

Environmental Protection Agency

§ 118.3

States which provides movement or conveyances of CWA hazardous substances in interstate or intrastate commerce by rail, pipeline, highway vehicle, or vessel pursuant to 49 CFR parts 171–199.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

Vessel as defined by section 101(28) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

Water distribution system means a system to connect water treatment plants or water sources (in the absence of treatment) to customers via a network of pipes, storage facilities, valves, and pumps.

Wellhead protection area means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

Worst case discharge means the largest foreseeable discharge in adverse weather conditions including a discharge resulting from fire or explosion.

§ 118.3 Applicability.

This part applies to the owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging CWA hazardous substances into or on the navigable waters or a conveyance to navigable waters by meeting the following criteria:

(a) *Threshold quantity.* The maximum quantity onsite for any CWA hazardous substance listed at 40 CFR 116.4 at any

time, meets or exceeds 1,000 times the Reportable Quantity in pounds (kilograms) found at 40 CFR 117.3. Do not include any exceptions or exemptions identified in § 118.8. To calculate the threshold quantities of CWA hazardous substances in mixtures, follow the procedures in § 118.9; and

(b) *Proximity to navigable waters.* The non-transportation-related onshore facility boundary or nearest opportunity for discharge is located within one-half mile of navigable waters or a conveyance to navigable waters; and

(c) *Substantial harm criteria.* The non-transportation-related onshore facility meets one or more of the following substantial harm criteria:

(1) *Ability to cause injury to fish, wildlife, and sensitive environments.* The non-transportation-related onshore facility is located at a distance to an endpoint as calculated using a planning distance in § 118.10(b) such that a worst case discharge of a CWA hazardous substance or the aqueous products that form when the CWA hazardous substance enters water from the non-transportation-related onshore facility could cause injury to fish, wildlife, and sensitive environments. For identification of fish, wildlife, and sensitive environments, owners or operators shall use the applicable Area Contingency Plan prepared pursuant to section 311(j)(4) of the CWA, in addition to identifying other areas pursuant to the definition in § 118.2;

(2) *Ability to adversely impact a public water system.* The non-transportation-related onshore facility is located at a distance to an endpoint such that a worst case discharge could adversely impact a public water system, as described by the five criteria listed under paragraphs (c)(2)(i) through (v) of this section. This assessment should be conducted in collaboration with the downstream public water system(s). If the owner or operator is unable to work with the public water system after good faith efforts to do so, the owner or operator should use the estimated peak concentration of the CWA hazardous substance from a worst case discharge at the water intake to assess the potential to adversely impact a public water system. Ability to adversely impact a public water system includes a

concentration of a CWA hazardous substance, or the aqueous products that form when the CWA hazardous substance enters water, reaching a public water system which:

(i) Violates any National Primary Drinking Water Standard or State Drinking Water Regulation, such as an exceedance of a Maximum Contaminant Level;

(ii) Compromises the ability of the public water system to produce water that complies with any National Primary Drinking Water Standard or State Drinking Water Regulation;

(iii) Results in adverse health impacts in people exposed to the maximum concentration that could enter a drinking water distribution system;

(iv) Contaminates public water system infrastructure, including but not limited to intake structures, treatment facilities, and drinking water distribution systems, or premise plumbing systems to a degree that requires remediation to restore system components to acceptable performance; or

(v) Impairs the taste, odor, or other aesthetic characteristic of the water entering a drinking water distribution system to a degree that could make the water unacceptable to consumers and that could prompt the public water system to issue use restrictions;

(3) *Ability to cause injury to public receptors.* The non-transportation-related onshore facility is located at a distance to an endpoint as calculated using a planning distance in § 118.10(b) such that a worst case discharge into or on the navigable waters or a conveyance to navigable waters could cause injury to a public receptor as defined in § 118.2; or

(4) *Reportable discharge history.* The non-transportation-related onshore facility has had a reportable CWA hazardous substance discharge under § 117.21 within the last five years that reached navigable waters.

§ 118.4 General requirements.

(a) *Preparation, submission, and implementation of facility response plans.* The owner or operator of any non-transportation-related onshore facility meeting the applicability requirements of § 118.3 shall prepare, submit, and implement a

facility response plan according to the following provisions:

(1) *Initially regulated facilities.* The owner or operator of a non-transportation-related onshore facility in operation on November 30, 2026 that satisfies the criteria in § 118.3 shall prepare and submit a facility response plan that satisfies the requirements of this section and Appendix A: Substantial Harm Certification Form to the Regional Administrator by June 1, 2027.

(2) *Newly regulated facilities.* The owner or operator of a non-transportation-related onshore facility that did not satisfy the criteria in § 118.3 on November 30, 2026, but satisfies the criteria in § 118.3 after November 30, 2026 or that is notified by the Regional Administrator pursuant to § 118.5 shall prepare and submit a facility response plan that satisfies the requirements of this section and Appendix A: Substantial Harm Certification Form to the Regional Administrator within six months of meeting the criteria or notification.

(3) *Newly constructed facilities.* For a newly constructed non-transportation-related onshore facility that commences operation after June 1, 2027, and is required to prepare and submit a facility response plan based on the criteria in § 118.3, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator prior to the start of operations. Adjustments to the facility response plan to reflect changes that occur during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days.

(4) *Facilities regulated as a result of a planned event or change.* For a non-transportation-related onshore facility required to prepare and submit a facility response plan after June 1, 2027, as a result of a planned change in design, construction, operation, or maintenance so that the non-transportation-related onshore facility now meets the criteria in § 118.3 of this part, the owner or operator shall submit the facility response plan and Appendix A: Substantial Harm Certification Form to the Regional Administrator before the portion of the non-transportation-related