The Freedom Industries Spill: Lessons Learned and Needed Reforms

Presentation to:
Joint Legislative Oversight Commission on State Water Resources

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President
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The Freedom Industries Spill

Lessons Learned and Needed Reforms

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January 20, 2014
Downstream Strategies

- Environmental consultants
- Started in 1997
- Staff of 11
- Offices in Morgantown and Alderson
Downstream Strategies offers environmental consulting services that combine sound interdisciplinary skills with a core belief in the importance of protecting the environment and linking economic development with natural resource stewardship.
Clients

- Federal (VA, USFWS, ARC)
- State (DEP, Conservation Agency)
- Local (Pocahontas Co., Jefferson Co.)
- Foundations and nonprofits
- Universities (WVU, Kent State)
- Attorneys
- Individuals
- Private businesses
West Virginia Rivers Coalition

A statewide nonprofit organization focused on protecting West Virginia’s water resources and upholding people’s right to use and enjoy clean water.
It’s time to change the tone

- Elected officials, agency heads, and members of the Legislature
- Anti-regulation, anti-EPA rhetoric

- Protecting human health and the environment is directly linked to a thriving, diversified economy
Failures at multiple levels

- Government
  - Federal
  - State
  - Local

- Private industry
  - Freedom Industries
  - West Virginia American Water
Zone of Critical Concern, Morgantown

Drinking water intake

Industrial Park: Chemtura, Marcellus wells
Zone of Critical Concern, Huntington

Industrial sources are blue circles

Drinking water intake
Potential significant contaminant sources within ZCCs

<table>
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<tr>
<th></th>
<th>Industrial</th>
<th>Other</th>
<th>Total</th>
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</thead>
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<tr>
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<td>44</td>
<td>51</td>
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<tr>
<td>Morgantown</td>
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<td>21</td>
<td>55</td>
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<tr>
<td>Huntington</td>
<td>206</td>
<td>218</td>
<td>424</td>
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</table>

Other sources: residential, commercial, municipal, agriculture
Our report focuses on three key laws:

1. Clean Water Act
2. Safe Drinking Water Act
3. Emergency Planning and Community Right-to-Know Act

- Other
  - CERCLA
  - Toxic Substances Control Act
  - Oil Pollution Act
  - Chemical Safety Board recommendations
Clean Water Act

- Freedom Industries holds NPDES permit
- Registration under the state’s general multi-sector industrial stormwater permit
- DEP issues and enforces these permits
- Includes many items related to spills
- Requires immediate reporting of noncompliance that may endanger health or the environment
CWA recommendations

- Require that DEP inspect all NPDES-permitted sites, and immediately inspect the most critical sites
- Prohibit coverage under the general industrial stormwater permit for facilities in zones of critical concern
- Require additional permit conditions for facilities such as the Freedom Industries site
- Increase funding and staffing for DEP’s NPDES and environmental enforcement programs
Safe Drinking Water Act

- Source Water Assessment Report written in 2002
- The system is highly susceptible to contamination
- Delineates a zone of critical concern
- ~50 potential significant contaminant sources are in this zone, including Freedom Industries
- No Protection Plan appears to have been written
SDWA recommendations

- Update Charleston’s SWAR, and all SWARs across the state
- Mandate Protection Plans and provide for funding to write them
- Provide for state-specific protective standards for chemicals used in large quantities in West Virginia
- Local emergency planning committees should carefully review SWARs and take all necessary actions
Protection Plans in Ohio

- Ohio EPA lists 5 example Protection Plans

- Upper Ohio River Protection Plan
  - Initiated by OEPA
  - Included 6 communities between Follansbee, WV and East Liverpool, OH
  - Held 6 meetings
  - Weirton, Follansbee, Arcelor-Mittal Steel Plating, and WVDHHR invited to participate
Emergency Planning and Community Right-to-Know Act

- Requires hazardous chemical emergency planning
- Requires industry to report on the storage of hazardous chemicals
- Freedom Industries filed Tier Two Emergency and Hazardous Chemical Industry forms
- Specifically listed MCHM along with 16 other chemicals since 2007
- List MCHM as “immediate (acute) physical and health hazard”
- Quantity of MCHM stored onsite: 100,000-999,999 pounds
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EPCRA recommendations

- Support local emergency planning committees and local governments in their planning efforts
- Local emergency planning committees should utilize the information submitted on Tier Two forms to minimize risk
Local emergency planning committees

- Division of Homeland Security and Emergency Management maintains list

- One for each county except:
  - Cabell/Wayne
  - Kanawha/Putnam
  - Lewis/Upshur
  - Marshall/Wetzel
  - Wood/Wirt
Proposals on the table

- Senate Bill 373
- Governor’s recommendations
- Our recommendations
Senate Bill 373

- Focuses on ASTs
- Does not recognize authorities under existing NPDES permit
- Does not mandate Protection Plans
Governor’s recommendations

- Does not recognize value of clean water to economic prosperity, human health
- Focuses on ASTs (with numerous loopholes)
- Does not recognize authorities under existing NPDES permit
- Requires Protection Plans within 90 days, but does not provide funding
Our recommendations

- Take advantage of existing NPDES authorities:
  - Require INDIVIDUAL permits for industrial facilities in ZCCs
  - Require DEP inspections
  - Require additional permit conditions
  - Increase funding and staffing at DEP
Our recommendations

- Support the rapid development of sound Protection Plans
  - Mandate them, but recognize that planning process takes time to develop community support
  - Provide funding
Our recommendations

- Provide for state-specific protective standards for chemicals used in large quantities in West Virginia