**EPA to Require Additional Facilities to Submit Facility Response Plans**

New Rule Incorporates Clean Water Act’s Hazardous Substances

EPA has issued a proposed rule that would require many non-transportation-related facilities to develop a Facility Response Plan under the Clean Water Act, based on planning for worst-case scenario discharges. This proposed rule significantly increases the number of facilities who may need a Facility Response Plan and increases the number of hazardous substances to be considered when making a compliance determination.

EPA’s goal is to make onshore non-transportation facilities determine if they could reasonably be expected to cause substantial harm to the environment by discharging one of the 296 Clean Water Act hazardous substances into or on navigable waters, the shoreline or exclusive economic zones. If the facility meets the criteria, then they’ll be required to prepare a Facility Response Plan that plans for worst case scenarios.

This rule is a result of a settlement EPA made in a 2019 lawsuit from the Natural Resources Defense Council and others. The suit claimed EPA was required, but failed, to make non-transportation-related facilities that could cause substantial harm to plan, prevent, mitigate and respond to worst case spills of hazardous substances. The consent decree requires EPA to take final action on a rule addressing worst case discharge plans for hazardous substances before September 2022 and this is the result of that.

**What Industries are Affected?**

The new rule would apply to the following NAICS code groups:

111 Crop Production

115 Support Activities for Agriculture and Forestry

211 Oil and Gas Extraction

212 Mining (except Oil and Gas)

213 Support Activities for Mining

221 Utilities

311 Food Manufacturing

314 Textile Product Mills

321 Wood Product Manufacturing

322 Paper Manufacturing

324 Petroleum and Coal Products Manufacturing

325 Chemical Manufacturing

326 Plastics and Rubber Products Manufacturing

327 Nonmetallic Mineral Product Manufacturing

331 Primary Metal Manufacturing

332 Fabricated Metal Product Manufacturing

333 Machinery Manufacturing

335 Electrical Equipment, Appliance, and Component Manufacturing

336 Transportation Equipment Manufacturing

423 Merchant Wholesalers, Durable Goods

424 Merchant Wholesalers, Nondurable Goods

441 Motor Vehicle and Parts Dealers

444 Building Material and Garden Equipment and Supplies Dealers

447 Gasoline Stations

453 Miscellaneous Store Retailers

488 Support Activities for Transportation

493 Warehousing and Storage

511 Publishing Industries (except internet)

522 Credit Intermediation and Related Activities

562 Waste Management and Remediation Services

611 Educational Services

622 Hospitals

811 Repair and Maintenance

812 Personal and Laundry Services

928 National Security and International Affairs

**How Do You Know if It Affects Your Company?**

To determine if this applies to your company, there are three criteria to consider.

**1. Maximum Capacities Stored Onsite**

Determine if your maximum capacity for any of the 296 Clean Water Act-identified hazardous substances meets or exceeds 10,000 times the reportable quantity in pounds. The reportable quantities for each hazardous substance are different. Some may be 5000 lbs. (hydrochloric acid, acetic acid), others may be 1000 lbs. (nitric acid, phenol), some may be 100 lbs. (hydrogen sulfide, formaldehyde), others may be 10 lbs. (benzene, nitrogen dioxide, sodium) and some may be 1 lb. (PCBs, arsenic, diazinon).

**2. Location**

Next, determine if your facility is one half mile of a navigable water or conveyance to a navigable water. The definition of a navigable water has been under debate for a number of years and has changed between the different Presidential administrations.

**3. Substantial Harm Criteria**

Last, do you meet any of the substantial harm criteria. That is, will you:

* Do you have the ability to adversely impact a public water system?
* Could you cause injury to fish, wildlife and sensitive environments?
* Do you have the ability to cause injury to public receptors?
* Have you had a reportable discharge of a Clean Water Act hazardous substance within the past 5 years?

If you meet the substantial harm criteria, you would need to submit your Facility Response Plan to the EPA. Existing facilities that meet the criteria on the effective date of the rule would have to submit a Facility Response Plan within 12 months.

**What is a Facility Response Plan (aka, an FRP)?**

FRPs are required per 40 CFR 112. Current criteria says if you have over 42,000 gallons of oils and are transferring them over water to/from vessels, or if you have over 1,000,000 gallons and meet other certain criteria, you are required to have one. Facility Response Plans requirements are from the Federal Water Pollution Control Act.

**Public Comment**

EPA is taking public comments on the proposed rule until May 27, 2022. More information, including links to the public comment site can be found [HERE](https://www.epa.gov/hazardous-substance-spills-planning-regulations/proposed-rulemaking-clean-water-act-hazardous).