AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 524

113TH CONGRESS
2d Session

SENATE

REPORT
113–238

CHEMICAL SAFETY AND DRINKING WATER PROTECTION ACT OF 2014

JULY 31, 2014.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 1961]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works to which was referred a bill (S. 1961) to protect surface water from contamination by chemical storage facilities, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

On January 9, 2014, a spill from an above-ground storage tank at the Freedom Industries chemical storage facility adjacent to the Elk River near Charleston, West Virginia, contaminated drinking water with a mixture of the chemical 4-methylcyclohexane methanol (MCHM) and another chemical called "PPH, Stripped." The mixture is used in the processing of coal. The spill left more than 300,000 residents without tap water for days. The public water system provides drinking water to the City of Charleston and communities in 9 surrounding counties.

On January 27, 2014, Senator Joe Manchin introduced S. 1961, the "Chemical Safety and Drinking Water Protection Act of 2014," along with Senator Jay Rockefeller and Senator Barbara Boxer. S.1961 would establish State programs under the Safe Drinking Water Act (SDWA) that will oversee and inspect chemical storage tanks that present a risk to surface drinking water sources for public water systems.

S. 1961 would amend the SDWA to provide States further authority and oversight of chemical storage tanks that may pose a risk to surface waters supplying public drinking water. The Chemical Safety and Drinking Water Protection Act would add a new Part G to the SDWA that would require State programs to protect surface water from contamination by chemical storage tanks.

S. 1961 would require the establishment of State chemical storage tank surface water protection programs with minimum requirements for regular inspections of above-ground chemical storage tanks, design, construction and maintenance standards, leak detection, spill and overfill prevention and containment, inventory control, emergency response and communication plans, employee training, financial responsibility, and integrity inspections. When establishing their own programs, States would be afforded flexibility in deciding which chemical storage tanks posed a risk of harm to public water systems. States as well as EPA are directed to limit duplicative regulation of chemical storage tanks subjected to other laws that substantially meet the requirements of this Act. The bill would require owners and operators of covered chemical storage tanks to provide EPA or the State with existing information on the potential toxicity of the stored chemicals along with safeguards or other precautions that can be taken to detect, mitigate or limit adverse effects of a spill. S. 1961 would allow EPA or the State to recoup response costs incurred from responding to spills from covered storage tanks.

PURPOSE OF THE LEGISLATION

To establish State programs for the oversight and inspection of above-ground storage tanks that pose a risk to surface waters that supply drinking water.

SECTION–BY–SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the "Chemical Safety and Drinking Water Protection Act."

Section 2. Protection of surface water from contamination by chemical storage tanks

(a) In General—

Subsection (a) amends the SDWA by adding a new Part G, as follows:

Section 1471. Definitions

Section 1471 defines the terms "chemical," "covered chemical storage tank," and "program" for purposes of the Act. A "chemical" is defined as a chemical substance that is identified as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601(14)), subject to emergency planning or reporting requirements of the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001 et seq.), or defined as a contaminant under section 1401(6) of the SDWA (42 U.S.C. 300f(6)).

A "covered chemical storage tank" is defined to make clear the chemical storage tanks that would be subject to the program. This

section makes clear that tanks that are being regulated under section 311(j)(1)(C) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(1)(C)), known as the Spill Prevention Control and Countermeasure (SPCC) regulations, are excluded. This section also provides criteria for additional exclusions that EPA or a State may adopt based on applicable Federal or State laws that substantially meet the requirements and purposes of this Act, or for tanks that EPA or the State determines would not pose a risk of harm to a public water system.

Section 1472. Establishment of programs

(a) In General

Subsection (a) provides 2 years for States that are exercising primary enforcement responsibility for public water systems under the SDWA to establish a chemical storage tank surface water protection program. This subsection also allows the Governor to delegate the program to any State agency the Governor determines appropriate, including agencies other than the agency currently responsible for implementation of other aspects of the SDWA.

(b) Program Requirements

Paragraph (1) requires that a State program provide for oversight and inspection of covered chemical storage tanks, including tanks located in source water areas identified under section 1453 of the SDWA (42 U.S.C. 300j–13).

Paragraph (2) provides the minimum requirements for a State chemical storage tank surface water protection program, including provisions for leak detection, spill and overfill prevention and containment, emergency response and communication plans, employee training, existing information on the potential toxicity of the stored chemicals to public health and the environment, and financial responsibility. This subsection requires inspections of covered chemical storage tanks. For covered tanks identified in source water assessments, inspections are required every 3 years. For any other covered chemical storage tanks, inspections are required every 5 years. For covered chemical storage tanks identified as high hazard tanks under Paragraph (3), annual inspections by a certified inspector on behalf of the owner or operator are required. Paragraph (2) also requires a comprehensive inventory of covered chemical storage tanks.

Paragraph (3) requires the EPA or State, as applicable, within 2 years, to develop a list of high hazard covered chemical storage tanks from which a chemical release pose the greatest risk of harm to public water systems and public health.

(c) Incorporation of Existing Standards

Subsection (c) provides that, in establishing the mandatory program requirements, EPA or the State may, by reference, include appropriate requirements of existing federal or State laws and regulations and consensus standards, which is intended to avoid duplication with existing requirements.

(d) National Primary Drinking Water Regulations

Subsection (d) provides that a State program and its requirements, for purposes of primary enforcement responsibility, are part of the national primary drinking water regulations and requires that they be implemented and enforced in accordance with the applicable procedures of the SDWA.

(e) Administration

Subsection (e) provides that a State program will be carried out by each State exercising primary enforcement responsibility for public water systems in that State or by EPA if the State does not exercise primary enforcement responsibility for public water systems in that State or if the State opts out under Subsection (f).

(f) Notification

Subsection (f) allows States to opt out of implementing the program by notifying EPA within 2 years.

(g) Severability

Subsection (g) makes clear that a State's decision to carry out the program or to opt out does not impact the State's primacy over other programs under the SDWA.

(h) Guidance

Subsection (h) requires EPA to issue guidance, subject to public notice and comment, and provide technical assistance to States carrying out programs and activities under the Act.

Section 1473. Corrective action orders

Section 1473 authorizes EPA and the States to issue administrative orders to the owner or operator of covered chemical storage tanks to carry out this Act.

Section 1474. Response cost recovery

Section 1474 provides that if EPA or the State incurs costs in undertaking a response action relating to a release of a chemical from a covered storage tank, the owner or operator of the tank is liable to EPA or the State for those response action costs.

Section 1475. Transfer of covered chemical storage tanks

(a) In General

Subsection (a) requires a pre-transfer integrity inspection prior to the transfer of a covered chemical storage tank and requires that any appropriate measures to address the results of the inspection be taken within 1 year, except when EPA or the State has granted an extension under subsection (e).

(b) Qualifying Inspections

Subsection (b) provides that an integrity inspection within 1 year of the transfer can satisfy the pre-transfer inspection requirement.

(c) Third-party Inspection

Subsection (c) allows for third-party inspections by qualified engineers.

(d) Calculation of Time Period

Subsection (d) provides that the deadline for the next required inspection for a transferred tank is calculated from the date of the pre-transfer inspection.

(e) Extension

Subsection (e) allows EPA or the State to extend the deadline for the completion of appropriate measures identified in the pre-transfer inspection.

Section 1476. Information sharing

(a) Information for Public Water Systems

Subsection (a) provides that EPA or the State will make available to public water systems, on request, information maintained

by EPA or the State relating to emergency response plans for covered chemical storage tanks located within the watershed, an inventory of each chemical in the covered chemical storage tanks, existing information on the potential toxicity of the stored chemicals to public health and the environment that EPA or the State determines is relevant to evaluate the risk of harm to the public water system, and safeguards or other precautions that can be taken to detect, mitigate, or otherwise limit the adverse effects of a release of the stored chemicals.

(b) Emergency Response Plans

Subsection (b) requires EPA or the State to provide the emergency response plans submitted under the program to EPA and the Department of Homeland Security (DHS). Subsection (b) also requires, to the maximum extent practicable, that the emergency response plans submitted under the program be integrated with applicable area contingency plans under section 311(j)(4) of the Clean Water Act (33 U.S.C. 1321(j)(4)).

(c) Information

Subsection (c) establishes requirements for maintaining confidential information by a State or EPA.

(b) Emergency powers

Section (b) amends section 1431 of the SDWA by redesignating subsection (b) as subsection (c), and by inserting a new subsection (b) as follows:

Paragraph (1) authorizes, but does not require, a public water system to bring 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 and to petition EPA to issue an order or commence a civil action. Paragraph (1) provides a discretionary mechanism under federal law for public water systems to seek relief to address potential threats to its water supply but does not establish new requirements for public water systems in responding to such potential health threats. Paragraph (1) does not, under any circumstances, obligate or confer any responsibility upon a water utility to commence a civil action.

Paragraph (2) generally requires EPA to respond to the petition filed under paragraph (1) within 30 days. If the public water system submits a petition under paragraph (1) in response to an emergency, EPA must respond within 72 hours.

(c) Conforming amendment

Section (c) makes conforming amendments to the SDWA.

LEGISLATIVE HISTORY

Senator Manchin along with Senators Rockefeller and Boxer introduced S. 1961, the "Chemical Safety and Drinking Water Protection Act of 2014," on January 27, 2014. The bill was read twice and referred to the Senate Committee on Environment and Public Works. The Committee met on April 3, 2014, and ordered S. 1961 favorably reported with an amendment in the nature of a substitute by voice vote.

HEARINGS

The Committee on Environment and Public Works, Subcommittee on Water and Wildlife, held a hearing on February 4, 2014, entitled "Examination of the Safety and Security of Drinking Water Supplies Following the Central West Virginia Drinking Water Crisis."

ROLLCALL VOTES

On April 3, 2014, the Committee on Environment and Public Works met and considered a substitute amendment to S. 1961, offered by Senator Boxer. S. 1961, as amended, was reported favorably by a voice vote with Senators Inhofe and Fischer recorded as "no". There were no roll call votes taken in Committee on this bill.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee notes that the Congressional Budget Office has found, "S. 1961 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners and operators of some chemical storage tanks." The committee finds that S. 1961 will not cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the Committee notes that the Congressional Budget Office has found, "S. 1961 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners and operators of some chemical storage tanks . . . CBO estimates that the cost of mandates for public entities would fall below the annual threshold established in UMRA for intergovernmental mandates ($76 million in 2014, adjusted annually for inflation) . . . CBO estimates that the aggregate cost of the private-sector mandates would probably exceed the annual threshold established in UMRA ($152 million in 2014, adjusted annually for inflation)."

JUNE 5, 2014.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1961, the Chemical Safety and Drinking Water Protection Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1961—Chemical Safety and Drinking Water Protection Act of 2014

Summary: S. 1961 would amend the Safe Drinking Water Act (SDWA) to require either the Environmental Protection Agency

(EPA) or those states with primary enforcement authority for public water systems to carry out a program to protect surface water from contamination by chemical storage tanks.[1] Under this legislation, however, states would have the option to not establish the proposed program; if states opt out of running the program, then authority to implement it would revert to EPA.

Based on information from EPA, various state agencies, and experts in the storage tank industry, CBO estimates that implementing this legislation would cost $114 million over the 2015–2109 period, subject to the availability of appropriated funds. That estimate assumes that all but about 10 state, tribal, or territorial governments would probably implement their own programs to oversee chemical storage tanks. EPA would implement the program with federal funds for state, tribal, or territorial governments that opt not to do so. Enacting S. 1961 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1961 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners and operators of some chemical storage tanks. Those owners and operators would have to meet requirements established by EPA and states, including standards for construction, spill prevention, and emergency response. Owners and operators also would have to comply with requirements for periodic inspections. The cost of the mandates would ultimately depend on the minimum requirements developed by EPA and states, but they would affect a large number of entities. Only a small number of the chemical storage tanks owned by public entities would be affected by the program's requirements; therefore, CBO estimates that the cost of mandates for public entities would fall below the annual threshold established in UMRA for intergovernmental mandates ($76 million in 2014, adjusted annually for inflation). However, a large number of private entities would be affected by the program. Given the potential costs of compliance for those entities, CBO estimates that the aggregate cost of the private-sector mandates would probably exceed the annual threshold established in UMRA ($152 million in 2014, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of this legislation is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015–2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	30	30	20	20	20	120
Estimated Outlays	20	29	24	21	20	114

Basis of estimate: CBO assumes that S. 1961 will be enacted by the start of 2015 and that the amounts estimated to be necessary will be appropriated for each fiscal year beginning that year. Estimated outlays are based on historical spending patterns for similar EPA programs.

[1] Under the SDWA, tribal governments and territories are treated as states.

This legislation would require that the proposed new state programs to protect drinking water from contamination by chemical storage tanks meet minimum requirements including: conducting regular inspections of covered chemical storage tanks; establishing emergency response and communication plans; and, maintaining an inventory of tanks. S. 1961 broadly defines covered chemical storage tanks as onshore, fixed, above-ground storage containers from which a release of a chemical could pose a risk of harm to a public water system. Based on information from state regulators of storage tanks, EPA, and chemical industry experts, CBO estimates that this definition of chemical storage tanks would probably extend to tens of thousands of storage tanks across the country.

CBO estimates that EPA would incur significant costs to operate this program if states opt out of running the program themselves. Whether or not a state elects to run their own program depends on a couple of factors:

- First, about 20 states already have similar inspection programs of tanks and water systems in place and thus, running the proposed program would enable certain states to continue their own administration of water protection and oversight of water systems by expanding current inspection programs. States generally prefer to seek delegation of the federal environmental laws, rather than have EPA administer such programs in the state. For example, all states except Wyoming, the District of Columbia, and most tribal governments have primary enforcement authority for the federal government's Public Water System Supervision Program. In addition, almost all states have been delegated permitting and other authorities under the federal Clean Water Act, and all states administer the federal Clean Air Act Permitting Program.
- Second, the states would also have to consider the cost to run their own enforcement program for chemical storage tanks because S. 1961 would not authorize federal grants to states for this purpose. States could recoup the cost of operating the new program by imposing fees on owners and operators of covered chemical tanks, but some states may require changes to state laws to authorize such fees.

Based on information from some states currently running similar enforcement programs, CBO expects that most states (and some tribal governments and territories) would probably establish their own programs under the bill. However, CBO expects that about 10 states would not establish their own programs and would let EPA run programs in those states instead.

We estimate that it would cost EPA about $3 million initially per state to run a program protecting surface water from contamination by chemical storage tanks. After regulations have been developed and initial training for inspectors completed, CBO expects that annual costs would decrease to about $2 million per state.

Overall, we estimate that implementing this legislation would cost $114 million over the 2015–2019 period for EPA to operate the program for about 10 states, subject to appropriation of the necessary amounts. Such costs could be higher or lower depending on how many states opt out of operating their own programs, and those decisions could change after the proposed program starts.

Intergovernmental and private-sector impact: S. 1961 would impose intergovernmental and private-sector mandates, as defined in

UMRA, on owners and operators of some chemical storage tanks. The bill would require owners and operators of covered chemical storage tanks to meet minimum requirements to be established under a program for protecting public water systems from chemical releases. The program's requirements would include standards for tank construction, leak detection, spill prevention, lifecycle maintenance, and proof of financial responsibility. The program also would require owners and operators to develop emergency response plans and comply with requirements for periodic inspections. The bill would direct EPA and states with primary enforcement authority for public water systems to consider excluding from the program tanks that are already regulated by state or federal standards and tanks that do not pose a risk to public water systems. However, CBO expects that at least tens of thousands of tanks would be covered by the program, most owned or operated by private entities. Based on information from states, CBO estimates that a small proportion of those tanks are owned or operated by public entities such as local governments, public universities, or hospitals.

The cost of the mandates would ultimately depend on the minimum requirements developed by EPA and states administering the program. Existing requirements in federal or state law as well as voluntary consensus standards could be incorporated into the program. Consequently, a number of tanks might already comply with some requirements that program would establish. Based on information from states, CBO estimates that only a small number of the chemical storage tanks owned by public entities would need to take additional action to comply with the program's requirements. Consequently, CBO estimates that the aggregate cost for those entities to comply with the intergovernmental mandates would fall below the annual threshold established in UMRA ($76 million in 2014, adjusted annually for inflation).

Based on information from industry sources, CBO estimates that the cost for private entities to comply with the mandates could amount to tens of thousands of dollars per tank, depending on the requirements set by EPA and states. Given the large number of private entities that would be affected by the program and the potential costs of compliance, the cost of the private-sector mandates would probably be substantial. Consequently, CBO estimates that the aggregate cost of the private-sector mandates would probably exceed the annual threshold established in UMRA ($152 million in 2014, adjusted annually for inflation).

Estimate prepared by: Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Melissa Merrell and Michael Hirsch; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

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SAFE DRINKING WATER ACT-(TITLE XIV OF PUBLIC HEALTH SERVICE ACT)

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PART A—DEFINITIONS

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ENFORCEMENT OF DRINKING WATER REGULATIONS

SEC. 1414. (a)(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems *or a covered chemical storage tank* (within the meaning of section 1413(a)) that any public water system—*or a covered chemical storage tank*

(i) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any applicable requirement, or

(ii) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system *or a covered chemical storage tank* and provide such advice and technical assistance to such State and public water system *or a covered chemical storage tank* as may be appropriate to bring the system into compliance with the requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) requiring the public water system *or a covered chemical storage tank* to comply with such applicable requirement or the Administrator shall commence a civil action under subsection (b).

(2) ENFORCEMENT IN NONPRIMACY STATES.—

(A) IN GENERAL.— If, on the basis of information available to the Administrator, the Administrator finds, with respect to a period in which a State does not have primary enforcement responsibility for public water systems *or a covered chemical storage tank*, that a public water system *or a covered chemical storage tank* in the State—

(i) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any applicable requirement; or

(ii) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule or other requirement imposed pursuant to the variance or exemption;

the Administrator shall issue an order under subsection (g) requiring the public water system *or a covered chemical storage tank* to comply with the requirement, or commence a civil action under subsection (b).

(B) NOTICE.— If the Administrator takes any action pursuant to this paragraph, the Administrator shall notify an appropriate local elected official, if any, with jurisdiction over the public water system *or a covered chemical storage*

tank of the action prior to the time that the action is taken.

(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with any applicable requirement, with an order issued under subsection (g), or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if—

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system *or a covered chemical storage tank* which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems *or a covered chemical storage tank* in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $25,000 for each day in which such violation occurs.

* * * * * * *

(e) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems *or a covered chemical storage tank*, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

(f) If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1)) with respect to a public water system *or a covered chemical storage tank* in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system *or a covered chemical storage tank* or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water system *or a covered chemical storage tank*, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water

system *or a covered chemical storage tank* and shall be made available to the public and communications media.

(g)(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 1445 with respect to any applicable requirement, the Administrator also may issue an order to require compliance with such applicable requirement.

(2) An order issued under this subsection shall not take effect, in the case of a State having primary enforcement responsibility for public water systems *or a covered chemical storage tank* in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the order. A copy of any order issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems *or a covered chemical storage tank* in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) In a case in which a civil penalty sought by the Administrator under this paragraph does not exceed $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a public hearing (unless the person against whom the penalty is assessed requests a hearing on the record in accordance with section 554 of title 5, United States Code). In a case in which a civil penalty sought by the Administrator under this paragraph exceeds $5,000, but does not exceed $25,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

(C) Whenever any civil penalty sought by the Administrator under this subsection for a violation of an applicable requirement exceeds $25,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28 of the United States Code).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

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[(i) DEFINITION OF APPLICABLE REQUIREMENT.— In this section, the term "applicable requirement" means—**]**

(i) DEFINITIONS.—*In this section:*

(1) APPLICABLE REQUIREMENT.—*The term 'applicable requirement' means—*

[(1)] *(A)* a requirement of section 1412, 1414, 1415, 1416, 1417,[5] 1433, 1441, [or 1445] *1445, or part G*

[(2)] *(B)* a regulation promulgated pursuant to a section referred to in paragraph (1);

[(3)] *(C)* a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

[(4)] *(D)* a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 1413 have been satisfied, or an applicable State program approved pursuant to this part.

(2) COVERED CHEMICAL STORAGE TANK.—*The term 'covered chemical storage tank' has the meaning given the term in section 1471.*

* * * * * * *

PART D—EMERGENCY POWERS

EMERGENCY POWERS

SEC. 1431. (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water, or that there is a threatened or potential terrorist attack (or other intentional act designed to disrupt the provision of safe drinking water or to impact adversely the safety of drinking water supplied to communities and individuals), which may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) PETITIONS.—

(1) IN GENERAL.—*In any case in which the Administrator is authorized to act under subsection (a), the owner or operator of a public water system may, but is not required—*

(A) to commence a civil action for appropriate equitable relief, including a restraining order or permanent or tem-

[5] Lack of comma so in law. Section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107–188; 116 Stat.594) amended section 1414(i)(1) by inserting "1433" after "1417". The amendment should probably have inserted "1433," after "1417,".

porary 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) to petition the Administrator 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 system 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.*

[(b)**]** *(c)* Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed $15,000 for each day in which such violation occurs or failure to comply continues.

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PART G—PROTECTION OF SURFACE WATER FROM CONTAMINATION BY CHEMICAL STORAGE TANKS

SEC. 1471. DEFINITIONS.

In this part:

(1) CHEMICAL.—*The term 'chemical' means a chemical substance that is—*

(A) identified as a hazardous substance, as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601(14));

(B) subject to emergency planning or reporting requirements of the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001 et seq.); or

(C) defined as a contaminant under section 1401(6) of the Safe Drinking Water Act (42 U.S.C. 300f(6)).

(2) COVERED CHEMICAL STORAGE TANK.—

(A) IN GENERAL.—*The term 'covered chemical storage tank' means an onshore, fixed, above-ground bulk chemical storage container (including any associated piping and appurtenances), or a combination of such storage containers, from which a release of the chemical from the tank or storage containers or combination of storage containers and tanks could pose a risk of harm to a public water system.*

(B) EXCLUSIONS.—

(i) IN GENERAL.—*The term 'covered chemical storage tank' does not include a tank or container that is sub-*

ject to a procedure, method, or other requirement pursuant to regulations promulgated under section 311(j)(1)(C) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(1)(C)).

(ii) ADDITIONAL EXCLUSIONS.—The Administrator or State, as applicable, shall consider and may adopt appropriate exclusions—

(I) based on applicable Federal or State laws (including regulations) that substantially meet the requirements and purposes of this Act; or

(II) for covered chemical storage tanks that the Administrator or State, as applicable, determines would not pose a risk of harm to a public water system.

(3) PROGRAM.—*The term 'program' means a chemical storage tank surface water protection program established under section 1472.*

SEC. 1472. ESTABLISHMENT OF PROGRAMS.

(a) IN GENERAL.—*Not later than 2 years after the date of enactment of this part, the Administrator or each State exercising primary enforcement responsibility for public water systems, as applicable, shall establish, directly or through delegation to any State agency the Governor of the State determines is appropriate, a chemical storage tank surface water protection program to provide for the protection of public water systems from a release of a chemical from a covered chemical storage tank.*

(b) PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—*A program under subsection (a) shall provide for oversight and inspection of each covered chemical storage tank in accordance with the requirements described in paragraph (2) to prevent the release of chemicals into surface water supplies of public water systems, including a covered chemical storage tank located in a source water area identified under section 1453.*

(2) MINIMUM REQUIREMENTS.—*At a minimum, the program shall include—*

(A) requirements for covered chemical storage tanks, including—

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

(ii) leak detection;

(iii) spill and overfill prevention and containment;

(iv) inventory control for the purpose of promptly determining the quantity of chemicals released in the event of a spill;

(v) an emergency response and communication plan, including procedures for immediately notifying, after discovery of a chemical release, public water systems that may be adversely impacted by the chemical release, and other entities required by the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.);

(vi) an employee training and safety plan;

(vii) an inspection of the integrity of covered chemical storage tanks, consistent with appropriate standards;

(viii) lifecycle maintenance, including corrosion protection;

(ix) notice to the Administrator and the appropriate State agency of—

(I) the existing information on the potential toxicity of the stored chemicals to public health and the environment that the Administrator or State, as applicable, determines is relevant to evaluate the risk of harm to public water systems; 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, self-insurance, guarantee, or other similar financial assurance instrument;

(B) inspections of covered chemical storage tanks, which shall occur—

(i) for a covered chemical storage tank listed under paragraph (3), annually by a certified inspector on behalf of the owner or operator of such tank;

(ii) for a covered chemical storage tank identified in a source water assessment area under section 1453, not less frequently than once every 3 years by the Administrator or State, as applicable; and

(iii) for any other covered chemical storage tank, not less frequently than once every 5 years; and

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

(3) HIGH HAZARD COVERED CHEMICAL STORAGE TANKS.—*Not later than 2 years after the date of enactment of this part, the Administrator or the State, as applicable, shall develop a list of covered chemical storage tanks from which a release of a chemical from the tanks poses the greatest risk of harm to public water systems in the State and the greatest risk to public health.*

(c) INCORPORATION OF EXISTING STANDARDS.—*In establishing mandatory program requirements under subsection (b), the Administrator or a State, as applicable, may, by reference, include appropriate—*

(1) requirements under State or Federal law, including regulations, as in effect on the date on which the program requirements are established; and

(2) consensus standards.

(d) NATIONAL PRIMARY DRINKING WATER REGULATIONS.—*For purposes of primary enforcement responsibility, a program and any requirements under this part shall be—*

(1) considered to be a part of the national primary drinking water regulations established under section 1412; and

(2) implemented and enforced in accordance with this Act.

(e) ADMINISTRATION.—*A program shall be carried out—*

(1) if the State exercises primary enforcement responsibility for public water systems in that State under this Act, by the State; or

(2) by the Administrator if the State—

(A) does not exercise primary enforcement responsibility for public water systems in that State under this Act; or

(B)(i) exercises primary enforcement responsibility for public water systems in that State; and

(ii) expressly refrains from administering and implementing a program under this part.

(f) NOTIFICATION.—*Not later than 2 years after the date of enactment of this part, the State shall notify the Administrator if the State—*

(1) exercises primary enforcement responsibility for public water systems in that State under this Act; and

(2) refrains from establishing a program under this part.

(g) SEVERABILITY.—*If a State does not implement a program under this part, it shall not otherwise affect the primary enforcement responsibility of the State under this Act.*

(h) GUIDANCE.—*The Administrator shall issue guidance, subject to public notice and opportunity for comment, and provide other technical assistance to States carrying out programs and activities under this part.*

SEC. 1473. CORRECTIVE ACTION ORDERS.

The Administrator under section 1472(e)(2) or the State under section 1472(e)(1), as applicable, may issue an order to the owner or operator of a covered chemical storage tank to carry out this part.

SEC. 1474. RESPONSE COST RECOVERY.

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

SEC. 1475. TRANSFER OF COVERED CHEMICAL STORAGE TANKS.

(a) IN GENERAL.—*Notwithstanding the inspection schedule under section 1472(b)(2)(B), no person shall transfer a covered chemical storage tank unless—*

(1) prior to the closing or completion of the transfer, the transferor submits to the transferee the results of a pretransfer inspection of the integrity of the covered chemical storage tank, which shall be conducted pursuant to any requirements set by the Administrator under section 1472(e)(2) or the State under section 1472(e)(1), as applicable; and

(2) except as provided in subsection (e), the transferor or the transferee agrees to take appropriate measures to address the results of the pretransfer inspection prior to the date that is 1 year after the date on which the covered chemical storage tank closes or transfer is complete.

(b) QUALIFYING INSPECTIONS.—*An inspection carried out not earlier than 1 year before the date on which a covered chemical storage tank is transferred shall satisfy the pretransfer inspection requirement described in subsection (a).*

(c) THIRD-PARTY INSPECTIONS.—*An inspection made by a qualified engineer on behalf of the owner or operator of the tank shall satisfy the pretransfer inspection requirement described in subsection (a).*

(d) CALCULATION OF TIME PERIOD.—*For a covered chemical storage tank subject to a pretransfer inspection under subsection (a)(1),*

the deadline for the next required inspection under section 1427(b)(2)(B) shall be calculated from the date of the pretransfer inspection.

(e) EXTENSION.—*The Administrator or State, as applicable, may extend the time period described in subsection (a)(2) for a reasonable time if the transferor or transferee establishes, to the satisfaction of the Administrator or State, that the design and construction of the appropriate measures taken under subsection (a)(2) cannot reasonably be completed during the time period.*

SEC. 1476. INFORMATION SHARING.

(a) INFORMATION FOR PUBLIC WATER SYSTEMS.—*Subject to subsection (c), the Administrator or State, as applicable, shall make available to public water systems, on request, information maintained by the Administrator or State, as applicable, in accordance with section 1472(b)(2) relating to—*

(1) emergency response plans for covered chemical storage tanks located within the same watershed as the public water system;

(2) an inventory of each chemical held at the covered chemical storage tanks described in paragraph (1);

(3) existing information on the potential toxicity of the stored chemicals to public health and the environment that the Administrator or State, as applicable, determines is relevant to evaluate the risk of harm to public water systems; and

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

(b) EMERGENCY RESPONSE PLANS.—

(1) IN GENERAL.—*A State or the Administrator, as applicable, shall submit a copy of each emergency response plan submitted under section 1472(b)(2)(A) to—*

(A) the Administrator (or the State if the Administrator is carrying out the program); and

(B) the Secretary of Homeland Security.

(2) CONSISTENCY.—*To the maximum extent practicable, emergency response plans submitted under section 1472(b)(2)(A) shall be integrated with applicable area contingency plans under section 311(j)(4) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(4)).*

(c) INFORMATION.—

(1) IN GENERAL.—*The Administrator or a State, as applicable, shall keep confidential information reported to, obtained by, or otherwise submitted to the Administrator or the State that the Administrator or State determines to be national security sensitive or present a security risk to a covered chemical storage tank.*

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

(A) apply to public health information;

(B) apply to information required to be disclosed under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.) or any other requirement under any law (including regulations); or

(C) 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.

(3) EFFECT.—*Nothing in this subsection affects—*

(A) except as provided under paragraph (2), any disclosure requirement or exceptions to disclosure under any State law (including regulations); or

(B) any disclosure requirement or exceptions to disclosure under Federal law, including section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act').

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