

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4024

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

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2014

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

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## A BILL

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

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. PROTECTION OF NAVIGABLE WATERS FROM CON-**  
2 **TAMINATION BY CHEMICAL STORAGE FACILI-**  
3 **TIES.**

4 The Federal Water Pollution Control Act (33 U.S.C.  
5 1251 et. seq.) is amended by adding at the end the fol-  
6 lowing:

7 **“TITLE VII—PROTECTION OF**  
8 **NAVIGABLE WATERS FROM**  
9 **CONTAMINATION BY CHEM-**  
10 **ICAL STORAGE FACILITIES**

11 **“SEC. 701. DEFINITIONS.**

12 “In this title:

13 “(1) ABOVEGROUND STORAGE TANK.—

14 “(A) IN GENERAL.—For the purposes of  
15 this title, the term ‘aboveground storage tank’  
16 means any container, or set of connected con-  
17 tainers, designed to contain fluids located at a  
18 covered chemical storage facility, constructed of  
19 materials including concrete, steel, plastic or fi-  
20 berglass reinforced plastic and located on or  
21 above the ground surface.

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

25 “(i) any aboveground storage tank of  
26 1,100 gallons or less capacity, unless that

1 tank is greater than 500 gallons capacity  
2 and is located within 500 feet of a navi-  
3 gable water that is designated for use as a  
4 domestic water supply under section 303;  
5 or

6 “(ii) any aboveground storage tank  
7 that is subject to oversight and inspection  
8 requirements under a Federal or State law  
9 or regulation that is determined by the Ad-  
10 ministrator or the State as applicable  
11 under section 702(c) to be at least as  
12 stringent as the requirements of the pro-  
13 gram under section 702.

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

16 “(3) COVERED CHEMICAL STORAGE FACIL-  
17 ITY.—

18 “(A) IN GENERAL.—The term ‘covered  
19 chemical storage facility’ means a facility at  
20 which a chemical is stored and the Adminis-  
21 trator or State, as applicable, determines that a  
22 release of the chemical from the facility poses  
23 a risk of harm to a navigable water that is des-  
24 ignated for use as a domestic water supply  
25 under section 303.

1           “(B) EXCLUSIONS.—The term ‘covered  
2           chemical storage facility’ does not include a fa-  
3           cility that is subject to a procedure, method, or  
4           other requirement for equipment to address  
5           hazardous substances pursuant to section  
6           311(j)(1)(C).

7           “(C) CONSIDERATIONS.—In determining  
8           risk of harm posed by a chemical storage facil-  
9           ity under subparagraph (A), the Administrator  
10          or State, as applicable, may consider the re-  
11          quirements of applicable Federal or State laws  
12          (including regulations).

13          “(4) STATE PROGRAM.—The term ‘State pro-  
14          gram’ means a chemical storage facility source water  
15          protection program established under section 702.

16   **“SEC. 702. ESTABLISHMENT OF STATE PROGRAMS.**

17          “(a) IN GENERAL.—Not later than 1 year after the  
18          date of enactment of this title, the Administrator or each  
19          State exercising primary enforcement responsibility under  
20          section 702(c), as applicable, shall carry out, directly or  
21          through delegation, a chemical storage facility source  
22          water protection program to provide for the protection of  
23          navigable waters that are designated for use as domestic  
24          water sources under section 303 from a release of a chem-  
25          ical from a covered chemical storage facility.

1 “(b) PROGRAM REQUIREMENTS.—

2 “(1) IN GENERAL.—A State program under  
3 subsection (a) shall provide for oversight and inspec-  
4 tion of each covered chemical storage facility in ac-  
5 cordance with the requirements described in para-  
6 graph (2) to prevent the release of chemicals into a  
7 navigable water that is designated for use as a do-  
8 mestic water source under section 303.

9 “(2) MINIMUM REQUIREMENTS.—At a min-  
10 imum, a State program shall include—

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

13 “(i) acceptable standards of good de-  
14 sign, construction, or maintenance;

15 “(ii) leak detection;

16 “(iii) spill and overflow control;

17 “(iv) inventory control;

18 “(v) an emergency response and com-  
19 munication plan;

20 “(vi) an employee training and safety  
21 plan;

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

24 “(viii) lifecycle maintenance, including  
25 corrosion protection;

1 “(ix) notice to the Administrator, the  
2 appropriate State agency, and applicable  
3 operators of public water systems on the  
4 navigable water designated for use as a do-  
5 mestic water supply under section 303  
6 of—

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

10 “(II) safeguards or other pre-  
11 cautions that can be taken to detect,  
12 mitigate, or otherwise limit the ad-  
13 verse effects of a release of the stored  
14 chemicals; and

15 “(x) financial responsibility require-  
16 ments, including proof of insurance, bond,  
17 or other similar instrument;

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

21 “(i) for a covered chemical storage fa-  
22 cility identified in a source water assess-  
23 ment area under section 1453 of the Safe  
24 Drinking Water Act (42 U.S.C. 300f et

1 seq.), not less frequently than once every 3  
2 years; and

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

6 “(C) a comprehensive inventory of the cov-  
7 ered chemical storage facilities in each State.

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

10 “(1) if the State exercises primary enforcement  
11 responsibility for the issuance of permits under sec-  
12 tion 402(b), by the State; and

13 “(2) if the State does not exercise primary en-  
14 forcement responsibility for the issuance of permits  
15 under section 402(b) in that State, by the Adminis-  
16 trator.

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

23 “(e) TECHNICAL ASSISTANCE.—Upon the request of  
24 a State exercising primary enforcement responsibility  
25 under section 702(c)(1), the Administrator may provide

1 technical assistance to a State program in carrying out  
2 activities under this title.

3 “(f) SURVEY OF BEST PRACTICES.—The Adminis-  
4 trator shall within six months of the date in section  
5 702(a)—

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

10 “(2) submit a copy of this report to the Chair-  
11 man and Ranking Member of the House Transpor-  
12 tation and Infrastructure Committee and the Senate  
13 Environment and Public Works Committee;

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

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

19 **“SEC. 703. EMERGENCY POWERS.**

20 “(a) CORRECTIVE ACTION ORDERS.—The Adminis-  
21 trator under section 702(c)(2) or the State under section  
22 702(c)(1), as applicable, may issue an order to the owner  
23 or operator of a covered chemical storage facility to carry  
24 out the requirements of this title.

25 “(b) PETITIONS.—



1           “(1) IN GENERAL.—In any case in which the  
2 Administrator or State as applicable under section  
3 702(c) is authorized to act under subsection (a), the  
4 owner or operator of a public water system may—

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

12           “(B) petition the Administrator or State as  
13 applicable under section 702(c) to issue an  
14 order or commence a civil action under sub-  
15 section (a).

16           “(2) RESPONSE.—

17           “(A) IN GENERAL.—Subject to subpara-  
18 graph (B), not later than 30 days after the date  
19 on which the Administrator receives a petition  
20 under paragraph (1), the Administrator shall  
21 respond to the petition and initiate such action  
22 as the Administrator determines to be appro-  
23 priate.

24           “(B) SPECIAL RULE FOR EMERGENCIES.—

25           If the owner or operator of a public water sys-

1           tem submits the petition under paragraph (1)  
2           in response to an emergency, the Administrator  
3           shall respond not later than 72 hours after re-  
4           ceipt of the petition.

5 **“SEC. 704. COST RECOVERY.**

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

12 **“SEC. 705. TRANSFER OF COVERED CHEMICAL STORAGE**  
13 **FACILITIES.**

14           “Notwithstanding the inspection schedule under sec-  
15 tion 702(b)(2)(B), no person shall transfer a covered  
16 chemical storage facility unless—

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

24           “(2) the transferor or the transferee agrees to  
25 take appropriate measures to address the results of

1 the pre-transfer inspection prior to the date that is  
2 30 days after the date on which the covered chemical  
3 storage facility closes or is transferred.

4 **“SEC. 706. INFORMATION SHARING.**

5 “(a) INFORMATION FOR OPERATORS OF DOMESTIC  
6 WATER SYSTEMS ON NAVIGABLE WATERS.—The Admin-  
7 istrator or State, as applicable, shall provide operators of  
8 domestic water systems on a navigable water that is des-  
9 igned for use as a domestic water source under section  
10 303 with information relating to—

11 “(1) emergency response plans for covered  
12 chemical storage facilities located within the same  
13 watershed as the domestic water system; and

14 “(2) an inventory of each chemical held at the  
15 covered chemical storage facilities described in para-  
16 graph (1).

17 “(b) EMERGENCY RESPONSE PLANS.—A copy of  
18 each emergency response plan submitted under section  
19 702(b)(2)(A) shall be provided to—

20 “(1) the Administrator (if the State exercises  
21 primary responsibility under section 702(c)(1)); and

22 “(2) the Secretary of Homeland Security.

23 “(c) INFORMATION.—

24 “(1) IN GENERAL.—The Administrator or a  
25 State, as applicable, may keep confidential informa-

1       tion the Administrator or the State determines to be  
2       sensitive or present a security risk to a covered  
3       chemical storage facility.

4               “(2) EXCEPTIONS.—Paragraph (1) shall not—  
5               “(A) apply to public health information; or  
6               “(B) prevent the sharing of information  
7               with the Administrator, the Secretary of Home-  
8               land Security, a public water system, or a pub-  
9               lic agency involved in emergency response.

10 **“SEC. 707. PENALTIES FOR VIOLATIONS.**

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

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