



August 23, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket No. EPA–HQ–OLEM–2018–0024, *Clean Water Act Hazardous Substances Spill Prevention*

Dear Acting Administrator Wheeler,

The Association of Metropolitan Agencies (AMWA) is an organization representing the largest publicly owned drinking water utilities in the United States.

AMWA member utilities place immense value on protecting drinking water sources and the best protection against the negative impacts from chemical spills remains avoiding them altogether. Given the health, economic and environmental risks posed by spills, it is imperative that the U.S. Environmental Protection Agency continue to improve practices that prevent hazardous chemical discharges. AMWA has reviewed the agency’s proposed action regarding the regulation and prevention of hazardous chemical spills under the Clean Water Act (CWA) and we offer the following comments.

Cost-Benefit Analyses Is Insufficient

The agency has proposed to not establish new requirements for preventing hazardous spills under the CWA based on the conclusion that “the benefits would not justify the costs in any alternative other than the proposed [no action]” and that the “existing framework of regulatory requirements serves to prevent CWA [hazardous substances] discharges.” However, AMWA does not believe EPA’s cost-benefit analyses have adequately accounted for potential impacts to drinking water utilities and the communities they serve.

EPA’s analysis determined that 2,491 chemical releases between 2007-2016 were CWA hazardous substances that originated from non-transportation related sources. Of these, the agency reports that 117 incidents resulted in an “impact” (evacuations, injuries, hospitalizations, fatalities, waterway closures, or water supply contamination). In addition, EPA included a summary of the monetized damages that were incurred during these spills and listed 12 different categories. EPA only estimated average annual damages for four of these. Among the excluded categories is water supply contamination. AMWA believes that water supply contamination can be a major cost to a community. When drinking water supplies are disrupted due to contamination, costs are incurred not just by the utility and its rate payers,

BOARD OF DIRECTORS

PRESIDENT

Mac Underwood
Birmingham Water Works
Board

VICE PRESIDENT

Steve Schneider
Saint Paul Regional Water
Services

TREASURER

Angela Licata
New York City DEP

SECRETARY

John Entsminger
Las Vegas Valley Water District

Jerry Brown
Contra Costa Water District

John P. Sullivan, Jr.
Boston Water and Sewer
Commission

Rudolph Chow
Baltimore City Department of
Public Works

Robert L. Davis
Cleveland Department of Public
Utilities

Kevin Gertig
Fort Collins Utilities

Julia J. Hunt
Trinity River Authority of Texas

Robert Hunter
Municipal Water District of
Orange County

Carrie Lewis
Portland Water District

James S. Lochhead
Denver Water Department

Ron Lovan
Northern Kentucky Water
District

Sue McCormick
Great Lakes Water Authority

J. Brett Jokela
Anchorage Water &
Wastewater Utility

Charles M. Murray
Fairfax Water

William Stowe
Des Moines Water Works

Kathryn Sorensen
Phoenix Water Services

Jeffrey Szabo
Suffolk County Water Authority

Douglas Yoder
Miami-Dade Water and Sewer
Department

**CHIEF EXECUTIVE
OFFICER**
Diane VanDe Hei

but also the taxpayers of the responding neighboring/state/federal agencies.

Examples of possible costs:

- If downstream utilities are not notified that a contaminated plume of water is migrating toward its surface water intakes, those utilities may draw in contaminated water, which in turn would contaminate the treatment plant, and possibly the drinking water distribution network. This could result in extensive remediation and potential public health consequences.
- If a utility's source of water is contaminated and it does not have an alternate source, potable water production and distribution would cease. And, as a result, sewerage service would be interrupted. Economic losses from these outages could be severe, as businesses, manufacturers and government agencies cannot operate without water and wastewater service. In addition, without potable water, public health impacts could also be severe. For a discussion of the criticality of water and the economic sectors that rely on water, consult the *2015 Water Sector-Specific Plan*, produced by the U.S. water sector, EPA, the Department of Homeland Security and other organizations¹.
- Without water in the distribution system, depressurization in the mains and pipes will occur, which in turn could lead to cracks, collapses in the system and loss of fire protection. If this happens, the distribution system would likely experience pipe bursts when water distribution is resumed, causing the community further economic losses and requiring significant infrastructure repair and replacement.
- If remediation of the water source is not possible, the community will have to develop a new source of raw water, potentially at great effort and expense.
- When a spill occurs, the utility incurs costs to conduct significant outreach to ensure customers are aware of drinking water advisories and to not drink the contaminated water.

We urge EPA to examine recent economic impact analyses: The Federal Emergency Management Agency (FEMA) has estimated the standard value of losing potable water at \$93/person/day (in 2008 dollars)², which would make communities served by AMWA members (populations of 100,000 or greater) liable to suffer losses of at least \$9.3 million/day during an outage. However, a study that analyzed FEMA's methodology and data assumptions for calculating this value determined the agency's standard value "may greatly underestimate the total economic loss of potable water service due to a total disruption in supply" and contends that a value of \$208/person/day (in 2011 dollars) is more accurate³. Using a real-world example for comparison, the Marshall University Center for Business and Economic Research (CBER) conducted an analysis on the high-profile incident in Charleston West Virginia, where

¹ Water Sector Coordinating Council and Government Coordinating Council. (2015). *2015 Water Sector-Specific Plan*. Retrieved from <https://www.dhs.gov/sites/default/files/publications/nipp-ssp-water-2015-508.pdf>

² Federal Emergency Management Agency. (2009). *BCA Reference Guide: Final*. Prepared by URS group.

³ Aubuchon, C.P. and Morley, K.M. (2013). The Economic Value of Water: Providing Confidence and Context to FEMA's Methodology. *Homeland Security & Emergency Management*. 10(1). 1-21.

a chemical spill caused a water use ban in nine counties. CBER estimated the spill cost the community roughly \$19 million/day for the first four days after the incident totaling \$61 million⁴.

AMWA requests EPA provide further details regarding their cost-benefit analysis and why critical impacts like water supply contamination were excluded from the monetized damages summary. AMWA also requests that EPA perform a second cost-benefit analysis, which would include these impacts in order to obtain a more accurate understanding of the true costs to utilities, businesses and communities when hazardous spills contaminate drinking water supplies.

Further Regulatory Analysis Required

EPA has not provided a sufficient review of current regulatory requirements for preventing hazardous substance spills. EPA's approach included a review of 11 regulatory programs within EPA that included discharge or accident prevention requirements and regulated at least a portion of the CWA hazardous substances. This analysis determined that "the majority of identified CWA [hazardous substances] reported discharges to water from non-transportation-related sources have been discharges of chemicals currently subject to discharge or accident prevention regulatory requirements." With this in mind and after the agency's cost-benefit analysis, EPA determined that additional regulatory requirements are not necessary. However, EPA's RIA shows 49 instances of water contamination from hazardous spills between 2007-2016. AMWA believes EPA should provide more information regarding what gaps in current regulations allowed these 49 incidents to occur. AMWA encourages EPA to take another look at how existing regulations might be improved in order to reduce the number of hazardous chemical spills in the future.

The information provided by EPA within the RIA also lists both the number of people impacted and the monetary costs of water contamination from a hazardous spill as "unknown." So although the number of spills is a small portion of the total, the full impact is undetermined. These are crucial components for determining the full impact of a hazardous chemical spill on a community. AMWA urges EPA to include these components in a second, more comprehensive, analysis in order to accurately determine the full impact of these spills to drinking water systems and their communities.

Even if we were to set aside concerns about the agency's cost-benefit and regulatory analyses, AMWA believes significant changes can be made to reduce the impacts of hazardous spills on communities while still avoiding unnecessary economic burdens. While EPA may deem the mitigation measures provided in this proposal as economically infeasible this does not preclude the agency from investigating and implementing alternative, more feasible, and cost-effective practices and policies to better protect public health and the environment.

⁴ Marshall University Center for Business and Economic Research. (2014). CBER Calculate Impact from Chemical Spill into Elk River. Retrieved from <http://www.cbermu.org/mu-study-spill-61-million-negative-impact-affected-areas/>

Lack of Sufficient Information and Local Communication for Water Utilities

Within the proposal, EPA gave detailed overviews of the existing regulatory requirements for hazardous substances. AMWA would like to highlight issues with the implementation of the Emergency Planning and Community Right-to-Know Act (EPCRA), which requires industry to report on the storage, use and releases of hazardous substances to federal, state and local governments, and to make that information available to the public. The information legally mandated to be provided by industries under EPCRA is vital for utilities to better plan for the possibility of a chemical spill. This information includes the quantities, locations, use and release of hazardous chemicals.

However, according to Benjamin et al. (2018)⁵, while this data is required by EPCRA to be made available to the public, it is “often the most difficult data for utilities to obtain an entire area because of restrictions mandating how requests must be submitted and data must be accessed once a request is fulfilled.” In particular, Benjamin et al. singles out the requirement where requests made under EPCRA must be made by individual facility name and address, which requires utilities to have knowledge of all facilities in their area that may have chemical storage tanks on site. These restrictions mean that utilities often do not have all the information they need to prepare for the possibility of a future spill. This limitation must be addressed if the agency plans to use the regulations under EPCRA as justification for choosing to propose no new requirements for preventing hazardous chemical spills. Furthermore, there is no requirement in any current regulations requiring facilities to alert downstream utilities once a spill has occurred. This is a simple problem with an easy fix that can allot utilities critical time to address a spill before it has reached the intakes.

AMWA is also concerned that the hazardous substances list has not been updated in decades. This list should be updated on a semi-regular basis as new chemicals enter production. This change would assist utilities in staying up-to-date on nearby hazards and enable them to better prepare for the possibility of a spill.

Summary and Recommendations

AMWA disagrees with EPA’s proposal of “no action” and believes that this decision is not in keeping with the intent of Congress under CWA §311. While some regulatory requirements already exist to prevent spills, the number of spills that do occur and the economic and health threats they pose warrant regulatory action.

Further, neither the cost benefit analysis or the regulatory analysis are sufficient enough to justify “no action.” AMWA urges EPA to conduct a second cost-benefit analysis, which includes the impacts to utilities and communities when hazardous spills contaminate drinking water supplies. We also urge EPA to perform a second regulatory analysis to determine gaps where current regulations lack protection and led to the 49 hazardous spills discussed in the RIA and how the current regulations could be improved to prevent these spills in the future.

⁵ Benjamin, J., Smith, E., Kearns, M., Rosen, J., and Stevens, K. (2018). Improving Water Utilities’ Access to Source Water Protection and Emergency Response Data. *Journal AWWA*. 110:2. E33-E44.

Acting Administrator Wheeler

August 23, 2018

Page 5

AMWA also urges EPA to develop a mandatory process for downstream utilities to be notified when a hazardous chemical spill has occurred.

Additionally, AMWA urges EPA to facilitate utilities obtaining EPCRA information. EPA should also clarify existing requirements and develop guidance for utilities to better utilize the program.

EPA should also update and expand the outdated hazardous substances list.

AMWA thanks EPA for the opportunity to comment and looks forward to working with the agency to protect drinking water sources in the future. We believe it is important to continually evaluate current policies and make changes when feasible to better protect drinking water sources from contamination.

If you have any questions, please contact Stephanie Hayes Schlea (schlea@amwa.net), AMWA's Manager of Regulatory and Scientific Affairs.

Sincerely,



Diane VanDe Hei
Chief Executive Officer

cc: David Ross, Assistant Administrator for Water
Peter Grevatt, Director, Office of Ground Water and Drinking Water