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Senators Float Bills To Address Spills But Advocates Suggest EPA Actions

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Key senators are pushing a series of measures that would provide EPA with new authority to address concerns highlighted by the recent chemical spills in West Virginia and elsewhere, though environmentalists are doubting the measures' passage and are instead urging EPA to act using existing authorities.

The legislation is being developed in response to the 7,500 gallons of coal-cleaning chemical 4-methylcyclohexane methanol (MCHM), as well as an additional substance, a mixture of glycol ethers known as PPH, from an above-ground tank run by Freedom Industries into West Virginia's Elk River earlier this month.

The spill, upstream from a drinking water utility intake, contaminated potable water for 300,000 residents for days. In a sign of ongoing congressional interest in the West Virginia incident, the Senate Environment & Public Works Committee plans to hold a hearing on the spill next week.

And a September 2013 spill of 233,000 gallons of molasses in Honolulu harbor is also driving legislative efforts.

But legislation is unlikely to advance after House Speaker John Boehner (R-OH) said that no new regulations are needed to address the issue. "We have enough regulations on the books. And what the administration ought to be doing is actually doing their jobs," Boehner said Jan. 14. The speaker raised concerns that the plant had not been inspected since 1991, adding that "somebody ought to be held accountable here."

"We're a bit concerned about the prospects of enacting anything worthwhile given Boehner's position, which is opposed to any new regulations and thinks the solution is to simply 'enforce the existing law' and inspect the plants more frequently," says one environmentalist.

Despite dim prospects, senators are crafting legislative proposals to address regulatory gaps identified by the two spills. Senate environment committee Chairman Barbara Boxer (D-CA), together with Sens. Joe Manchin (D-WV) and Jay Rockefeller (D-WV), Jan. 17 announced plans to introduce a bill that would create a new Safe Drinking Water Act (SDWA) program allowing states to regulate chemical facilities, identify facilities that already present a risk to drinking water and set minimum federal standards for the state programs governing construction, emergency leak detection and emergency response.

A fact sheet on the legislation said that facilities identified in drinking water protection plans should be inspected every three years and others every five years. In addition, the bill would allow states to recoup costs incurred from responding to any emergency.

In a Jan. 17 interview, Manchin said he hoped the bill would not be "intrusive at all" or make it harder for businesses to operate. "It's basically just a protection I think, and everyone should look at it, because what happened to us I wouldn't want to happen to any other state or any other part of our state, or any part of our country," he said.

Additionally, Manchin says he hopes the problems raised by the West Virginia spill -- the fact that there was little health and safety information about the spilled chemicals because it was claimed as confidential business information (CBI) under the Toxic Substances Control Act-- would help drive renewed interest in reforming the law through another bill, one introduced by Sen. David Vitter (R-LA) and the late Sen. Frank Lautenberg (D-NJ).

The bill, S. 1009, has stalled in the Senate environment committee over concerns from Boxer and others that it would preempt

stronger chemical regulations in California, among other concerns.

Spill 'Disasters'

Meanwhile, Sen. Brian Schatz (D-HI), with support from Rockefeller, Jan. 17 introduced two bills seeking to amend the Superfund law, which the senators say are needed to address concerns raised by the two spills.

"The spill disasters in Honolulu Harbor and in West Virginia may seem different, but they both reveal a disturbing loophole under the Superfund law," Schatz said in a press release. "Neither molasses nor MCHM are designated as hazardous by the federal government, despite the damage that can occur to people's health, businesses and our environment when spilled."

S. 1951, which the lawmakers introduced Jan. 17, would, among other things, expand the Comprehensive Environmental Response, Compensation and Liability Act's (CERCLA) current definition of hazardous substances to include any pollutant(s) or contaminant(s) "if the President takes any response measures" to address their release.

The bill appears aimed at ensuring that substances that EPA may not currently list as a hazardous substance -- such as molasses and MCHM -- would be subject to the law's emergency response provisions, requiring facilities that handle them to craft response plans and making them liable to cover remediation and response costs in the event of a spill.Another bill the two senators introduced, S. 1958, would raise -- from $2 million to $4 million -- the law's cap on funds that can be spent from the Superfund trust fund in emergency response actions.

Environmentalists say that given the legislation's dim prospects, a better approach would be for EPA to use its existing authority to better protect water supplies.

For example, several say that EPA can list MHCM as a hazardous substance without legislation and adopt spill prevention programs for hazardous substances beyond its current oversight of oil storage facilities.

Jon Devine, a senior attorney at the Natural Resources Defense Council, said in a Jan. 17 blog post that EPA has authority under the Clean Water Act (CWA) to establish a spill prevention program for hazardous substances but has only set up such a program for oil.

The 1972 CWA required the government "as soon as practical" to develop measures that "establish procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . and to contain such discharges."

Devine argues that now is the time for EPA to finally update the spill prevention requirements. Although he concedes doing so might "take some political spine" given some members of Congress are opposed to the oil spill rules, he says EPA should prioritize the action.

EPA also has the power to classify MCHM as a hazardous substance, in order to be covered under the program.

The first environmentalist also says that EPA can take steps to address spills as one of the lead agencies in the administration's working group established by President Obama's executive order Aug. 1 to make chemical facilities safer following the West, Texas fertilizer plant disaster that killed 15 people last April.

According to the source, "This Working Group is perfectly situated to include prevention measures that were clearly lacking in West Virginia and it's charged with proposing new policy and regulations by May 1."

Lawmakers and advocates are also seeking to release more information on the spilled chemicals' toxicity, given that the company has withheld much of the data claiming it as CBI.