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August 14, 2019

Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Recommendations for Promoting Environmental Regulation on Aboveground Storage Tanks

Dear Administrator Wheeler:

The National Environmental Justice Advisory Committee (NEJAC) is concerned about the Clean Water Act Hazardous Substances Spill Prevention proposed rule and requests that you review previous recommendations made by NEJAC regarding chemical safety, including aboveground storage tanks, and provide status updates on their implementation.

In the 1980s, to address a nationwide problem of leaking Underground Storage Tanks (UST), the EPA implemented laws recognizing the hazards of underground storage tanks. The EPA established financial responsibility requirements for UST owners and operators and created the Leaking Underground Storage Tank (LUST) Trust Fund. The Trust Fund is intended to cover the cost of taking corrective actions and to compensate third parties for injury and property damage caused by leaking tanks. No similar actions have been taken to mitigate the threats from Aboveground Storage Tanks (AST), even though they pose similar threats to human health and the environment. This omission means that our most underserved communities, and our population in general, are not afforded the same protections from ASTs as from USTs.

On March 26, 2018, EPA submitted a draft proposal to the White House Office of Management and Budget (OMB) for a rulemaking for prevention of hazardous substances discharges under the Clean Water Act (CWA). On June 25, 2018, the Clean Water Act Hazardous Substances Spill Prevention proposed rule was published in the Federal Register. The proposed regulation for prevention of hazardous substances spills from onshore facilities included ASTs. A February 16, 2016 Consent Decree from the United States District Court for the Southern District

of New York requires the EPA to sign a notice of proposed rulemaking pertaining to the issuance of hazardous substance regulations, and to take final action after notice and comment. In the case of the June 25, 2018 action, the EPA is required to issue a final rule by August 29, 2019. We implore the EPA to issue the final rule by the August deadline.

Currently, facilities with ASTs holding oils of any kind may be subject to U.S. EPA's Spill Prevention, Control, and Countermeasure (SPCC) regulation.[1] The SPCC regulation does not specifically use the term AST, but rather includes ASTs under the term "bulk storage container." ASTs are primarily regulated by states. The requirements are minimal and can usually be found in the fire code. There may be a requirement to paint the tank, or a fill pipe, a certain color to identify its contents, provide alarms in addition to those federally required, and register the tank.

There are only three states—Pennsylvania, New York, and West Virginia—that have established regulations for chemical storage in ASTs. Many states rely on the industries to be "good neighbors" and "do the right thing"; however, these voluntary programs are not stopping pollution or preventing communities from suffering the impacts and damages caused by facilities that choose not to "self-regulate". Our concern is driven by several examples where AST incidents have endangered the public, ten of which are summarized below.

- August 2005: Following Hurricane Katrina, ASTs at a Murphy Oil refinery released more than a million gallons of oil, impacting over 1,700 homes in Chalmette, Louisiana, and Meraux, Louisiana.

- August 2008: A near-miss event at the Bayer CropScience facility in Institute, West Virginia occurred when a process vessel at a pesticide manufacturing unit exploded and careened into the air in proximity to a 37,000-pound capacity AST containing methyl isocyanate (MIC). Documented deaths from this incident included two workers. Injuries to eight emergency responders were documented. Over 40,000 residents were forced to shelter-in-place for more than three hours.[2] This event could just have easily produced another Bhopal-like disaster had the ruptured vessel exploded in the direction of the MIC AST.[3]

- October 2008: A transfer operation overflowed an oleum process tank, filling a vent system and releasing the oleum into a storage building at Indspec Chemical Corporation in Petrolia, Pennsylvania. The release of oleum created a cloud of sulfuric acid mist that filled the building and flowed out into the

[1] 40 CFR Part 112
[2] U.S. Chemical Safety and Hazard Investigation Board, 2008.
[3] House Energy and Commerce Committee, Subcommittee on Oversight and Investigations, 2009.

facility and surrounding community. Plant personnel evacuated the facility, while emergency responders evacuated about 2,500 residents from the towns of Petrolia, Bruin, and Fairview.[4]

- October 2009: Two young men aged 16 and 18 died as the result of an explosion from an AST containing oil in Carnes, Mississippi. Local teenagers told the police that the unfenced, unguarded property and other oil tank sites were popular hangouts for partying, shooting deer, riding four-wheelers and smoking cigarettes.[5]

- January 2014: A leak originating from a corroding AST at Freedom Industries contaminated the local water supply, leaving hundreds of thousands of West Virginia residents across nine counties without clean drinking water for over a week.[6]

- October 2016: A chemical release occurred at the MGPI Processing plant in Atchison, Kansas. The release occurred when a chemical delivery truck, owned and operated by Harcros Chemicals, was inadvertently connected to a tank containing incompatible material. The plume generated by the chemical reaction led to a shelter-in-place order for thousands of residents. At least 120 employees and members of the public sought medical attention.[7]

- August 2017: Multiple aboveground storage tanks containing hazardous chemicals released significant emissions during Hurricane Harvey, far exceeding state limits.[8]

- August 2017: Adverse weather conditions from Hurricane Harvey created unstable conditions in ASTs at an organic peroxide manufacturing unit in Crosby, Texas, which led to combustion and fire. People in a 1.5-mile radius were evacuated for five days.[9] Seven emergency responders were documented as being injured.[10]

- March 2019: Intercontinental Terminals Company (ITC)'s Deer Park, Texas facility reported a refinery fire that shut down local schools and the Houston Ship Channel for days. The effort to extinguish the fire resulted in a discharge of toxic chemicals, including xylene and benzene, into Tucker

[4] U.S. Chemical Safety and Hazard Investigation Board, 2009.
[5] *On One-Year Anniversary of Fatal Oil Site Accident in Forrest County, Mississippi, CSB Launches Educational Outreach Initiative*
[6] U.S. Chemical Safety and Hazard Investigation Board, 2014
[7] U.S. Chemical Safety and Hazard Investigation Board, 2017
[8] National Response Center, 2017.
[9] U.S. Chemical Safety and Hazard Investigation Board, 2018.
[10] *Chemical and Engineering News,* 2017.

Bayou. Water samples taken March 19 through March 21 by the Texas Commission for Environmental Quality (TCEQ) showed benzene levels exceeding TCEQ's "Protective Concentration Level."

- April 2019: Fire at the Crosby chemical facility, owned by the company KMCO in Houston, Texas, caused a shelter in place order for a one-mile radius around the facility. In addition, the catastrophe left one dead and two critically injured.

These are just a few examples where spills and other consequences of poor management and "self-regulation" involve years of cleanup efforts and lengthy legal battles. Issues of community concern include the following:

1. Contamination of soil and water
2. Decrease in property value
3. Cost of cleanup
4. Evacuation of nearby neighborhoods in the event of a sizable release
5. Potential of terrorist activity
6. Cumulative community exposures and related environmental health disparities
7. Preparedness for storms, storm surge, and climate change impacts.

There are numerous benefits in having specific regulations that address ASTs including:

- Providing technical and operational standards for the installation and operation of AST systems in general.
- Providing field-tested management procedures and security measures to use when storing, dispensing, and disposing of chemical products.
- AST owners that are not currently meeting industrial standards would no longer have the option to "self-regulate" or volunteer to operate in accordance with industrial standards.

Over the past several years, various reports have included recommendations for creating and improving rules that govern the operation of ASTs, including specific recommendations in the 2015 NEJAC report, "Proposed Recommendations for Promoting Community Resilience in Environmental Justice Industrial Waterfront

Areas." Following is a summary of some of those recommendations. The NEJAC requests that the EPA provide the NEJAC with the status of their implementation.

1. Implementation of national, state, local and industry regulations based on prevention and safety rather than incident management.

2. Identification and prioritization of the most endangered and vulnerable populations by passing and implementing laws that protect the communities surrounding these facilities.

3. Retention of the Clean Water Act Hazardous Substances Spill Prevention proposed rule as proposed, and the inclusion of regulation of ASTs in the development of the proposed Clean Water Act Hazardous Substances Spill Prevention rule.

4. Implementation of stringent recordkeeping and monitoring requirements on companies with chemical storage in ASTs; such as:

    a. Inventory and registration of aboveground chemical storage tanks.

    b. Individual permits to operate for each tank. Do not allow states to issue general permits for aboveground chemical storage.

    c. Secondary containment records will contain detailed tank design and installation, leak detection, spill and overfill control, corrective action, tank closure, construction, maintenance, and performance requirements.

    d. Tank maintenance and corrosion plans.

5. Specification of a routine tank inspection schedule, which must be included within the federally-enforceable issued permit.

6. Ensuring the rights of vulnerable communities to hold industries and EPA accountable when AST laws are violated by:

    a. Including enforcement penalties that place the burden of proof on industry and deter future unlawful action.

    b. Including a citizen-suit provision that allows for damages and the recovery of attorneys' fees.

7. Creation of a Trust Fund to address AST releases and emergencies by providing money to:

    a. Oversee cleanups of releases by responsible parties.

    b. Enforce cleanups by noncompliant parties.

    c. Pay for cleanups at sites where the owner or operator is unknown, unwilling, or unable to respond, or which require emergency action.

    d. Conduct inspections and other release prevention activities.

By its charter, the NEJAC represents community organizations, non-governmental organizations, academia, indigenous peoples and tribal governments, state and local governments, and business and industry. When giving the EPA administrators advice and recommendations on issues of environmental justice, the power of the NEJAC's voice emanates from this multi-stakeholder constituency rooted in the realities of communities facing environmental justice challenges, from the Black Belt of Alabama to the native villages of Alaska, and from the hills of Appalachia to the deserts of the Southwest. By working together, we can continue to advance the work of protecting our country's most underserved and vulnerable communities. At your request, NEJAC can provide you with copies of previous reports that involved chemical safety.

Sincerely,

Richard Moore, Chair

cc: NEJAC Members
Peter Wright, Assistant Administrator for the Office of Land and Emergency Management
Dave Ross, Assistant Administrator for the Office of Water
Brittany Bolen, Associate Administrator for the Office of Policy
Matthew Tejada, Director for the Office of Environmental Justice
Karen L. Martin, Designated Federal Officer and NEJAC Program Manager