Chemical Spill Legislation

In January 2014, thousands of gallons (the precise quantity is unknown) of 4-methylcyclohexanemethanol (MCHM) spilled from an above-ground storage tank in West Virginia and made its way into the Elk River. It then entered the primary water intake for the West Virginia American Water Company, the largest utility in the state with over 300,000 customers in and around the capital city of Charleston.

MCMH is a chemical used to wash coal. The water utility had to issue a “do not use” order to residents for five days. In response, the Senate Committee on Environment and Public Works last July reported out S. 1961, the Chemical Safety and Drinking Water Protection Act of 2014. It would have created a new water protection program for chemical storage facilities. Similar legislation (H.R. 4024) was introduced in the House. We understand that Sen. Joe Manchin of West Virginia is working on similar legislation for the current session of Congress.

AWWA and other water organizations supported the aims and many of the features of S. 1961 and H.R. 4024, but made suggestions to improve it. Following are principles we believe will make any legislation of this nature more effective in helping water systems prepare for and respond to such emergency situations.

Standards and Notification. First and foremost, chemical storage facilities that could pose a risk to nearby sources of drinking water must be held to the highest standard of safety and security. This includes regulatory oversight with requirements for a strong leak detection and spill control program, a robust emergency response plan, and speedy notification of nearby water utilities of any incident that releases a chemical into water supplies.

This last point about spill notification is critical, because it sets the stage for all response and recovery activities that will follow. If a water utility is not told that a certain chemical has entered its source waters, that chemical may not be detected until it reaches homes and businesses in the community. Conversely, timely notification by a chemical facility may allow a utility to react in a timely manner with a range of appropriate response measures.

Information. The more comprehensive a spill notification is, the more effective the water utility’s response can be. Any new law or regulation that requires chemical spill notifications should mandate the inclusion of all available information on the substance that was spilled, how much was spilled, how that chemical behaves in water, what treatment measures or techniques are most effective to treat or remove that chemical, what the human health risks are at given.
concentrations, and any guidance that may be available for dealing with the chemical. Quickly getting this information into the hands of water treatment experts will greatly improve the chances of a successful response.

**What to do with Contaminated Water.** Even with meaningful notification requirements in place, the risk of a water contamination event will always remain. To minimize impacts when such an event does occur, EPA needs to help water utilities answer the basic question of, “what should the utility do with the contaminated water?” Existing EPA guidance essentially says to store the water or get an NPDES permit to flush the system. In practice, storing all the water in a utility distribution system means the utility must entirely cease operations, while typical NPDES permits might not be issued in a timely manner. Neither of those is a workable solution in the midst of an emergency. We urge Congress to ensure that EPA works with AWWA to develop workable answers to the problem of managing contaminated water.

**Costs of a State-Based Program.** We know that any new water quality protection activities to be carried out by EPA or state primacy agencies will come with a cost. And while we are sympathetic to the realities of the federal government’s current fiscal climate, most state governments are operating under very tight or declining budgets as well. Therefore any new chemical facility-monitoring program enacted under SDWA must include a sufficient authorization to offset at least some of the implementation costs. Otherwise, these new activities will come at the expense of other ongoing water quality oversight activities or badly needed infrastructure investments.

**Cost of Recovery from a Spill.** Legislation in the last Congress provided that EPA and state agencies could file suit for costs incurred in a chemical spill. However, water utilities or communities that incurred cleanup or repair costs or that suffered economic damage were not included in this provision. Utilities and communities are the entities or people that will suffer the most from spills. Future legislation must make it clear that utilities have a right of action through the courts for full recovery of damages and response costs.

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