



March 19, 2026

Administrator Lee Zeldin
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attention: Docket ID No EPA–HQ–OAR–2025–0299

Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: Comments of API, AFPM, and ILTA on EPA’s Advance Notice of Proposed Rulemaking — CWA Hazardous Substances Facility Response Plan Requirements; Amendment Reconsideration (Docket ID No. EPA-HQ-OLEM-2025-1707)

Dear Administrator Zeldin:

The American Petroleum Institute (API), the American Fuel & Petrochemical Manufacturers (AFPM), and the International Liquid Terminals Association (ILTA) (collectively, “the Associations”) respectfully submit these comments in response to EPA’s Advance Notice of Proposed Rulemaking seeking to reconsider key provisions of the 2024 CWA Hazardous Substances Facility Response Plan (FRP) rule (40 CFR Part 118). The Associations represent facilities across the petroleum, petrochemical, and liquid bulk terminal sectors that collectively handle the majority of CWA hazardous substances subject to the rule.

API is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API’s more than 600 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms.

AFPM is the national trade association representing nearly all U.S. refining and petrochemical manufacturing capacity, including the midstream transport that moves products from facilities to consumers. AFPM members support more than three million quality jobs, contribute to our nation’s economic and national security, and enable the production of thousands of vital products used by families and businesses throughout the United States.

Founded in 1974, ILTA represents over 60 companies operating liquid terminals in all 50 states and in countries around the world. Terminals provide essential logistics services, support domestic and international trade, and foster the readiness of the United States armed forces by making fuels and liquid products available throughout the world—products such as petroleum fuels, aviation fuels, petrochemical products, chemicals, asphalt, alternative fuels like ethanol, and beyond.

Our overarching position is that the 2024 final rule significantly overreached EPA’s statutory mandate by casting an unnecessarily wide regulatory net — capturing facilities with robust, pre-existing spill prevention programs and negligible actual discharge risk to navigable waters — while doing little to improve real-world emergency preparedness. These comments are organized around the ANPRM’s six topic areas: applicability thresholds, threshold quantity methodologies, substantial harm criteria, planning distance calculations, exemptions, and FRP content and simplification.

Across all areas, the Associations’ central ask is recalibration: reset the RQ multiplier from 1,000× back to the originally proposed 10,000×, establish meaningful de minimis exclusions for container sizes, concentrations, and physical states of matter, and eliminate redundant compliance burdens for facilities already operating under SPCC, Oil FRP, RMP, or NPDES permit programs. These comments are grounded in empirical data — including National Response Center incident records from 2020–2025 — demonstrating that the population of facilities posing genuine worst-case discharge risk to navigable waters is far smaller than the 1,000× RQ threshold implies.

Summary of Key Comments

- **Restore the 10,000× RQ threshold** — the 2024 rule’s 1,000× multiplier sweeps in thousands of facilities with no meaningful discharge risk beyond what existing programs already address.
- **Data supports a smaller regulated universe** — NRC incident data (2020–2025) shows only ~1.6% of reported incidents involving a CERCLA substance actually reached a water body.
- **Eliminate the “conveyance” proximity pathway** — the undefined term creates legal ambiguity; proximity should be measured solely by direct distance to navigable waters.
- **Establish de minimis container size and concentration exclusions** — sub-55-gallon containers and low-concentration mixtures (below 1% by weight, or 0.1% for carcinogens) should be excluded from threshold calculations.
- **Exclude gaseous and solid-state substances** — worst-case releases of such substances are atmospheric events already governed by RMP/PSM.
- **Establish de minimis concentration thresholds for mixtures** — exclude constituents below 1% by weight (0.1% for carcinogens) from threshold quantity calculations, consistent with the EPCRA Section 312 framework, with a rebuttal mechanism for unknown mixture compositions.
- **Fully exclude CWA HS in oils already regulated under 40 CFR Part 112** — trace CWA HS constituents in crude oil, refined products, condensates, and produced water covered by an existing Oil FRP should be categorically excluded from CWA HS FRP threshold calculations.
- **Broaden water treatment chemical exemptions** — all water systems at a facility (drinking, fire, stormwater, wastewater) should be exempt.

- **Simplify planning distance calculations** — adopt the standardized Oil FRP distance methodology from 40 CFR Part 112, Appendix C, until EPA provides a validated, publicly available modeling tool.
- **Align FRP content requirements with existing programs** — where CWA HS FRP requirements are substantively equivalent to Oil FRP, SPCC, RMP, or PSM obligations, EPA should accept compliance with those programs as satisfying the CWA HS requirement.
- **Provide compliance tools before compliance deadlines** — EPA should publish all required planning tools and guidance first, then allow a minimum 12-month implementation period.
- **Remove Regional Administrator discretionary designation authority** — FRP applicability should be determined solely by objective statutory criteria.

The Associations urge EPA to use this rulemaking to calibrate the scope of regulated facilities to those that present a genuine worst-case discharge risk to navigable waters, eliminate duplicative compliance obligations, and deliver a rule that directs planning resources to facilities where those investments will produce demonstrable environmental benefit.

The specific recommendations set forth above would accomplish each of these objectives while fully satisfying the statutory mandate of CWA Section 311(j)(5).

The Associations appreciate EPA's willingness to reconsider these provisions and stand ready to provide additional data or technical support as the Agency develops its proposed rule.

Respectfully submitted,

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SECTION A — APPLICABILITY ISSUES

In the 2024 final rule, EPA reduced the applicability threshold from the originally proposed 10,000× RQ multiplier to 1,000×, rejected de minimis container size and concentration exclusions, and retained an undefined “conveyance to navigable waters” proximity criterion. The Associations’ comments on the ANPRM’s Section A questions are set forth in the table below.

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1. What other RQ multipliers should EPA reconsider? Why?	The Associations strongly support returning to the originally proposed 10,000× RQ multiplier. The Associations represent facilities across the petroleum, chemical, petrochemical, and liquid bulk terminal sectors — industries that collectively handle the majority of CWA hazardous substances subject to this rule. Our members operate under layered environmental management systems that include SPCC Plans, Oil FRPs, RMP programs, and NPDES permits, all of which already address chemical discharge risk in the contexts EPA most associates with worst-case scenarios. The 1,000× RQ threshold expands FRP obligations to a large number of facilities in these sectors that manage CWA HS as incidental components of larger regulated processes — process waters, utility chemicals, wastewater treatment reagents, and petroleum product constituents — where the incremental risk of a worst-case discharge to navigable waters above and beyond what is already addressed by existing plans is negligible. Requiring these facilities to develop standalone CWA HS FRPs does not improve emergency preparedness; it redirects compliance resources from facilities where planning investments would produce real risk reduction. EPA should set the threshold at 10,000× RQ, provide clear data in the record quantifying the discharge risk differential between 1,000× and 10,000× facilities, and confirm that the resulting regulated universe is consistent with the statutory mandate to address substantial harm — not theoretical harm from facilities with no discharge history and existing multi-layered spill prevention infrastructure. The Associations’ analysis of National Response Center (NRC) incident data for 2020–2025 provides an independent empirical basis for calibrating the threshold multiplier. Of 138,063 total reported incidents in that period, only 5.6% (7,709) involved a CERCLA-listed hazardous substance at all, and of those incidents, only 1.64% (1,159) involved a CERCLA substance

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	confirmed to have reached a water body. This means roughly 1 in 60 total reported incidents across all causes, all industries, and all geographies resulted in a CERCLA substance reaching water. The population of incidents that would involve a CWA-jurisdictional facility, a listed CWA HS in quantities above any reasonable threshold, and a confirmed discharge to navigable waters is a fraction of that fraction. This finding is consistent with EPA’s own retrospective analysis in the 2022 NPRM record, which identified only 52 discharges over a ten-year period that could be linked to regulated facilities and confirmed as reaching navigable waters — fewer than six per year across the entire country. The population of facilities that pose a genuine, quantifiable worst-case discharge risk to navigable waters is small, and the threshold multiplier should be calibrated to that population. The 1,000× RQ threshold does not do this. The 10,000× multiplier does. The Associations also note that Executive Order 14192, Unleashing Prosperity Through Deregulation (Jan. 20, 2025), provides an independent and compelling basis for EPA to return to the 10,000× RQ multiplier. EO 14192 directs agencies to identify and eliminate regulatory requirements that impose costs on the private sector without commensurate public benefit, and to prioritize deregulatory actions that reduce compliance burdens on American industry. The 1,000× RQ threshold, which dramatically expanded the regulated universe beyond what EPA originally proposed and what the statutory mandate requires, is precisely the kind of disproportionately burdensome regulatory requirement the EO was designed to address. Returning to the 10,000× multiplier — restoring the threshold EPA itself identified as appropriate in the 2022 NPRM — would directly advance the Administration’s deregulatory priorities while aligning the rule with its statutory purpose of targeting facilities capable of causing substantial harm, not facilities that merely handle CWA hazardous substances in incidental or trace quantities.
2. What different approaches, other than an RQ multiplier, should EPA reconsider for establishing threshold quantities?	In addition to the multiplier question, EPA should consider whether the CWA HS list itself can be better tiered to focus regulatory requirements on substances that pose the greatest acute risk to aquatic environments. Many of the 296 CWA HS differ enormously in aquatic toxicity, persistence, and potential exposure routes. EPA could consider a two-tier structure: (1) a

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	lower threshold (e.g., 1,000× RQ) applied only to those substances with the highest acute aquatic toxicity; and (2) a higher threshold (e.g., 10,000× RQ) for all remaining listed substances. However, the Associations caution that if EPA pursues such tiering, the criteria for placing substances in the higher-risk tier must be clearly defined, scientifically grounded, and administratively transparent. Any tiering approach should also account for the degree to which a substance is already regulated under existing frameworks (OPA 90, RMP, PSM) to prevent redundant regulation. For the avoidance of doubt, the Associations’ primary recommendation is the 10,000× RQ multiplier applied on a largest-single-container basis — not an aggregate site inventory. The alternative fixed volumetric threshold discussed below is offered as a secondary option for EPA’s consideration, not as a substitute for the RQ-based approach. An alternative worth considering is tying the threshold not to RQ multiples but to a single fixed volumetric threshold (e.g., the largest single container capacity on site that contains a CWA HS above a de minimis concentration), which aligns with how worst-case discharge quantities are actually calculated. The Associations’ preferred outcome is that EPA eliminate the mixture aggregation provision entirely for threshold quantity purposes, limiting applicability determinations to pure CWA HS stored in discrete bulk containers. If EPA declines to eliminate the provision, the Associations urge adoption of the de minimis concentration approach described below as the minimum necessary reform. Mixtures: The Associations urge EPA to fundamentally reconsider its treatment of CWA hazardous substances present in mixtures, both for threshold quantity determinations and for worst-case discharge calculations. The current rule’s mixture provisions are among the most administratively burdensome and scientifically unjustified elements of the program. Key issues include: • The rule requires that when one or more hazardous substance constituents in a mixture are unknown, the facility must apply the lowest reportable quantity of any constituent to the entire mixture volume. This approach is grossly

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	conservative and does not reflect actual discharge risk. EPA should modify this provision to allow facilities to rebut the default by providing documented information — through Safety Data Sheets, generator knowledge, or facility testing — about the actual substances and their concentrations in the mixture. Where a facility can document composition, only that documented quantity of the CWA HS constituent should count toward the threshold, not the total volume of the mixture. • The mixture rule’s scope must be bounded by the same disclosure framework that determines what constituents a facility is required to characterize. Under EPCRA Section 312 and the GHS Safety Data Sheet conventions incorporated into OSHA’s Hazard Communication Standard (29 CFR 1910.1200), a constituent of a mixture need not be identified on an SDS unless it is present at 1% or more by weight (0.1% for carcinogens). The Associations therefore recommend that EPA codify a two-part scoping rule: (1) the mixture rule applies only to CWA HS constituents required to be disclosed on the SDS; and (2) constituents present at concentrations below 1% by weight (0.1% for carcinogens) are excluded from threshold quantity calculations, consistent with EPCRA Section 312 at 40 CFR 370.14(c). • Establishing a de minimis concentration threshold — at a minimum 0.1% by weight for all CWA HS, consistent with GHS SDS reporting conventions — would eliminate absurd outcomes such as the following: a petroleum refinery maintains a wastewater treatment system that uses ferric sulfate — a listed CWA HS with a 1,000-pound RQ — at an active concentration of approximately 0.03% by weight in a 50,000-gallon treatment pond. Under the current rule, the facility must include the entire pond volume in its threshold calculation, yielding an on-site quantity of roughly 12,500 pounds — more than 12 times the 1,000× RQ threshold — even though the substance is diluted to a concentration that poses no credible worst-case discharge risk to navigable waters. The facility already maintains a Part 112 SPCC Plan and an Oil FRP covering the same infrastructure. Triggering a separate CWA HS FRP obligation for this wastewater treatment application adds cost and planning burden with no marginal environmental benefit.

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	- Recognize that only mixtures that are hazardous and contain a CWA HS are included and covered. In the example above the water system, even though ferric sulfate was used for treatment, does not have the hazards of ferric sulfate. Focusing the rule on mixtures that are hazardous or contain the same hazards as the CWA HS would better identify risk. - CWA HS present in petroleum products — crude oil, refined products, condensates, produced water — that are already regulated under 40 CFR Part 112 should be fully excluded from CWA HS FRP threshold calculations. Requiring facilities to separately account for trace benzene, toluene, xylene, naphthalene, or other listed substances that are constituents of a regulated petroleum mixture already covered by an Oil FRP is precisely the kind of duplicative regulation that serves no environmental purpose.
3. How could EPA simplify the threshold quantity screening criterion? What reconsiderations should be given to establishing CWA HS de minimis concentrations, including byproducts and intermediates?	The Associations support simplifying the threshold screening criterion to focus on the largest single container (or group of permanently manifolded containers) holding a CWA HS above a de minimis concentration, rather than requiring aggregation of all containers across the facility. This approach is consistent with how RMP worst-case release quantities are determined and would eliminate the substantial administrative complexity that flows from needing to inventory and sum dozens or hundreds of small containers across large industrial sites. Specifically, the Associations recommend: - The screening criterion should be satisfied only if the largest single container (or permanently manifolded group) at the facility holds a CWA HS in a quantity meeting or exceeding the applicable threshold (recommended: 10,000× RQ). If no single container meets this test, the facility should not be subject to the FRP requirement regardless of aggregate site inventory. - Where EPA elects to retain an aggregate approach, a de minimis container size (55 gallons, consistent with the SPCC program) should be established below which containers are excluded from the calculation. - EPA should formally establish de minimis concentration thresholds below which a CWA HS constituent in a mixture

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	is excluded from threshold quantity calculations. EPA should adopt the EPCRA Section 312 framework at 40 CFR 370.14(c): exclude constituents below 0.1% by weight for carcinogens and below 1% by weight for all other substances. - Aligning the screening criterion with RMP and EPCRA frameworks is essential. Facilities already preparing Tier II reports and/or RMP plans have existing data systems and inventory procedures built around those frameworks, reducing burden and increasing accuracy. - The rule requires that for a worst-case discharge involving a mixture, the facility must assume the entire container volume consists of the constituent with the lowest RQ. This assumption is unrealistic and produces analytically meaningless outputs. Where a facility can document the actual composition of a mixture, the worst-case discharge calculation should use that documented composition. Expand and make clear exemptions for CWA HS handling under the rule, to focus the rule on the higher risk and not as many as possible. - Water systems, which may contain CWA HS from chemicals used to treat the water are water systems, not chemical storage and are exempt. This extends to potable water systems, process water, wastewater, and firewater. - Mixtures defined as an oil regulated under 40 CFR 112 are exempt and excluded from threshold quantity screening - Recognize container size threshold, (see additional questions below) - Recognize CWA HS de minimis threshold (see additional questions below) - Simplify the handling of mixtures to ensure non-hazardous chemicals are exempt.
4. What factors would support establishing a de minimis container size for purposes of CWA HS facility	The Associations strongly recommend establishing a 55-gallon de minimis container size, consistent with the SPCC program, below which containers are excluded from threshold quantity calculations. In the SPCC rulemaking, EPA explained that 55-

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applicability threshold determinations?	gallon containers represent the lowest commercially standard bulk container size, that smaller containers are typically end-user consumer packages, and that discharges from sub-55-gallon containers generally pose a smaller environmental risk while including them creates disproportionate compliance burdens. Those same rationales apply with equal or greater force here. More fundamentally, the scope of regulated containers should be limited to bulk storage containers — fixed tanks, portable bulk containers, and mobile storage units — consistent with the 40 CFR Part 112 framework. Process vessels, reaction vessels, pipelines, and operational equipment that contain CWA HS as part of the manufacturing or processing function should be excluded. The Associations also recommend clarifying that “interconnected containers” means only permanently manifolded storage tanks that function as a single storage unit (volumes equalized under normal operation), consistent with 40 CFR Part 112, not any containers connected by process piping. The Associations recommend that EPA align worst-case discharge volume calculations with the Oil FRP methodology, which uses the capacity of the largest single container as the planning volume — consistent with how secondary containment is already required and sized under API standards and 40 CFR Part 112. Secondary containment is a mandatory design requirement under these frameworks, not a discretionary mitigation credit; Oil FRP worst-case discharge scenarios do not reduce the planning volume based on secondary containment. Accordingly, the Associations urge EPA to align the CWA HS FRP worst-case volume methodology with the Oil FRP’s established approach of using largest-single-container capacity as the planning volume, with secondary containment sizing requirements addressed through existing Part 112 obligations.
5. What factors would support establishing de minimis concentrations for purposes of facility applicability threshold determinations? What reconsiderations should be given to	The Associations recommend that EPA establish de minimis concentration thresholds below which a CWA HS constituent in a mixture is excluded from threshold quantity calculations. Specifically, the Associations recommend adopting the EPCRA Section 312 framework at 40 CFR 370.14(c): exclude hazardous components in a mixture at concentrations below 0.1% by weight for carcinogens and below 1% by weight for all other hazardous substances.

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establishing CWA HS de minimis concentrations?	Several categories warrant specific exclusion: • CWA HS present in oils (crude oil, refined petroleum products, condensates, produced water) that are already regulated under 40 CFR Part 112 should be fully excluded. • CWA HS present only in gaseous form at ambient conditions should be excluded from water-focused FRP requirements. The rule’s statutory foundation — CWA Section 311(j)(5) — is expressly focused on discharges to navigable waters. A substance that exists as a gas or solid under ambient conditions cannot discharge as a liquid to a navigable water in a worst-case scenario and therefore cannot cause the type of harm the statute is designed to prevent. • Process intermediates and byproducts present in small or variable quantities within reaction vessels should be excluded. Only Liquid-State CWA Hazardous Substances Should Be Subject to the Rule. EPA should clarify that the CWA HS FRP rule applies only to hazardous substances that exist in liquid form under ambient temperatures and pressures (25°C / 1 atm). A substance that exists as a gas or solid under ambient conditions cannot discharge as a liquid to a navigable water in a worst-case scenario, and therefore cannot cause the type of harm the statute is designed to prevent. Subjecting gaseous or solid-state substances to the same FRP requirements as liquid hazardous substances extends the rule beyond its statutory purpose. CWA hazardous substances stored under pressure may liquefy but will volatilize rapidly upon release at ambient temperatures and pressures. For these substances, a worst-case discharge event would result in atmospheric release — not a liquid discharge to navigable waters. The primary regulatory framework governing atmospheric releases is the Clean Air Act’s Risk Management Program under 40 CFR Part 68, not the CWA FRP program. Requiring facilities storing these substances to also prepare a CWA HS FRP for a water-discharge scenario that cannot physically occur is scientifically unsupportable and duplicative of existing CAA requirements.

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	EPA should establish a clear exclusion for any CWA hazardous substance whose normal boiling point is at or below ambient temperature (approximately 25°C / 77°F) at standard atmospheric pressure, such that a worst-case release would result in volatilization rather than a liquid discharge. EPA already applies analogous physical-state logic in the RMP program’s distinction between program levels for gases versus liquids. The same logic applies to substances that are solid at ambient temperatures and pressures. A solid CWA hazardous substance released during a worst-case event will not flow to a navigable water as a liquid. Adipic acid — a solid powder at ambient conditions with a melting point of 152°C, normally stored in silos — is one concrete example. Proposed Regulatory Language: “For purposes of threshold quantity calculations and FRP applicability, only CWA hazardous substances that exist in liquid phase at ambient temperature (25°C) and standard atmospheric pressure (1 atm) are subject to these requirements. CWA hazardous substances that exist as gases or solids under these conditions are excluded from threshold quantity calculations. Where a substance is stored under conditions that maintain it in liquid phase but would cause it to volatilize upon release to ambient conditions, such substance shall be excluded from FRP applicability on the grounds that a worst-case discharge to navigable waters is not a physically plausible outcome.”
6. How can EPA simplify the facility criterion for proximity to navigable waters? Is a clarification of “facility boundary” versus “nearest opportunity” necessary? Is there a need to clarify the term “conveyance” as it applies to CWA HS FRP requirements?	The proximity criterion requires significant clarification and recalibration. The Associations recommend the following clarifications and modifications: • Measurement standard: Proximity should be measured from the facility’s nearest opportunity for discharge, not from the facility fence line. For large industrial facilities with significant geographic footprints, using the facility boundary can capture facilities with storage tanks located far from any drainage pathway. • The proximity criterion’s reference to “conveyances to navigable waters” is one of the most consequential and legally problematic elements of the current rule. The

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	Associations strongly urge EPA to remove this term entirely. The CWA’s own definition of “conveyance” within the definition of “point source” — encompassing “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container” — is so broad that it provides no meaningful geographic limit whatsoever. Under the current text, a facility located 50 miles from the nearest navigable body could nonetheless be subject to the rule because it is within one-half mile of a roadside ditch that eventually drains to navigable water. That result is fundamentally inconsistent with the statutory mandate to focus FRP requirements on facilities capable of causing substantial harm through a worst-case discharge to navigable waters. Removing conveyances from the criterion and limiting proximity to a facility’s direct distance from a named navigable water body would also align the rule with the post-Sackett v. EPA (2023) jurisdictional landscape. • Secondary containment credit: Facilities with engineered secondary containment systems that could prevent a worst-case release from reaching navigable waters should be eligible for a reduced proximity threshold or an exemption. • WOTUS alignment: The proximity criterion should be aligned with the post-Sackett v. EPA (2023) WOTUS framework.
7. What changes to the substantial harm criteria specified under 40 CFR 118.3(c), if any, should EPA reconsider? What are alternative approaches to determine whether a facility’s discharge of a CWA HS could reasonably be expected to cause substantial harm?	The Associations recommend fundamental reconsideration of the substantial harm criteria, particularly the requirement that facilities calculate endpoint concentrations for fish, wildlife, and sensitive environments (FWSE) and public receptors using facility-selected models calibrated to EPA-specified LC50/LD50 values. The core problem with the current approach is that it requires sophisticated aquatic fate-and-transport modeling as a threshold applicability determination, before any decision has been made that a facility actually poses a risk warranting an FRP. EPA acknowledged in the NPRM that no single available model covers all 296 CWA HS adequately. The Associations strongly recommend that EPA replace the current endpoint-based substantial harm criteria with the Oil FRP’s vulnerability analysis approach: a planning distance is

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	calculated using a standardized formula, and if FWSE, public water systems, or other sensitive receptors fall within that planning distance, substantial harm is established. Regarding public receptors: the Associations recommend removing public receptors as a standalone substantial harm criterion. Regarding the five-year reportable discharge criterion: the Associations recommend EPA establish a fixed volumetric threshold (such as the Oil FRP's 10,000-gallon threshold) rather than an RQ-based threshold. The Associations urge EPA to reconsider the regulatory necessity and practical utility of the Substantial Harm Certification Form as a standalone submission requirement. As currently structured, the form imposes a significant administrative burden while providing EPA with information that either duplicates what is contained in the FRP itself or, in the case of facilities that ultimately do not meet the substantial harm criteria, produces no regulatory output whatsoever. More fundamentally, the Associations and the Coalition seek confirmation that facilities that do not meet the threshold quantity, geographic proximity, or substantial harm criteria are not required to complete, submit, or retain the Substantial Harm Certification Form to document their non-applicability. Such a demonstration requirement — requiring regulated entities to affirmatively prove they are not covered — would impose regulatory burden on potentially thousands of facilities that Congress never intended to subject to FRP requirements. Any Certification Form deadline should run from the date of EPA tool publication, not from an arbitrary calendar date, since meaningful completion requires planning distance tools EPA has not yet developed.
8. What quantity, other than an RQ, should EPA reconsider for the five-year reportable discharge substantial harm criterion? What rationale would support an alternative threshold?	The five-year reportable discharge substantial harm criterion should use a fixed volumetric threshold rather than an RQ-based threshold. The current approach — which triggers the substantial harm criterion based on any reportable discharge (i.e., any discharge above the RQ, which can be as small as 1 pound for certain substances) — creates an inappropriately low bar.

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	The CWA Part 112 and Oil FRP program’s 10,000-gallon threshold provides the appropriate analog. The Associations recommend clarifying the following: • The five-year window should run from the effective date of the final rule on a rolling basis, not from an arbitrary reference date. • Releases that triggered NRC reporting but did not reach navigable waters should not count toward this criterion. • Releases of CWA HS in oils already covered by 40 CFR Part 112 Oil Pollution Prevention should not count toward this criterion. • Releases permitted under NPDES should be excluded.
9. What other potential approaches should EPA reconsider for planning distance determination calculations?	Planning distance calculations under the current rule are technically burdensome, inconsistent across facilities, and not tied to tools or models that EPA has actually made available to the regulated community. The Associations recommend EPA adopt the Oil FRP planning distance methodology: standardized transport formulas from Appendix C to 40 CFR Part 112 (Chezy-Manning formula), with a 27-hour response window for non-high-volume port scenarios and a 15-hour window for high-volume ports. If EPA wishes to retain a concentration-based component, it should develop a publicly available, EPA-validated tool (analogous to RMP*Comp) that facilities can use for free, rather than requiring each facility to independently select, justify, and implement its own methodology. In the interim — before any such tool is available — the Associations recommend that modeling-based endpoint calculations be suspended in favor of the Oil FRP distance approach. The following specific modeling parameters cited in the current rule should be reconsidered or made optional: soil distribution

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	porosity, soil absorption rate, evaporation rate based on wind speed, velocity of navigable water, and water temperature/pH. Additionally, the current rule requires a facility to develop a WCD scenario for every HS chemical onsite that exceeds the threshold quantity. Facilities with numerous HS chemicals onsite will be required to develop separate WCD scenarios and planning distances for each chemical, imposing a significant administrative burden. The Associations recommend two alternative approaches: • (Preferred Option) Require the facility to develop the WCD scenario and planning distance based only on the largest container storing an applicable HS chemical onsite. This represents the true WCD: a planning distance established from the largest HS container would encompass all other HS chemicals stored at lesser volumes, eliminating the need for multiple planning distances at multi-chemical sites. The FRP could still require a list of all applicable HS chemicals exceeding the threshold quantity, the size of the largest container for each chemical, and a brief description of applicable chemicals and spill response mitigations in place (e.g., secondary containment, routing to wastewater treatment). • If EPA insists on requiring multiple WCD scenarios, EPA should group HS chemicals into categories based on similar properties and require WCD scenarios to be developed only for the largest container storing an HS chemical within each group or classification. This would substantially reduce the number of WCD scenarios and planning distances that a facility must develop.
10. What other potential exemptions from the applicability threshold determination should EPA reconsider? What factors would support expanding the exemption for water treatment	The Associations urge EPA to establish a broad, clearly defined exemption for CWA hazardous substances used as water treatment chemicals across all categories of water systems present at a regulated facility, and to exclude NPDES-permitted discharges from both the threshold quantity calculation and the five-year reportable discharge substantial harm criterion. The current rule's exemption framework — limited to process water and non-contact cooling water under 40 CFR 118.9(b)(iv),

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facilities/wastewater treated under NPDES permit?	with a separate carve-out for POTW-treated wastewater — is incomplete, ambiguous, and fails to account for the full range of water management functions that industrial and municipal facilities routinely perform. At minimum, the exemption should encompass: • Chemicals present in potable drinking water, including water drawn from municipal supplies or on-site sources; • Chemicals present in wastewater treatment operations, including neutralization, coagulation, biological treatment, and effluent polishing; • Chemicals present in cooling water treatment, consistent with the existing non-contact cooling water exemption; • Chemicals present in boiler feedwater, reverse osmosis, and deionized water treatment systems; • Chemicals present in fire protection water storage systems, including fire suppression, deluge, and sprinkler systems; and • Chemicals present in stormwater management systems at concentrations attributable to contact with treated water supplies or ambient environmental sources. Tanks, basins, lagoons, and vessels used for wastewater treatment — including equalization, neutralization, sedimentation, and biological treatment — should similarly be exempt. The SPCC regulation at 40 CFR 112.1(d)(6) already excludes wastewater treatment systems from its scope. The CWA HS FRP rule should incorporate the same exclusion. EPA should also expand the existing POTW exemption to encompass all wastewater treatment operations conducted under a valid NPDES permit, regardless of whether the treatment works is publicly or privately owned. An NPDES permit represents EPA’s own affirmative determination that the permitted discharge is consistent with protecting water quality. It is internally inconsistent for EPA to simultaneously treat that discharge as a potential “substantial harm” trigger under the FRP program.

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	EPA should establish the following: • CWA hazardous substances present in wastewater streams discharged under a valid NPDES permit — whether from a publicly or privately owned treatment works — should be excluded from threshold quantity calculations to the extent those substances are present at or below permitted effluent concentrations. • A discharge of a CWA hazardous substance that is authorized under a valid NPDES permit and does not constitute a permit violation should not count as a “reportable discharge” for purposes of the five-year discharge substantial harm criterion. Counting permitted discharges toward this criterion would perversely penalize facilities for operating in full compliance with their NPDES permits.
11. How should the new CWA HS FRP requirements account for CWA HS in oils that are already subject to 40 CFR Part 112 oil FRP requirements? What factors would support establishing an exemption?	The Associations strongly support establishing a clear exemption for CWA HS present in oils that are regulated under 40 CFR Part 112. This is one of the most consequential and clearest cases of regulatory redundancy in the current rule. Petroleum products — crude oil, refined products, condensates, produced water — are complex mixtures that may contain many listed CWA HS (benzene, toluene, ethylbenzene, xylene, naphthalene, and hundreds of other substances). Facilities with large volumes of these materials already prepare Oil FRPs under 40 CFR Part 112, which requires worst-case discharge planning, response resource contracts, training, drills, and coordination with local emergency responders. Requiring these facilities to separately account for CWA HS present in their regulated petroleum products would: • Force double-counting of the same containers in two separate regulatory frameworks; • Create inconsistencies between the Oil FRP or SPCC and CWA HS FRP for the same physical infrastructure; and • Add cost and administrative burden with no environmental benefit.

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	Creates potential contradictions in what impact to a navigable water a facility can have. The appropriate approach is to recognize coverage and exempt mixtures that meet the definition of oil and are regulated under 40 CFR Part 112. Additionally, where a facility has additional CWA HS stored, not exempt as a mixture meeting oil definition, and triggers a CWA HS allow facilities with existing Oil FRPs to amend those plans to add a CWA HS addendum that addresses any CWA HS not already covered by the oil response planning.

SECTION B — PROGRAM IMPLEMENTATION ISSUES

Beyond the applicability concerns addressed in Section A, the Associations raise program implementation issues that affect compliance feasibility across the regulated community. The Associations' comments on the ANPRM's Section B questions are set forth in the table below.

EPA ANPRM Question	Comment Response
1. What existing tools or alternative approaches would assist a facility in determining planning distances for the existing worst case discharge calculations? Should EPA reconsider planning distance approaches like those applied to oil discharges in Appendix C under 40 CFR Part 112?	Planning distance calculations under the current rule are technically burdensome, inconsistent across facilities, and not tied to tools or models that EPA has actually made available to the regulated community. The Associations recommend that EPA formally adopt the Oil FRP planning distance methodology — the standardized transport formulas from Appendix C to 40 CFR Part 112, using the Chezy-Manning formula and standardized response time windows (27 hours for non-high-volume ports; 15 hours for high-volume ports) as the default for CWA HS FRP planning distance determinations. The Associations recommend a fundamental reorientation of the planning distance's purpose: it should function as a binary applicability trigger (does a worst-case discharge reach a sensitive receptor within the planning distance?), not as a predictor of specific chemical concentrations at specific points in a water body. This shift would eliminate the need for chemical fate modeling, aquatic toxicity endpoint calculations, and facility-specific model selection. If EPA retains any concentration-based component, it should develop and publish an EPA-validated tool analogous to RMP*Comp before the compliance deadline. Compliance cannot precede tool availability.
2. How are chemical reaction intermediates and byproducts appropriately reconsidered in making substantial harm	Chemical reaction intermediates and byproducts should be excluded from both the threshold quantity calculation and the worst-case discharge analysis. The technical realities of industrial chemistry support this conclusion:

EPA ANPRM Question	Comment Response
determinations and worst case discharge calculations?	• Intermediates and byproducts are typically present in small, variable quantities that are difficult or impossible to characterize without detailed process chemistry analysis for every reaction step. • Because composition changes continuously during processing, any worst-case assumption about in-process streams would be so conservative as to be analytically meaningless. • Catastrophic release scenarios — the basis for worst-case discharge planning — involve loss of primary containment of bulk storage. Process containment failures are already addressed by PSM and RMP requirements. • NRC data shows CERCLA water releases are typically small (median approximately 5 gallons) and concentrated in a small number of large events driven by bulk storage failures, not by in-process vessel releases. The rule should explicitly exclude from threshold calculations any CWA HS that is present solely as a process intermediate or byproduct in a process vessel.
3. What specific overlapping requirements under other relevant EPA regulatory programs should EPA reconsider for purposes of compliance with the CWA HS FRP requirements? Are there specific requirements in other programs that should be highlighted (e.g., 40 CFR Part 112, 40 CFR Part 68)?	The Associations recommend that EPA develop a comprehensive cross-reference matrix identifying which CWA HS FRP requirements are satisfied by compliance with each overlapping program (40 CFR Part 112 Oil FRP, 40 CFR Part 68 RMP, 29 CFR 1910.119 PSM, 40 CFR Part 122 NPDES, 40 CFR Part 260 RCRA). Specific overlaps requiring explicit guidance include: • PREP drills and exercises: EPA should formally extend PREP to CWA HS FRP exercises and provide credit for PREP exercises completed under the Oil FRP program. Facilities regulated under both programs should not be required to conduct duplicative exercises. Credit should similarly be extended to RMP and PSM emergency response exercises. • RMP program elements: EPA has estimated approximately 19% overlap between RMP and CWA HS FRP requirements. RMP's hazard review, emergency response

EPA ANPRM Question	Comment Response
	program, and coordination requirements should be recognized as satisfying equivalent CWA HS FRP elements where the covered substance is the same. The Associations believe the actual overlap is substantially greater. - Oil Pollution Prevention (approximately 10% overlap per EPA): Facilities with SPCC plans have made a determination that of no impact to navigable waters based on containment. Facilities with approved Oil FRPs should be permitted to incorporate CWA HS FRP requirements as an addendum to their existing plan, using cross-references rather than duplicating plan elements. The Associations believe the actual overlap is substantially greater. - RCRA large quantity generator requirements: Emergency response provisions under RCRA hazardous waste generator regulations have meaningful overlap with CWA HS FRP notification and response plan elements and should be recognized accordingly.
4. Are there specific external resources that would assist in the facility FRP coordination with potentially affected entities at the federal, state and/or local level (e.g., public water systems)?	Effective FRP coordination with public water systems and other external entities requires EPA to provide specific, usable resources. The Associations recommend: - State drinking water administrator directory: EPA should publish and maintain a current directory of state primary drinking water contacts organized by EPA Region. - State source water warning networks: EPA should identify these networks by state and provide guidance on how CWA HS FRP coordination can be integrated with existing state-administered early warning systems. - Area Contingency Plans (ACPs): EPA should require that CWA HS FRPs be cross-referenced to applicable ACPs rather than requiring facilities to independently re-identify all sensitive receptors within their planning distance. - LEPC coordination: Facilities should be permitted to satisfy annual coordination requirements by participating in existing LEPC meetings held under EPCRA and providing CWA HS FRP information at those meetings, rather than conducting separate annual coordination activities.

EPA ANPRM Question	Comment Response
5. Are there other opportunities or ways in which to simplify the CWA HS FRP requirements under 40 CFR Part 118 that would maintain readiness to protect human health and the environment?	The overarching simplification principle the Associations recommend is alignment: wherever a CWA HS FRP requirement is substantively equivalent to an existing requirement under the Oil FRP, RMP, or PSM programs, EPA should explicitly recognize compliance with the existing program as satisfying the CWA HS FRP requirement. Specific simplification opportunities: • Plan format: Allow facilities to incorporate CWA HS requirements as an addendum to an existing SPCC/Oil FRP plan, using cross-references. EPA should not require a standalone CWA HS FRP document for facilities that already have an approved Oil FRP. • Qualified individual: Accept the same QI designation used in an existing Oil FRP for CWA HS FRP purposes. • Training and exercises: Provide explicit credit for PREP exercises, RMP tabletop exercises, and HAZWOPER training completed under other programs. • Discharge detection: Accept reference to existing facility monitoring programs rather than requiring a separate CWA HS discharge detection description. • Recordkeeping: Align recordkeeping requirements with EPCRA Section 312 Tier II reporting cycles. • Mixture requirements and proximity: Implementing the Associations' recommendations to remove the "conveyances to navigable waters" proximity trigger, broaden water treatment exemptions to all water systems, and exclude CWA HS in oils already regulated under 40 CFR Part 112 would collectively represent the single most significant simplification available. The Associations caution that simplification should not come at the cost of making CWA HS FRP requirements more onerous in areas where the Oil FRP is less restrictive.
6. What other FRP amendments should EPA reconsider that may be more	The Associations recommend the following additional FRP amendments to better target the rule's requirements on facilities with genuine worst-case discharge risk:

EPA ANPRM Question	Comment Response
appropriately targeted to address CWA HS worst case discharges to navigable waters or adjoining shorelines?	• <u>Remove Regional Administrator discretionary designation authority:</u> The substantive applicability criteria — threshold quantity, proximity, and substantial harm should be the only basis for FRP designation. Giving Regional Administrators open-ended authority to designate additional facilities creates regulatory uncertainty and potential for inconsistency across regions. • <u>Compliance tools before compliance obligations:</u> EPA should establish a two-phase approach: (a) publication of EPA-developed planning tools; followed by (b) a minimum 12-month implementation period after tool publication before compliance is required. • <u>Plan update timelines:</u> The 60-day update requirement for material changes is inadequate. The Associations recommend aligning update timelines with USCG’s framework under 33 CFR 154.1065: 90 days for most material changes, with an annual review cycle for non-material updates. • <u>Agency review timelines:</u> EPA should establish a formal review timeline — analogous to USCG’s 90-day review period under 33 CFR 154.1065 — after which an FRP is deemed approved absent a specific written objection from EPA. • <u>Appeals process:</u> All appeal outcomes should provide at minimum a 12-month FRP preparation period before the compliance deadline runs. The current 60-day requirement is inadequate.