**National Ground Water Association**

**Comments on**

**U.S. Environmental Protection Agency**

**Advanced Notice of Proposed Rulemaking (ANPRM)**

**Clean Water Act Hazardous Substance Facility Response Plans; Amendment Reconsideration**

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Summary

The U.S. Environmental Protection Agency (EPA or Agency) published an advance notice of proposed rulemaking to seek feedback on reconsidering Clean Water Act Hazardous Substance Facility Response Plans regulations that were published in the Federal Register on March 28, 2024. This advanced notice of proposed rulemaking seeks feedback on potential amendments to address implementation challenges and clarify requirements from the 2024 final rule. Any resulting proposed amendments will align with Administration priorities and would prioritize opportunities to address regulatory burden while maintaining planning requirements to protect human health and the environment when responding to Clean Water Act Hazardous Substance worst case discharges.

Electronic Link: https://www.federalregister.gov/documents/2026/02/18/2026-03220/clean-water-act-hazardous-substance-facility-response-plans-amendment-reconsideration

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Different Approaches for Threshold Quantities

EPA Question: What different approaches, other than an RQ multiplier, should EPA reconsider for establishing threshold quantities?

NGWA Response: The EPA should consider toxicity of the hazardous substance that would adversely affect people and aquatic life to establish reportable quantities of substances. Setting a reportable quantity too high will miss the opportunity to be protective of human health and the environment of a hazardous substance that is highly toxic at small quantities.

For example, from the Clean Water Act Toxic Substances list, 2,3,7,8 tetrachlorodibenzo-p-dioxin, trichloroethylene and benzene are highly toxic at very low doses, as compared to zinc and copper compounds.

De Minimus Concentrations

EPA Question: What factors would support establishing de minimis concentrations for applicability threshold determinations?

NGWA Response: Priority should be given first to the hazard and toxicity of the substance. High hazard or toxicity should indicate no de minimus quantity.

Proximity to Navigable Waters

EPA Question: How can EPA simplify the facility proximity criterion to navigable waters?

NGWA Response: Using a standard 1/2 – mile distance from a navigable water is very artbitrary, given that topography, soil texture and subsurface conditions vary substantially from one location to another for a release of hazardous substances and have a significant effect on fluid movement on and under the surface. Some entities that generate, use or dispose of hazardous substances that are further than ½-mile distant from a navigable water may be situated that a release may reach a navigable water more quickly than those within a ½ mile. The better, more protective approach is allow the owner/operator within a larger area to identify the site information, such as topography, soil texture and subsurface and groundwater flow and other factors and model those conditions for a release of the hazardous substances at that site and present the results to the state or federal regional office for evaluation of need for a response plan. Give priority for response plans to sites

closest to human water sources. Those sources are defined as the most current delineation of source water protection areas, including wellhead and sole source aquifer protection areas which may intersect surface waters, near navigable waters. These protection areas supply public water systems and should receive the highest priority for attention for responses to hazardous substance releases in or near them. Owners and operators of facilities with boundaries that touch or overlap with these protection areas are potentially positioned to adversely impact water supply.

Terminology Clarification

EPA Questions: Is there a need to clarify the term "conveyance" as it applies to CWA hazardous substance facility response plan requirements? What terminology could the Agency reconsider?

NGWA Response: The Agency should consider the Supreme Court opinion in *County of Maui v. Hawaii Wildlife Fund* (No. 18-260). The case examined whether the Clean Water Act (CWA) requires a National Pollution Discharge Elimination System (NPDES) permit when pollutants are conveyed from a point source to waters of the United States (WOTUS) by groundwater. While this case involved determining whether a permit is needed, the key aspect that applies to hazardous substance response plans is that it recognizes that groundwater may be a conveyance for pollutants regulated under the Clean Water Act. In that case, groundwater conveyance of point source pollution to a navigable water was considered the 'functional equivalent' of a direct discharge to navigable water. Site conditions may contribute to rapid movement of hazardous pollutants to a navigable water via groundwater in certain geologic settings, such as karst (solution channels), fractured rock or gravel. Facilities near source water protection areas should be given high priority for protection. NGWA has guidance on determining functional equivalence.[1]

Reconsider Targets for Worst-Case Discharges

EPA Question: What other FRP amendments should EPA reconsider that would better target worst-case hazardous substance discharges?

NGWA Response: Specific points on approaches related to "source water protection areas" that provide water to community water systems that may be potentially affected by hazardous substance worst-case discharges are:

[1] National Ground Water Association (NGWA). 2023. Evaluating Groundwater Conveyance of Point Source Pollution to a Navigable Water as Functionally Equivalent to Direct Discharge. NGWA Press, Westerville, Ohio. https://www.ngwa.org/docs/default-source/default-document-library/2024-white-papers/maui-decision-white-paper_final.pdf (Accessed February 24, 2026).

- For nearly all 49,680 small, medium and large community water systems, source water protection/wellhead protection areas have already been delineated, of which 37,971 are groundwater-supplied. Many larger water systems have conducted groundwater flow modeling to define their source water protection areas.

- Since these protection areas have already been delineated and are widely accepted, these areas should be considered principal human health receptor zones of highest priority for hazardous substance worst-case discharge planning. These delineated source water protection areas, including wellhead protection areas, may intersect surface waters, such as stream channels and lakes. The utility or other water abstractor may draw water impacted by a hazardous substance release for drinking water use through their intakes in and wells near streams and lakes. Pumping wells can draw water from streams and lakes through the sediments to well screen and up the well casing. Depending on the treatment process, the utility or water producer may not be able to remove the hazardous substances through its treatment and thereby supply contaminated water to its consumers.

If hazardous substances reached the navigable water and surface water intakes or groundwater wells near the navigable waters downstream can extract water from the stream without sufficient dilution directly or via water well pumping in the subsurface, those intake locations should be considered in the assessment of which facilities are required to have a response plan.

- Typically, source water protection areas for groundwater-supplied water systems apply a one- or two-year time-of-travel for groundwater to reach the production well(s) in defining the outer boundary of the protection area. Any worst-case release that may occur within the boundary of the source water protection area and/or near the well(s) may have a shorter timeframe within which a hazardous substance release may reach the well and be pumped into the system's or other well owner's pipes.

- Some communities may be protecting areas for new or future wells, as provided for under SDWA Section 1428. The process for identifying priority areas for worst case response should include these areas not currently used for water supply but important to those communities. These areas may include brackish and saline groundwaters for communities that require supplemental water supply.

**Basis for NGWA interests in Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulations**

NGWA, the largest trade association and professional society of groundwater professionals in the world, represents over 10,000 groundwater professionals within the United States

and internationally. NGWA represents four key sectors: scientists and engineers, water-well contractors; manufacturers and suppliers, responsible for manufacturing and providing the equipment needed to make groundwater development possible. NGWA's mission is to advocate for and support the responsible development, management, and use of groundwater.

Over 34 million people in the United States rely on private wells and 93 million are served by groundwater from public community water systems.

NGWA sees groundwater and the subsurface as natural infrastructure that should be sustainably managed for current and future use. The subsurface environment should be considered from an integrated resource perspective. The natural infrastructure of the subsurface environment with proper management can provide fresh groundwater for drinking, industrial and manufacturing applications, food production, and ecosystem support.

Thank you for the opportunity to review this proposed rule. NGWA looks forward to working with EPA and the NPDES program to support a groundwater-protective approach in hazardous substance worst-case discharge planning.

For further information and followup, please contact:

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