If you would like support with navigating the application of the CWA 40 CFR 118 to your facilities, PCCI provides end-to-end Hazardous Substance FRP development support, including:

- Determining if 40 CFR 118 applies to your facilities
- Preparation or modification of any existing FRPs to incorporate the new requirements
- Coordinating with the facility to conduct a comprehensive onsite risk assessment.
- Identifying the facilities worst-case discharge (WCD).
- Calculating toxicity endpoints and planning distances.
- Developing hazardous substance spill mitigation strategies.
- Creating a credible operational response plan for hazardous substances that defends against harm to natural resources and navigable waters.
- Serving as the primary interface during the EPA regulatory review process and provide expert input and in-depth responses to address EPA observations to ensure the HS FRP aligns with EPA expectations for final regulatory approval.

CONTACT US

E-mail jwilson@pccii.com, / chunter@pccii.com for help with your HS FRP Planning needs.

FEDERAL GOVERNMENT CUSTOMERS CAN ACCESS PCCI SUPPORT THROUGH:

- GSA FEDERAL SUPPLY SERVICE CONTRACT: 47QRAA18D00HE
- SEAPORT- NXG CONTRACT VEHICLE No. N00178-19-D-8274 (U.S. Navy only)

CWA Hazardous Substance Rulemaking (40 CFR 118)

On March 14, 2024, the United States Environmental Protection Agency (EPA) signed a rule requiring certain facilities to develop response plans for worst-case discharges of CWA hazardous substances. A worst-case discharge is the largest foreseeable discharge in adverse weather conditions, including those caused by climate change. Facilities must submit these plans to the EPA.

The FRP rule went into effect on May 28, 2024, triggering a three-year compliance period. Any industrial, commercial, or other facility that stores large quantities of hazardous substances could be affected by the new FRP rule and should take steps to determine if the rule applies to them.

Facilities storing quantities of oil above certain thresholds have long been required to have spill prevention plans. The FRP rule covers a much wider range of hazardous substances and will apply to any facility that has any substance deemed hazardous under the Clean Water Act that is stored and present in quantities of one thousand (1,000) times the reportable quantity (“RQ”). The RQ is the threshold at which an unpermitted spill or release would have to be reported to the government and is set by existing EPA regulations. The list of Clean Water Act hazardous substances is set forth at 40

CFR § 116.4 and the RQs are listed in § 117.3. RQ amounts vary by chemical, and can be as low as one pound or as high as 5,000 lbs.

While the threshold for the FRP rule being set at a thousand times the RQ may sound like a large quantity is needed to trigger the new rule, in fact, a 10,000 gallon storage tank may hold over 100,000 lbs. of material. This final threshold of one thousand times the RQ will subject many more facilities to the final rule.

If a facility exceeds the threshold of one thousand times the RQ, then the rule applies if two additional criteria are met. First, the facility must be within half a mile of a navigable water or a conveyance that would carry a spill to a navigable water. Second, the rule applies if a spill would have the ability to cause substantial harm, which means it meets one or more of the following criteria: if it can cause injury to fish, wildlife or sensitive environments; the ability to adversely affect a public water system; or the ability to cause injury to public receptors. Additionally, the substantial harm criteria is automatically satisfied if the facility in question has had a reportable discharge of a CWA hazardous substance above the RQ that reached navigable waters within the past five years.

There are some nuances to applicability of the rule, such as determining the quantity of a given chemical when that chemical is only present in a mixture. There are also some exemptions from the rule, such as for material that is hazardous waste and already comprehensively regulated under the Resource Conservation and Recovery Act (i.e., this exemption applies to large quantity generators but not for small quantity generators of hazardous waste), or for materials in regulated underground storage tanks.

Facilities that are subject to the FRP rule must prepare response plans to prevent and address the risks of worst-case discharges. EPA defines a worst-case discharge as the largest foreseeable discharge in adverse weather conditions, including extreme weather conditions due to climate change. The response plan must identify the potential worst case discharge and identify resources to respond to the maximum extent possible to a worst case discharge. Specifically, facility owners and operators must identify and ensure, by contract or other means, the availability of private response personnel and equipment; facilities may not shift the burden of response onto public agencies and resources. The response plan must be consistent with the National Contingency Plan (40 CFR Part 300), and must identify a “Qualified Individual”, which is a specific person who will have full authority to implement response actions. Other specific requirements for response plans are detailed in the new rule.

Response plans for existing facilities are generally required to be submitted to EPA within 3 years of the effective date of the rule, or by May 28, 2027. Response plans must then be reviewed and recertified every five years. Facilities that have hazardous substances above the threshold and are within a half mile of a navigable water or conveyance to a navigable water, but do not meet the substantial harm test, must still submit a Substantial Harm Certification Form to the EPA.

Additionally, even where facilities do not trigger the FRP rule, EPA regional administrators may require additional facilities to comply with the rule where a facility has the potential to impact an environmental justice community.