To: Jarvela, Steve[Jarvela.Stephen@epa.gov]
From: Stroud, Fred
Sent: Mon 3/31/2014 8:00:15 PM
Subject: RE: new EPA spill program....maybe

Has Mr. Wright recovered from his near death experience?

From: Jarvela, Steve
Sent: Monday, March 31, 2014 12:55 PM
To: Stroud, Fred
Subject: RE: new EPA spill program....maybe

AHHHHhhhhh1111 dealing from the bottom of the deck

From: Stroud, Fred
Sent: Monday, March 31, 2014 2:46 PM
To: Jarvela, Steve
Subject: RE: new EPA spill program....maybe

They will take it out some other program that can't afford to lose funding!!!!

From: Jarvela, Steve
Sent: Monday, March 31, 2014 11:45 AM
To: Stroud, Fred
Subject: RE: new EPA spill program....maybe

I DIDN'T SEE ANY TRUST FUND TO HELP PAY FOR THIS. SOME TIME RATTLING A SABRE IS NOT ENOUGH.

From: Stroud, Fred
Sent: Monday, March 31, 2014 2:03 PM
Subject: new EPA spill program....maybe

Daily News

Despite State Fears, Key Senators Back SDWA For New EPA Spill Program

Posted: March 31, 2014

Democratic senators on the environment committee are poised to mark up a bill later this week creating a new EPA drinking water law program governing chemical releases from above ground storage tanks, despite fears from state drinking water regulators that they lack the resources and expertise to implement the bill's mandates, sources say.

While sources say the senators appear likely to preserve the core of the bill, S. 1961, that requires EPA to create the Safe Drinking Water Act (SDWA) inspection and regulation program for the tanks, it is not clear whether lawmakers may be planning to provide states with the resources they say they need to implement any new program.

In a March 28 statement to *Inside EPA*, Sen. Ben Cardin (D-MD), chairman of the committee's water subcommittee, reiterated his support for creating the new program under the SDWA, even though state regulators had raised concerns about the burdens such a new program would impose.

Cardin praised the bill's sponsors for "working together to come up with a fix the ensure the SDWA does a better job of protecting drinking water supplies from potential future hazardous events."

A state source said majority staff have largely rebuffed states' calls to weigh their concerns about new resource burdens and said they intend to push the bill forward at a business meeting as soon as April 2 with the same basic structure as when it was introduced.

"Like a lot of things on Capitol Hill, it's very knee-jerk, and they're not really listening to the people affected," the source says. "There's just this rush to get this done for some reason."

The state source says that because senators appear to have ignored their concerns, officials are now backing a competing bill in the House that seeks to create a similar regulatory program under the Clean Water Act (CWA), which would impose burdens on water pollution control officials who may have more expertise than their drinking water counterparts. The state source says the issue of which statute should house the new program would likely have to be addressed if the bills reach a conference committee.

While the state source says environment committee majority staff appears eager to advance the bill amending the SDWA, other sources indicate staff is at least weighing the potential resource burden for water facilities to maintain information on contamination risks that are present near their source waters.

An environmentalist backs calls for regulators to receive additional funding to carry out a new program, but called the state regulators' opposition to the bill inappropriate, given that the recent chemical spill in West Virginia contaminated drinking water of thousands of residents, and that state officials are charged with protecting public health.

Although the senators do not appear likely to drop the SDWA approach, they are also facing late calls from a host of groups for additional amendments. Industry groups, for example, are seeking to narrow the definition of facilities that would be subject to any new regulatory regime, environmentalists are seeking easier access to inspection data and

water utilities are seeking limits on any liability or monitoring mandates they may face, as well as improved notification and data provisions.

West Virginia Spill

S. 1961 is intended to address gaps in EPA and state regulatory programs that were highlighted by the recent chemical spill in Charleston, WV, that released chemicals from an above ground tank that had not been inspected in decades, contaminating the town's water supply when it entered the Elk River upstream from the local drinking water utility's intake.

Sponsored by environment committee Chairman Barbara Boxer (D-CA) and Sens. Joe Manchin (D-WV), Jay Rockefeller (D-WV) and Dick Durbin (D-IL), the bill gives EPA new authority under SDWA to create a program for states to regulate above-ground chemical storage facilities.

The bill would require the agency to create "a chemical storage facility source water protection program to provide for the protection of public water systems from a release of chemicals from a covered chemical storage facility." Under the bill, the agency would set programmatic requirements for delegated states, which would be required to conduct oversight and routine inspections of above-ground chemical storage facilities.

But an alliance of state regulators in a March 5 letter to senators questioned the need for the bill and called on senators to first inventory existing state and federal programs before advancing the new SDWA requirements.

Despite the state officials' concerns, some regulators have urged senators to address the gaps highlighted by the spill, though not necessarily in the way the committee is proposing. Randy Huffman, West Virginia's environment secretary, told Boxer in a March 17 letter that the "regulatory weakness" revealed by the West Virginia spill is "reflective of potential risk nationally."

There are few rules in place at the state or national level that specifically address the integrity of tanks and secondary containment. This risk is even greater when considering chemicals that are not listed as hazardous as was the case of the chemical that spilled in West Virginia, the letter says.

Although Huffman sees the need to act, the legislation's prospects have long been limited. No Senate Republicans have yet joined as cosponsors of S. 1961. And in the House, Speaker John Boehner (R-OH) has dismissed calls for new regulations, though Rep. Shelley Moore Capito (R-WV) has introduced a bill, H.R. 4024, that would create a nearly identical program under the CWA.

Should the legislation fail, EPA could still craft a new program under its existing CWA authority, though Boxer has said such authority is "loosey goosey."

In the face of the states' concerns, Boxer and her GOP counterpart, Sen. David Vitter (R-LA), announced they had agreed to delay a planned markup, hoping it would give them time to resolve concerns from states and others.

But it is not clear whether the senators and their staff have been able to reach agreement. Vitter's spokesman did not respond to a request for comment.

And Boxer told a March 26 environment committee hearing that she planned to mark up the bill the week beginning March 31.

'Covered Facilities'

Although the environment committee majority appears unlikely to change the bill's basic framework, sources say senators are weighing a host of other changes, including possibly exempting certain industries from the bill's provisions and narrowing a broad provision precluding the release of facility information to the public.

Sources familiar with recent lobbying say the bill appears to have been hastily drafted following the West Virginia disaster, and that the current language lacks clarity in several significant respects, including an ambiguous definition of covered facilities, which could give EPA broad discretion to regulate industries beyond what senators intend.

The bill currently applies to facilities "at which a chemical is stored and [a regulator] determines that a release of the chemical from the facility poses a risk of harm to a public water system," though it excludes facilities that are subject to oil spill response requirements mandated by the CWA and its implementing rules. As currently crafted, the bill also gives regulators discretion to determine if other state or federal authorities are available to address potential harm.

But sources say that as currently crafted, the bill provides regulators with broad new authority. "There's a number of concerns from industry's standpoint -- the scope and application of the statute is extremely broad," says one water utility source, noting that the definition of covered facilities could be interpreted to include everything from pipelines to rail cars and even restaurants that store only very minor amounts of hazardous chemicals.

While groups, including the Natural Resources Defense Council in Feb. 4 testimony, and water utility officials have called for clarification of the bill's definition of covered facilities, the water utility source says the issue is of greatest concern for industry, and that there is "a growing list of companies that want to be excluded" from the bill's provisions.

Senate majority staff are also weighing other possible changes such as how to amend existing laws to ensure that facilities that store hazardous chemicals bear the burden of preventing and mitigating releases, as well as specific prevention measures to require facilities that pose contamination risks to source waters to employ, sources say.

Water utility officials are also urging senators to limit any additional monitoring requirements or liability for water contamination from upstream facilities, despite receiving additional information on the chemical holdings of nearby facilities.

In a position statement, the American Water Works Association (AWWA) also calls for creation of a database giving water utilities access to information on risks posed from facilities near their water supplies, and also to allow utilities, EPA and state regulators to petition a chemical facility to change its processes. The group also asks that EPA and states be given adequate resources to carry out the responsibilities of any new program.

Environmentalists, meanwhile, are pushing to limit broad provisions preventing the release of information from facility assessments to the public, adding that the public should know if facilities with rusting or corroded tanks are upstream from a drinking water utility and could pose a threat. "We're not saying that everything needs to be public, but some of the basic information needs to be [available] so the public can try to get the facility to clean up their act," the source said.

Senators and staff are also considering the frequency with which watershed assessments should be required and how to finance those assessments. -- *Dave Reynolds* (dreynolds@iwpnews.com