

Region 10 EPA Tribal Consortium (RTOC)
2206 W. Sherman St. Spokane, WA 99203

Coordinator Phone: 907-512-9446

rtoccoordinator@region10rtoc.net

www.region10rtoc.net



August 24, 2018

Ms. Stacy Yonce, Office of Emergency Management
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Clean Water Act Hazardous Substances Spill Prevention

Dear Ms. Yonce:

This letter is sent on behalf of the Tribal Caucus members of EPA Region 10's Tribal Operations Committee (RTOC). The Region 10 RTOC includes Tribes across Alaska, Washington, Idaho, and Oregon. This letter is not sent on behalf of EPA Region 10 or any employees of EPA, but solely tribal government representatives of the RTOC. These comments are submitted in response to the request for public comment regarding "Clean Water Act Hazardous Substances Spill Prevention," Docket No. EPA-HQ-OLEM-2018-0024-0001.

RTOC supports new requirements under the Clean Water Act and so opposes the proposed rule. Due to the permeability of hazardous spills, the Tribes are interested in any possible impact on tribal land and water. The Hanford Nuclear site in Washington sits beside the Yakama Nation and is an example of such contamination. "The United States [chose] the ancient wintering grounds of the Yakama people as the location to produce plutonium to fuel the first atomic bombs."¹ As evidenced by Hanford downwinders, people that lived and worked near this contaminated site show elevated levels of disease and toxic exposure.² A similar worry was made evident when the Standing Rock Sioux Tribe resisted the Dakota Access Pipeline.³ Recently communities in Pennsylvania are facing dangerous levels of chemicals in their waters, such as perfluoroalkyl and polyfluoroalkyl substances.⁴ So long as there is no federal mandate, there is no guarantee that similar mistakes will not occur in areas where environmental considerations are unrecognized as a matter of cause.

¹ See Michael R. Bauer, *The Yakama Nation's Involvement at the Hanford Nuclear Site*, 30 GONZ. L. REV. 647, 648 (1994).

² See Eric DeJure Wilson, *Hope for Hanford Downwinders?: The Ninth Circuit's Ruling in In re Hanford Nuclear Reservation Litigation*, 82 OREGON L.R. 581-624 (2003).

³ *Standing Rock Sioux Tribe v. United States Army Corps of Eng'rs*, 255 F. Supp. 3d 101 (2017).

⁴ The Associated Press, *White House Called Toxins Contamination 'PR Nightmare'*, N.Y. TIMES, Aug. 13, 2018.

RTOC supports the existing regulations in the proposed rule but is concerned that these regulations keep pace with increasing environmental risk. The EPA's proposal of doing nothing is contrary to the Clean Water Act intention to "[establish] procedures, methods, and equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities."⁵ Regulations must stay as current as possible to fully address the scope of environmental degradation. Because tribal lands and waters have distinctive characteristics, the federal minimum must be high enough to facilitate additional protections where regional review is lacking. The possible pollution of tribal land and water ought to support substantive tribal participation in regulatory schemes. Where rules are already established to help curb the potential for hazardous spills the Tribes are inclined to support new steps in the right direction. RTOC finds however that the agencies ought to be proactive in providing new regulations in response to the exigency of deteriorating land and water. This is not only a tribal interest but also a public interest where clean land and water are an essential resource for survival.

The RTOC encourages EPA to engage with tribes in Region 10 in government-to-government consultation to further understand the significance of this proposal.

We appreciate your consideration of these comments.

Sincerely,

Handwritten signature of William (Billy) J. Maines in cursive.

William (Billy) J. Maines
Region 10 RTOC, Tribal Caucus Co-chair

⁵ *Clean Water Act Hazardous Substances Prevention*, 83 Fed. Reg. 29499, 29501 (to be codified at 40 C.F.R. pt. 151); *Citing Clean Water Act* § 311(j)(1)(C).