardous substances;
- (viii) A description of the potential discharge pathways of the CWA hazardous substances to public water systems, public receptors, and fish, wildlife, and sensitive environments, and estimated time of travel; and
- (ix) A diagram of the facility including evacuation routes.

§ 118.12 Coordination Activities.

The facility response plan shall be coordinated with the local emergency response plan developed by the Local Emergency Planning Committee or Tribal Emergency Planning Committee under section 303 of title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 *et seq.*). Upon request, the owner or operator shall provide a copy of the facility response plan to the Local Emergency Planning Committee, Tribal Emergency Planning Committee, State Emergency Response Commission, Tribal Emergency Response Commission or other local emergency planning and response organizations. The owner or operator shall coordinate response needs with local emergency planning and response organizations to determine how the facility is addressed in the community emergency response plan and to ensure that local response organizations are aware of the CWA hazardous substances at the facility, their quantities, the risks presented, and the resources and capabilities provided by the facility to respond to a worst case discharge of a CWA hazardous substance into or on the navigable waters or a conveyance to navigable waters.

- (a) Coordination shall occur at least annually, and more frequently, if necessary, to address changes at the facility, in the facility response plan, and/or in the community emergency response plan.
- (b) Coordination shall include providing to the appropriate State, local, or Tribal emergency planning and response organizations the facility response plan, updated emergency contact information, and other information necessary for developing and implementing the local emergency response plan.
- (c) Coordination shall include consulting with appropriate State, local, or Tribal emergency response officials to establish appropriate schedules and plans for drills and exercises required under § 118.13. The owner or operator shall request an opportunity to meet with the Local Emergency Planning Committee or Tribal Emergency Planning Committee (or equivalent) and/or local fire department as appropriate to review and discuss those materials.
- (d) The owner or operator shall document coordination with appropriate State, local, or Tribal authorities and retain that documentation for the life of the facility, including:
 - (1) The names of individuals involved and their contact information (phone number, email address, and organizational affiliations), dates of coordination activities, and nature of coordination activities; and
 - (2) Signed agreements on activities and resources, identified by the facility, in the facility response plan to be performed by the appropriate State, local, or Tribal emergency response organizations.

- (3) If a facility owner or operator is unable to coordinate with their State Emergency Response Commission or Tribal Emergency Response Commission, Local Emergency Planning Committee or Tribal Emergency Planning Committee, and/or local fire department, documentation must show a good faith effort to contact, coordinate, and consult with those bodies in the frequency described in this section.

§ 118.13 Facility response training, drills, and exercises.

- (a) The owner or operator of any facility required to prepare a facility response plan under § 118.3 shall develop and implement a facility response training program and a drills and exercise program that satisfy the requirements of this section. The owner or operator shall describe the programs in the facility response plan as provided in § 118.11.
- (b) The facility owner or operator shall develop a facility response training program to train facility and non-facility personnel involved in CWA hazardous substance response activities. Training shall be functional in nature according to job tasks for both supervisory and non-supervisory operational personnel.
 - (1) A facility owner or operator must identify the method to be used for training any volunteers or casual laborers used during a response to comply with the requirements of 29 CFR 1910.120.
 - (2) The facility owner or operator is responsible for ensuring that all private response personnel are trained to meet the Occupational Safety and Health Administration standards for emergency response operations in 29 CFR 1910.120.
 - (3) The facility response plan shall include a description of the training program as required in § 118.11.
 - (4) The facility response plan shall include records, including logs, of CWA hazardous substance facility response plan meetings and describe the type of response training and dates, review of personnel responsibilities during a response action, and drills and exercises. These records may be included in the facility response plan or kept as an annex to the facility response plan. Completed records will be kept for five years following each activity. Records required under this part kept under usual and customary business practices will suffice for purposes of this paragraph.
- (c) The facility owner or operator shall develop a program of facility response drills and exercises, including evaluation procedures. A program that follows the National Preparedness for Response Exercise Program (PREP) will be deemed as compliant with the drill and exercise requirements of this section. An alternative program or deviations from the PREP exercise requirements may also be developed by the owner or operator and are subject to approval by the Regional Administrator.
 - (1) Drills and exercises shall, when appropriate, be coordinated with local public emergency response officials and these officials shall be invited to participate. If a facility owner or operator is unable to coordinate with local public emergency response officials, documentation must show a good faith effort to contact and coordinate with those bodies.

Appendix A to Part 118: Substantial Harm Certification Form

Facility Name:

Facility Address:

EPA Facility ID:

Facility Latitude/Longitude:

Facility Qualified Individual (Last name, First name):

Facility Contact (phone):

Facility Contact (email):

Parent Company:

Facility industry NAICS code:

1. Does the facility have a maximum quantity onsite of a CWA hazardous substance greater than or equal to the CWA Reportable Quantity (RQ)x 1,000?

Yes__ No__

If Yes, list names, CAS no., and maximum quantities (lbs) onsite for each CWA hazardous substance:

If No, you do not need to proceed.

2. Is the facility within one-half mile of navigable waters or a conveyance to navigable waters?

Yes__ No__

If Yes, list navigable waters and a description of conveyance(s).

If No, you do not need to proceed.

If the answers to both 1 and 2 are Yes, answer questions 3-6.

3. Is the facility located at a distance such that a worst case discharge from the facility could cause injury to fish, wildlife, and sensitive environments? For further description of fish, wildlife, and sensitive environments (FWSE), see the applicable Area Contingency Plan (ACP). Attach documentation of the formulas, assumptions, ACP(s) consulted, and distances calculated.

Yes __ No __

4. Is the facility located at a distance such that a worst case discharge from the facility could cause injury to public receptors? Attach documentation of the formulas and distances calculated.

Yes __ No __

5. Would a worst case discharge from the facility cause substantial harm to a public water system by causing any one, or any combination of more than one, of the adverse impacts listed below?

(i) Violates any National Primary Drinking Water Standard or State Drinking Water Regulation, such as 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;

- (iv) Contaminates public water system infrastructure, including but not limited to intake structures, treatment facilities, and distribution systems, or premise plumbing systems to a degree that requires remediation to restore system components to acceptable performance; or
- (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.

Yes ___ No ___

Attach documentation of the methodology and assumptions used to evaluate the potential of a worst case discharge to cause each of the adverse impacts (i-v).

For each worst case discharge scenario list:

- CWA hazardous substance name, CAS no. and worst case discharge quantity (lbs)
- Worst case discharge scenario type (single container or interconnected containers)
- Name(s) of each FWSE receptor(s) and planning distance(s) to FWSE (feet or miles)
- Type(s) and description(s) of public receptor(s) and planning distance(s) to public receptor(s) (feet or miles)
- Adverse impacts (i-v) to a public water system

Attach documentation attesting to the required consultation with the applicable downstream public water system, including name of public water system, point of contact, and date of consultation for each potentially impacted public water system. If efforts to coordinate with the applicable downstream public water systems were unsuccessful, provide documentation to demonstrate the efforts to coordinate and provide the distance to the first downstream public water system intake.

6. Has the facility experienced a reportable CWA hazardous substance discharge to navigable waters within the last five years?

Yes ___ No ___

Attach relevant documentation of past reportable discharges.

For each reportable discharge identify:

Name of CWA hazardous substance, CAS no.

Date of discharge:

Duration of discharge (minutes):

Quantity discharged (lbs):

Navigable water(s) reached:

Injury caused to FWSE:

Injury caused to public receptors:

Adverse impacts to public water systems:

NRC report number:

Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature

Name (please type or print)

Title

Date

Phone/Email

Appendix B to Part 118—Toxicity Endpoints for Calculating Planning Distance for Fish, Wildlife and Sensitive Environments and Public Receptors

Category	RQ (lbs.)	Endpoints for public receptors LD50			Endpoints for fish, wildlife and sensitive environments using 96-hour LC50		
		Mammalian toxicity (oral) (mg/kg)		10% (mg/kg)	Aquatic toxicity (mg/liter)		10% (mg/L)
		Lower	Upper		Lower	Upper	
X	1	0	0.1	0.01	0	0.1	0.01
A	10	0.1	1	0.1	0.1	1	0.1
B	100	1	10	1	1	10	1
C	1,000	10	100	10	10	100	10
D	5,000	100	500	50	100	500	50

