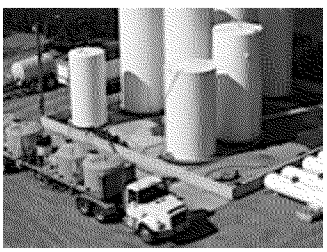
To: Santiago, Armando[Santiago.Armando@epa.gov]; Tulis, Dana[Tulis.Dana@epa.gov]; Stanton, Larry[Stanton.Larry@epa.gov]; Averback, Jonathan[Averback.Jonathan@epa.gov]; Bove, James[Bove.James@epa.gov]; DeHaven, Leigh[DeHaven.Leigh@epa.gov]; Bosecker, Elizabeth[Bosecker.Elizabeth@epa.gov]; Gattuso, Peter[Gattuso.Peter@epa.gov]; Denning, George[Denning.George@epa.gov]; Wilson, Gregory[Wilson.Gregory@epa.gov]; Belke, Jim[Belke.Jim@epa.gov]; Swackhammer, J-Troy[Swackhammer.J-Troy@epa.gov]; Franklin, Kathy[Franklin.Kathy@epa.gov]; Howard, MarkW[Howard.MarkW@epa.gov]; Nichols, Nick[Nichols.Nick@epa.gov]; Gioffre, Patricia[Gioffre.Patricia@epa.gov]; Jacob, Sicy[Jacob.Sicy@epa.gov]; Eby, Terry[Eby.Terry@epa.gov]; Principe, Vanessa[Principe.Vanessa@epa.gov]
Cc: Jennings, Kim[Jennings.Kim@epa.gov]
From: Matthiessen, Craig
Sent: Wed 1/22/2014 2:56:29 PM
Subject: FYI from BNA - West Virginia Governor Proposes Tougher Storage Tank Rules in Wake of Elk River Spill

FYI from BNA Report:

Toxic Substances

West Virginia Governor Proposes Tougher Storage Tank Rules in Wake of Elk River Spill



By Bebe Raupe

Jan. 21 — After 11 "extremely difficult" days for West Virginians whose drinking water was contaminated by a storage tank leak, Gov. Earl Ray Tomblin (D) announced legislation to improve regulation of such storage sites.

The governor's proposal, which was unveiled Jan. 20, would give the West Virginia Department of Environmental Protection (WVDEP) tools to prevent a similar incident by establishing a chemical storage regulatory program.

Tomblin said the measure aims to address shortcomings in state regulation that allowed 7,500 gallons of 4-methylcyclohexane methanol to leak Jan. 9 into the Elk River, just upstream from a water treatment plant serving Charleston and nine surrounding counties, prompting a state of emergency barring 300,000 people from using their tap water (08 DEN A-13, 1/13/14).

Safety flaws at the storage site owned by Freedom Industries went largely undetected, according

to the WVDEP, because the facility didn't manufacture chemicals, had no emissions and didn't store substances underground; therefore, it was not subject to environmental regulations.

Moreover, the coal-cleaning chemical that leaked into the waterway has not been studied extensively and wasn't deemed hazardous enough to warrant additional regulation, the department said.

Proposed Safeguards

At a news conference in Charleston, Tomblin said the measure would require above-ground storage facilities to be inspected annually and have their safety certified by professional engineers. It would allow the WVDEP secretary to order a facility to take corrective action when storing material that could impact public safety and health.

The proposal would give the WVDEP authority to implement an above-ground storage tank program that would require all operators to self-report the location of all their tanks, detail the construction and maintenance of each, submit written annual reports outlining any changes and file individual spill prevention and response plans.

Tomblin's proposal, which has yet to be formally introduced as legislation, is intended to ensure that all above-ground storage tanks are built and maintained according to expressed safety standards.

According to WVDEP estimates, there are more than 1,000 above-ground chemical storage tank sites scattered throughout the state.

Under the bill, the WVDEP secretary would require owners or operators of industrial above-ground storage tanks to conduct “reasonable” monitoring or testing, allow access these records and allow the secretary to issue enforcement orders, including temporary and permanent injunctions or civil and criminal penalties.

In addition, it would require all public water systems to have written plans in place to prepare for emergencies, specifically in the event a contaminant is discharged into the water supply.

“This legislation will not duplicate the state and federal regulator efforts already in place,” Tomblin said, calling his proposal “reasonable, common sense provisions to regulate above-ground storage tanks across the state.”

Environmentalists Want More

At the news conference, Tomblin characterized the Freedom Industries site as “unregulated,” a description the West Virginia Rivers Coalition took exception to in a report released Jan. 20.

In its report, The Freedom Industries Spill: Lessons Learned and Needed Reforms, the environmental advocacy group said the company holds a West Virginia/National Pollutant Discharge Elimination System permit under the Clean Water Act, a registration under the state's

general multi-sector industrial stormwater permit.

While the WVDEP issues and enforces these permits, "In recent years, the tone of many of our state leaders has been clear—too much regulation and too much involvement by the United States Environmental Protection Agency" poses a threat to the state's economy, said the report, which proposed stricter reforms than those suggested by the governor.

The coalition's report proposed that the legislature require the WVDEP to inspect all NPDES-permitted sites, beginning immediately with the most critical; prohibit coverage under the general multi-sector industrial stormwater permit of facilities located in zones of critical concern, upstream from public water supply intakes; and increase funding and staffing for the WVDEP's NPDES, water quality and environmental enforcement programs.

Under the Safe Drinking Water Act, the state should update its source-water assessment report for the Elk River and all drinking water supplies across the state, said the report, and set site-specific standards for chemicals used in large quantities.

"No one should be surprised that an administration that has done so little to uphold clean water standards would propose such a limited approach," Angie Rosser, executive director of the West Virginia Rivers Coalition, said in a prepared statement. "The governor needs to acknowledge the scale and scope of the challenges in protecting our water supplies and lead a complete transformation of the state's attitude and approach to regulation and enforcement."

Manchin: Protect Waterways

At the governor's news conference, Sen. Joe Manchin (D-W.Va.) said both state and national leaders need to pursue preventative clean water legislation.

Manchin, who has often been at odds with the EPA, both as a U.S. senator and as West Virginia's governor, said he would work with the agency on legislation to prevent another chemical spill emergency.

On Jan. 17, Manchin announced he was co-sponsoring federal legislation to regulate above-ground chemical storage tanks.

The Chemical Safety and Drinking Water Protection Act, drafted by Senate Environment and Public Works Committee Chairman Barbara Boxer (D-Calif.), Sen. Jay Rockefeller (D-W.Va.) and Manchin, would give states more authority to prevent such spills and require state inspections of above-ground chemical storage facilities (13 DEN A-11, 1/21/14).

Under the act, the chemical industry would be required to develop emergency response plans and submit them to states for approval.

Manchin's and Tomblin's bills both would aim to make locations and specifics of chemical storage sites publicly available.

Although West Virginia completely lifted the tap water ban Jan. 18, public safety officials are still advising pregnant women to continue using alternative water sources.

The leaking storage tank's owner, Freedom Industries, filed for Chapter 11 bankruptcy Jan. 17 (13 DEN A-12, 1/21/14).

To contact the reporter on this story: Bebe Raupe in Cincinnati at braupe@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

For More Information

Gov. Tomblin's proposed legislation is available at http://op.bna.com/env.nsf/r?Open=jstn-9fkudx.

The West Virginia Rivers Coalition report is available at http://op.bna.com/env.nsf/r?Open=jstn-9fkuew.