



August 23, 2018

Office of Land and Emergency Management (OLEM)
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue NW
Washington, DC 20460
Docket ID No. EPA-HQ-OLEM-2018-0024

Via regulations.gov submission

RE: Clean Water Act Hazardous Substances Discharge Prevention Action

To whom it may concern:

The Society of Chemical Manufacturers & Affiliates (SOCMA) appreciates the opportunity to submit comments on the U.S. Environmental Protection Agency's proposed Clean Water Act Hazardous Substances Spill Prevention proposed rule.¹

SOCMA is the only U.S.-based trade association solely dedicated to the specialty and fine chemical industry. Our members play an indispensable role in the global chemical supply chain, providing specialty chemicals to companies in markets ranging from aerospace and electronics to pharmaceuticals and agriculture.

Many manufacturing facilities operated by SOCMA members are subject to the extensive range of accident prevention program requirements that EPA has accurately identified in the proposed rule, including the NPDES Multi-Sector General Permit (MSGP) for Industrial Stormwater, the oil Spill Prevention, Control, and Countermeasure (SPCC) rule, the Risk Management Program (RMP) rule, and OSHA's Process Safety Management (PSM) standard.

These programs, in the aggregate, result in the prevention and containment of the vast majority of hazardous substance (HS) discharges. SOCMA therefore supports EPA's assessment that the existing framework of regulatory requirements provides the necessary program elements to ensure that on-shore facilities avoid discharges of hazardous substances into navigable waters. By the same token, the incident data developed by EPA suggests that there is an opportunity to reduce the number of discharges, via more targeted prevention requirements, directed toward the subset of facilities that should be the subject of enhanced compliance attention. As described below, SOCMA recommends that EPA (i) conduct further analysis of the causes and consequences of HS releases, and (ii) further explore requiring compliance with the five program elements contained in the MSGP and SPCC requirements as a means of preventing and mitigating HS releases.

Additional Data Collection and Analysis

The proposed rule's review of cause data collected through the National Response Center (NRC) identifies 117 discharges with reported impacts that were documented. Further information regarding the specific circumstances of these incidents would assist EPA in determining what program elements might have averted these discharges. This is particularly true regarding the majority of incidents (74) that were caused by either illegal dumping or unknown causes. EPA has initiated an information collection request on the

¹ 83 FR 29499 (June 25, 2018).

number and type of facilities with HS onsite; historical discharges of HS; the ecological and human health impacts of those discharges; and existing state, territory, and Tribal programs that address discharge prevention of CWA HS, and has said that it anticipates using the results of the survey to further inform this rulemaking.² SOCMA encourages EPA to finalize this collection. In particular, SOCMA recommends that EPA focus on the written follow-up reports that facilities have filed with State Emergency Response Commissions pursuant to 40 C.F.R. § 355.40(b) regarding hazardous substance releases that triggered reporting to the NRC. This data will support the reasonableness of the action EPA takes in this docket.

Recommended Targeted Requirements

While further data collection would help confirm this conclusion, SOCMA believes the data EPA has presented in the proposed rule successfully demonstrates that the principal program elements are already in place in the Code of Federal Regulations for HS discharge prevention, containment, and mitigation. These elements are all found in the MSGP, the oil SPCC rules, and Underground Storage Tank (UST) requirements, all of which address hazard identification, mechanical integrity, secondary containment, personnel training, and emergency response planning. See Table 5, p. 29511. As EPA describes in Table 7 (p. 29517), the first four of these provide the greatest protection against potential CWA discharge scenarios; emergency response planning supports them.

In the interest of ensuring that facilities maintain critical program elements that prevent and mitigate potential discharges into navigable waters, SOCMA supports EPA's "targeted prevention requirements" alternative (p. 29516). Specifically, SOCMA recommends that EPA further explore requiring facilities to comply with either the MSGP or the oil SPCC rules, adapted to apply to HS. Facilities that already comply with the MSGP would need to take no further action; facilities that already comply with the oil SPCC rules would be expected to adapt their SPCC plans as necessary to ensure that they address HS as well. Appropriate *de minimis* volume cutoffs would be necessary, comparable to the 42,000 gallon belowground/1,320 gallon aboveground cutoffs that are currently in the oil SPCC rule.³ The CERCLA release reporting cutoffs (100-5,000 lbs) could also potentially serve as the *de minimis* HS applicability cutoffs.

This alternative would assure that EPA meets its statutory obligation to "issue regulations . . . establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of . . . hazardous substances from . . . onshore facilities . . . , and to contain such discharges" ⁴ SOCMA believes that doing so will also assist the Agency's mission of reducing the number of HS discharges and those with reported impacts.

SOCMA also believes that this approach, if implemented reasonably, would not impose substantial costs and would have a net benefit. We expect that most covered facilities already comply with either or both the MSGP and the oil SPCC rules; indeed, that is true of all SOCMA member facilities that responded to a brief survey on the topic. To the extent, however, that there are other on-shore facilities (i) that store hazardous substances where they could reasonably be expected to have a discharge of a hazardous substance to navigable waters, but (ii) that are not currently subject to either the MSGP or the oil SPCC rules, a targeted rulemaking could significantly reduce the potential for such releases to occur.

² [82 FR 44178](#) (Sept. 21, 2017).

³ Because the existing UST rules already apply to HS, see 83 FR 29509, EPA need take no further action regarding underground storage of HS.

⁴ 33 U.S.C. § 1321(j)(1)(C).

Conclusion

SOCMA appreciates the opportunity to comment on EPA's proposed Clean Water Act Hazardous Substances Spill Prevention rule and recommends the Agency (i) gather and analyze additional information and (ii) consider establishing targeted program requirements that ensure that subject facilities adhere to existing requirements of the MSGP and oil SPCC rule.

SOCMA looks forward to continued involvement and collaboration with EPA in the future on this and other topics. If you have any question about these comments, please do not hesitate to contact me at rothsteinj@socma.com or 571-348-5122.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jared Rothstein". The signature is fluid and cursive, with the first name "Jared" being larger and more prominent than the last name "Rothstein".

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