

## **Advocacy Comments on EPA's Proposed Worst Case Discharge of Hazardous Substances under the Clean Water Act Rule**

On July 25, 2022, the Office of Advocacy (Advocacy) submitted comments to the U.S. Environmental Protection Agency (EPA) on its proposed Worst Case Discharge of Hazardous Substances under the Clean Water Act Rule. The proposed regulation requires certain facilities to plan and prepare for a worst case discharge of a hazardous substance into navigable waters.

- Under the Clean Water Act, as amended by the Oil Pollution Control Act of 1990, EPA is required to promulgate regulations to plan for the worst case discharge of either hazardous substances or oil into navigable waters. This proposed rule addresses facility requirements that have hazardous substances onsite that may pose a risk of substantial harm to the environment through a discharge into a navigable water.
- On March 28, 2022, EPA published its proposed rule setting forth requirements for facilities to plan for a worst case discharge of hazardous substances. The proposed rule creates a threshold analysis to determine which facilities are subject to the rule. The first criterion is whether the facility has the onsite capacity to hold a hazardous substance in the amount of 10,000 times the Reportable Quantity (RQ) as previously defined by EPA.
- Advocacy is concerned about the inadvertent inclusion of facilities owned or operated by small entities that do not pose a risk of substantial harm to the environment. Although a facility may have the capacity to hold a hazardous substance at or above the threshold amount, the facility does not necessarily hold the hazardous substance in an amount at or above the threshold amount. Many facilities hold a hazardous substance below full capacity. Advocacy recommended EPA modify its first criterion by requiring facilities to comply with the proposed rule only if facilities have the quantity of the hazardous substance at or above the threshold quantity.

The comment letter [is available online](#). For more information visit Advocacy's web page at [advocacy.sba.gov](https://advocacy.sba.gov) or contact Astrika Adams at (202) 798-7750 or [astrika.adams@sba.gov](mailto:astrika.adams@sba.gov).

