

Chemical Safety and Drinking Water Protection Act

By

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The tragic spill of a chemical into the Elk River in West Virginia that occurred on January 9, 2014, has spurred the development of new legislation. On January 27, 2014, Senators Joe Manchin (D-WV), Barbara Boxer (D-CA), Chair of the Environment and Public Works Committee, and Jay Rockefeller (D-WV) introduced the Chemical Safety and Drinking Water Protection Act of 2014. The regrettable spill and the mismanagement of the spill's consequences by federal and state regulators reads like a case summary of mistakes to avoid when managing a crisis of epic proportions. The legislation that may emerge from this tragedy could prevent similar events from occurring in the future.

The New Legislation

The bill is intended to strengthen states' ability to prevent chemical spills such as the January 9, 2014, spill into the Elk River that contaminated the water supply in West Virginia to over 300,000 citizens. The events in West Virginia and the disarray that continues to plague the federal and state governments' response to the spill offers a classic cautionary tale of what can go so very wrong when adversity strikes.

The bill would amend the Safe Drinking Water Act (SDWA) by adding Part G, "Protection of Surface Water from Contamination by Chemical Storage Facilities." The bill's

key principles include requiring regular state inspections of above-ground chemical storage facilities; expecting industry to meet standards for good design, construction, and maintenance of above-ground chemical storage facilities; supply information on storage facility inventory and stored chemicals; develop state-approved emergency response plans; and develop employee training and safety plans; allowing states to recoup costs incurred from responding to emergencies; and ensuring drinking water systems have the tools and information to respond to emergencies.

A “covered chemical storage facility” is a facility at which a chemical is stored and the U.S. Environmental Protection Agency (EPA) or a state determines that the release of the chemical poses a risk of harm to a public water system. State programs would be required to include minimum requirements for covered chemical storage facilities. Covered chemical storage facilities would be required to provide notice to EPA, the state, and applicable public water systems of the potential toxicity of the stored chemicals; safeguards that can be taken to limit the effects of a release of the stored chemicals; and financial responsibility requirements.

The bill would give EPA or a state the authority to order the owner or operator of a covered chemical storage facility to comply with the bill. The bill would prohibit owners or operators of covered facilities from transferring the facility unless, prior to closing or completion of the transfer, they provide the results of a pretransfer inspection of the integrity of the covered chemical storage facility. EPA or the state must provide public water systems with information relating to emergency response plans for covered facilities located within the same watershed as

the public water system, and an inventory of each chemical held at the covered facility. Emergency response plans must be submitted to EPA and the Secretary of Homeland Security.

On February 10, 2014, Representative Shelley Moore Capito (R-WV) introduced similar legislation in the House. The Ensuring Access to Clean Water Act would compel states to inspect tanks every three years if the tanks are located near sources of drinking water, and every five years for all other tanks. The bill would establish safety standards, design standards, leak detection and spill and overflow controls, emergency response, employee training, lifecycle maintenance, and notice regarding the potential toxicity of stored chemicals.

Conclusion

The events unfolding in West Virginia are tragic and preventable. The new legislation could go a long way in preventing similar mishaps from occurring in the future.

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