**Updates Underway for 2020 Emergency Response Guidebook**

Work is underway to update the Emergency Response Guidebook (ERG) for publishing in 2020. The ERG is published every 4 years, and the current version in use is the 2016 version. The 2020 version is anticipated to be available in the spring of 2020.

**What is the ERG?**

The ERG contains emergency response information and is a handbook used by emergency and hazardous materials incident responders, truck drivers, railroad personnel, pipeline personnel, pilots, police and firefighters. It is written and updated by 4 separate international agencies:

* U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA)
* Transport Canada’s Canadian Transportation Emergency Centre (CANUTEC)
* Argentina’s Chemistry Information Center for Emergencies (CIQUIME)
* Mexico’s Secretariat of Communications and Transport

iSi uses the ERG in our HAZWOPER training as well as our Hazardous Waste Management and RCRA Refresher trainings, as handling emergency spills are a component of both classes.

**Planned Updates**

The 4 agencies have been working on the new version since 2017. In 2018, all of the agencies solicited input from their public through calls for comment, listening sessions, online surveys, and articles. From these solicitations, 100 comments were gleaned to be considered for incorporation. Since then, sub-groups have been working on them. A public meeting was held on July 17 by DOT regarding its progress. Here are the presented current planned changes and items for review within each section of the book.

The agencies will:

**White Pages [General Information, Instructions, Recommendations, Guidance]**

* Review content for use of plain language;
* Improved quality of illustrations in charts;
* Add new lithium battery markings;
* Add a decontamination section; and,
* Add basic information about heat induced tears (HIT).

**Orange Pages [Response Guides]**

* Comprehensively review of all materials and their assignments in the orange pages, with certain items up for review in 2020 while others will be reviewed before the 2024 version;
* Clarify sentences;
* Address inhalation concerns for petroleum crude oil (UN1267) in Guide 128; and,
* Reevaluate radioactive materials guides with radiological/nuclear regulatory agencies.

**Yellow/Blue Pages [Materials in ID/Name of Material Order]**

* Add or remove UN numbers to align with United Nations Model regulations and North American regulations;
* Remove UN numbers for chemical warfare agents; and,
* Review polymerization hazards for certain materials.

**Green Pages [Isolation and Protective Action Distances]**

* Add distances for new Poison Inhalation Hazard/Toxic Inhalation Hazard materials added by regulations;
* Revise Table 2 introduction;
* Add container capacities to Table 3;
* Make a new border to differentiate between Tables 1, 2 and 3; and,
* Argonne National Laboratory will update the CASRAM model with outcomes from field and lab experiments.

**Where Can the Current ERG Be Found?**

A free PDF version of the current Emergency Response Guidebook is available online at <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/ERG2016.pdf>. There’s also a [mobile app](https://www.phmsa.dot.gov/hazmat/erg/erg2016-mobileapp) for the guide available for both Android and iPhone devices. If you’d like to purchase a hard copy for your use, [please contact us](https://isienvironmental.com/index.php/contact-us/).

**Georgia NPDES Permitees Required to File Electronically Through NetDMR Starting December 21**

The Georgia Environmental Protection Division (EPD) has been moving towards electronic filing of various reports and permits. This electronic requirement is now being required for submittal of Discharge Monitoring Reports from those companies who hold an NPDES (National Pollution Discharge Elimination System) permit for water discharges.

Starting December 21, 2016, all NPDES permittees will be required to submit their Discharge Monitoring Reports (DMRs) online using a site called NetDMR. Those who use land application systems, pre-treatment, PID, and general permittees will also eventually be required to use NetDMR later.

NetDMR will have similar features to other online applications.

**Step 1: Create Your Own Account**

Each person must create their own account. When setting up an account, facilities should be mindful of the instance and type of user chosen.  Within the state of Georgia, the instance should be “Georgia Environmental Protection Division”.  You may see other options such as EPA – GA, but DO NOT select these options.

Once the appropriate instance or agency has been selected, click on “Create a new account” and follow the prompts.  The type of user for facility personnel should be the external user type “Permittee User.”  An internal user is meant for agency use only.

**Step 2: Set User Roles**

Once an account has been created, there are four roles for a permittee user: View, Edit, Signatory, and Permit Administrator.

Permit Administrator: The Permit Administrator has the ability to approve role requests within their permit for all roles except Signatory.  The first person to request and get approved for Signatory Role will be granted the Permit Administrator role automatically.

Signatory: No one will be able to access the permit within NetDMR until someone is approved by EPD as the Signatory.  EPD is the only entity that can approve access to Signatory Role requests.  Someone seeking Signatory Role must submit a signed Subscriber Agreement to EPD by mail and wait approval.  EPD estimates approximately a two week turnaround to review and approve Subscriber Agreements.  Remember, the first person to request and get approved for Signatory Role will also be granted the Permit Administrator role automatically.

View, Edit: Other personnel can request View, Edit, and/or Permit Administrator Roles from the Permit Administrator.

**Step 3: Start Using the System**

Once approval has been received, you may then start entering DMR data electronically into the system. Note: there is no external notification, so if a role request has been made within NetDMR the Permit Administrator must check within NetDMR to see that request.

**Learn More**

NetDMR Quick Start Guides on how to create an account, what the roles do, and how to request roles are available at <http://epd.georgia.gov/netdmr/getting-started> and there is a Frequently Asked Questions page on EPD at <http://epd.georgia.gov/netdmr/faq#field_related_links-486-1>.

If you need assistance, iSi can also help walk you through the process. Give Marc Mason a call at (678) 712-4705 and he can get you a proposal for iSi to handle this for you.

EPA has reviewed inspection data from its regional offices to get an idea of the most common Facility Response Plan and [SPCC (Spill Prevention, Control and Countermeasures) Plan](https://isienvironmental.com/spcc-plan-blog/) deficiencies.  The goal of the review was to help EPA determine how clear their rules were to help companies comply with the regulations.  [[Check out the SPCC Plan deficiencies here.](https://isienvironmental.com/spcc-plan-deficiencies-blog/)]

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

Facility response plans are required per 40 CFR 112.  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 certain criteria, you are required to have a Facility Response Plan.  Both the SPCC Plan and Facility Response Plan are from the Federal Water Pollution Control Act.

**EPA's Review**

The data was reviewed for companies who also had both Facility Response Plans and SPCC Plans, with a preference for companies with higher oil storage capacity.  The Facility Response Plans facilities had an average aggregate oil storage capacity of 69,000 to 857 million gallons of oil, with a worse case scenario discharge planning volume of 94,000 to 20 million gallons.  EPA found an average of 4 issues per plan.

**Top 4 Facility Response Plan Deficiencies (in Order)**

1. Diagrams (1.9) – 31 of the 55 had this deficiency
   * This includes site plans, evacuation plans and drainage diagrams.
2. Discharge Scenarios (1.5)
   * This includes discussion and plans for worse-case discharge.
3. Vulnerability Analysis; Hazard Evaluation (1.4. 2 and 1.4)
   * This would be spill history and analysis of discharge potential.
4. Plan Implementation  (1.7)
   * This would be a description of containment and drainage planning, disposal plans and response resources.

**Other Issues Found**

* Lack of details about response equipment. (1.3, 1.3.2)
* Companies didn't include key information from their Emergency Response Action Plans (ERAPs) (1.1)
* Not conducting required preparedness drills and exercises (1.8)
* Not training personnel on appropriate oil spill response measures.

Do you have any of these issues with your own Facility Response Plan?   Are you required to have an FRP?  We can help!  We can review your plan for compliance to these issues, prepare updates, or provide the required training or scenarios you need to conduct to your employees.  [Contact us today](https://isienvironmental.com/contact-us/)!

The EPA, along with the Army and the Army Corps of Engineers announced its intent to make changes to the Clean Water Rule and return the definition of “waters of the United States” (WOTUS) back to what it was prior to the 2015 rule change.

The definition of WOTUS has been at the point of contention between regulators, industry and environmental groups since the Clean Water Act was amended in 2015. The definition has been at the heart of a number of legal battles and an item of regulatory enforcement uncertainty. The rules containing it were in a state of stay by the Supreme Court.

Today’s announcement will turn back the definition of WOTUS to what it was prior to 2015 with a published proposed rule announcement in the Federal Register, along with a public comment period. Next, the agencies will work to review and revise the definition to replace the approach of the 2015 Clean Water Rule.

EPA’s announcement emphasized the redefinition is intended to “...provide regulatory certainty in a way that is thoughtful, transparent, and collaborative with other agencies and the public.”

**EPA to Change the Way It Handles Lawsuits**

EPA Administrator Scott Pruitt has announced EPA will be ending practice of “sue and settle.”

In sue and settle, a third-party group sues a federal agency, asking the courts to require the agency to change statutory duties or to enforce specific timelines written within laws. In the past, EPA has settled out of court with these groups through a consent decree or settlement agreement. EPA says the resulting negotiations would often change regulations, causing unreasonable deadlines or commitments to actions which weren’t part of the existing regulations.

These consent agreements were negotiated privately and any new requirements were not eligible for public comment. On top of that, the agency would pay tens of thousands of dollars in attorney’s fees and litigation costs of the groups which were suing them.

Going forward, EPA promises further transparency and public engagement when it comes to considering any settlement or consent decree, including:

* Establishing procedures to publish lawsuits, complaints, and petitions which have been filed against them or their state agency counterparts;
* Publishing a list of consent decrees and settlement agreements, including attorney’s fees paid;
* Providing sufficient time for public comment on any action which would modify a proposed or final rule, and publishing proposed and modified decrees and settlements for public comment;
* Not entering into any consent decree that exceeds the authority of the courts; and,
* No longer paying attorney’s fees and litigation costs of the groups who are suing them.

To learn more, see [EPA’s announcement](https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-end-epa-sue-settle).

**EPA Proposing Changes to Aerosol Can Hazardous Waste Regulations**

EPA is proposing to allow generators to handle aerosol cans as a universal waste rather than a hazardous waste. As a result, EPA hopes to encourage more recycling, ease regulatory burdens on generators, reduce the amount of cans going to landfills, and save over $3 million per year.

The Current Aerosol Can Hazardous Waste Regulation

Aerosol cans, when discarded, are handled as hazardous waste. Entities with these are required to follow all hazardous waste rules regarding them. They can be stored for only 270 days. Retail stores who discard aerosol cans must also follow all hazardous waste rules. In some states, generators can recycle the cans for scrap metal by puncturing them and draining the contents into other containers. The can becomes non-hazardous, but the container of leftovers is considered hazardous waste. Some states don’t allow the puncturing and recycling of cans at all, even under carbon filtration.

The Proposed Aerosol Can Hazardous Waste Regulation

The proposed regulation would make discarded aerosol cans a universal waste. Other EPA universal wastes include batteries, mercury-containing equipment, and hazardous waste mercury lamps. Universal wastes can be stored and collected for up to one year and don’t need a hazardous waste manifest as long as they’re properly packaged and labeled.

As for can recycling, the proposed rule would encourage generators to collect and send their cans to a centralized hazardous waste handler for recycling. Any company recycling aerosol cans would be subject to special requirements. Only approved commercial devices for safely puncturing cans could be used. These facilities would also be required to have written procedures for operations and maintenance of the machines, how incompatible wastes would be segregated, proper hazardous waste management practices to be followed, and what emergency spill procedures would be followed.

EPA’s intent is to ease retail’s burden of managing hazardous waste, ease generators’ hazardous waste management burden of handling the cans as hazardous waste, and encouraging more states and more entities to recycle them.

Gaps

There are still some gaps and unknowns within the regulations such as: What is the exact definition of an aerosol can, that is, would cans that do not aerate (such as shaving gel cans), be included? At what point between full, empty, “RCRA empty”, and used would the cans be eligible for universal waste consideration? Should there be a size limit on the cans; would cylinders be included? Would the equipment that some generators have already invested in to puncture and recycle their own cans be suitable under the new regulation?

EPA is accepting comments until May 15, 2018. To read more about the proposed regulation and where to send your comments, [read here](https://www.federalregister.gov/documents/2018/03/16/2018-05282/increasing-recycling-adding-aerosol-cans-to-the-universal-waste-regulations).

**EPA’s National Compliance Initiatives Show Upcoming Enforcement Priorities**

Just like OSHA has national emphasis programs for areas they want to target in their enforcement, EPA has its own national emphasis targets. Called the National Compliance Initiatives (NCI), EPA has listed 7 priority areas to target for enforcement for Fiscal Years 2020-2023.

So what’s on EPA’s NCI Target List?

**Air – Reducing Air Emissions at Hazardous Waste LQGs and TSDFs**

EPA has found that facilities that generate a greater amount of hazardous waste have air emissions issues. Their focus will be on air emissions at Large Quantity Generators (LQGs) and Treatment, Storage and Disposal Facilities (TSDFs). This emphasis item was in the agency’s last list of NCIs, and inspectors have found there is still significant noncompliance at these facilities. EPA wants improved compliance in controlling organic air emissions from certain management activities. They will especially be looking at the following areas in which they are continuously finding problems:

* Leaking or open pressure relief valves;
* Tank closure devices;
* Monitoring; and,
* Recordkeeping.

**Water – Reducing NPDES Permits Noncompliance**

EPA will be looking at your facility’s NPDES (National Pollutant Discharge Elimination System) permits to see if you’re in compliance. NPDES permits are for water discharges, whether they be wastewater, stormwater or otherwise. In 2018, 11,000 permits had violations totaling 4 billion pounds of pollutants above permitted limits, and EPA wants to crack down on that. Out of 40,000 facilities with NPDES permits, EPA estimates 29% are in significant noncompliance. EPA’s goal is to cut that in half by fall 2022. EPA specifically mentions failure to submit required reports and significant exceedances of limits as two of the most violated areas.

**Air – Reducing Excess Emissions of HAPs and VOCs from Stationary Sources**

EPA wants a focus on reducing emissions of volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). They will be focusing on sources of VOCs that may have substantial impact on an area’s attainment or non-attainment of National Ambient Air Quality Standards. EPA will also be focusing on areas with a greater concentration of HAP sources. EPA has listed over 180 chemicals that are HAPs, including mercury, asbestos, toluene, cadmium, chromium, benzene, perchloroethylene, and lead.

**Hazardous Chemicals – Reducing Risks of Accidental Releases at Industrial and Chemical Facilities**

This was on EPA’s list last time, and is continuing. This NCI not only applies to facilities subject to Risk Management Program requirements (for accidental chemical releases at facilities that store certain chemicals above a certain threshold). EPA cites a General Duty Clause in their Clean Air Act to cover all facilities with regulated substances and extremely hazardous substances, regardless of quantity. They’ll be using that General Duty Clause (Clean Air Act Section 112(r)) which requires companies:

* Identify hazards that may result from accidental releases by using appropriate hazard assessment techniques;
* Design and maintain a safe facility;
* Take steps to prevent releases; and,
* Minimize the consequences of the accidental releases that occur.

It will be important that your facility not only has conducted the proper hazard assessments and has plans and controls in place, but has documentation that has occurred. This exercise and documentation will help you with both EPA and OSHA compliance.

**Air – Stopping Aftermarket Defeat Devices for Engines**

This is a new item on EPA’s list. They will be looking to stop the manufacture, sale and installation of defeat devices on engines. Often called tuners, these devices bypass the engines’ emissions control systems in order to improve engine performance or fuel efficiency. The systems modify the exhaust system or electronic chips within the vehicle. EPA has been levying fines on car manufacturers for a number of years in this area. One of the most famous cases is the recent Volkswagen emissions scandal where vehicles were rigged to recognize regulatory emissions testing, but operated differently in real world driving conditions. Now EPA is going after the aftermarket manufacturers and have already started. However, the emphasis isn’t just limited to vehicles on the road, it’s for any engine, including non-road vehicles and engines.

**Water – Noncompliance with Drinking Water Standards at Community Systems**

This is a new NCI area for EPA. EPA says that out of 50,000 Community Water Systems that serve water to the same people year-round, 40% violated at least one drinking water standard in 2018. Also at these facilities, 30% had monitoring and reporting violations and 7% had health violations. EPA’s goal is to reduce this noncompliance by 25% by having EPA’s Office of Water work to increase capacity within the states and tribes to address these violations.

**Lead – Child Exposure to Lead**

This one is an unofficial NCI emphasis because it will be treated as a directive but not be a part of the official NCI enforcement list as a separate program. EPA has an overall initiative for lead, and the NCI guidance documents affirm enforcement commitment to participating in that initiative. Plans for EPA’s overall lead initiative include:

* Increasing compliance with and awareness of lead-safe renovations with the Renovation, Repair and Painting rule;
* Developing a mapping tool to identify communities with higher lead exposures;
* Targeted geographical initiatives; and,
* Public awareness campaigns on lead issues.

**What’s Next: Regional Plans**

Each region is to develop a strategic plan on how they will be accomplishing these NCI goals. Within these plans the regions are to determine how they’re going to allocate resources to these NCIs and how much investment will be put into each one. The plans are due August 1.

These NCIs are the goals for Fiscal Year 2020-2023, thus they will go into effect October 1, 2019.

**EPA Names Most Common SPCC Errors – Do You Have Any of These?**

EPA recently reviewed inspection data from its regional offices to get an idea of what errors were being found in [SPCC (Spill Prevention, Control and Countermeasures) Plans](https://isienvironmental.com/spcc-plan-blog/). The goal of the review was to help EPA determine how clear their rules were to help companies comply with the regulations.

The data was reviewed for companies who had SPCC Plan issues, with a preference for companies with higher oil storage capacity and who also had to have Facility Response Plans (FRPs) onsite as well. Inspection data was reviewed for 120 companies with oil storage capacity between 4,000 gallons and 857,000,000 gallons.

Of those, 10 companies didn’t have an SPCC Plan. Of the remaining, they found the companies averaged 4 issues with their plans.

**Top 9 Deficiencies of the Standard (in Order)**

* Plan Content, Certifications & Reviews (112.3, 112.5, 112.7) – 119 of the 120 had this deficiency
* General Secondary Containment (112.7)
* Testing and Inspection: Integrity Testing (112.8, 112.12)
* Sized Secondary Containment (112.8, 112.9, 112.12)
* Drainage (112.8)
* Piping: General (112.8)
* Piping: Inspections (112.8, 112.9)
* Discharge Prediction (112.7)
* PE Certification (112.3)

Some examples of these include:

* Inadequate or no documentation of the required 5-year review of the plan;
* Failure to address required containment for piping;
* Failure to address integrity testing of bulk storage containers;
* Failure to demonstrate that secondary containment met the requisite size of design requirements; and,
* Failure to provide procedures for controlling stormwater discharges from diked areas.

Do you have these issues with your own SPCC plan? Are you required to have an SPCC Plan? Check out [our blog about SPCC plans](https://isienvironmental.com/spcc-plan-blog/), or contact us today to help. We can review your plan for compliance to these issues, conduct the required 5-year update, or provide the required training you need to conduct to your employees. Contact us today!

**What is EPA’s General Duty Clause?**

In our last blog, we looked at OSHA’s General Duty Clause and some example violations. Did you know that EPA has a General Duty Clause as well?

The EPA General Duty Clause can be found in the Clean Air Act, Section 112(r)(1). It states companies that produce, process, handle or store hazardous substances/chemicals have a primary duty to identify release hazards and prevent chemical accidents.

If your company doesn’t fall under EPA’s Risk Management Plan (RMP) requirements, you will fall under EPA’s General Duty Clause.

**General Duty Clause vs. RMP**

If you produce, process, handle or store hazardous substances/chemicals, you will need to comply with either the EPA General Duty Clause or the requirements for EPA’s Risk Management Plan (RMP) based on your operations.

The requirements for RMP can also be found this same Clean Air Act Section 112(r) as the General Duty Clause, and it also applies to the same types of facilities who use hazardous chemicals. However, RMP is focused on one or more of 140 targeted toxic or flammable chemicals that have the potential to be released at certain threshold quantities.

RMPs are directly submitted to EPA. Water treatment plants, agricultural COOPs, and chemical manufacturers are typical types of companies who need to comply with RMP. Ammonia, chlorine, propane, and sulfur dioxide are among those 140 chemicals.

RMPs must include:

* Potential effects of a chemical accident
* Hazard assessments
* 5-year accident history
* Evaluation of worst-case scenarios and alternative accident release potentials
* Prevention programs that include safety precautions, maintenance, monitoring, and employee training measures
* Emergency response program that lists emergency health care, employee training measures, procedures for informing the public.

**What is Required by EPA’s General Duty Clause?**

In an EPA inspection, the inspector can ask your company to produce the all relevant information to show you are complying with the General Duty Clause. To be compliant, companies are required to address the following:

* Identify hazards which could occur if an accidental release happens
  + Identify the environmental, health and safety hazards
  + Identify potential release scenarios through experience/industry research, analysis and logic trees, or “What If” brainstorming
  + Determine consequences in each scenario
* Design and maintain a safe facility by putting features such as these in place
  + Design safety codes
  + Use less hazardous chemicals when possible
  + Equipment quality control, using alternate processes, determine process siting, using safety technology
  + Standard Operating Procedures
  + Employee training
  + Change management
  + Incident investigation programs
  + Self audits
  + Preventative maintenance programs
* Determine potential consequences of accidental releases and minimize them
  + Development of an Emergency Response Plan that contains, at a minimum: anticipated releases, mitigation, notification process to local responders and local responder involvement.
  + Coordination with local emergency response officials including the local emergency planning committee
  + Training for “out of the norm” circumstances
  + Periodic exercises using your plan, training, and equipment practicing response, evacuation, sheltering-in-place, and worker’s ability to perform in the event of an emergency.

Inspectors will also be looking into the thoroughness of your process hazard analyses, your evaluations, and the elements you’ve put into place, and whether or not they apply to your current operations.

**Which One Applies to Your Facility?**

Because the RMP is specific to certain chemicals and threshholds, all companies with the potential for accidental chemical releases may not fall under its requirements. However, if RMP does not apply to your company, then the EPA General Duty Clause will.

Which one applies to your facility? Have you completed all the necessary analyses required? Do you have all the programs, processes and training in place? If the answer to any of these questions is no, then iSi can help. Contact us today for more information.

**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).