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Thursday, April 3, 2014

US Senate committee OKs amended chemical spill bill

by **Dave Boucher**, Capitol Bureau Chief



FILE PHOTO

A federal bill co-sponsored by Sen. Joe Manchin aims to curtail chemical leaks into water supplies — like the Freedom Industries leak that contaminated the water supply for 300,000 people on Jan. 9.

A U.S. Senate committee approved a different version of a bill introduced by West Virginia lawmakers following a chemical leak and subsequent tap water contamination for 300,000 people.

By approving the amended Chemical Safety and Drinking Water Protection Act by voice vote Thursday, the Senate Committee on Environment and Public Works sends the legislation to the full Senate and a step closer to becoming law.

“Today, we are one step closer to making sure our chemical facilities are appropriately monitored and inspected and our drinking water sources remain safe,” said Sen. Joe Manchin, D-W.Va.





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On Jan. 9 West Virginia officials discovered thousands of gallons of chemicals leaking from a faulty storage tank owned by Freedom Industries into the Elk River. The leak and subsequent tap water contamination elicited calls for regulatory changes at all levels of government.

Gov. Earl Ray Tomblin recently signed state legislation that implements a new aboveground regulatory system and outlines the framework for increased planning in the event of an emergency.

Sens. Joe Manchin and Jay Rockefeller, both D-W.Va., joined Sen. Barbara Boxer, D-Calif., in [introducing similar legislation](#) at the federal level.

“This bill moves us in the right direction toward closing the egregious regulatory gaps that led to that horrific disaster, and it holds those accountable for the cleanup costs of any future spill so that taxpayers aren’t unfairly left with footing the bill,” Rockefeller said in an emailed statement.

As originally introduced [the 11-page bill](#) calls for regular inspections and stricter regulations of aboveground storage tanks as well as better preparedness procedures in the event of an emergency.

The new, 17-page version of the bill contains many of same components of the original bill.

The measure still calls for state regulatory systems, with inspections and criteria for tank construction.

It still says state must create or administer the creation of an emergency response plan with local public water providers, and it allows states the ability to recoup costs for responding to a spill from the entity that is responsible for the leak.

There are some noticeable changes. Evan Hansen, president of Morgantown-based environmental consulting firm Downstream Strategies, said some changes slightly weaken the bill while others provide a little strength.

“On balance, my sense is this is a good bill. I’m glad it’s making its way through Congress,” Hansen said.

“But I think we have to recognize that it addresses just one kind of specific threat to our drinking water intakes.”

The bill added a definition for chemical, identifying it as one of three things: a hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act; anything subject to planning or reporting under the Emergency Planning and Community Right-To-Know Act; or a contaminant as defined by the federal Safe Drinking Water Act.

This definition seemingly covers facilities like Freedom Industries. The company



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was required to include MCHM — the main chemical in the spill — in its Tier II reports, filed in accordance with the Emergency Planning and Community Right-To-Know Act.

The bill also narrowed its regulatory focus, changing the terminology in the bill from “covered chemical storage facility” to “covered chemical storage tank.” The change in definition addresses the tank holding the chemical itself, as opposed to the facility where it is stored.

The amended bill added some leeway for states to determine if sites are exempt from the bill. Specifically, a state can exempt some tanks if it determines the site “would not pose a risk of harm to a public water system.” Hansen thought the criteria for making that determination were a little vague.

The new bill gives states two years to create an aboveground storage tank surface water protection program, an extra year compared to the first version of the bill. The plan must also include a component that addresses containment of a spill, as opposed to just spill and overflow prevention that was mentioned in the original version.

The committee added to the emergency response section to specify it must include procedures for notifying the public about the emergency.

While requiring inspections every three years for tanks that sit near water sources and every five years for most other tanks, the committee amendment created a new classification for “high hazard covered chemical storage tanks.”

These tanks would contain chemicals that, if released, would pose “the greatest risk” of harm to public water sources and public health. After the state develops a list of these sites within two years of passage of the bill, these sites must be inspected annually. Hansen considered this a good addition to the bill.

Hansen pointed out the new bill also doesn’t mandate that a state provide a public water source with emergency preparedness information, but rather says a state must provide it if requested by the water utility. This is a weakening of the bill, Hansen said, but it still puts responsibility on the water utility to seek out the best way to prepare for an emergency.

Boxer, the chairwoman of the committee, said she didn’t get everything she wanted in the new bill, but she was pleased with the compromise. She thanked ranking GOP Sen. David Vitter, R-La., for working with the committee to create the new version, adding the bill should be seen as a positive for the nine-county region recently affected by the Freedom leak.

“The people of West Virginia deserve to have their spirits lifted. This is wonderful,” Boxer said after the vote.



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Boxer said she expected the bill would officially go to the Senate floor in a couple weeks, at which point she encouraged other senators to join her in advocating for its consideration by the full body.

Manchin's statement also included a statement from the American Chemistry Council, and industry-funded advocacy organization.

"While we are still evaluating the details of today's amendment... we welcome the progress that has apparently been made by Senators Manchin, Boxer and Vitter to refine the bill," the ACC said in a statement.

Manchin and the ACC are also involved in legislation that would change the Toxic Substances Control Act. Manchin and supporters argue the bill is a step toward better regulation of the thousands of chemicals used daily by industry, but some environmental groups and other opponents say it's too industry friendly and could weaken regulatory efforts.

Contact writer Dave Boucher at 304-348-4843 or david.boucher@dailymailwv.com. Follow him at www.Twitter.com/Dave_Boucher1.



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