



July 25, 2022

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

Re: Docket ID No. EPA-HQ-OLEM-2021-0585, Clean Water Act Hazardous Substance Worst Case Discharge Planning

Dear Administrator Regan,

The Association of Metropolitan Water Agencies (AMWA) is pleased to have the opportunity to provide comments on the proposed Clean Water Act (CWA) hazardous substances worst case discharge planning rule. AMWA is an organization of the general managers and CEOs of large publicly owned drinking water utilities that serve over 100,000 customers and collectively provide clean drinking water to approximately 160 million people. The association strongly supports actions that protect drinking water sources but requests further clarification from EPA on how this rule will affect public water systems (PWS) that rely on some CWA hazardous substances to provide clean, safe drinking water to the public.

Source water protection

AMWA has consistently supported EPA’s efforts to prevent pollutants from entering drinking water supply source waters and is pleased EPA included, “ability to adversely impact a public water system” as a substantial harm criterion in this proposed rule. AMWA has continually stressed in multiple comments to EPA over the years that it is most effective to control pollutants at their source, where they are highly concentrated, rather than remove them at the consumer’s expense after entering a water body or supply source. This proactive approach would ensure that those who pollute our natural resources are not allowed to pass the cost of cleanup onto public drinking water utilities and their customers.

EPA has proposed that facilities would be required to make an effort to coordinate with downstream PWS “to determine whether concentrations from a worst-case discharge would result in scenarios adversely impacting the public water system.” AMWA agrees with this

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approach but insists that the facility should be responsible for all aspects of planning, including any research, modeling or data analysis, or any other action necessary for determining impacts. It is crucial that the time and costs associated with this planning fall directly on the facilities creating, using, and/or benefitting from the hazardous substances, rather than PWS.

EPA recognizes in the proposed rule that this coordination between facilities and downstream PWS could impose excess burdens on PWS depending on personnel capabilities and number of upstream facilities; therefore, AMWA supports EPA's decision to make this action voluntary for PWS. Some PWS may lack the resources needed to coordinate with these facilities, particularly in instances where multiple upstream facilities request input. To improve and accelerate this coordination, AMWA recommends EPA provide clear and detailed guidance on how to evaluate impacts of worst-case discharges to address the wide range of CWA hazardous substance physiochemical properties and toxicities.

AMWA also recommends EPA close loopholes making it easier for regulated facilities to avoid compliance. For example, the current definition of "facility" used in this proposal gives large discretion as to what constitutes a facility. Therefore, larger facilities could separate buildings and structures into separate "facilities" and avoid being subject to this rule. AMWA supports a more robust definition of facility that would prevent this scenario and urges EPA to close the loophole that currently would allow a regulated facility to divide one facility into several to circumvent reaching the threshold quantity.

Additional clarity on hazardous substances at PWS

AMWA understands the importance of protecting waters from accidental discharges of hazardous substances, but requests additional information specifying how this requirement would affect PWS that store CWA hazardous substances onsite, particularly since other parts of the rule purport to protect PWS from discharges upstream. As mentioned earlier, there are potential burdens this proposed rulemaking could have on water utilities with respect to increased coordination efforts between facilities and PWS. It is imperative that no additional unnecessary burdens or unintended consequences are imposed on PWS through this proposal.

AMWA is concerned this proposed rule could require some PWS to be required to submit a facility response plan (FRP) for CWA hazardous substances that they are already required to plan for under the Clean Air Act (CAA) Risk Management Program (RMP). This would lead to duplicated efforts and the diversion of resources away from where they are needed. AMWA recommends that the Office of Land and Emergency Management coordinate with the RMP office and explicitly explain in the final preamble what new requirements there are (if any) and how this rule does not overlap/duplicate the RMP.

Large water utilities rely on chlorine for water disinfection to ultimately supply safe drinking water to the public. Chlorine is listed as a CWA hazardous substance, which will cause some utilities with large stores of it to meet the threshold requirement in this proposed rulemaking. If

these utilities are located within a half mile from waters of the US (WOTUS), they would only need to meet one of the additional substantial harm criteria:

- the ability to adversely impact a public water system;
- the ability to cause injury to fish, wildlife, and sensitive environments;
- the ability to cause injury to public receptors; and/or
- having had a reportable discharge of a CWA hazardous substance within the last five years.

Meeting the threshold and location criteria would lead to the question of whether a worst-case discharge of chlorine at a water utility meets the “ability to adversely impact a public water system” criteria. Under this criterion, a discharge would only need to “compromise the ability of a public water system to produce water that complies with federal and state drinking water standards.” If a discharge of chlorine at a water utility could interfere with its ability to disinfect water, then it seems the utility would be required to submit a FRP under this proposed rulemaking.

AMWA believes requiring utilities to submit an FRP under this rule, as well as under the RMP, would lead to duplicated efforts that redirect resources away from other important operations. Since a release of chlorine would be in gaseous form, an accidental discharge is already covered under the RMP. A discharge of chlorine would not directly flow into WOTUS, so more clarity is required in the proposed rule for these situations. Therefore, AMWA recommends EPA explicitly state in the final rule that PWS are not subject to this rulemaking based on storage of chlorine if the water system is already required to submit a risk management plan through CAA. While it may not have been the intent of EPA to include water utilities in being subject to this proposed rule, the ambiguity warrants explicit exemption language to reduce burdens on PWS in the final rule.

Conclusion

AMWA believes that PWS should not be required to duplicate efforts already mandated by the RMP. This would divert resources away from other essential functions and duplicate efforts already done to comply with RMP regulation. AMWA supports increased coordination between PWS and facilities but urges EPA to refrain from including PWS as facilities subject to the rule if a plan is already in place under the RMP. AMWA asks EPA to continue to use its authorities to address water pollution at the source and to hold polluters responsible to reduce burdens on PWS.

AMWA appreciates the opportunity to provide comments on EPA’s proposed CWA hazardous substance worst-case discharge planning rule. If you have any additional questions, please contact Brian Redder (Redder@amwa.net), AMWA’s Manager of Regulatory and Scientific Affairs.

Administrator Regan

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Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas Dobbins".

Thomas Dobbins
Chief Executive Officer

cc: Radhika Fox, OW
Jennifer McLain, OGWDW
Anita Thompkins, OGWDW
Rebecca Broussard, OLEM