

United States Senate

Committee on Environment and Public Works

Subcommittee on Water and Wildlife

February 4, 2014

Randy C. Huffman, Cabinet Secretary

West Virginia Department of Environmental Protection

The State of West Virginia and its Department of Environmental Protection (DEP) appreciate and welcome the opportunity to address this committee. I am hopeful that, by sharing West Virginia's experience from the perspective of an environmental regulator, not as a public health official, I can provide insight to you and other states as we seek to provide more comprehensive regulation of the pollutants stored in aboveground storage tanks, so as to better protect human health and the environment and minimize the risks associated with this industrial activity.

On January 9, 2014, DEP received a complaint concerning an odor around a tank farm owned by Freedom Industries, Inc. Freedom Industries operated a bulk storage distribution center located in Charleston along the Elk River. Upon investigation, DEP personnel observed free product in secondary containment units surrounding aboveground storage tanks holding a chemical known as 4-Methylcyclohexene Methanol (MCHM). DEP personnel also observed that this material appeared to have escaped the secondary containment and entered the Elk River approximately 1.5 miles above a public water supply intake. At 12:05 p.m. a

Freedom Industries employee reported the spill to DEP's Emergency Response Spill Hotline, and stated that the facility had discovered a hole in one of the tanks.

DEP officials shut down the site and instructed Freedom Industries to immediately take all necessary measures to contain, recover, and remediate the material that had escaped the aboveground storage tank and the secondary containment structure. DEP officials further instructed Freedom Industries to empty the three tanks that were identified as containing MCHM and move that material to a separate site that had appropriate secondary containment structures, and to identify the contents of the 11 other tanks located on the site. DEP has had a continuous presence on the site since January 9, and is directing the containment and remediation measures with the assistance of officials from Homeland Security, the Coast Guard, EPA, and the Chemical Safety Board.

This incident highlights an issue that exists not just in West Virginia, but all over the country. While all states have substantially similar regulations for underground storage tanks, based on regulations promulgated by the EPA, the same is not true for their surface-situated counterparts. EPA does not have regulations pertaining to all ASTs, and the states that do regulate them do so a myriad of different ways. One similarity - most states that have AST regulations have them as a result of an event similar to what has just happened in West Virginia. Also, most states focus primarily on tanks containing petroleum products or hazardous waste or materials regulated by CERCLA. This leaves virtually unregulated an entire universe of pollutants stored in aboveground tanks. It is easy with hindsight to see a potential threat existed on the Elk River, and that clarity also sharpens our focus looking forward. According to the EPA TSCA Chemical Inventory, there are approximately 84,000 known industrial chemicals being used

in this country today; about 20,000 of those have been added to the list in the last 30 years with little change in the list of regulated chemicals. While most of these materials are not currently classified as hazardous, the truth is we simply do not know enough about them. The material that leaked into the Elk River on January 9th is one of those chemicals.

The West Virginia Legislature is considering legislation that would help to fill the void that currently exists in the regulation of aboveground storage tanks. The bill being discussed in the West Virginia Legislature today requires some things that are very important from DEP's perspective: it requires the owner or operator of an AST with a capacity of 1,100 gallons or more to register with DEP, identifying the tank's contents, age, and location; to have a registered professional engineer inspect the tanks annually and certify their integrity; to develop spill prevention and emergency response plans; and to construct and maintain adequate secondary containment. Our Legislative Session is not even half way over yet, so it remains to be seen how the law will look upon passage, but these are important environmental and public health protections that DEP will strongly support throughout the debate. On the federal side, we also support Senator Manchin's proposed legislation to tighten up the standards in the Safe Drinking Water Act. By requiring EPA to establish minimum acceptable standards by which the states will be held accountable, we can significantly reduce the risk of similar problems in the future.

West Virginia's proposed AST program has been modeled after the very successful underground storage tank (UST) program DEP has operated for more than two decades. The UST program was developed in the late 1980s, because environmental regulators recognized that over 2 million UST systems, estimated to be located at over 700,000 facilities nationwide, existed with little or no oversight,

and that over 75 percent of the existing systems were made of unprotected steel, a type of tank system proven to be the most likely to leak and thus create the greatest potential for health and environmental damage. The success of this program nationally is indisputable. Currently, West Virginia has about 1600 facilities with 4300 tanks registered in the UST program.

The AST universe is not nearly as well known. Many of these facilities are regulated by registering under a general NPDES stormwater permit, because the only environmental impact these tanks were thought to have was stormwater runoff; they were not supposed to discharge, leak or otherwise emit pollutants into the environment. ASTs can also be found at facilities covered by individual NPDES permits, but that permit does not require integrity testing or leak detection monitoring, either. The registration requirement in the current legislation is the key to us getting a handle on the universe of structures that are currently under-regulated.

But until such time as we have that requirement in law, we have undertaken our own investigation into the number of ASTs in the State. We started by looking at the 1063 registrations under the Multi Sector General Stormwater Permit, as well as the 204 individual NPDES permits, to try to determine what facilities have aboveground tanks on site. This investigation is still in its early stages, but so far, it has yielded an estimate of about 600 facilities housing approximately 3500 tanks across the State. Further investigation has determined that more than 100 of these - with as many as 1000 ASTs - may exist within an area that could impact a public drinking water source. Many of these tanks contain petroleum or other materials that may be regulated under different programs, in which case they would not pose the risk that the Freedom Industries site and others like it pose, but these numbers clearly raise concerns that this incident could be repeated in other areas of the

State. We are optimistic that the legislation currently pending in West Virginia will greatly reduce the risk that we will suffer a repeat of this type of incident, and that we can serve as an example to other states to be more proactive in their regulation of these structures so they do not find themselves in the situation with which we are currently dealing.

Thank you for the opportunity to be here and speak to you about the water crisis in West Virginia. This crisis reminds us all of how basic and fundamental clean water is to a stable society and how vulnerable our water supplies are, not only in West Virginia, but nationwide.