To protect navigable waters from contamination by chemical storage facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2014

Mrs. CAPITO introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To protect navigable waters from contamination by chemical storage facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring Access to Clean Water Act of 2014”.


SEC. 2. PROTECTION OF NAVIGABLE WATERS FROM CONTAMINATION BY CHEMICAL STORAGE FACILITIES.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) is amended by adding at the end the following:

"TITLE VII—PROTECTION OF NAVIGABLE WATERS FROM CONTAMINATION BY CHEMICAL STORAGE FACILITIES

"SEC. 701. DEFINITIONS.

"In this title:

"(1) ABOVEGROUND STORAGE TANK.—

"(A) IN GENERAL.—For the purposes of this title, the term ‘aboveground storage tank’ means any container, or set of connected containers, designed to contain fluids located at a covered chemical storage facility, constructed of materials including concrete, steel, plastic or fiberglass reinforced plastic and located on or above the ground surface.

"(B) EXCLUSIONS.—For the purposes of this title, the term ‘aboveground storage tank’ does not include—

"(i) any aboveground storage tank of 1,100 gallons or less capacity, unless that
tank is greater than 500 gallons capacity and is located within 500 feet of a navigable water that is designated for use as a domestic water supply under section 303; or

“(ii) any aboveground storage tank that is subject to oversight and inspection requirements under a Federal or State law or regulation that is determined by the Administrator or the State as applicable under section 702(c) to be at least as stringent as the requirements of the program under section 702.

“(2) CHEMICAL.—The term ‘chemical’ means any substance or mixture of substances.

“(3) COVERED CHEMICAL STORAGE FACILITY.—

“(A) IN GENERAL.—The term ‘covered chemical storage facility’ means a facility at which a chemical is stored and the Administrator or State, as applicable, determines that a release of the chemical from the facility poses a risk of harm to a navigable water that is designated for use as a domestic water supply under section 303.
“(B) Exclusions.—The term ‘covered chemical storage facility’ does not include a facility that is subject to a procedure, method, or other requirement for equipment to address hazardous substances pursuant to section 311(j)(1)(C).

“(C) Considerations.—In determining risk of harm posed by a chemical storage facility under subparagraph (A), the Administrator or State, as applicable, may consider the requirements of applicable Federal or State laws (including regulations).

“(4) State Program.—The term ‘State program’ means a chemical storage facility source water protection program established under section 702.

“Sec. 702. Establishment of State Programs.

“(a) In General.—Not later than 1 year after the date of enactment of this title, the Administrator or each State exercising primary enforcement responsibility under section 702(c), as applicable, shall carry out, directly or through delegation, a chemical storage facility source water protection program to provide for the protection of navigable waters that are designated for use as domestic water sources under section 303 from a release of a chemical from a covered chemical storage facility.
“(b) Program Requirements.—

“(1) In General.—A State program under subsection (a) shall provide for oversight and inspection of each covered chemical storage facility in accordance with the requirements described in paragraph (2) to prevent the release of chemicals into a navigable water that is designated for use as a domestic water source under section 303.

“(2) Minimum Requirements.—At a minimum, a State program shall include—

“(A) requirements for covered chemical storage facilities, including—

“(i) acceptable standards of good design, construction, or maintenance;

“(ii) leak detection;

“(iii) spill and overfill control;

“(iv) inventory control;

“(v) an emergency response and communication plan;

“(vi) an employee training and safety plan;

“(vii) an inspection of the integrity of each covered chemical storage facility;

“(viii) lifecycle maintenance, including corrosion protection;
“(ix) notice to the Administrator, the appropriate State agency, and applicable operators of public water systems on the navigable water designated for use as a domestic water supply under section 303 of—

“(I) the potential toxicity of the stored chemicals to humans and the environment; and

“(II) safeguards or other precautions that can be taken to detect, mitigate, or otherwise limit the adverse effects of a release of the stored chemicals; and

“(x) financial responsibility requirements, including proof of insurance, bond, or other similar instrument;

“(B) inspections of aboveground storage tanks at covered chemical storage facilities, which shall occur—

“(i) for a covered chemical storage facility identified in a source water assessment area under section 1453 of the Safe Drinking Water Act (42 U.S.C. 300f et
seq.), not less frequently than once every 3 years; and

“(ii) for any other covered chemical storage facility, not less frequently than once every 5 years; and

“(C) a comprehensive inventory of the covered chemical storage facilities in each State.

“(c) ADMINISTRATION.—A State program shall be carried out—

“(1) if the State exercises primary enforcement responsibility for the issuance of permits under section 402(b), by the State; and

“(2) if the State does not exercise primary enforcement responsibility for the issuance of permits under section 402(b) in that State, by the Administrator.

“(d) RULE OF CONSTRUCTION.—Nothing in this title shall preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce standards for the oversight and inspection of covered chemical storage facilities that are more stringent than the minimum requirements in this section.

“(e) TECHNICAL ASSISTANCE.—Upon the request of a State exercising primary enforcement responsibility under section 702(c)(1), the Administrator may provide
technical assistance to a State program in carrying out
activities under this title.

“(f) Survey of Best Practices.—The Administrator shall within six months of the date in section
702(a)—

“(1) prepare a report that surveys the State
oversight and inspection programs provided for in
this section and applicable regulations implementing
such programs in place in each State;

“(2) submit a copy of this report to the Chairman
and Ranking Member of the House Transportation and Infrastructure Committee and the Senate
Environment and Public Works Committee;

“(3) make the report available to the public on
the Administrator’s Web site; and

“(4) provide a copy of the report to each State
exercising primary enforcement responsibility under
section 702(c)(1).


“(a) Corrective Action Orders.—The Administrator under section 702(c)(2) or the State under section
702(c)(1), as applicable, may issue an order to the owner
or operator of a covered chemical storage facility to carry
out the requirements of this title.

“(b) Petitions.—
“(1) IN GENERAL.—In any case in which the Administrator or State as applicable under section 702(c) is authorized to act under subsection (a), the owner or operator of a public water system may—

“(A) commence a civil action for appropriate equitable relief, including a restraining order or permanent or temporary injunction, to address any activity or facility that may present an imminent and substantial endangerment to the health of persons who are supplied by that public water system; or

“(B) petition the Administrator or State as applicable under section 702(c) to issue an order or commence a civil action under subsection (a).

“(2) RESPONSE.—

“(A) IN GENERAL.—Subject to subparagraph (B), not later than 30 days after the date on which the Administrator receives a petition under paragraph (1), the Administrator shall respond to the petition and initiate such action as the Administrator determines to be appropriate.

“(B) SPECIAL RULE FOR EMERGENCIES.—

If the owner or operator of a public water sys-
tem submits the petition under paragraph (1) in response to an emergency, the Administrator shall respond not later than 72 hours after receipt of the petition.

“SEC. 704. COST RECOVERY.

“If costs have been incurred by the Administrator or the State, as applicable, for undertaking a response action under this title relating to the release of a chemical, the owner or operator of the covered chemical storage facility shall be liable to the Administrator or the State for those costs.

“SEC. 705. TRANSFER OF COVERED CHEMICAL STORAGE FACILITIES.

“Notwithstanding the inspection schedule under section 702(b)(2)(B), no person shall transfer a covered chemical storage facility unless—

“(1) prior to the closing or completion of the transfer, the transferor submits to the transferee the results of a pre-transfer inspection of the integrity of the covered chemical storage facility, which shall be conducted pursuant to any requirements set by the Administrator under section 702(c)(2) or the State under section 702(c)(1), as applicable; and

“(2) the transferor or the transferee agrees to take appropriate measures to address the results of
the pre-transfer inspection prior to the date that is
30 days after the date on which the covered chemical
storage facility closes or is transferred.

````SEC. 706. INFORMATION SHARING.
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````(a) INFORMATION FOR OPERATORS OF DOMESTIC
WATER SYSTEMS ON NAVIGABLE WATERS.—The Admin-
istrator or State, as applicable, shall provide operators of
domestic water systems on a navigable water that is des-
ignated for use as a domestic water source under section
303 with information relating to—
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````(1) emergency response plans for covered
chemical storage facilities located within the same
watershed as the domestic water system; and
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````(2) an inventory of each chemical held at the
covered chemical storage facilities described in para-
graph (1).
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````(b) EMERGENCY RESPONSE PLANS.—A copy of
each emergency response plan submitted under section
702(b)(2)(A) shall be provided to—
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````(1) the Administrator (if the State exercises
primary responsibility under section 702(e)(1)); and
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````(2) the Secretary of Homeland Security.
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````(c) INFORMATION.—
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````(1) IN GENERAL.—The Administrator or a
State, as applicable, may keep confidential informa-
tion the Administrator or the State determines to be sensitive or present a security risk to a covered chemical storage facility.

“(2) EXCEPTIONS.—Paragraph (1) shall not—

“(A) apply to public health information; or

“(B) prevent the sharing of information with the Administrator, the Secretary of Homeland Security, a public water system, or a public agency involved in emergency response.

“SEC. 707. PENALTIES FOR VIOLATIONS.

“Any person owning or operating a covered chemical storage facility who violates any applicable requirement or who fails or refuses to comply with an order issued by the Administrator or the State as applicable under this title, may, in an action brought in the appropriate United States District Court, be subject to a civil penalty not to exceed $15,000 for each day in which such violation occurs or failure to comply continues.”.