

America's Water Infrastructure Act

Implications for Emergency Management

BY TIMOTHY R. GABLEHOUSE AND ASHLEY L. ZURKAN

America's Water Infrastructure Act makes significant changes to emergency planning in connection with drinking source water protection. This article analyzes this Act, focusing on how it affects local emergency planning and community water systems.

America's Water Infrastructure Act (AWIA or the Act) was signed into law on October 23, 2018.¹ An omnibus bill with broad bipartisan support, the Act aims to revitalize and repair water infrastructure throughout the United States. Significantly, the Act imposes new requirements on community water systems and state and local agencies to report and coordinate on releases of hazardous chemicals to the water supply. This article explores how the Act evolved and highlights its salient features.

AWIA Overview

The AWIA passed as omnibus legislation with many sponsors and scattered debate. Although it incorporates language from bills that failed in previous sessions, the Act passed through an amendment to a courthouse naming bill, S. 3021.² House and Senate leadership replaced the text of H.R. 8, the Water Resources Development Act of 2018, and an amendment by the Senate Committee on Environment and Public Works with a negotiated bill that would revise S. 3021.³ The negotiated text included provisions from other bills, namely H.R. 8, S. 2800, and H.R. 3387.⁴ As a result, the Act's provisions and priorities are somewhat opaque, but are informed by environmental events and congressional intent.

The Elk River Disaster: A Triggering Event

Early in the morning on January 9, 2014, residents reported an odor to the West Virginia Department of Environmental Protection. Air quality inspectors eventually discovered a tank farm 1.5 miles from the water supply intake of West Virginia American Water where gallons of 4-methylcyclohexanemethanol (MCHM)⁵ had escaped secondary containment and

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flowed into the Elk River.⁶ When authorities were alerted to the accident, they discovered that then available chemical safety data sheets⁷ provided almost no information for emergency responders. The West Virginia governor declared a state of emergency and a “Do Not Use” order was issued to the public. Over 300,000 people in nine counties boiled their water and drank from bottles, as authorities struggled to follow their emergency management plans.⁸

The consequences of the accident and impact to the public were magnified by the

lack of reliable information, particularly on safe levels of MCHM.⁹ The material safety data sheet (MSDS) was incomplete, listing toxicity data as “not available” more than two dozen times.¹⁰ In the immediate aftermath of the spill, public health officials operated from this incomplete information and thereby created confusion.¹¹ A report commissioned after the Elk River disaster recommended that Tier II data sheets¹² be made available to local emergency planning committees (LEPCs) for more targeted emergency planning.¹³ Tier II data sheets are forms that U.S. organizations and businesses storing hazardous chemicals above certain quantities are required to complete and submit annually to local fire departments, LEPCs, and state emergency response commissions (SERCs) to help those agencies plan for and respond to chemical emergencies. Analysts noted that chemical manufacturers could have kept MSDSs up-to-date and publicized toxicity information earlier.

Congress held hearings on the spill. The chief concern during the Elk River hearings was the lack of public confidence in the emergency response and information disseminated. Senators reflected that the “Do Not Use” order was premature but could not get a confident answer from the utility that the water was safe, even weeks after the incident.¹⁴ One witness testified that “[r]arely, if ever, are public water systems provided or privy to specific data about the chemicals upstream that, if released, could affect the water system.”¹⁵

Senator Boxer noted in a hearing that the lack of data for many chemicals stemmed from the inappropriate invocation of the confidential business information exemption for trade secrets by facilities.¹⁶ The Act's amendments to section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), requiring

expanded disclosure to LEPCs and the public, are likely intended to address this problem, as opposed to more comprehensive intervention by the U.S. Environmental Protection Agency (EPA) as contemplated, for example, by Senator Manchin in proposed S. 1961, discussed below. Indeed, the majority of the Senate Committee on Environment and Public Works observed that while existing mechanisms of the Clean Water Act and the Safe Drinking Water Act (SDWA) appropriately manage confidential business information, there is a need for increased public disclosure of chemical data.¹⁷

Congress repeatedly heard from witnesses that management of information received from facilities under statutory reporting requirements imposed burdens on LEPCs and SERCs that should be limited due to their resource capacity.¹⁸ For example, experts noted that volunteers and local officials who staff LEPCs, such as firefighters, have collateral duties.¹⁹ Thus, the legislative priority should be to improve coordination among facilities and emergency managers and provide funding rather than to expand testing or management practices.²⁰

Rather than increasing federal regulation, legislators appeared concerned with providing local governments with the resources needed to fulfill their existing responsibilities. Witnesses at a Senate hearing testified that no major overhaul of toxics regulation was necessary, with one observing that “existing West Virginia Law expressly provided a requirement which, if honored, would have prevented the incident.”²¹ Where local agencies lack the funding to carry out these duties on their own, they should be empowered “with information, training, responsibility, and tools to address the needs of their citizens.”²²

Congressional Debate

In response to the Elk River accident, Congress debated more onerous measures than those that made it into the AWIA, including EPA reviews of all chemicals in commerce.²³ A competing bill, S. 1961, clarified that the EPA and the states should not duplicate regulations; it directed the EPA and states with primary enforcement authority for public water systems to consider excluding from the regulatory program tanks

that are already regulated by state and federal standards and tanks that do not pose a risk to public water systems.²⁴ In the end, Congress created a more modest solution in the AWIA, focusing on funding the existing responsibilities of states and the EPA. But the rejected bills provide useful context for understanding the Act overall.

Senator Manchin of West Virginia introduced S. 1961, the Chemical Safety and Preparedness Act, contemporaneous with Representative Capito’s H.R. 4024, the Ensuring Access to Clean Water Act of 2014.²⁵ Both contained provisions to enhance information-sharing at the local level, but neither passed out of the 114th Congress. S. 1961 would have set federal standards for state programs encompassing all stored chemicals.²⁶ In this plan, facilities would notify utilities directly of any chemicals stored on site. H.R. 4024 established oversight and inspection standards for all upstream chemical facilities.²⁷

In hearings on the Elk River disaster, some witnesses blamed the proximity of chemicals to drinking water, while others blamed human error.²⁸ S. 1961 responded by requiring the EPA to study all chemicals in commerce, aiming to end the ad hoc study approach that led Elk River to wait over a year for information.²⁹ S. 1961 also required either the EPA or the governing state to make available to public water systems inventory on each chemical held, along with toxicity information.³⁰ This scope is wider than the modest amendments that ended up in the AWIA; it would have broadened the definition of storage tanks and potentially increased compliance burdens drastically.³¹

Water Source Protection

AWIA § 2018, titled Source Water, was ultimately drawn, with encouragement from Representative Tonko, from the Drinking Water System Improvement Act of 2017, H.R. 3387.³² H.R. 3387 was reported from the House Energy and Commerce Committee in November 2017 with one unrelated amendment and only voice votes, leaving it unclear which members of the committee ultimately supported the language. It was clear, however, that there were no significant objections as the AWIA eventually incorporated

this bill. Section 2018 of the AWIA addresses source water protection by amending EPCRA.³³

EPCRA

EPCRA was passed in response to a deadly toxic gas leak in Bhopal, India in 1984.³⁴ Considered the world’s deadliest chemical release, the Bhopal disaster killed about 25,000 people, while another 500,000 have lingering health problems.³⁵ EPCRA’s purpose was to develop emergency plans and empower local communities with information about hazardous chemicals in their areas to improve community preparedness.³⁶

By creating a network of officials and mandating comprehensive emergency planning, EPCRA decentralizes the process and empowers local communities to tailor plans to their needs. Pursuant to EPCRA, governors appoint a SERC to establish procedures for public communication and requests.³⁷ SERCs supervise emergency planning districts in their implementation and emergency planning duties, which may be managed by existing state agencies.³⁸ SERCs also appoint LEPCs from local representatives, media, and safety experts to implement these plans.³⁹ The Colorado SERC is the Colorado Emergency Planning Committee.⁴⁰

LEPCs primarily process requests from the public and maintain information according to procedures set by each SERC.⁴¹ LEPCs are often small and composed of volunteers, and have limited budgets and an informal structure.⁴²

EPCRA regulates facilities that store certain hazardous substances above specified threshold amounts. It requires facilities to identify themselves to their SERC and comply of their own initiative.⁴³ While fire departments have a statutory right to inspect facilities,⁴⁴ facility compliance is largely effected through a facility’s written disclosures and chemical inventories. Facility owners may use trade secret protections to shield some of this information, but only with sufficient justification.⁴⁵ In no event can chemical information be kept from health or emergency personnel as needed for public safety. The EPA manages copies of this data, but information is largely maintained at the local level.

While LEPCs and SERCs have enforcement power to obtain chemical inventory information

from regulated facilities,⁴⁶ this authority is seldom used due to a lack of resources. Instead, regulated facilities compile and annually send their chemical inventory reports to the SERCs, LEPCs, and emergency response agencies.⁴⁷

When a release of a hazardous substance occurs, EPCRA's notification requirements under § 304 become operative.⁴⁸ Section 304 requires that if a release of an "extremely hazardous substance" at or above its applicable reportable quantity occurs, the facility must notify the SERC and LEPC for any areas likely to be affected by the release. In Colorado, additional release reporting obligations may apply whether or not EPCRA is triggered.⁴⁹ For any release that would require notice under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 103(a), immediate notice must be given to the LEPC for any area likely to be affected and to the SERC of any state likely to be affected, or reported to 911 if the substance is spilled during transportation.⁵⁰

Changes to this notice system contained in the AWIA require SERCs to notify the state drinking water regulatory agency of any reportable releases and to provide community water systems, which are public water systems that supply water to the same population year-round, with chemical inventory data.⁵¹ While seemingly modest, these amendments have important implications and unintended consequences for SERCs and LEPCs. Many SERCs and drinking water regulatory agencies will be required to modify existing release notice procedures to conform, such as call trees and local divisions of responsibility.

The AWIA amendments to EPCRA are intended to empower community water systems to react promptly to emergencies like the Elk River spill.⁵² Elsewhere in the AWIA, grants and technical assistance are made available to community water systems and LEPCs so they can improve their resilience to contamination.⁵³ Indeed, drafters expressed a general unwillingness to give the federal government more control at the expense of local authority, regardless of admitted disparities in capacity.⁵⁴ The general sense of Congress was to empower communities through increased public participation.⁵⁵ The recognition that communities lack funding

prompted other AWIA provisions, including the Revolving Loan Fund and consumer confidence reporting, which would supplement local resources.⁵⁶

The Safe Drinking Water Act

The SDWA is the primary vehicle for source water protection. It was significantly amended in the AWIA,⁵⁷ which attempts to integrate source water protection by combining amendments to the SDWA with the EPCRA amendments. State agencies are directed to forward any notifications or information they receive under EPCRA § 304 to community water systems. AWIA § 1433 requires community water systems to perform risk and resilience assessments, including an assessment of "the use, storage, or handling of various chemicals by the system."⁵⁸ These assessments must be certified by the EPA and regularly reviewed, at least every five years.⁵⁹ Further, community water systems are directed to prepare or revise emergency response plans in coordination with LEPCs.⁶⁰ To facilitate this improvement of the preparedness of community water systems, the AWIA creates a Drinking Water Infrastructure Risk and Resilience Program fund (DWIRRP),⁶¹ which provides funding to improve physical security and assist in the planning, implementation, and design of the required emergency response plans.

These emergency preparedness changes to the SDWA apply to public water systems with at least 15 service connections or who regularly provide service to 25 individuals.⁶² Community water systems are a subclass of those public water systems that either serve 15 or more connections used by year-round residents of the area served by the system or 25 year-round residents.⁶³ Source water protection areas (SWPAs) are designated by states under SDWA § 1453 to implement state source water assessment programs (SWAPs).⁶⁴ SWAPs are intended to identify, to the extent practicable, the origins within each delineated area of all regulated contaminants for which monitoring is required and thus determine the susceptibility of public water systems to contamination.⁶⁵ Through this process, the state identifies facilities storing extremely hazardous substances and certain other hazardous chemicals for monitoring and

ACRONYM KEY

AWIA: America's Water Infrastructure Act

CAMEO: Computer-Aided Management of Emergency Operations

CBO: Congressional Budget Office

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act

DWIRRP: Drinking Water Infrastructure Risk and Resilience Program Fund

EPA: U.S. Environmental Protection Agency

EPCRA: Emergency Planning and Community Right-to-Know Act of 1986

LEPC: Local Emergency Planning Committee

MCHM: 4-methylcyclohexane-methanol

MSDS: Material Safety Data Sheet

SDWA: Safe Drinking Water Act

SERC: State Emergency Response Commission

SWAP: Source Water Assessment Program

SWPA: Source Water Protection Area

inclusion in emergency plans. Under the AWIA, SWPAs are regulated and formed in the same manner as SWAPs for purposes of notification.

The Act defines an "affected community water system" as one that receives supplies of drinking water from a source water area in which a facility that is required to prepare and submit an inventory form is located.⁶⁶ The Act thus combines the EPCRA definition of facilities with the SDWA framework for water quality, requiring increased coordination between community water systems and such

facilities. At the same time, the Congressional Budget Office (CBO) predicted there would be no significant cost increases as a result of compliance with these changes.⁶⁷ Congress, therefore, assumed that these entities are already capable of communication and integration.

Congress recognized that limited resources might threaten the implementation of the Act's notice scheme. Community water systems are "relatively small," with most serving fewer than 3,300 people.⁶⁸ Merely providing "reams of paper" will not solve the resources problem without assistance in risk-assessment.⁶⁹ The DWIRRP is intended to mitigate this resource gap and bolster community water system planning, even though money is not provided to LEPCs or SERCs.

Emergency Notice Provisions

One major category of changes under the Act affects emergency notice procedures under EPCRA § 304.⁷⁰ Congress amended § 304 to include community water systems in the spill response scheme. The primary drinking water agency in a given state should receive information collected under §§ 304(b)(2) and 304(c) and forward these notices to community water systems.⁷¹ In general, this information is intended to assist state and local officials in developing emergency response plans.⁷² The AWIA expands the notification process, but does not change its structure, by including community water systems. The legislative history suggests that LEPCs and SERCs should direct information to community water systems in an emergency; it does not suggest that these entities must affirmatively research and react to spills differently than they did pre-AWIA.

If the spill-reporting system does not reach the proper actors in time, there is little advantage to these amendments. A Congressional Research Service report following the Elk River spill noted that a critical emergency response failure was the assumption "that state and local emergency responders would notify all affected entities and individuals."⁷³ LEPCs should be integrated into the emergency response plan for all spills to ensure they can coordinate using critical information at the outset. But LEPCs' and SERCs' ability to notify community water

systems depends on their possession of the required information. To be effective, they must already possess or be able to obtain without written correspondence the data they need. Thus, compliance resources may become a consideration for smaller communities lacking the customer base to spread costs.⁷⁴

Facilities Covered

Facilities that were previously subject to EPCRA remain subject under the AWIA. While Congress looked at expanding the facilities subject to regulation by referring at various times to bulk chemical storage facilities, the EPCRA amendments do not expand the universe of regulated facilities.⁷⁵ Members of Congress also spoke of facilities in general terms and in the context of several federal frameworks, including the Toxic Substances Control Act.⁷⁶ While Congress may have considered covering all chemical storage facilities in the omnibus bill, no discussion of expanding the Tier II list was evident, so it is reasonable to infer that Congress intended facilities exempt from EPCRA to be regulated through other provisions.

Transportation versus Fixed Facility Spills

Confusion will likely arise from EPCRA's treatment of transportation spills as opposed to fixed facility spills. Read alone, EPCRA § 327 exempts substances or chemicals in transportation or being stored incident to transportation from the requirements of the Act.⁷⁷ However, § 327 specifically carves out § 304 notices from this exemption.⁷⁸

Section 304 broadens the definition of a facility to include motor vehicles, rolling stock, and aircraft.⁷⁹ Congress's intent to prepare for all chemical spills supports a broad interpretation of "facility," but its decision to rely on existing frameworks and definitions is instructive. The AWIA makes no specific mention of transportation; it merely adds community water systems to existing notification lists. Thus, while Congress's general desire to increase information-sharing is clear, the process by which fixed facilities report spills is materially different from the process for transit spills. Seemingly, Congress expressed no wish to overhaul right-to-know reporting,

but, as happened at Elk River, this process is prone to failure. Thus, if past performance is a predictor of future results, this system has a high risk of failure due to the lack of real-time, centralized spill reporting and communication systems in most states.

Transportation spills are reported to 911 and processed through a notification list that is focused on the information necessary for emergency response agencies. Drinking water agencies may receive reports as a result of this process, but not always promptly or directly, because the notification lists often do not include direct intake water systems. Only limited areas of a few states have a notification list that includes the headgates for direct-intake water systems, and many of these systems are not related to drinking water such as agricultural ditches. In Colorado, this reporting loop does not include Colorado's SERC.⁸⁰

Fixed facility spills are reported to 911 as well, but this process will not always result in a report to LEPCs and SERCs. The AWIA has not resolved concerns that these reports are not timely enough to truly inform or empower community water systems in an emergency.

The reporting process failed in West Virginia. When 911 received calls, first responders were dispatched but unable to contact the utility.⁸¹ When the West Virginia Department of Environmental Protection was given Tier II reports, they were for the wrong plant and incomplete.⁸² The utility had insufficient information and reported that the calls were never received.⁸³

Enforcement and Compliance

Under the AWIA, responsibility for emergency notification and Tier II inventory remains with LEPCs. Their responsibilities remain mostly unchanged, except for a requirement that LEPCs and SERCs share information with community water systems and the state drinking water agencies. Responsibility for enforcement remains with the EPA, which has primary responsibility for enforcement of EPCRA, unless an LEPC is inclined to retain counsel and pursue a direct enforcement action. Administrative, civil, and criminal penalties may apply to noncompliant facilities, with violations fined up to \$25,000 per day.⁸⁴ Citizen lawsuits can compel facilities

to pay these fines to the government as well as injunctive relief.⁸⁵ SERCs and LEPCs, however, are not empowered to assess penalties under federal law. Congress was silent on this or any other enforcement mechanism, suggesting that LEPCs have no new tools to effect compliance.

Yet Congress was aware that LEPCs and SERCs would be unable to perform their duties with current levels of funding.⁸⁶ As a leader of the information-gathering effort, LEPCs are only equipped to communicate what information they have and coordinate emergency planning. To lighten the burden of paperwork management, the EPA and the National Oceanic and Atmospheric Administration have developed Computer-Aided Management of Emergency Operations (CAMEO)⁸⁷ tools, which are freely available to LEPCs and emergency responders. CAMEO is a software suite that allows chemical emergency planners and responders to access, store, and evaluate information. It also aids regulatory compliance by facilitating user reporting of chemical inventories. While gathering information on chemical inventories without relying on the voluntary cooperation of regulated facilities may seem unrealistic, voluntary cooperation is generally high as various industry guides suggest that the costs of noncompliance are a poor public image and future facility siting opposition.⁸⁸

Facility owners and operators are subject to fines and penalties for failing to provide Tier II data.⁸⁹ If an LEPC exercises its legal authority to obtain the data, courts may impose compliance obligations on the facility to provide the desired information. However, this process is lengthy and would either require costly preemptive record-keeping maintenance by the LEPC or be too late to address spills. Given the history of the Act, it is unlikely that reactive legal action was the reform Congress envisioned.

Unavailable Data

Congress was concerned with the inadequacy of Tier II and other chemical information in the wake of the Elk River spill. The AWIA approach is to allow water systems to access more information so they may react accordingly. If the requested Tier II information is unavailable from an LEPC, the LEPC must obtain it from the

facility.⁹⁰ An LEPC has 45 days to respond to a request, but a facility has only 30 days to respond to a request from an LEPC.⁹¹ Theoretically, this should be adequate for the LEPC to react to inadequate data or to provide such data to the community water system.

The AWIA amends EPCRA to direct either the SERC or LEPC to request chemical inventory data from a facility owner when Tier II data is not in its possession, and this information “shall” be furnished to a community water system upon request.⁹² The legislative history offers little guidance on how a community water system should use its authority to obtain this chemical inventory data, other than that Congress was aware of the problem in the aftermath of the Elk River spill. United Water executive Brent Fewell observed in his Senate testimony that “these systems simply cannot monitor for the thousands of chemicals that could potentially impact water supplies.”⁹³ Because community water systems are responsible for drinking water safety, this gap has left their systems vulnerable. Without the Tier II data, community water systems cannot implement the planning procedures in the AWIA.

Federal Assistance

Congress appropriated funds to assist states with drinking water systems and emergency planning. Specific appropriations include “\$4.4 billion over three years for the state drinking water revolving loan fund program, aid to states and utilities with compliance and asset management, updates to antiterrorism and resilience measures at public water systems, and improv[ing] transparency for consumers about the quality of their drinking water.”⁹⁴ A state may use up to 4% of its allotment to provide technical assistance to public water systems.⁹⁵ For FY 2020, the AWIA authorizes \$1.3 billion for capitalization grants to states, tribes, and territories, equaling 14% additional subsidization.⁹⁶ A state may make expenditures from these grants to delineate and assess source water protection areas under SDWA § 1453.⁹⁷

The EPA’s Circuit Rider program also provides critical assistance to LEPCs and community water systems. The program was established in the SDWA with \$12.7 million for technical support, though controversy remains over

the appropriation of these funds.⁹⁸ The Circuit Rider program offers technical experts who are available to help rural communities with local issues, such as delineation of source water areas. The technical experts are shared among rural areas and help these communities avoid the expense of consultants.⁹⁹

The EPA also provides passive tools that will facilitate AWIA compliance for LEPCs. Online tools such as Tier II Submit, RMP Comp, and CAMEO help LEPCs manage their data.¹⁰⁰ The EPA is to develop electronic access to this data through memoranda of understanding, as well as promote awareness of reporting and planning obligations among regulated facilities.¹⁰¹ Finally, EPA is developing online EPCRA training modules and response guidance materials for SERCs and LEPCs.¹⁰² The Chemical Facility Safety and Security Working Group developed these programs following the issuance of President Obama’s Executive Order 13650 in the wake of the explosion at West Texas.¹⁰³

Presumably, the EPA will clarify the AWIA amendments through regulations and other guidance.

Budget Projections

Budget projections for drinking water safety measures indicate the scope of changes to regulatory administration. The CBO estimated in 2017 that H.R. 3387, the Drinking Water System Improvement Act, might cost as much as \$156 million annually in non-government unfunded mandates, as defined under the Unfunded Mandates Reform Act.¹⁰⁴ However, the cost of compliance for SERC and LEPC notification activity is unlikely to increase, as the CBO estimates that their actions will be substantially similar to the status quo. The National Rural Water Association commented that Title II of the AWIA would not ultimately include an additional regulatory burden on small communities.¹⁰⁵ Given this assessment and the provision of technical assistance, Congress most likely intended compliance efforts to be led at the local and community level with minimal guidance and information-sharing from the EPA.

The local burden is something that the Revolving Loan Fund is intended to balance, as aggressive data collection by LEPCs is possible.


LEPCs could make “zero threshold” requests for Tier II data, ignoring EPA’s reporting quantity thresholds, which could make preemptive data-mining highly onerous.¹⁰⁶ Legal commenters have noted that “a facility that may not have to provide a planning notice under § 302 because it handles only a small amount of a hazardous substance may nevertheless have to provide a § 304 notice if it releases just a small amount of the substance.”¹⁰⁷ Therefore, to the extent LEPCs receive any funding, they should consider using it for education and administration efforts.

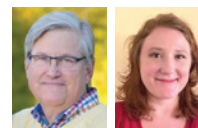
Disclosure Changes

In the event of a hazardous chemical release, the AWIA does little to change the requirements for disclosure to parties other than community water systems. The language describing the requirements for disclosure to community water systems is in a different section of the Act than that governing the public’s access to this information.¹⁰⁸ If Congress meant to distinguish disclosure to the public from disclosure to community water systems, the Act’s legislative history contains no evidence of such intent. But, consistent with its overall scheme, the Act should be interpreted to empower community water systems and allow broad information disclosure to community water systems. The provision that these systems may have access to Tier II information is analogous to the “state or local official acting in his or her official capacity” requirement in EPCRA § 312(e)(2).¹⁰⁹ This is important as EPCRA specifically controls access to information collected under EPCRA authorities.

The AWIA intends to expand access to information, but the amended statute distinguishes requests from community water systems from requests from the public. While all information on a Tier II form should be forwarded to community water systems and government authorities, public inquiries must be particularized and limited in scope. Additionally, LEPCs are empowered to deny certain public requests, unlike all others.¹¹⁰ This limitation on public disclosure, along with the preexisting protection of trade secrets, should comfort facility operators who may otherwise question what information to share and track.¹¹¹

Conclusion

The AWIA seeks to promote drinking water safety and water infrastructure integrity. Its primary tool in this effort is new requirements for the reporting and sharing of information among community water systems and state and local entities on releases of hazardous chemicals to the water supply. All entities involved in maintaining safe water supplies and responding to hazardous spills should ensure that their procedures comply with the Act. 



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NOTES

1. America’s Water Infrastructure Act of 2018, Pub. L. 115-270.
2. *Id.*
3. Cong. Research Serv., R45212, Water Resources Development Act of 2018 and America’s Water Infrastructure Act of 2018: An Overview (July 18, 2018), <https://crsreports.congress.gov/product/pdf/R/R45212/6>.
4. *Id.*
5. MCHM is a clear, colorless liquid that is reported to smell like licorice. It is used in the coal industry in the separation of usable coal from rocks, debris, and coal dust. U.S. Nat’l Library of Medicine, https://pubchem.ncbi.nlm.nih.gov/compound/4-Methylcyclohexyl_methanol.
6. Field Hearing: The Charleston, West Virginia Chemical Spill Before the H. Comm. on Transp. and Infrastructure, 113th Cong. (2014) (hereinafter Field Hearing), <http://bit.ly/371kcYT>.
7. For a general description of safety data sheets, see https://www.epa.gov/sites/production/files/2018-12/documents/fact_sheet_and_qsas_for_reporting_new_hazard_categories_on_tier_ii_form_12-03-18.pdf.
8. Field Hearing, *supra* note 6 at 3.
9. *Id.* (comments of Reps. Rahall and Capito).
10. Rizzuto, “Elk River Provides Tangible Illustration of Deficiencies in Public Data on Chemicals,” Bloomberg Law (Mar. 5, 2014), <https://news.bloomberglaw.com/bloomberglaw-news/elk-river-provides-tangible-illustration-of-deficiencies-in-public-data-on-chemicals>.
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15. *Id.* at 60 (statement of Brent Fewell, United Water).
16. *Id.* at 7 (remarks of Sen. Boxer).
17. *Id.* at 77 (written testimony of Michael McNulty, gen. manager, Putman Pub. Serv. Dist.).
18. Preventing Potential Chemical Threats and Improving Safety: Oversight of the President’s Executive Order on Improving Chemical Facility Safety and Security Before the S. Comm. on Env’t and Pub. Works, 113th Cong. (Mar. 6, 2014) (testimony of Billy Pirkle, senior dir. of Env’t, Health and Safety at Crop Prod. Serv.), <https://www.govinfo.gov/content/pkg/CHRG-113shrg97586/pdf/CHRG-113shrg97586.pdf> (hereinafter Chemical Threats); West Fertilizer, Off the Grid: The Problem of Unidentified Chemical Facilities Before the Comm. on Homeland Security, Subcomm. on Cybersecurity, Infrastructure Prot., and Sec. Tech., 113th Cong. (2013), <http://www.gpo.gov/fdsys> (hereinafter West Fertilizer).
19. Federal Risk Management and Chemical Threats Before the S. Comm. on Env’t and Pub. Works (2013) (testimony of Rafael Moure-Eraso, Ph.D., chairperson, U.S. Chem. Safety Bd.), <http://www.gpo.gov/fdsys>.
20. Examination, *supra* note 14 (testimony of Brent Fewell).
21. *Id.* (testimony of Richard O. Faulk, senior dir., Initiative for Energy and the Env’t, George Mason University School of Law).
22. *Id.*
23. 161 Cong. Rec. S7131-02, S7143-44 (2015) (remarks of Sen. Manchin).
24. S. Rep. No. 113-238, 9 (2014), <https://www.congress.gov/113/crpt/srpt238/CRPT-113srpt238.pdf>.
25. Chemical Safety and Preparedness Act, S. 1961, 114th Congress (2014); Ensuring Access to Clean Water Act of 2014, H.R. 4024, 114th Congress (2014).
26. S. 1961 §§ 2, 14 (2014).

27. H.R. 4024 §§ 2, 4 (2014).
28. Examination, *supra* note 14 (testimony of Richard O. Faulk and Brent Fewell).
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31. S. 1961 § 1471(2).
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36. H.R. Rep. No. 99-962 (1986) (Conf. Rep.), as reprinted in 1986 U.S.C.A.N. 3276, 3374.
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42. EPA Office of Emergency Mgmt., 2008 Nationwide Survey of Local Emergency Planning Committees at 13 (2008), <http://www.epa.gov/osweroe1/docs/chem/2008lepcsurv.pdf>.
43. 42 USC § 11002(c).
44. 42 USC § 11022(f).
45. 42 USC § 11042.
46. 42 USC § 11045.
47. 40 CFR Part 470; 8 CCR 1507-42.
48. 42 USC § 11004.
49. CRS § 29-22-102(2).
50. 42 USC § 11004(a)-(b). All releases under CERCLA § 302(a) require immediate notice except those for a federally permitted release under § 101(10), which is below EPA's threshold, or one that does not occur in a manner that would require notification under § 103(a). If the substance has a reportable quantity established under CERCLA § 102(a) or is over a pound, notice is also required. All releases that result in exposure to persons solely within the site or sites of the facility are exempted. 42 USC § 11004(a)(4).
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53. 162 Cong. Rec. 5585, 5592 (Sept. 13, 2016) (statement of Rep. Capito).
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55. 164 Cong. Rec. 6807-01 (Oct. 11, 2018) (statement of Sen. Van Hollen).
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61. AWIA § 1433(g).
62. 42 USC § 300(f)(4)(A).
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75. Examination, *supra* note 14 (statement of Brent Fewell).
76. 161 Cong. Rec. S2770-01 (May 12, 2015).
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78. 42 USC § 11004(d), 11047.
79. 42 USC § 11049(4).
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81. Field Hearing, *supra* note 6 (statement of Gordon Merry, dir., Cabell County Office of Emergency Servs.).
82. *Id.* (statement of Dale A. Petry, dir., Kanawha Cty. Env't'l Dep't of Homeland Security and Emergency Mgmt.).
83. *Id.* (statement of Jeffrey L. MacIntyre, president, West Virginia American Water).
84. 42 USC § 11045.
85. *Id.*
86. Chemical Facility Safety Before S. Comm. on Env't and Pub. Works, 113th Cong. (Mar. 6, 2014) (hereinafter CFSP) (statement of Mathy Stanislaus, asst. admin. of the Office of Solid Waste and Emergency Response at EPA), <https://www.epw.senate.gov/public/index.cfm/2014/3/full-committee-hearing-entitled-preventing-potential-chemical-threats-and-improving-safety-oversight-of-the-presidents-executive-order-on-improving-chemical-facility-safety-and-security>.
87. <https://www.epa.gov/cameo>.
88. Right-to-Know Planning: Facility Audits, Right-to-Know Planning Guide, 8200 (Bloomberg Law Reports) (available with subscription).
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90. 42 USC § 11022(e).
91. 42 USC § 11022(e)(3)(D); 40 CFR § 370.33.
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93. Examination, *supra* note 14 (statement of Brent Fewell).
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100. CFSP, *supra* note 86.
101. West Fertilizer, *supra* note 18 at 62.
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109. 42 USC § 11022(e).
110. 42 USC § 11022(e)(3).
111. 42 USC § 11042.