

CWA Hazardous Substances Facility Response Plan (FRP) Regulations

A guideline to the new rule

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Logistics

How to ask questions?

- Please enter your questions in the Questions box.
- Q&A at the end.

Can I get a certificate of completion?

- Yes, webinar attendees will receive a certificate the same week of the webinar. Please email marketing@all4inc.com if you have any questions.

Will I get a copy of the slides?

- Yes, we will post a recording of the webinar and a copy of the slides on our website. A link will be emailed to participants.



Agenda

- ❑ Background
- ❑ Applicability Criteria
- ❑ Worst Case Discharge
- ❑ Facility Response Plans
- ❑ What Comes Next?



Background

- ❑ What is the Clean Water Act (CWA)?
 - The Clean Water Act (CWA) is a U.S. **federal law enacted** in **1972** that regulates the discharge of pollutants into the nation's surface waters and sets quality standards for those waters.
 - This includes ***regulating pollutant discharges*** into all navigable waters of the United States, protecting water quality, and maintaining the integrity of wetlands and other aquatic ecosystems.



Background



- Who does this apply to?
Examples include:
 - Industrial Facilities
 - Municipalities and Local Governments
 - Agricultural Operations
 - Construction Sites
 - Property Owners
 - Federal and State Agencies



Background of CWA Hazardous Substances FRP

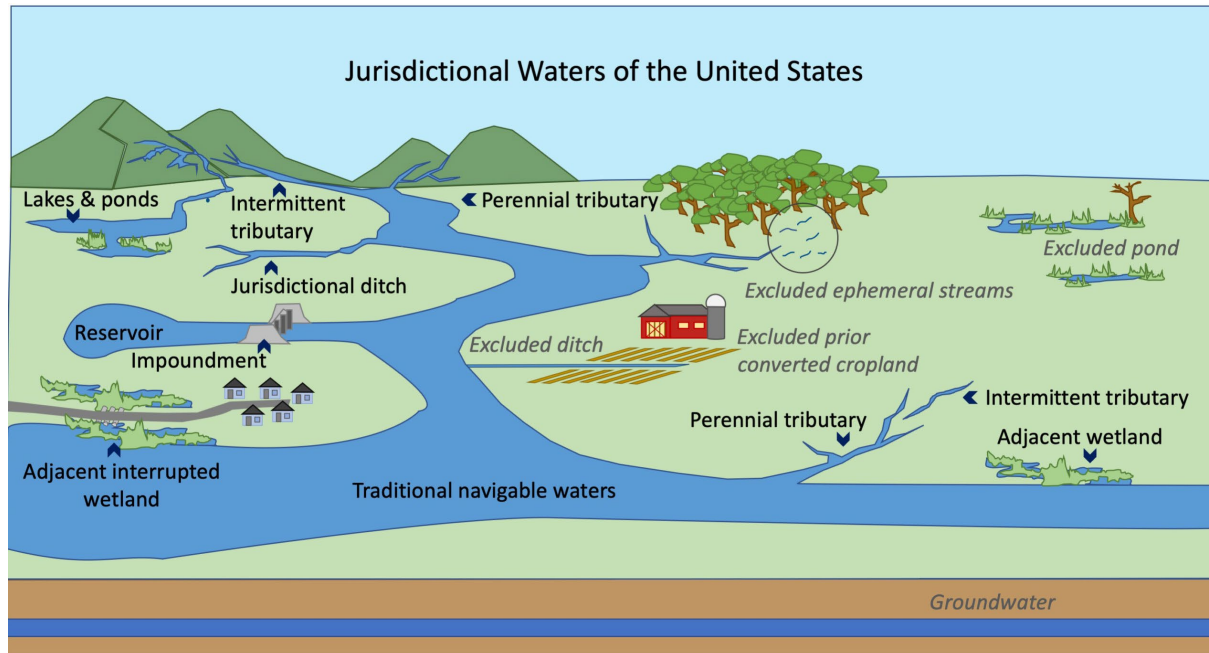
- ❑ March 2019 - Natural Resources Defense Council files suit against U.S. EPA (EPA)
- ❑ March 2020 – EPA enters consent decree to resolve the suit
- ❑ March 2022 – First proposal of Clean Water Act (CWA) Worst Case Discharge Planning with comment period
- ❑ March 2024 – Clean Water Act Hazardous Substances Facility Response Plans (40 CFR 118) is published in the Federal Register
- ❑ May 28, 2024 – Effective date of 40 CFR 118
- ❑ June 1, 2027 - Facilities are required to submit response plans to EPA for review (facility response plans need to be recertified every 5 years after initial review/approval)



SPCC, FRP, and Worst-Case Discharge

	SPCC	FRP	CWA Worst Case Discharge FRP
Applicability	Non-transportation-related operations that store, transfer, use, or consume oil or oil products. There is a reasonable expectation of an oil discharge into or upon navigable waters of the U.S.	The owner or operator of any non-transportation-related onshore facility that could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.	Land-based facilities in which CWA hazardous substances are made, used, stored, or otherwise handled that could reasonably be expected to cause substantial harm to the environment. The facility must be located within 0.5 miles of navigable water or a conveyance to navigable water .
Onsite Quantity	1,320 U.S. Gallons of oil stored aboveground and 42,000 U.S. of oil store underground. Containers ≥ 55 gallons.	The facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or the facility's total oil storage capacity is greater than or equal to 1 million gallons	Maximum onsite quantity of any CWA Hazardous Substance (HS) > 1,000 times EPA Reportable Quantity (RQ) as per 40 CFR 117.3
Materials	Oil Products	Oil Products	296 Clean Water Act Hazardous Substances

What is Considered Navigable Water?



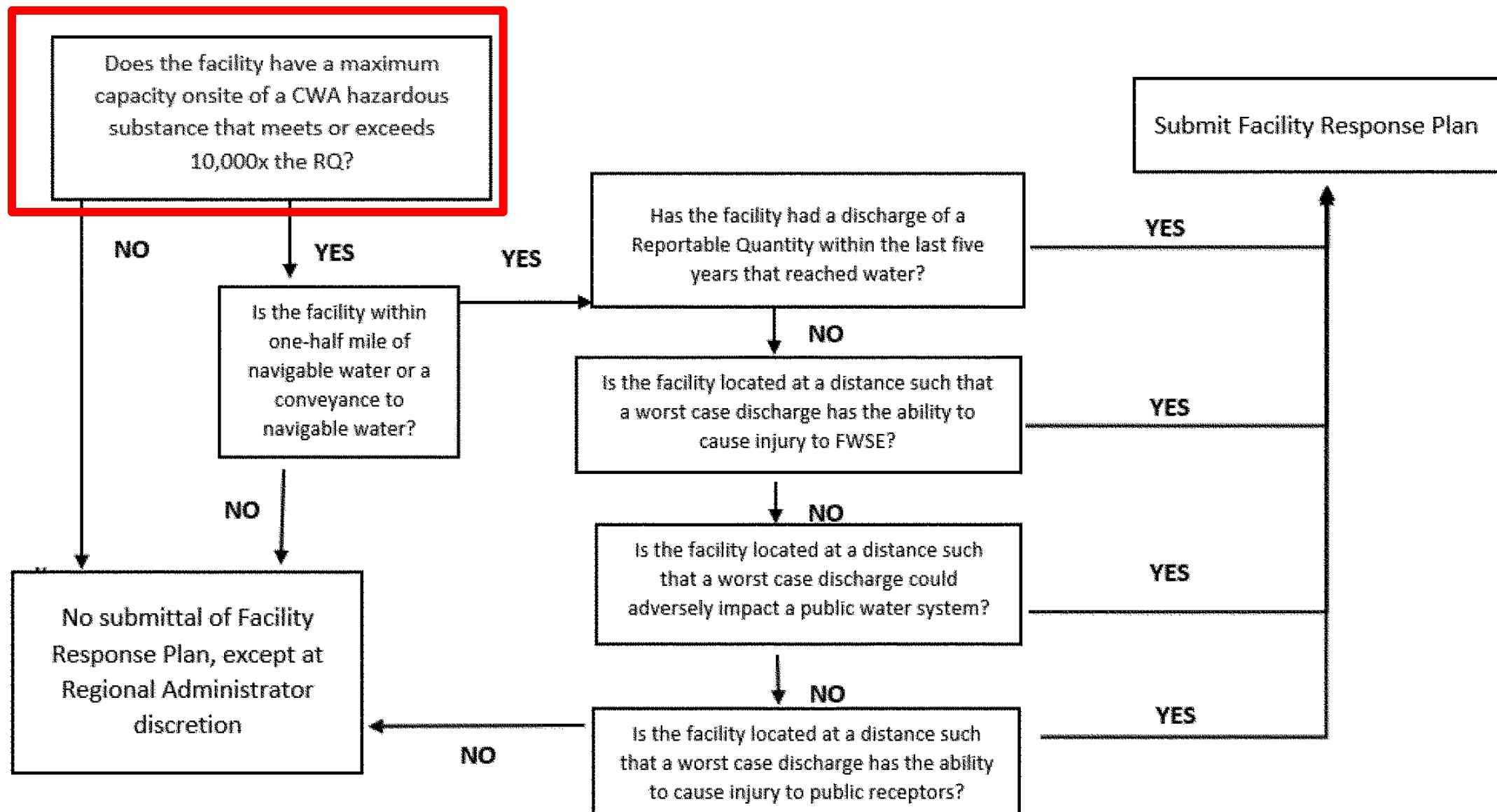
- ❑ Traditional Navigable Waters
- ❑ Territorial Seas
- ❑ Interstate Waters
- ❑ Impoundments (impounded bodies of water created in or from WOTUS like reservoirs and beaver ponds)
- ❑ Tributaries (branches of creeks, streams, rivers, lakes, ponds, ditches, and impoundments that ultimately flow into the first three categories)
- ❑ Adjacent Wetlands
- ❑ Additional Waters (lakes, ponds, streams, or wetlands that do not fit into the above categories and meet either the relatively permanent standard or the significant nexus standard)

What is a Conveyance?

- ❑ EPA has not included a rule specific definition
- ❑ The means of transport will be discernible, confined, and discrete to the navigable water
 - any pipe, ditch, channel, tunnel, or conduit



What changed since prelim draft?





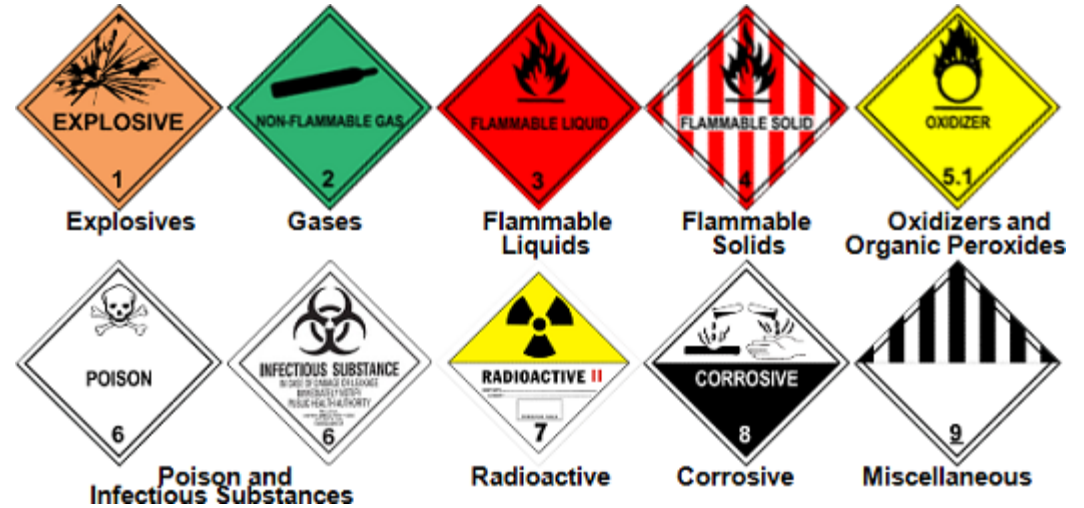
Applicability

□ Step 1:

- Facility has a maximum quantity onsite of $\geq 1,000 \times \text{RQ}$ (in pounds or kilograms) of a CWA HS.

AND

- Facility is within 0.5 miles of navigable water or conveyance.
- All 296 hazardous substance RQs can be found at **40 CFR 117.3**.
- Will be added to EPA's list of lists



CWA Hazardous Substances Include:



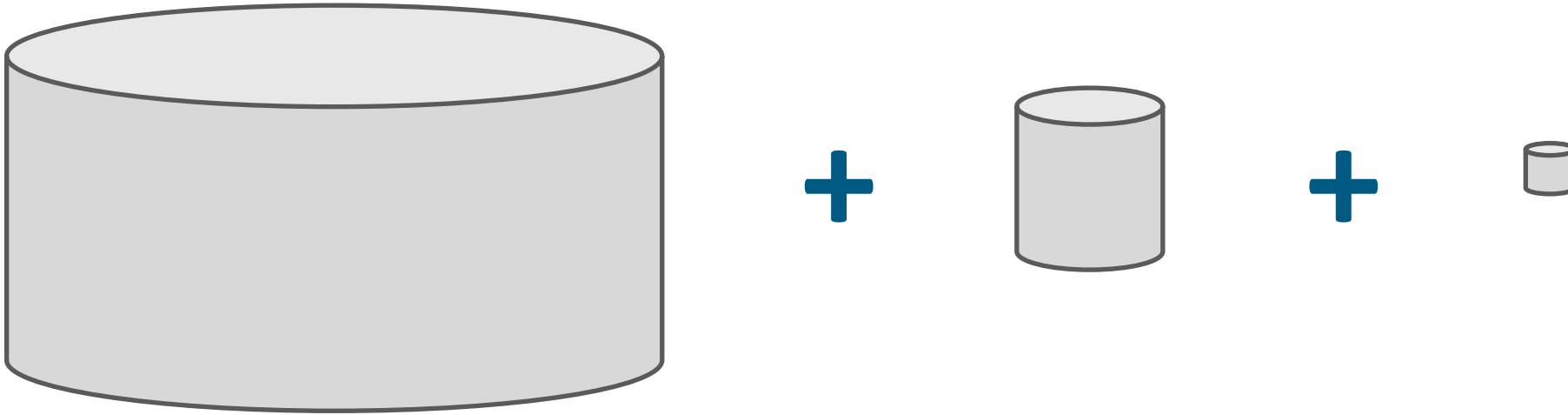
- ❑ Acids and Bases: Sulfuric Acid, Sodium Hydroxide
- ❑ Inorganics: Sodium Arsenate, Sodium Cyanide
- ❑ Water Treatment Chemicals: Sodium Hypochlorite, Aluminum Sulfate, Ferric
- ❑ VOCs: Benzene, Xylenes, Styrene
- ❑ Pesticides: Chlorpyrifos, Endosulfan

Is it a container?



Maximum Quantity Onsite

- ❑ There is no *de minimis* container size exemption.



- ❑ **Must include CWA HS in mixtures.**

Math for Mixtures

10,000 pounds of Phenoxy herbicide

- ❑ 42-47% 2,4-Dichlorophenoxyacetic acid, dimethylamine salt
 - CWA HS, RQ: 100, TQ: 100,000
- ❑ 5-10% Dicamba
 - CWA HS, RQ: 1,000 TQ: 1,000,000
- ❑ 43-48% water

- ❑ Use highest range:
 - 2,4-D acid: $.47 \times 10,000 = 4,700$
 - Dicamba: $.10 \times 10,000 = 1,000$
 - 5,700 lbs is Under TQ





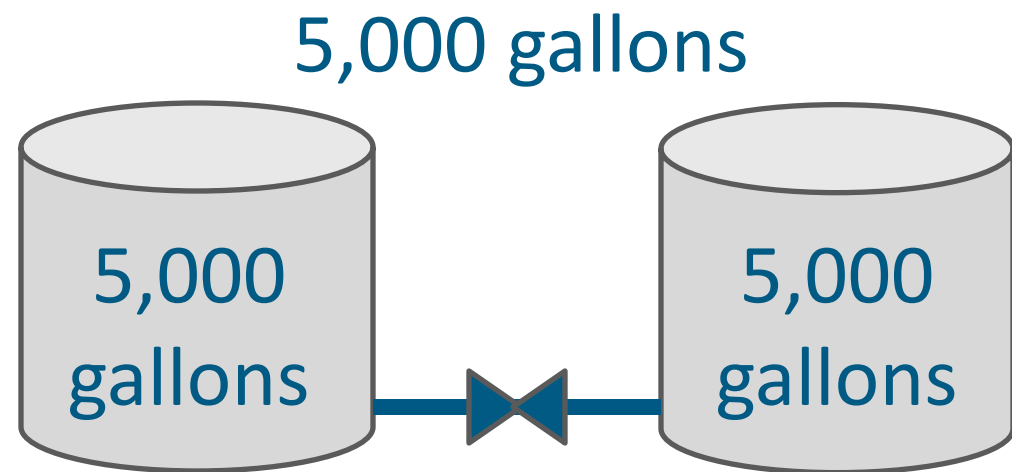
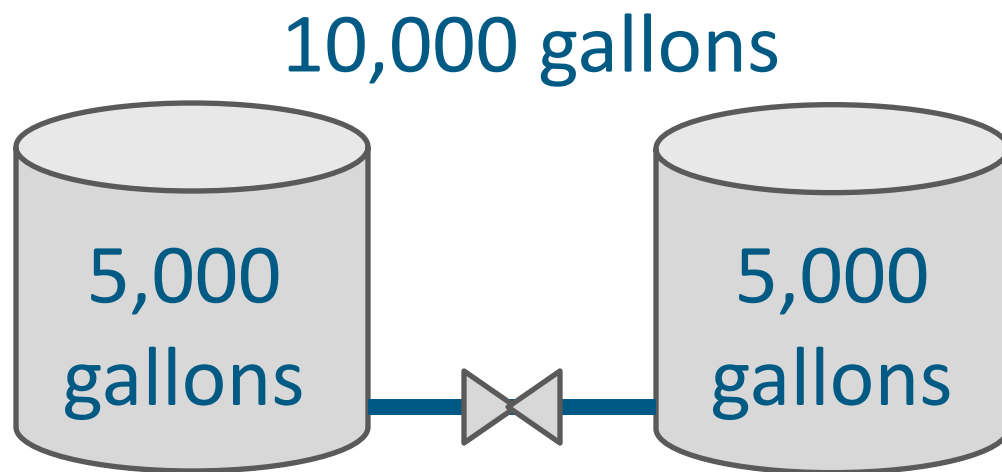
Data Availability

- ❑ Toxic Release Inventory (TRI)
- ❑ SARA TIER II Reporting
- ❑ Best Management Practices (BMP) Plans
- ❑ Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Tracking and Reporting



Worst Case Discharge

- ❑ CWA HS in separate containers, the maximum quantity of a single container, such as a bulk storage tank, process vessel, rail car, or mobile or portable container;
- ❑ CWA HS in interconnected containers, the maximum quantity of a group of interconnected containers;

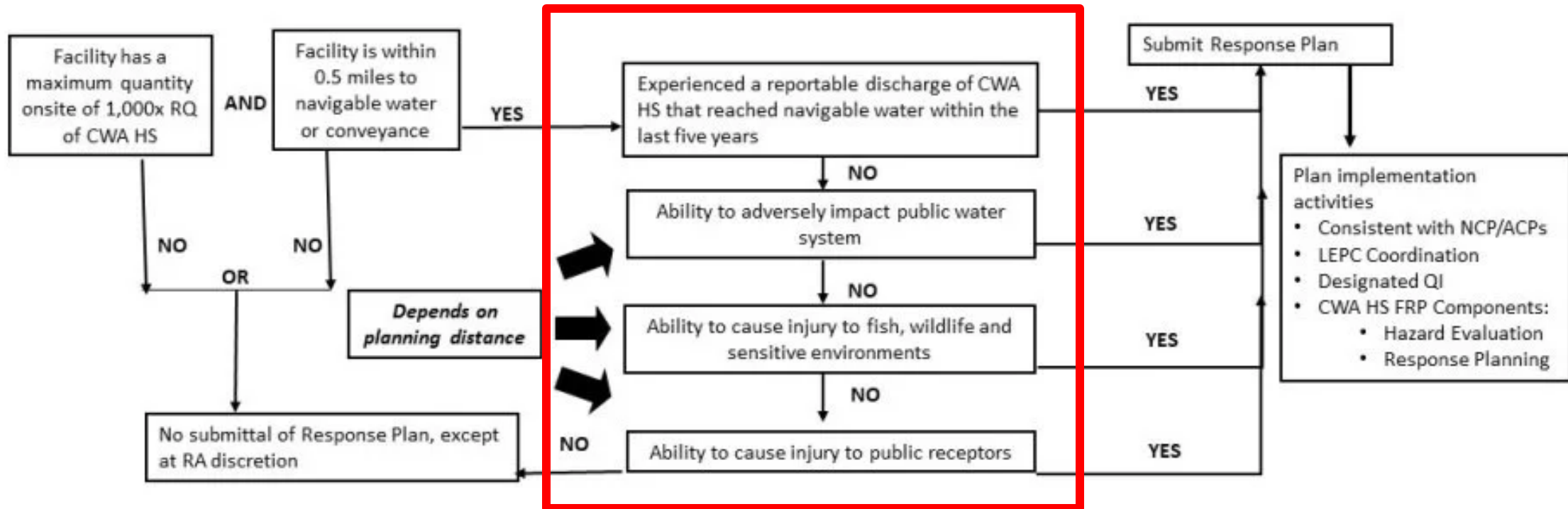


Proximity to Navigable Waters

- ❑ The non-transportation-related onshore facility boundary or nearest opportunity for discharge is located within 0.5 miles of navigable waters or a conveyance to navigable waters.
- ❑ The boundaries of a facility depend on several site-specific factors, including but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and types of activity at the site.



Final Applicability Criteria





Applicability

❑ Step 2:

- Facility had a CWA RQ discharge in the past 5 years;

OR

- Ability to adversely impact a public water system based on modeled planning distance

OR

- Ability to cause injury to fish, wildlife, and sensitive environments (FWSE) modeled planning distance

OR

- Ability to cause injury to public receptors.

Ability to Adversely Impact a Public Water System (PWS)

- ❑ Violates any National Primary Drinking Water Standard (NPDWS) or State Drinking Water Regulation (SDWR)
- ❑ Compromises the ability of the PWS to produce water that complies with any NPDWS or SDWR
- ❑ Results in adverse health impacts in people exposed
- ❑ Contaminates public water system infrastructure
 - intake structures, treatment facilities,
 - distribution systems,
 - premise plumbing systems
- ❑ Impairs the taste, odor, or other aesthetic characteristic of the water entering a drinking water distribution system



Ability to Cause Injury to Fish, Wildlife, and Sensitive Environments (FWSE)



- ❑ Located at a distance such that a discharge located at a distance to an endpoint as calculated using a planning distance from the facility could cause "injury" to fish, wildlife, and sensitive environments
- ❑ Includes but not limited to:
 - Wetlands
 - National and State parks
 - Conservation areas and preserves
 - Wildlife refuges
 - Wild and scenic rivers
 - National forests

Ability to Cause Injury to Public Receptors

- ❑ Any public spaces inhabited, occupied, or used by the public at any time where members of the public could be injured





Modeling Factors

- ❑ Must account for:
 - Each CWA HS $\geq 1,000 \times \text{RQ}$.
 - Adverse weather, including climate change.
 - Largest foreseeable discharge, including because of a fire or explosion.
 - Quantity in piping and interconnected containers.



Modeling Factors

- ❑ Typical Modeling Inputs:
 - Receiving water properties.
 - Base and peak flows, temperature, pH, depth.
 - CWA hazardous substance properties.
 - Solubility, vapor pressure, reactivity.
 - Transport Mechanics affecting the endpoint.
 - Volatilization, diffusion, dispersion, biodegradation.



High Level FRP Requirements

- ❑ Identification of Qualified Individuals (QI).
- ❑ Identification of key response resources.
- ❑ Routine employee training and response drills.
- ❑ Risk identification, characterization, control, and communication.
- ❑ Coordination with Local Emergency Planning Committee (LEPC).
- ❑ Release detection including hazardous air releases resulting from discharges.



If exempt, then what?

- ❑ Document it!
- ❑ Exemptions include:
 - Articles
 - Structural components
 - Food, drugs, cosmetics
 - Janitorial
 - Cooling water and process water
 - Retail and personal use





What If...

- ❑ You already have an oil-based FRP but trigger for a hazardous substance under the worst-case discharge rule?
- ❑ The hazardous substance stored is a solid or a gas – do I still need to do anything?
- ❑ You exceed the reportable quantity thresholds, but modeling shows the substantial harm criteria are not met?
- ❑ You meet the 1,000 x RQ and 0.5 threshold then have a reportable release after the initial compliance date?





Recent Developments

- ❑ Recent Updates from August 2024
 - Deadline for legal suits over the final FRP rule was July 26, 2024.
 - Final implementation dates could be delayed if EPA receives budget cuts.
 - Guidance on substantial harm criteria applicability from EPA is forthcoming (late 2025).





What Comes Next?

- ❑ Facilities will need to determine the applicability to their facility based on specific criteria within the rule and, if required, submit a FRP by **June 1, 2027**.
- ❑ This may seem like a far-off date, but inventorying all your CWA hazardous substances, modeling worst case discharges, developing the FRP, forecasting for future facility expansions, and implementing capital projects takes time and planning.





Questions or Comments?

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