To: Berry, Chuck[Berry.Chuck@epa.gov]; Andrew, Gary[Andrew.Gary@epa.gov]; Andrews, David[Andrews.David@epa.gov]; Ball, Stephen[Ball.Stephen@epa.gov]; Booth, Jason[Booth.Jason@epa.gov]; Buerki, Karen[Buerki.Karen@epa.gov]; Byrd, Terrence[Byrd.Terrence@epa.gov]; Crowley, Jeffery[Crowley.Jeffery@epa.gov]; Eger, Chuck[Eger.Chuck@epa.gov]; Eichinger, Kevin[Eichinger.Kevin@epa.gov]; Englert, Brian[Englert.Brian@epa.gov]; Francendese, Leo[Francendese.Leo@epa.gov]; Franco, Benjamin[Franco.Benjamin@epa.gov]; Garrard, Jordan[Garrard.Jordan@epa.gov]; Gaughan, Perry[Gaughan.Perry@epa.gov]; Harper, Greg[Harper.Greg@epa.gov]; Huyser, Matthew[Huyser.Matthew@epa.gov]; Jardine, Rick[Jardine.Richard@epa.gov]; Kenneth Rhame[Rhame.Kenneth@epa.gov]; Neal, Timothy[Neal.Timothy@epa.gov]; Patel, Subash[Patel.Subash@epa.gov]; Russell, Chris[Russell.Chris@epa.gov]; Sargent, Neil[Sargent.Neil@epa.gov]; Smith, Art[Smith.Art@epa.gov]; Spurlin, Steve[Spurlin.Steve@epa.gov]; Stilman, Terry[Stilman.Terry@epa.gov]; Tanner, Terry[Tanner.Terry@epa.gov]; Walden, Ted[Walden.Ted@epa.gov]; Williamson, Carter[Williamson.Carter@epa.gov]; Taylor, Matt[Taylor.Matt@epa.gov]; Webster, James[Webster.James@epa.gov]; McGuire, Jim[McGuire.Jim@epa.gov]
From: Negron, Jose
Sent: Fri 1/10/2014 6:10:00 PM
Subject: RE: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

Chuck:

Yes and no. ☺ Goes back in history to the development of the Water Pollution Act and then the Clean Water Act . Back then a list based on what known chemicals where **impairing** (here is your impact) the waters was developed. That list includes all the chemicals regulated under the CWA which must be reported when the permitted amount is exceeded. That list can be amended to either remove or add chemicals as better sampling and analytical techniques re developed . Also included in the must report are those chemicals that may not be listed but have RCRA characteristic waste (a product when released becomes a waste (a different discussion point).

From: Berry, Chuck
Sent: Friday, January 10, 2014 12:21 PM
To: Andrew, Gary; Andrews, David; Ball, Stephen; Berry, Chuck; Booth, Jason; Buerki, Karen; Byrd, Terrence; Crowley, Jeffery; Eger, Chuck; Eichinger, Kevin; Englert, Brian; Francendese, Leo; Franco, Benjamin; Garrard, Jordan; Gaughan, Perry; Harper, Greg; Huyser, Matthew; Jardine, Rick; Kenneth Rhame; Neal, Timothy; Negron, Jose; Patel, Subash; Russell, Chris; Sargent, Neil; Smith, Art; Spurlin, Steve; Stilman, Terry; Tanner, Terry; Walden, Ted; Williamson, Carter; Taylor, Matt; Webster, James; McGuire, Jim

Subject: RE: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

hypothetically speaking, what if the facility didn't have an npdes permit?

my real question here what is the actual reporting requirement for a pollutant or contaminant? is there some impact threshold it has to cross (e.g. impact to water supplies, fish kill) or is it just a simple "none" unless they're controlled by some other program?

I tried to look it up in the NCP, but the response section is divided up into 'oil response' and 'hazardous substance' response, and the haz sub section only refers back to cercla 103a and c, which themselves only refer to haz substances.

40 cfr 302 provides for 'unlisted haz substances' by including haz waste (characteristic or listed), so that would include a bunch of stuff out there as well, but throughout the section the phrase 'listed haz substance' is used. I didn't find the words 'pollutant' or 'contaminant' in the entire section.

it's an academic question, and not necessarily applicable to last night's spill. if there's no answer, that's fine as well. I get that we can respond as a pollutant or contaminant, but I'm speaking strictly to reporting requirements.

I just naturally thought there would be some sort of impact-determined reporting requirement. I guess not.

Chuck Berry

On-Scene Coordinator

US Environmental Protection Agency

61 Forsyth Street, 11th Floor

Atlanta, GA 30303

404.562.8278 (Office)

404.859.0970 (Cell)

berry.chuck@epa.gov

From: Negron, Jose
Sent: Friday, January 10, 2014 11:10 AM
To: Berry, Chuck; Andrews, David
Cc: Francendese, Leo; Stilman, Terry; Andrew, Gary; Franco, Benjamin; Kenneth Rhame
Subject: RE: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

NRC

From: Berry, Chuck
Sent: Friday, January 10, 2014 11:09 AM
To: Andrews, David; Negron, Jose
Cc: Francendese, Leo; Stilman, Terry; Andrew, Gary; Franco, Benjamin; Kenneth Rhame
Subject: Re: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

Is this reporting to the NRC or to the Water Division?

Chuck Berry
EPA OSC
Via Mobile Device
404.859.0970
Berry.chuck@epa.gov

From: Andrews, David
Sent: Friday, January 10, 2014 10:42:54 AM
To: Negron, Jose
Cc: Berry, Chuck; Francendese, Leo; Stilman, Terry; Andrew, Gary; Franco, Benjamin; Kenneth Rhame
Subject: RE: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

jose, You win... Yours is the proper answer.... :-)

From: Negron, Jose
Sent: Friday, January 10, 2014 10:25 AM
To: Berry, Chuck; Francendese, Leo; R4 ERRB
Subject: RE: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

If they have an NPDES permit which they should, they would be required to report under the Clean Water Act NPDES permit requirement which gives them authority to discharge x amount as part of their regular ops but need to report if they exceed as may happen with an uncontrolled release.

From: Berry, Chuck
Sent: Friday, January 10, 2014 9:20 AM
To: Francendese, Leo; R4 ERRB
Subject: Re: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

Saw this last night on reddit. Chem isn't on hazardous substance list (I searched by CAS# but I might have missed it). What is their duty to report to NRC (which they didn't) if its only a "pollutant or contaminant" sans RQ?

Chuck Berry
EPA OSC
Via Mobile Device
404.859.0970
Berry.chuck@epa.gov

From: Francendese, Leo
Sent: Friday, January 10, 2014 9:04:06 AM
To: R4 ERRB
Subject: Fw: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

fyi

From: leofrancendese < Ex. 6 - Personal Privacy
Sent: Friday, January 10, 2014 7:57:28 AM
To: Francendese, Leo
Subject: West Virginia chemical spill cuts water to up to 300,000, state of emergency declared - U.S. News

http://usnews.nbcnews.com/_news/2014/01/09/22245996-west-virginia-chemical-spill-cuts-water-to-up-to-300000-state-of-emergency-declared?lite