Attorneys General of New York, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Washington and Wisconsin, and the County Attorney of Harris County, Texas

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Submitted electronically via www.regulations.gov
Rebecca Broussard
Office of Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, Washington, DC 20460

Re: Comments on Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulations (Docket EPA-HQ-OLEM-2021-0585; FRL-7881-02-OLEM); published at 87 Fed. Reg. 17,890 (March 28, 2022)

Dear Ms. Broussard,

The Attorneys General of New York, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Washington and Wisconsin, and the County Attorney of Harris County, Texas (collectively, the States and Local Governments), hereby submit these comments on the above-referenced Proposed Rule. The States and Local Governments have a strong interest in protecting their residents and the environment from harmful discharges of hazardous substances and support the promulgation of robust worst-case discharge planning regulations.

The States and Local Governments have long engaged in litigation and advocacy concerning the Clean Air Act's Risk Management Program (RMP) regulations (40 C.F.R. part 68), which require owners or operators to analyze worst case air release scenarios, coordinate with local emergency planning and response agencies on how to respond to such releases, and take steps to prevent such releases. Since 2017, the States and Local Governments have been advocating for strong RMP regulations that mandate risk analysis and mitigation of hazards posed by climate change, and address environmental injustice by better protecting communities surrounding RMP facilities and improving information access.

There is significant overlap between the need to address climate change risk at RMP facilities and at Clean Water Act (CWA) hazardous substance facilities. Approximately 19 percent of facilities that would be covered by the Proposed Rule are currently covered by the RMP regulations, and CWA hazardous substance facilities can pose similar threats to nearby communities, workers, and first responders. Both categories of facilities are becoming increasingly vulnerable to "natech incidents," in which technological failures or accidents are caused or worsened by natural hazards such as extreme weather. Thus, the States and Local Governments strongly support those aspects of the Proposed Rule that require consideration of climate risks in preparing for worst case discharges at CWA hazardous substance facilities. However, as detailed below, EPA should further strengthen the Proposed Rule by: (1) amending the initial location-

based screening criteria to include facilities within mapped floodplain or storm surge boundaries; (2) explicitly including wildfires and flooding in the definition of adverse weather conditions; and (3) providing additional guidance to facilities on how to consider climate change in Facility Response Plans (FRPs).

There is also a significant overlap between the need to address environmental justice concerns in the RMP regulations and in the Proposed Rule. For too long, communities of color and low-income communities have borne the brunt of the hazards posed by facilities that use or house dangerous chemicals in their neighborhoods. 87 Fed. Reg. 17890, 17,922 (Mar. 28, 2022). The States and Local Governments strongly support those aspects of the Proposed Rule that require consideration of impacts to communities of color and low-income communities, but, as discussed further below, EPA should strengthen the final rule by: (1) including the ability to cause harm to communities of color and low-income communities as a substantial harm criterion; and (2) requiring that information EPA collects from facilities pursuant to the final rule be accessible to the public in an online database.

In addition, EPA should broaden the rule's initial screening threshold to ensure that all facilities that could reasonably be expected to cause substantial harm will at the very least be required to perform a substantial-harm analysis. Under the Proposed Rule, the first step in assessing applicability is to determine whether a facility has the container capacity for a CWA hazardous substance onsite at or above a threshold quantity. 87 Fed. Reg. at 17,897. EPA proposes to set the threshold quantity at a level that excludes all but approximately 2,200 facilities in the United States.[1] EPA should strengthen the final rule by decreasing the proposed threshold quantity so that more facilities meet the initial screening criteria.

Finally, since the Proposed Rule applies only to facilities that store hazardous substances covered under the CWA, EPA should undertake a separate rulemaking to update the list of covered hazardous substances. This list has not been updated in decades. EPA should update and expand the list so that more facilities with hazardous substances create FRPs that minimize the threat chemical spills pose to communities, drinking water supplies, and waterways across the United States.

I. Facilities Should Engage in Ongoing Consideration of Climate Risks in Preparing for CWA Hazardous Substance Worst Case Discharges.

Extreme weather events, made worse by climate change, are triggering natech events at industrial facilities with increasing frequency.[2] For example, during Hurricane Sandy in 2012, oil tanks were damaged at the Motiva Enterprises Terminal, causing 336,000 gallons of diesel to spill

[1] U.S. EPA, *Regulatory Impact Analysis: Clean Water Act Hazardous Substance Worst Case Discharge Planning Regulations* ("RIA"), EPA-HQ-OLEM-2021-0585-0143 (Mar. 8, 2022), at 16, https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0585-0143.

[2] *See, e.g.,* U.S. Government Accountability Office (GAO), *EPA Should Ensure Regulated Facilities Consider Risks from Climate Change*, GAO-22-104494 (Feb. 2022), at 13, https://www.gao.gov/assets/gao-22-104494.pdf.

into the Arthur Kill, a narrow waterway separating New Jersey and New York.[3] During Hurricane Harvey in 2017, flooding disabled the refrigeration system at the Arkema Crosby chemical facility in Texas, leading to fires and the release of organic peroxide that sickened 21 people, who required care at the scene or had to be treated at a nearby hospital, and led to the evacuation of over 200 residents living within 1.5 miles of the facility.[4] Hurricane Harvey dumped one-day rain totals of 16 inches in Houston and 26 inches in Beaumont, Texas.[5] Climate change made this record rain at least three times more likely and 15% more intense.[6]

The Government Accountability Office (GAO) recently found that nearly one third of RMP facilities are at risk from climate-driven floods, storms, and wildfires.[7] It recommended that EPA issue regulations, guidance, or both to clarify requirements and provide direction to RMP facilities on incorporating natural hazards and climate change into risk management programs. EPA agreed with GAO's recommendations.

CWA hazardous substance facilities are similarly at risk from natural hazards worsened by climate change. For this reason, the States and Local Governments strongly support those aspects of the Proposed Rule that incorporate consideration of climate risk into the FRPs, but recommend strengthening the rule in the following ways.

a. Facilities Within Mapped Floodplain or Storm Surge Boundaries Should Meet the Initial Location-Based Screening Requirement.

The Proposed Rule would establish two initial screening criteria to determine if a CWA hazardous substance facility could cause substantial harm to the environment from a worst case discharge into or onto navigable water. 40 C.F.R. §§ 118.3(a)-(b). First, the facility must have a container capacity for a CWA hazardous substance onsite at or above a threshold quantity. Second, the facility must be located within one-half mile of navigable waters or a conveyance to navigable waters. If a facility meets both criteria, the owner or operator must determine whether the facility meets any of the four substantial harm criteria. If so, the owner or operator must submit a CWA hazardous substance FRP to EPA. EPA solicits comment on alternative or additional screening criteria. 87 Fed. Reg. at 17,897.

The States and Local Governments support the general framework of the screening criteria; however, they are concerned that the location-based half-mile distance threshold is underinclusive. EPA has not shown that a worst case spill cannot reasonably be expected to cause substantial harm

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[3] *See* Brian Thompson and Chris Glorioso, *336K Gallons of Diesel Fuel Leak in Arthur Kill*, NBC News (Oct. 31, 2012), https://www.nbcnewyork.com/news/local/arthur-kill-oil-spill-diesel-fuel-motiva-staten-island-woodbridge-nj/1966724/.

[4] U.S. Chemical Safety Board, *Organic Peroxide Decomposition, Release, and Fire at Arkema Crosby Following Hurricane Harvey Flooding* (May 2018), at 8, https://www.csb.gov/arkema-inc-chemical-plant-fire-/.

[5] Climate Central, *Pouring it on: How Climate Change Intensifies Heavy Rain Events* (May 15, 2019), https://www.climatecentral.org/report/report-pouring-it-on-climate-change-intensifies-heavy-rain-events.

[6] *Id*.

[7] GAO, *Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change* (Feb. 2022), https://www.gao.gov/assets/gao-22-104494.pdf.

when a facility is more than a half-mile from navigable waters or a conveyance thereto. If a facility is located in a flood or storm surge zone, water from the waterway may reach the facility in the event of adverse weather such as extreme rainfall or a hurricane. Any hazardous substance discharge from the facility during such an event could then be carried to the waterway. Therefore, EPA should amend the rule to provide that, regardless of measured distance from waterways, facilities within mapped floodplain or storm surge boundaries meet the initial location-based screening requirement.

As to floodplains, EPA should deem any facility that falls within a Federal Emergency Management Agency (FEMA) 500-year flood zone as meeting its location-based applicability criterion. EPA should use the 500-year flood zone because it is more protective than the 100-year flood zone and climate change is increasing the frequency and severity of extreme precipitation events in some parts of the country. As to storm surge boundaries, EPA should rely on the National Oceanic and Atmospheric Administration (NOAA)'s National Storm Surge Hazard Maps to deem any facility within an area at risk of experiencing a storm surge of three or more feet above ground in the event of either a Category Four or Five hurricane as meeting its location-based applicability criterion.

EPA notes in the Proposed Rule, "the potential to cause substantial harm to the environment is not static and evolves over time as factors at the facility change, especially factors related to the changing climate and the corresponding increase in adverse weather events and their severity." 87 Fed. Reg. at 17,909. Yet, the half-mile distance criteria is static and does not account for changing climate conditions that may cause more intense flooding and storm surge capable of moving worst case hazardous discharges farther than a half-mile to a waterway. Relying on the latest mapped floodplain and storm surge boundaries better accounts for current climate science as the maps are updated by FEMA and NOAA over time.

b. The Definition of Adverse Weather Should Include Wildfires and Flooding.

The worst case discharge scenario, which must be considered in an FRP, is defined as the largest foreseeable discharge in adverse weather conditions. EPA proposes to define "adverse weather" in 40 C.F.R. § 118.2 as:

> [W]eather conditions that make it difficult for response equipment and personnel to clean up or respond to discharged CWA hazardous substances, accounting for the potential for increased and more severe extreme weather events and other impacts due to climate change, and that must be considered when identifying response systems and equipment in a response plan for the applicable operating environment.

The States and Local Governments appreciate that the proposed definition of adverse weather is "forward-looking and encompasses a wide range of potential weather conditions due to climate change that could affect a facility's potential worst case discharge and response to such a discharge." 87 Fed. Reg. at 17,911. However, the States and Local Governments suggest that EPA modify the definition of adverse weather to explicitly include wildfires and flooding as weather conditions.

Due to climate change, wildfires are becoming more intense and more frequent and spreading in range. According to a 2022 report by the United Nations Environment Programme, "[c]limate change has led to numerous environmental changes that can increase the frequency and magnitude of dangerous fire weather – increased drought, high air temperatures, low relative humidity, dry lightning, and strong winds, resulting in hotter, drier, and longer fire seasons."[8] The Fourth National Climate Assessment found that "[w]armer and drier conditions have contributed to an increase in the incidence of large forest fires in the western United States and Interior Alaska since the early 1980s, a trend that is expected to continue as the climate warms and the fire season lengthens."[9]

There are several types of floods that can be caused by extreme weather events related to climate change. First, in coastal areas, storm surge is an abnormal rise of water generated by a storm, over and above the predicted astronomical tides.[10] Storm surge is the leading cause of hurricane damage in coastal regions. When storm surge occurs during high tide, as it did during Hurricane Sandy, it can raise water levels 20 feet or more above mean sea level.[11] Sea level rise is predicted to "create a profound shift in coastal flooding over the next 30 years by causing tide and storm surge heights to increase and reach further inland."[12] Second, riverine flooding occurs when excessive rainfall or heavy snow melt causes a river to exceed its capacity. The damage from a river flood can be widespread as the overflow affects smaller rivers downstream, sometimes causing dams and dikes to break. Third, a surface water flood is caused when heavy rainfall creates a flood event independent of an overflowing water body. This can occur when intense rain overwhelms an urban drainage system or when a hillside is unable to absorb the intense amount of rain falling on it.[13] The Fourth National Climate Assessment states that "[e]xpected increases in the severity and frequency of heavy precipitation events will affect inland infrastructure in every region, including access to roads, the viability of bridges, and the safety of pipelines."[14]

Both wildfires and flooding are conditions that may be caused by adverse weather events and that can make it difficult for response equipment and personnel to clean up or respond to discharged CWA hazardous substances. Both can cause damage to response equipment, power and communication lines, water supply, and roads. For this reason, they should be considered when

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[8] United Nations Environment Programme, *Spreading Like Wildfire: The Rising Threat of Extraordinary Landscape Fires* (2022), at 10, https://www.unep.org/resources/report/spreading-wildfire-rising-threat-extraordinary-landscape-fires.

[9] U.S. Global Change Research Program, *Fourth National Climate Assessment, Impacts, Risks, and Adaptation in the United States, Vol. II*, at first unnumbered page and 44-45 (2018), https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf.

[10] NOAA National Hurricane Center and Central Pacific Hurricane Center, *Storm Surge Overview*, https://www.nhc.noaa.gov/surge/.

[11] U.S. Climate Resilience Toolkit, *Storm Surge* (Mar. 2020), https://toolkit.climate.gov/topics/coastal/storm-surge.

[12] NOAA, *2022 Sea Level Rise Technical Report* (Feb. 2022), https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report-sections.html.

[13] FEMA, *Types of Floods and Floodplains*, https://training.fema.gov/hiedu/docs/fmc/chapter%202%20-%20types%20of%20floods%20and%20floodplains.pdf.

[14] *Fourth National Climate Assessment* at 30.

identifying response systems and equipment in a response plan for the applicable operating environment.

c. EPA Should Provide Additional Guidance to Facilities on How to Consider Climate Change in CWA Hazardous Substance FRPs.

Under the Proposed Rule, an FRP must include a hazard evaluation for a worst case discharge and a risk-based decision support system that includes the "impacts of climate change, including but not limited to increased flooding or subsidence, sea level rise, wildfires, and increased vulnerability to and changes in the frequency of natural disasters." 40 C.F.R. § 118.11(b)(3)(i). The States and Local Governments strongly support this requirement but urge EPA to impose additional requirements for how owners and operators of CWA hazardous substance facilities must assess whether their facilities have increased vulnerability to the impacts of climate change and how they should take that into consideration in their FRPs.

For example, EPA should require hazard evaluations to use the best available climate data when evaluating climate risks because the climate is changing rapidly compared to historical conditions. For example, climate change is intensifying the water cycle leading to more intense rainfall and associated flooding, as well as more intense drought in some regions.[15] Sea level rise is contributing to more frequent and severe coastal flooding in low-lying areas and to coastal erosion.[16] These rapidly changing conditions must be accounted for in worst case discharge planning as climate information relied upon today may not be accurate in five years. EPA should provide specific data sources that owners or operators are required to consider when determining climate impacts, such as NOAA sea level rise and tidal flooding projections, FEMA's National Risk Index for natural hazards, and the U.S. Department of Agriculture's Fire Hazard Potential dataset.

II. Facilities Should Engage in Ongoing Consideration of Impacts on Communities of Color and Low-Income Communities in Preparing for CWA Hazardous Substance Worst Case Discharges.

Communities of color and low-income communities, which often have the least amount of political and economic power, are the most at risk in the event of a worst case discharge of CWA hazardous substances. Many facilities that use or house hazardous substances are located close to or within residential neighborhoods. For example, in the United States, nearly 23 million people live within one mile of an RMP facility.[17] "People of color and people living in poverty, especially poor children of color, are significantly more likely to live in these fenceline zones than whites and people with incomes above the poverty line."[18]

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[15] Intergovernmental Panel on Climate Change, *Climate Change Widespread, Rapid, and Intensifying* (Aug. 9, 2021), https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/.
[16] *Id*.
[17] Center for Effective Government, *Living in the Shadow of Danger; Poverty, Race, and Unequal Chemical Facility Hazards* (Jan. 2016), at 1, https://www.foreffectivegov.org/shadow-of-danger.
[18] *Id*.

In addition, many communities of color and low-income communities are particularly vulnerable to flooding. In the aftermath of Hurricane Harvey, low-income neighborhoods fared worse than wealthier neighborhoods because they are located in flood-prone parts of Houston with deficient infrastructure.[19] Climate change is worsening this problem. The number of affordable housing units at risk from coastal flooding and sea level rise is expected to more than triple over the next three decades.[20] One recent study found that California residents in predominantly Black and Latino communities are five times more likely than the general population to live within half of a mile of a hazardous facility that could flood by 2050.[21]

The States and Local Governments strongly support those aspects of the Proposed Rule that require consideration of the impacts of worst case discharges on communities of color and low-income communities; however EPA should strengthen the final rule in the following ways.

a. EPA Should Include the Ability to Cause Harm to a Community of Color and/or a Low-Income Community as a Substantial Harm Criterion.

As discussed above, once a facility meets the two initial screening criteria, the owner or operator must complete a Substantial Harm Certification Form to determine if the facility meets any of the four substantial harm criteria: the ability to adversely impact a public water system; the ability to cause injury to fish, wildlife, and sensitive environments; the ability to cause injury to public receptors; and having had a reportable discharge of a CWA hazardous substance within the last five years. 40 C.F.R. §§ 118.3(c)(1)-(4) (proposed). If any of the four criteria are met, the owner or operator must submit an FRP. EPA notes that it "considered using impacts to communities with environmental justice concerns as an applicability criterion to determine whether such facilities have the potential to cause substantial harm in the event of a worst case discharge" and "solicits comment on alternate ways to prioritize the needs of communities with environmental justice concerns." 87 Fed. Reg. at 17,923.

Due to the disproportionate colocation of historically marginalized populations and hazardous substances and the fact that these communities are often in flood-prone areas with deficient infrastructure, communities of color and low-income communities are particularly vulnerable to worst case releases from CWA hazardous substance facilities, and therefore should be considered as an independent substantial harm criterion. *See* 87 Fed. Reg. at 17,922.

While the States and Local Governments support those aspects of the Proposed Rule that allow EPA Regional Administrators to require FRPs for facilities located in communities of color and/or low-income communities and allow the public to petition EPA to require a facility to submit

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[19] Deaton, Jeremy, *Hurricane Harvey Hit Low-Income Communities Hardest*, Think Progress (Sept. 1, 2017), https://thinkprogress.org/hurricane-harvey-hit-low-income-communities-hardest-6d13506b7e60/.
[20] Climate Central, *Struggling Against a Rising Tide, Sea Level Rise and Coastal Flooding Threaten Affordable Housing*, (Nov. 2020), at 1, https://assets.ctfassets.net/cxgxgstp8r5d/2nitlFrqBONFS2R44J7SLY/5c0c724f1d001be26c72cac05d859e1b/SEA_LEVEL_RISE_AND_COASTAL_FLOODING_THREATEN_AFFORDABLE_HOUSING.pdf
[21] Mahoney, Adam, *Toxic Tides: Climate change expected to cause 400 toxic California sites to flood by 2100*, Grist (Dec. 3, 2021), https://grist.org/cities/toxic-tides-project-maps-what-could-happen-to-people-living-near-industry-on-california-coastline/.

an FRP, the States and Local Governments believe the onus should be on facilities in the first instance to determine if they are located within, or within one-half mile, of a community of color and/or low-income community and then prepare an FRP that considers the impacts to those communities. Facilities should be required to use the best available environmental justice screening and mapping tools, including EJScreen, the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool, and/or other state-based tools, in making this determination.[22]

b. EPA Should Make Substantial Harm Certification Forms and FRPs Accessible to the Public in an Online Database.

The Proposed Rule requires that facilities submit the Substantial Harm Certification Form to EPA, but does not require that it be submitted electronically or made public. EPA acknowledges that an "electronic submission and review system could also be used to provide the public with access to all or some of the submitted data from facility owners and operators, which allows for transparency and availability of data to the public including communities with environmental justice concerns and those vulnerable to climate change impacts." 87 Fed. Reg. at 17,914. EPA solicits comment on whether the form should be made available to the public. It is the States' and Local Governments' position that EPA should make both the Substantial Harm Certification Forms and the FRPs available to the public in a searchable online database.

In the context of the Clean Air Act RMP regulations, the States and Local Governments have been advocating for EPA to better communicate with fenceline communities on risks and emergency preparedness. Currently, some members of the public that live near RMP facilities have difficulty obtaining information about those facilities. In contrast, EPA should make information on CWA hazardous substance facilities readily accessible to the public by compiling all non-confidential information in a searchable online database.

III. EPA Should Revise the Threshold Quantity so That More Potentially Dangerous Facilities are Covered Under the Regulation.

The initial screening criteria should be strengthened by adjusting the threshold quantity so that more facilities storing hazardous substances are covered by the regulation. Under the Proposed Rule, the first step in assessing applicability is to determine whether a facility's container[23] capacity meets or exceeds the threshold quantity for any single CWA hazardous substance. 87 Fed. Reg. at 17,897-98. The threshold quantity is currently defined as 10,000 times the Reportable Quantity ("RQ")[24] for each CWA hazardous substance. 87 Fed. Reg. at 17,898.

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[22] Several of our states and other stakeholders have suggested improvements to the Climate and Economic Justice Screening Tool that would, among other things, incorporate race and ethnicity. *See* Comments of the Attorney General of New York, et al. (May 25, 2022), https://www.regulations.gov/comment/CEQ-2022-0002-2631.

[23] "Container" is defined as "any device or portable device in which a CWA hazardous substance is processed, stored, used, transported, treated, disposed of, or otherwise handled." 87 Fed. Reg. at 17,926.

[24] *See* 40 CFR 117 (specifies RQ categories).

The Proposed Rule's threshold quantity is currently set too high and will result in many facilities not being covered by this regulation, thereby resulting in many facilities not having an FRP in case of a hazardous spill. Setting the threshold quantity so high means that over 100,000 facilities that store hazardous substances will not be covered.[25]

As many facilities as possible should be planning and adapting for future extreme weather impacts. Climate change will increase the frequency and severity of extreme weather events.[26] These events will increase the likelihood of accidental spills that will expose communities near facilities to toxic chemicals. Facilities must be developing response plans to be better equipped to handle these events and any spills caused by them.[27] The failure to have an FRP in place puts frontline communities living near these facilities at a greater risk of harm in the event of a hazardous spill.

At a minimum, the Proposed Rule should be strengthened by lowering the RQ multiplier from 10,000 to 1,000. This would increase the number of facilities that meet the threshold quantity from an estimated 2,233 to an estimated 12,618, nationally.[28] This lower threshold is necessary because EPA has provided no evidence that the facilities excluded by the 10,000x RQ threshold quantity would not reasonably be expected to cause substantial harm in the case of a hazardous spill. EPA should take a precautionary approach and include more facilities in the initial screening by using a 1,000x RQ threshold quantity.

IV. EPA Should Update the CWA List of Hazardous Substances.

The proposed FRP requirements apply to industrial facilities with, among other criteria, a CWA "hazardous substance" that meets or exceeds designated threshold quantities. Section 311 of the CWA authorizes EPA to designate as a "hazardous substance" any element or compound that, when discharged as specified in that section, would present an imminent and substantial danger to public health or welfare.[29] In 1978, EPA designated the list of CWA hazardous substances.[30] The original list published by EPA in 1978 included 271 substances. While 28 substances were added the following year, the list has changed slightly since that time and currently includes 296 substances. Obviously, since 1978, there has been much advancement in science and technology and much progress in identifying contaminants of concern and in the availability of new detection methods and increased monitoring.

The States and Local Governments urge EPA to undertake a separate rulemaking to update and expand the list of CWA hazardous substances in accordance with the CWA to ensure that the

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[25] RIA at 16 (Table 2-1, comparing no threshold with the RQ x10,000 threshold).
[26] Sarah Kaplan & Brady Dennis, *Humanity has a 'brief and rapidly closing window' to avoid a hotter, deadly future, U.N. climate report says*, Washington Post (Feb. 28, 2022), https://www.washingtonpost.com/climate-environment/2022/02/28/ipcc-united-nations-climate-change-adaptation/ (detailing IPCC's latest report warning of worsening risk from climate change, including more extreme weather events).
[27] Rebecca Hersher, *Climate change threatens nearly one third of U.S. hazardous chemical facilities*, NPR (Mar. 2, 2022), https://www.npr.org/2022/03/02/1083943889/climate-change-threatens-nearly-one-third-of-u-s-hazardous-chemical-facilities.
[28] RIA at 16.
[29] 33 U.S.C. §1321(b)(2)(A).
[30] 40 C.F.R. § 116.4.

list is comprehensive and captures contaminants of emerging concern. For example, in 2014, a chemical spill by Freedom Industries into the Elk River in West Virginia led to a do-not-drink order for more than 300,000 people. The chemical that spilled, MCHM or 4-methylcyclohexane methanol, is not on the CWA hazardous substance list. If the facility had an FRP in place, perhaps the spill would have been prevented or the effects of the spill mitigated.

V. Conclusion

The Proposed Rule represents a significant step forward in preparing for worst case discharges of CWA hazardous substances from onshore facilities. The States and Local Governments strongly support those elements of the rule that require consideration of risks from climate change and impacts to communities of color and low-income communities, but urge EPA to take the additional actions discussed above to make the rule more protective of public health and our waterways.

Respectfully submitted,

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