Webinar: Decades of Unregulated Chemical Storage Harm Communities and the Environment

January 13, 2022

Thank you for joining! We will begin shortly.
Housekeeping

► If you have problems with the webinar audio, you can join by phone at +1 646 558 8656; Webinar ID: 824 0638 1264

► All participants will be muted during the webinar.

► If you have questions during the presentation, please type them into the Q&A box located at the bottom of your screen. Your questions will be visible to the moderator and presenters only.

► The webinar is being recorded and will be shared shortly after the event.

► Members of the press may be joining today’s webinar.
Our Presenters

Jared Knicley  
Senior Attorney, Natural Resources Defense Council

Darya Minovi  
Policy Analyst, Center for Progressive Reform

Noah Sachs  
CPR Member Scholar and Professor, University of Richmond School of Law
Storage of Hazardous Chemicals:
Gaps in the Law & Threats to Communities

Noah M. Sachs
University of Richmond School of Law
Iowa Flooding 2019
Aboveground chemical storage tanks (ASTs) threaten drinking water supplies

Freedom Industries Site, Charleston WV
2014 West Virginia Legislation on ASTs

- Inventory and registration of every tank holding 1320 gallons or more
- Requirements for leak detection, monitoring & labeling
- Inspections by professional engineers
- Notice to local governments and public water systems if a tank is within a water supply’s Zone of Critical Concern
State Legislation on Chemical ASTs
Gaps in the Clean Water Act

• CWA, as implemented, applies primarily to intentional discharge of pollutants into water, not to storage of hazardous substances near water.

• The CWA and most states have comprehensive spill control regulations for oil tanks, but not for chemical storage tanks.
Gaps in EPCRA

- Emergency Planning and Notification
- Chemical Inventory Reporting
- Toxic Release Inventory
- General Provisions

- Emergency and Hazardous Chemical Inventory [Section 312]
- Annual reporting of routine chemical releases to the environment [Section 313]
Hazardous Chemical Inventory Reporting

Section 312 – Hazardous chemical inventory form must be filed if the facility has one or more hazardous chemicals on site above the reportable quantities.

BUT

– Enforcement is weak
– Citizen suits undercut by Steel Co. v. Citizens for Better Env. (1998)
– Does not provide follow-up authority to inspect, ensure safe storage, or prescribe storage standards
– Public access to data curtailed
TANKS FOR NOTHING

The Decades-long Failure to Protect the Public from Hazardous Chemical Spills

A National Report and Case Study of Virginia

David Flores
Darya Minovitz
Johnathan Clark
Agencies Underestimate the Extent of Unregulated Chemical Storage in VA

- EPA estimates that there are 2,037 onshore chemical storage facilities in Virginia
- Our analysis of EPCRA Tier II reports identified 2,011 facilities with tanks in Virginia
- EPCRA Tier II reports are submitted by facilities storing 500 pounds or more of 20 “extremely hazardous substances” and 10,000 pounds or more of other hazardous substances
- This approach also estimates the number of facilities not tanks
Comparing EPA’s Analysis to States with AST Registration Programs

<table>
<thead>
<tr>
<th>State</th>
<th>EPA estimate of the number of non-transportation-related onshore chemical storage facilities</th>
<th>Number of registered non-petroleum ASTs</th>
<th>Number of registered petroleum ASTs</th>
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<td>Virginia</td>
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</table>
EPA Significantly Underestimates Chemical Storage Spills in VA

- EPA’s 2018 analysis found that there were 12 storage tank hazardous substance spills between 2007-2016
- Our analysis of DEQ’s pollution reports found 1,484 AST incidents between 2000-2020
- An additional 3,370 tank-related reports in the same time period
- Tank-related incidents appear to increase following hurricanes
Tank Spills Appear to Increase Following Hurricanes

- Virginia is one of three U.S. states with the highest rate of hazardous substance spills due to hurricanes.
- Our analysis found that tank-related incidents increased eight, five-, and two-fold following Hurricanes Isabel (2003), Irene (2011), and Matthew (2016), respectively.
- Storage tanks release the largest volume of chemicals during hazardous material releases due to natural hazards.

Storage Tank Releases Disproportionately Harm Overburdened Communities

- Hazardous chemical facilities and spills are disproportionately located in communities of color
- Some of the state’s most notable tank spills have occurred in and around the state’s most overburdened communities
Conclusions

► Federal analyses underestimate the number of facilities and hazards posed by unregulated chemical storage
► The lack of data on the number of chemical ASTs and associated spills leaves regulators in the dark and communities in harm’s way
► The hazards posed by AST spills and releases are not equally distributed - workers and communities overburdened by other environmental and social stressors are impacted first and worst, and climate change will amplify these effects
A Half Century of Doing Nothing

EPA’s hazardous-substance spill “regulation”

Jared Knicley, Senior Attorney
Congress has repeatedly mandated action

1. 1972: EPA “shall issue regulations” to prevent hazardous-substance spills from onshore facilities like aboveground tanks.¹

2. 1990: EPA “shall issue regulations” by August 1992 requiring the most dangerous chemical facilities to develop plans to prevent and respond to worst-case spills of hazardous substances, including spills during bad weather.²

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EPA has done neither.
**EJHA v. EPA I – General Spill Prevention**

1. July 2015: NRDC, Environmental Justice Health Alliance, & People Concerned About Chemical Safety sue EPA over its forty-plus year failure to issue general spill-prevention regulations as required by 1972 Clean Water Act¹

2. Nov. 2015: We showed, using self-reported spill data, that unregulated spills were disproportionately affecting communities of color.


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EPA’s rulemaking approach
**Trump EPA’s Do-Nothing Rule**

1. June 2018: In response to Congress’s mandate to issue general spill-prevention rules, EPA “proposed no new regulatory action”\(^1\)

2. EPA admitted it did not know (or try to learn) the most basic information about the tanks it refused to regulate: how many exist, what chemicals they store, in what quantity, where, and with what protections. EPA instead pointed to a handful of other regulations—many irrelevant—to justify its inaction.


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1: 83 Fed. Reg. 29,499 (June 25, 2018)
**EJHA v. EPA II – Worst-Case Spills**

1. March 2019: NRDC, Environmental Justice Health Alliance, & Clean Water Action sue EPA over its quarter-century failure to issue worst-case spill regulations for hazardous substances¹

2. March 2020: EPA settles the case, agrees to propose worst-case spills rule by March 2022, take final action by fall 2024.

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¹ Compl., EJHA et al. v. EPA et al., 19-cv-2516 (S.D.N.Y. filed Mar. 21, 2019.)
Worst-Case Spills Rulemaking

• Any worst-case spills rule will be a huge improvement:
  • Will apply to most dangerous facilities—those where worst-case spills would threaten substantial harm to public health, water supplies, or the environment
  • Will require facilities to plan for preventing and responding to spills, including worst-case spills, caused by foreseeable bad weather—including climate-related disasters

• EPA must prioritize transparency and environmental justice

• EPA should also revisit its do-nothing rule, set baseline spill standards for all storage tanks, and expand list of hazardous substances covered
Thank you
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