To: Stanislaus, Mathy[Stanislaus.Mathy@epa.gov]
Cc: Breen, Barry[Breen.Barry@epa.gov]; Brooks, Becky[Brooks.Becky@epa.gov]; Natarajan, Nitin[Natarajan.Nitin@epa.gov]
From: Hickey, Mike
Sent: Wed 3/19/2014 2:54:29 PM
Subject: RE: W VA

Thank you Mathy.

From: Stanislaus, Mathy [mailto:Stanislaus.Mathy@epa.gov]
Sent: Wednesday, March 19, 2014 10:47 AM
To: Hickey, Mike
Cc: Breen, Barry; Brooks, Becky; Natarajan, Nitin
Subject: Re: W VA

West Virginia Coal Ash Spill

Final Desk Statement

The State of West Virginia has the lead in responding to the coal slurry spill that occurred on February 11. EPA staff and managers contacted their counterparts in the state immediately after being notified about the spill, and have stood ready to assist if needed. The State continues to oversee the clean-up, and from what we've seen and heard, they are taking appropriate actions to address the situation. At this point, the State has not asked for EPA's assistance.

Ex. 5 - Deliberative

Ex. 5 - Deliberative

AP Article Published in WV Today on February 11, 2011 (for background)

WINIFREDE, W.Va. (AP) — An unknown amount of coal slurry containing the chemical crude MCHM spilled from a preparation plant into a tributary of the Kanawha River on Tuesday, the West Virginia Department of Environmental Protection said.

Crude MCHM is the same chemical that spilled from a Freedom Industries storage tank into the Elk River in Charleston on Jan. 9, tainting the water supply of 300,000 residents in nine counties.

The slurry spilled into Fields Creek from the Kanawha Eagle preparation plant near Winifrede sometime between midnight Monday and 5:30 a.m. when a slurry line ruptured. There are not any public water intakes immediately downstream from the plant, Aluise said in a news release.

West Virginia American Water said it does not expect the slurry spill to affect its treatment plant on the Elk River.

"Our employees are working on behalf of our customers with local and state officials to gather additional information. We have been in contact with the West Virginia Bureau for Public Health, which concurs that they do not anticipate any impact to our plant on the Elk River," West Virginia American Water spokeswoman Laura Jordan said in a statement.

Crews were working to contain the spill Tuesday, Aluise said.

The company told the DEP that the plant uses Flomin 110-C, a frothing chemical that contains crude MCHM. Inspectors with the DEP collected water samples from the creek on Tuesday for testing to be conducted by ALS Laboratory in South Charleston, Aluise said.

Aluise said enforcement against is pending against the company.

A Patriot Coal spokesman did not have an immediate comment on the spill.

From: Stanislaus, Mathy
Sent: Tuesday, March 18, 2014 5:47:57 PM
To: Hickey, Mike
Cc: Breen, Barry; Brooks, Becky; Natarajan, Nitin
Subject: RE: W VA

Working on it

From: Hickey, Mike [mai Ex. 6 - Personal Privacy]
Sent: Tuesday, March 18, 2014 5:31 PM
To: Stanislaus, Mathy
Cc: Breen, Barry; Brooks, Becky; Natarajan, Nitin
Subject: RE: W VA

Mathy – It just occurred to me that it would be helpful to have the same kind of information on the WV coal ash spill. Could you send something to me tomorrow morning before 11?

Thank you,

Mike

From: Stanislaus, Mathy [mailto:Stanislaus.Mathy@epa.gov]
Sent: Friday, March 14, 2014 2:38 PM
To: Hickey, Mike
Cc: Breen, Barry; Brooks, Becky; Natarajan, Nitin
Subject: W VA

Mike: Below and attached are some info – let me know whether this does it or you need more detail or want a call. Thanks

Freedom Industries WV Chemical Spill

Chronology of Media Statements (Starting w/most recent)

On discontinuing EPA's daily presence at the site

On March 5, EPA discontinued a daily on-site presence at the Freedom Industries facility. West Virginia Department of Environmental Protection (WVDEP) water and waste enforcement staff are at the Freedom facility and continue to oversee operations. If conditions change, or if WVDEP requests federal on-site assistance, EPA responders can be redeployed to the site. EPA will return during future tank dismantling to observe site conditions.

On how was EPA's role determined in the WV response

In West Virginia, the West Virginia Department of Environmental Protection requested EPA's technical assistance in controlling and cleaning up the source of the chemical spill in the Elk River. On Jan. 10, day-two of the spill response, EPA Region 3 provided two on-scene coordinators from the Hazardous Sites Cleanup Division (waste program) to help with State-led efforts to control the source of the spill at Freedom Industries' tank farm in Charleston. It was a mutual determination by the response partners -- WVDEP, EPA, Freedom Industries as the responsible party, and contractors -- that the Incident Command structure would be most appropriate for managing the response, with the state of West Virginia as the lead.

In addressing MCHM in drinking water, the State and West Virginia American Water Company (WVAWC) developed a flushing protocol for homeowners to flush their household plumbing. After the State and WVAWC posted the protocol on their respective websites, EPA drinking water experts in Region 3 and in the Office of Water at headquarters collaborated in reviewing the flushing protocol. EPA offered comments to the State to make improvements in the clarity of the instructions.

EPA's legal authorities

Depending on the nature of the spill and the substance released, EPA may have statutory

response authorities, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), Section 311 of the Clean Water Act (CWA 311), and the Oil Pollution Act (OPA). EPA can provide support when requested or when state and local first responder capabilities have been exceeded, or when it determines it should act independently. In carrying out these responsibilities, EPA coordinates with other EPA programs, other federal agencies, states, tribes, and local governments.
At the Freedom Industries response, the WV Department of Environmental Protection is the lead agency currently overseeing the response activities, and the EPA has offered support and continues to work closely with other federal and state agencies in West Virginia as they begin implementing a plan for getting the water system back on-line and to address the source of the contamination. As those efforts are already underway, EPA is continuing to examine all available authorities that may be applicable to the incident to determine whether additional action by EPA is necessary. This review will help inform EPA's activities going forward.
EPA also has multiple authorities for undertaking enforcement actions, if relevant statutory and regulatory criteria can be met. Working closely with the State, EPA has already deployed Superfund employees known as On-Scene Coordinators to assess the situation. EPA is also assessing the facts on the ground to determine whether to invoke additional enforcement or response authorities, such as those under the Clean Water Act, the Safe Drinking Water Act (SDWA), the Emergency Planning and Community Right to Know Act (EPCRA), and the Toxic Substances Control Act (TSCA).

With respect to prevention and preparedness in advance of a spill or release, EPA currently has regulations for oil storage facilities under the Clean Water Act (Spill Prevention, Control, and Countermeasure Program – SPCC), and for chemicals listed under the Clean Air Act's Risk Management Program– RMP – to prevent, minimize and respond to releases.

Based on our current information, the Freedom Industries facility in West Virginia is not regulated under the EPA's RMP since neither MCHM nor PPH are on the list of RMP-regulated substances; and the SPCC Program does not apply to the tanks, as we are not aware that they contained any oil. Also, the facility does not fall under EPA's Resource Conservation and Recovery Act (RCRA) regulatory program (though it could be subject to RCRA's cleanup program) because the material leaked is a "product" and not a "solid waste" or hazardous waste that would require a permit, as defined under RCRA Subtitle C.

Under the Emergency Planning and Community Right-to-Know Act (EPCRA), facility owners or operators must provide hazardous chemical information to state and local responders. The state and local responders can then use this information to minimize risk and develop response plans.

On PPH

Early January 21, during an operations meeting at the facility, Freedom Industries informed the State of West Virginia, the West Virginia American Water Company, and EPA that another chemical was part of the release that occurred on January 9, 2014. This chemical has been identified as a proprietary mixture of polyglycol ethers (PPH). It was in the same tank and entered the water system at the same time as the MCHM. PPH represented a relatively small

percentage (approximately 7.3%) of the total volume in the tank. EPA shared this information with the Chemical Safety Board and the Agency for Toxic Substances and Disease Registry (ATSDR).

EPA will continue to support work with the State, the WVAMC and its federal partners to address this new development and continues to be available for sampling and monitoring assistance.

On EPA activity early on

EPA worked closely with other Federal and State agencies in West Virginia as they implemented a plan for getting the water system back on-line. The Agency also provided two on-scene coordinators to help the local response with air monitoring, inspecting and controlling the source of the spill, and related cleanup work. EPA drinking water experts have offered technical assistance to the State for West Virginia American Water Company's (WVAWC) plan for flushing the system. State and Federal (ATSDR/CDC) health officials have agreed that a level of 1 part per million (ppm) of methylcyclohexanemethanol is protective of public health and the State/WVAWC will use the flushing process to assure that the 1 ppm level is achieved throughout the system. The EPA supports this approach and has also offered sampling and monitoring assistance to the State during the restoration efforts.

Talkers on whether American Water Company knew to look for PPH

· PPH is not a substance for which the American Water Company is required to test for, however, the state and WVAWC are re-evaluating earlier test results to learn whether PPH was present and, if possible, to retest many early samples taken throughout the spill to learn the levels of PPH. This data will provide valuable information to the Water Co., the state, CDC and ATSDR, and the residents of West Va. This is a reasonable approach.

· As a point of perspective, there are thousands of chemicals in use today, which -- along with many other substances and products -- can potentially be washed into our waterways. The Safe Drinking Water Act requires water suppliers to monitor for contaminants for which EPA has established health based standards. PPH is not among those regulated parameters for drinking water and so WVAMC would not have looked for it in its testing.

· When an event such as a spill occurs, analysis of water samples centers on the major known substances to determine presence. Laboratories do not have standards available to make definitive identification of all possible compounds present in sample.

· In addition to regulated contaminants for safe drinking water, there are contaminants EPA is considering setting drinking water standards for and Water suppliers are assisting us with monitoring for them.

Mathy Stanislaus

USEPA Assistant Administrator

Office of Solid Waste & Emergency Response