

Enviro Groups May Have Christmas Lump of Coal for EPA: Set to Sue on EPA Decision Not to Develop New "SPCC" Program for Spills of Hazardous Substances

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Environmental groups have filed a Notice of Intent to sue the U.S. Environmental Protection Agency (EPA) over its still draft decision not to establish a program to address potential spills of hazardous substances similar to the existing "Spill Prevention, Countermeasure and Control" (SPCC) program for oil. In June, EPA reversed course from an Obama-era agreement to initiate a rulemaking to impose SPCC requirements for hazardous substances, explaining in a proposal that the agency believes that existing regulations are adequate to meet its obligations under the Clean Water Act (CWA) and no new regulatory program is needed. See [my prior post for more details on EPA's proposal](#).

Rather than wait for EPA to finalize the June proposal, the Natural Resources Defense Council (NRDC), Clean Water Action, Environmental Justice Health Alliance, and the Just Transition Alliance, filed on October 26 a recently posted Notice of Intent to sue the agency within 60 days for failure to move forward with what the groups consider long-overdue regulations:

Despite its duty to issue worst-case hazardous-substance spill regulations by August 1992, EPA missed its deadline. These regulations are now more than twenty-five years overdue. EPA's decades-long failure to issue worst-case hazardous-substance spill regulations therefore violates the Agency's nondiscretionary duty.

The groups cite for support CWA Section 311(j)(5)(A)(i), added as part of the Oil Pollution Act of 1990, which provides that "the President shall issue regulations which require an owner or operator [of a facility] ... to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

Based on the notice, it is apparent that the groups aim to assert both the non-discretionary nature of EPA's duty to develop an "SPCC for hazardous substances" and, more than likely, the adequacy of EPA's "non-regulation" proposal as failing to satisfy the statutory requirement to address "worst case discharges."

By failing to act, the groups contend that EPA

... leaves the communities closest to the most dangerous chemical facilities in the country without any assurance that those facilities are - as Congress mandated - adequately planning to prevent and respond to catastrophic chemical spills, including those caused by floods, fires, and hurricanes. These communities, which are disproportionately low-income or communities of color, are entitled to all the protections for public health, drinking water supplies, and the environment Congress mandated in the Clean Water Act.

The 60-day notice period required by the CWA prior to filing a suit against the agency expires Christmas Day ...meaning EPA could find a lump of coal in its stocking courtesy of NRDC *et al.* on December 25.