



Walter Wright, Jr.  
wwright@mwlaw.com  
(501) 688.8839

# Non-Transportation-Related Onshore Facilities/Clean Water Act: U.S. Environmental Protection Agency and Environmental Organizations Enter into Consent Decree Requiring Promulgation of Hazardous Substance Worst Case Discharge Planning Regulations

03/18/2020

The United States Environmental Protection Agency ("EPA") and three environmental organizations entered into a March 12th Consent Decree ("Decree") addressing Section 311(j)(5)(A)(i) of the Clean Water Act. See 19 Civ. 2516 (USDC s.d.n.y.).

The environmental organizations entering into the Decree with EPA include:

- Environmental Justice Health Alliance for Chemical Policy Reform
- Clean Water Action
- Natural Resources Defense Council, Inc. (collectively, "NRDC")

NRDC had alleged in a Clean Water Act citizen suit that EPA had a duty under the previously referenced section of the Clean Water Act to:

... issue regulations that require an owner or operator of a non-transportation-related onshore "facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of ... a hazardous substance" (the "Hazardous Substance Worst Case Discharge Planning Regulations") by August 18, 1992 (ECF No. 1, Compl. ¶¶ 23, 25, 29, 30)

NRDC alleged that EPA failed to comply with an alleged mandatory duty pursuant to this section of the Clean Water Act within the required timeframes. The organizations requested that the Court compel EPA to promulgate the Hazardous Substance Worst Case Discharge Planning Regulations ("Regulations").

The Decree sets out a schedule requiring no later than 24 months after the Court's entry of the Decree that EPA sign a Notice of Proposed Rulemaking to issue the Regulations. Further, not later than 30 months

after publication of the proposed Regulations EPA is required to sign a notice taking final action following notice and comment rulemaking pursuant to the issuance of the Regulations.

A copy of the Decree can be downloaded [here](#).