Proposed Information Collection Request; Comment Request; Survey on Clean Water Act Hazardous Substances and Spill Impacts

Background

On July 21, 2015, three parties filed a lawsuit against EPA for failing to address hazardous substances consistent with CWA 311(j)(1)(C). According to a settlement agreement reached in that case and filed with the United States District Court, Southern District of New York, on February 16, 2016, EPA is working to issue a proposed rulemaking no later than June 2018; this date is partly based on a 10-month extension to account for EPA conducting an information collection request through a Federal Register Notice.

On September 21, 2017, EPA published a notice in the Federal Register notifying the public of its intent to submit an information collection request (ICR), "Survey on Clean Water Act Hazardous Substances and Spill Impacts" (EPA ICR No. 2566.01, OMB Control No. 2050-New) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). EPA provided a 60-day public comment period in the notice, consistent with process guidance. At the close of the public comment period on November 20, 2017, EPA had received comments from 11 sources: 5 industry organizations, 4 anonymous commenters, 1 set of comments from a collaborative of 12 non-governmental organizations, and 1 set of comments from a consortium of state, Tribal and local emergency response agencies.

Several commenters characterized the regulatory process the ICR is supporting as an expansion of the SPCC program and noted that SPCC provided adequate regulatory coverage for facilities associated with oil and gas production and storage. Two commenters thought that the ICR was valuable for obtaining information that could be used to augment the record for the regulatory process, whereas several comments thought that the information sought on the ICR was already available to EPA and therefore the collection would be duplicative. One commenter suggested several changes to the language of the questions to ensure that information collected on substances was characterized appropriately. One set of commenters suggested that EPA ask more questions related to state spill prevention programs. Several commenters included comments that are outside the scope of this information collection (i.e., the ICR is directed at a limited number of respondents (e.g., state and tribal governments) regarding information on 40 CFR part 116.4 listed Clean Water Act hazardous substances (CWA HS) discharges and the prevention of their accidental discharge to jurisdictional waters).

EPA has reviewed all of the comments submitted; responses are provided below. In general, the commenters provided valuable suggestions for the agency to consider in its review of the ICR questionnaire, including corrections to omitted entities (e.g., tribes), as well as refinements to the language of the questions to facilitate a productive collection of information with greater utility to the ongoing regulatory process.

RESPONSE TO COMMENTS
Commenter: American Exploration & Production Council (AXPC) & Independent Petroleum

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Association of America (IPAA)	
1	When considering expansion of the SPCC Regulation, we recommend that EPA study the impact of recent state regulatory efforts and the corresponding effects on all stakeholders. These assessments should consider the true impact of regulating additional hazardous substances. **EPA Response:** EPA agrees that the study of applicable state regulations may be helpful in informing the proposed regulatory action. The ICR specifically includes a question on applicable state regulations.
2	Submission of a Tier II form is required under Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This inventory provides EPA with significant information related to the storage of hazardous chemicals. Additionally, some states may have supplementary requirements for reporting and submission of the Tier II inventory form. Any effort to report more on these chemicals, through the expansion of the SPCC rule, would be duplicative and unnecessary. **EPA Response:** EPA disagrees that these efforts are duplicative. The CWA HS data reported by facilities under EPCRA Section 312 and EPCRA 304 are collected by the state emergency response commission (SERC) and do not go to EPA. EPA does not have information collection authority under EPCRA, nor does EPA have ready access to this information collected by states or tribes. Therefore, EPA is requesting information from the SERC pertaining to the most recent year's (i.e., 2016) Tier II submission, and only for those facilities which produce, store, or use 40 CFR part 116.4 designated hazardous substances.
3	The questions being considered by EPA in the proposed voluntary ICR will largely be a duplication of information to which EPA already has access. The NRC website contains spill related information while the Tier II form is required under section 312 of the EPCRA. To reiterate, this proposed voluntary ICR will likely yield little information that EPA didn't already have the knowledge of or access to; reinforcing the sufficiency of the regulations currently in place.

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	EPA Response: EPA disagrees with the commenter that the questions are duplicative of available information. Although the National Response Center (NRC) collects information on spills and releases of oils and hazardous substances, the data reported to NRC at the time of an incident may be incomplete or inaccurate. EPA is analyzing the NRC data to inform the proposed regulatory action. However, we seek to augment this data by using the ICR to access incident data collected in follow up reports (under EPCRA section 304) that are maintained by the states. This information can clarify and/or bolster existing NRC data, providing a higher level of confidence in baseline analyses that use NRC data. Furthermore, EPA does not have access to Tier II reports submitted to SERCs under EPCRA section 312. See response to question 2 for additional information on Tier II data availability under EPCRA section 312.
4	AXPC and IPAA would like to remind the agency of its stated cooperative federalism policy goal, most recently noted in EPA's Draft FY 2018-2022 Strategic Plan, and the necessity of allowing states to be the stewards of national standards. Further, any expansion of the current SPCC rule not only usurps the states' regulatory authority, but seems to be at odds with President Trump's Executive Order 13777, Enforcing the Regulatory Reform Agenda, as the order explicitly directed agencies to identify regulations that are unnecessary or impose costs that exceed benefits. **EPA Response:** This comment is outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
Commenter: American Forest and Paper Association (AFPA)	
5	To create a regulation that is appropriately targeted, focused, and addresses actual risk, EPA must ensure that this ICR is based on accurate assumptions, has an appropriate scope, covers the appropriate resources, and minimizes burdens while maintaining the utility and integrity of future responses. **EPA Response:** EPA agrees. EPA provided a copy of the draft ICR questions in this announcement to solicit comments on the questions from stakeholders and the public. This was to ensure that there was public input as to whether EPA has adequately considered scope, burden, and future utility of the responses. EPA will consider all comments and will make appropriate edits with these issues in mind so that if EPA is permitted to move forward with an ICR, the process and the information collected will have had the benefit of these considerations.
6	EPA should define a specific timeframe for the information it requests. It is critical for EPA to set a narrower timeframe for the information requested in the draft survey. As currently proposed, the draft survey requests storage and spill data regarding the impacts of hazardous substances discharges over the past 10 years. Older data, therefore, simply is not representative of current practices and does not provide EPA with information that is "necessary for the proper performance of the function of the

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	agency" or that "will have practical utility" as required by the Paperwork Reduction Act (PRA). Furthermore, this request would be overly burdensome for state agencies to research and provide. AF&PA recommends that EPA seek data for a shorter period of time to avoid these concerns. EPA should review the data in EPA's National Response Center (NRC) database to determine, based on patterns or trends in the data, a reasonable time frame that considers the need to obtain relevant and representative data, and the burdens associated with data collection. **EPA Response:** EPA disagrees that the 10-year timeframe that we proposed in the survey should be amended to a shorter period. EPA intends to request spill data for the previous 10 years, in part to identify trends in CWA HS discharges. If a change in industry practices has resulted in a reduction in spills discharged to water, analysis of 10 years of data will help allow EPA to identify corresponding trends, which would be valuable in analyses supporting this regulatory action. Furthermore, EPA notes that the current draft ICR requests CWA HS storage data only for the most recent year that a facility has submitted.
7	EPA should review other sources of information (e.g. existing databases or current state regulatory programs) prior to finalizing and distributing the draft survey. Prior to finalizing the draft survey, EPA should first review sources of information that could contain similar information that already answers some of its questions. The NRC maintains reports of all reported releases and spills in a national database comprised of annual reports that date back to 1990. The records contained in this database represent a robust set of information that covers nearly any chemical release that has occurred in the recent past. Given that much of the information the EPA survey requests about spills would be contained in this database, the Agency should perform a detailed review of relevant NRC reports prior to finalizing and distributing its draft survey. **EPA Response:** EPA agrees. EPA has reviewed available databases and state regulatory program information related to this regulatory action, including the NRC database. This information has provided a baseline for analyses related to this regulatory action. However, the available information is limited in detail and may be incomplete or have inaccuracies. EPA seeks to augment this data by using the ICR to access incident data collected in follow up reports (under EPCRA section 304) that are maintained by the states. This information can clarify and/or bolster existing NRC data, providing a higher level of confidence in baseline analyses that use NRC data.
8	EPA should emphasize in its survey, however, that it is only seeking information from the database about CWA hazardous substances, and not other substances. **EPA Response:** EPA agrees and will ensure that only those substances designated as CWA HS in 40 CFR § 116.4 are included with respect to information and data solicited in this survey.
9	We support EPA's survey question 7 that asks states if they have "regulations/provisions relating to spill prevention requirements for CWA HS."

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	AF&PA believes that EPA should only issue a final substantive rule if one is needed to cover existing regulatory gaps, and responses to this question should help EPA determine whether such gaps exist. EPA also should ensure that it consults directly with the states and reviews current state-specific spill prevention plan regulations that are implemented in addition to federal Spill Prevention, Control, and Countermeasure (SPCC) requirements. These state regulatory programs contain a number of reporting requirements that would likely cover the answers requested by EPA in its draft survey. EPA should ensure that it thoroughly reviews the information contained in these state plans before and after it finalizes and distributes the draft survey. EPA also states that it anticipates the information collected from this effort will help the Agency evaluate potential regulatory approaches. As such, it is critically important that EPA closely review all state-specific spill prevention plans like the ones discussed above. The effectiveness of any future federal regulatory requirements is dependent on avoiding duplication with these state programs. **EPA Response:** EPA intends to evaluate existing applicable regulations at the state and federal level to help inform the proposed regulatory action. Therefore, EPA is asking states to identify applicable state regulations for CWA HS in this ICR to ensure that we evaluate all applicable regulations.
Commenter: American Petroleum Institute (API)	
10	In considering expansion of SPCC regulations, EPA should study the impact of existing state regulatory efforts on all stakeholders, including whether these regulatory efforts achieved measurable reductions in spills, or more effective responses to spills when they occurred. An expansion of SPCC regulations to address the lengthy list of substances at 40 CFR 116.4 would potentially be extremely costly and burdensome, with little commensurate benefit to human health and the environment. **EPA Response:** EPA intends to evaluate existing applicable regulations at the state and federal level to help inform the regulatory action. Therefore, EPA is asking states to identify applicable state regulations for CWA HS in this ICR to ensure that we evaluate all applicable regulations.
11	In crafting a spill prevention regulation for 40 CFR 116.4 hazardous substances, EPA should identify all 40 CFR 116.4 substances that are already regulated under 40 CFR 112 and list those substances as exempted from the new regulations. **EPA Response:** This comment is outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
12	Under this ICR, EPA is requesting states, tribes and territories to provide Emergency Planning and Community Right-to-Know Act (EPCRA) Tier II facility data for 40 CFR 116.4 hazardous substances stored and used, as a reasonable first step in assessing the need for hazardous substance spill prevention regulations. EPA will review and assess the quality of the data received, to ensure that it sufficiently and clearly supports regulatory

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	decision-making. **EPA Response:** EPA is requesting EPCRA Tier II facility data for CWA HS for the purposes of estimating the "facility universe" to which a rulemaking may apply. EPA will describe in the record the efforts taken to ensure the quality of the data collected, as appropriate.
13	The Tier II data submitted in response to the ICR survey will likely include substances not listed in 40 CFR 116.4. Therefore, EPA should make public the data quality assessment, analysis and specific data indicators that were used in its decision. **EPA Response:** EPA will review any data submitted in response to the ICR survey and evaluate its relevance to preventing discharges of CWA HS designated in 40 CFR § 116.4.
14	The information collected as a result of the voluntary survey will largely duplicate information already submitted to regulatory authorities. EPA should already have access to this information. For example, The National Response Center website contains spill related information. Many states have promulgated other regulations to address spill prevention and response as well. **EPA Response:** EPA disagrees with the commenter that the information collected will largely duplicate available information. EPA has reviewed available databases and state regulatory program information related to this regulatory action, including the NRC database. This information has provided a baseline for analyses related to this regulatory action. However, the available information is limited in detail and may be incomplete or have inaccuracies. EPA seeks to augment this data by using the ICR to access incident data collected in follow up reports (under EPCRA section 304) that are maintained by the states. This information can clarify and/or bolster existing NRC data, providing a higher level of confidence in baseline analyses that use NRC data. EPA has identified some state spill prevention, containment, and mitigation regulations and will use responses to the survey to augment this information in the regulatory analysis supporting this rulemaking.
15	EPA needs to specify a reasonable deadline for the states to respond. Potentially, a large amount of data must be identified and obtained for submission. A 90-day timeframe might be reasonable for such a task. **EPA Response:** EPA agrees that a reasonable deadline for the states to respond should be included. EPA recognizes that the ICR requests a substantial amount of data from respondents. EPA has estimated the required time to respond from a state consultation conducted with seven states as allowed by the Paperwork Reduction Act as part of the ICR process. The maximum time, identified by the respondents, for a state to provide information was approximately 45 days. Given that participation in the ICR is voluntary, and there is a court-ordered deadline for the rulemaking, EPA anticipates requesting a response within 45 days.
16	Rather than simply refer to "Clean Water Act hazardous substances," the precise provision,

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	40 CFR 116.4, should be specified throughout the survey. Data for substances not listed in 40 CFR 116.4 should not be submitted. EPA should explicitly state in its survey instructions that Tier II data for substances not listed in 40 CFR 116.4 should not be submitted. **EPA Response:** EPA agrees and has revised the survey to include hyperlinks to the list of CWA HS throughout the survey and additional instructions for identifying CWA HS designated at 40 CFR part 116.
17	The survey requests submission of maximum and average daily amounts of 40 CFR 116.4 hazardous substances. In many cases these amounts will be estimated. If the submitted data Hazardous Substances Spill Prevention ICR constitute estimates rather than measured or precisely inventoried weights or volumes, the submission should specify the data have been estimated. **EPA Response:** EPA agrees and plans to include information in the record to appropriately characterize the data received in response to the survey.
18	If the 40 CFR 116.4 hazardous substance is a component of a Tier II-reported mixture of substances, or is diluted by a solvent, the composition of the mixture should be provided if readily available, and the submission should be clear as to whether the listed amounts refer to the total mixture or to just the specific component. **EPA Response:** EPA has revised the ICR survey to specify that information about mixtures should be noted where possible, based on available information.
19	The survey should explicitly state that the data request for 40 CFR 116.4 Clean Water Act hazardous substance use and storage pertain only to the past calendar year (2016 calendar year). **EPA Response:** EPA has revised the survey to request CWA HS use and storage data for the most recent calendar year available.
Commenter: National Mining Association (NMA)	
20	NMA met with EPA representatives after the Feb. 16, 2016 consent decree was signed to discuss the robust spill prevention measures currently in place at mine sites. At that meeting, NMA encouraged EPA to send out an ICR to obtain information concerning current state programs and practices applicable to hazardous substance spill prevention and containment. NMA therefore supports EPA's proposed ICR, but provides the following suggestions to help ensure the request results in the submission of information that will aid EPA as it moves forward with its rulemaking. **EPA Response:** EPA appreciates NMA support for the ICR.
21	EPA should clarify in the ICR that the list of "hazardous chemicals" covered under Secs. 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) differs from, and is in fact much broader than, the list of "hazardous substances" under CWA Sec. 311(b)(2)(A), which is found at 40 C.F.R. 116.4. **EPA Response:** EPA has revised the survey to include a footnote noting that there are

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	differences in the list of chemicals regulated under EPCRA and designated CWA HS in 40 CFR part 116.
22	Notably, there is no specific list of OSHA "hazardous chemicals," and EPA should therefore specify that the only information the agency is requesting pertains to the listed CWA hazardous substances at 40 C.F.R. 116.4 to avoid confusion in reporting and interpretation of survey results. **EPA Response:** EPA has revised the survey to include hyperlinks to the list of CWA HS throughout the survey and additional instructions for identifying CWA HS designated in 40 CFR part 116 to avoid confusion in reporting and interpretation of survey results.
23	EPA should remove from consideration those CWA listed hazardous substances that are already regulated as part of an oil mixture pursuant to existing Spill Prevention Control and Countermeasure Plan (SPCC Plan) regulations at 40 C.F.R. 112. 2. For example, benzene is a listed hazardous substance under 40 C.F.R. 116. However, benzene is most likely found in gasoline, which is a regulated "oil" under the SPCC program and therefore should not be subject to a separate future hazardous substance spill regulation. **EPA Response:** EPA disagrees. In determining impacts to waters, EPA believes it is important to consider the universe of all CWA HS discharges.
24	NMA also strongly encourages EPA to include a survey question asking states, tribes, and territories to identify which facilities listed as having CWA listed hazardous substances on site already operate pursuant to an SPCC plan. **EPA Response:** EPA disagrees. There is no requirement for facilities to include designated CWA HS in SPCC Plans and states, tribes and territories may not have access to facility SPCC Plans. Therefore, EPA does not expect the states and tribes to be able to answer this question.
25	EPA should include a survey question asking states and tribes to identify which facilities listed as having CWA listed hazardous substances on site operate pursuant to state or tribal regulatory programs that already address the proper storage, containment, and spill prevention of hazardous substances. **EPA Response:** EPA believes that questions 7 and 8 of the ICR survey that requests information on state, tribal, or territorial regulations and regulatory provisions related to spill prevention of hazardous substances adequately addresses this commenter's suggestion.
26	To avoid getting incomplete responses from disparate state agencies and offices, NMA suggests that EPA (1) note that several state agencies may have information responsive to the ICR; and (2) send the ICR to state environmental, resource, and disaster response and emergency preparedness agencies. **EPA Response:** EPA agrees that multiple agencies within a state, tribe or territory may need to participate in responding to the survey. EPA intends to use the state emergency response commissions (SERCs) as points of contact for distributing questions to other

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	state agencies as appropriate.
27	Clerical Error: Lastly, NMA notes that in question 1 of the "Facilities with CWA hazardous substances" section on page 2 of the draft survey, EPA asks "How many EPCRA Tier II (40 CFR Part 312) facilities…" NMA believes that the citation should read "40 CFR Part 370," which outlines reporting requirements, as opposed to Part 312, which addresses "Innocent Landowner Standards for Conducting All Appropriate Inquiries under CERCLA." **EPA Response:** EPA agrees and will correct the survey.
Commenter: Marcellus Shale Coalition (MSC)	
28	The Commonwealth of Pennsylvania requires that all Tier II facilities report hazardous chemicals that are present at a facility during the prior calendar year. The USEPA should be able to gain access to this information through the *http://www.dIi.pa.gov/Individuals/labor-Ma nagement-Relations/bois/tier-ii/Pages/Tier-11-(PATTS)-System.aspx* Commonwealth of Pennsylvania's database; therefore, the MSC believes that the existing level of reporting is sufficient and nothing additional should be required. **EPA Response:** Thank you for your comment. EPA will review the information at the website provided. However, there are other questions on the ICR related to spill history, impacts, and state regulations that may not be addressed at the website noted.
29	As stated MSC member companies must follow both federal and state SPCC requirements for oil and gas operations. Pennsylvania's regulatory framework provided under the Community Right to Know affords adequate protection from hazardous chemical releases. **EPA Response:** These comments are outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
Commenter: NASTTPO	
30	Quite honestly, we believe this ICR is pointless. We recognize that the Consent Decree in Environmental Justice Health Alliance v US EPA, 15 Civ. 5705, (SDNY 2016) creates an incentive to make an ICR as it extends your deadlines. And we do not doubt that the agency needs more time to propose regulations pursuant to 33 U.S.C. 1321(j)(1)(C). Nonetheless, what this ICR suggests to us is that EPA is not focused on accident prevention, but rather accident response. That approach will not satisfy the requirements of the Clean Water Act nor the Consent Decree in our view. **EPA Response:** EPA disagrees with the comment. The information requested in the ICR will help EPA refine preliminary baseline estimates for the facility universe to which a regulatory action may apply. The information collected in this ICR will also augment spill impact information (in addition to available information through NRC). This information may be used to supplement and refine impact estimates derived from NRC data.
31	EPA already has access to the information it now proposes to gather, with one exception

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	discussed below. In addition, the information it now proposes to gather really will not be very useful in proposing a regulation. Knowing about how many accidental spills occur does not inform appropriate accident prevention efforts. To accomplish that task, EPA should look at other programs and sources of information. **EPA Response:** EPA notes that the NRC database contains some information that has allowed the agency to conduct a preliminary assessment on the causes of accidental CWA HS discharges to surface waters. The agency anticipates responses to the survey will provide more detailed information regarding causes and impacts of CWA HS discharges to jurisdictional waters than what is typically available in the NRC database.
32	The practice of almost every state and response agency we are aware of is to be sure that release reports are made to the NRC. It is, therefore, duplicative and burdensome to ask state agencies to provide EPA with that same information. **EPA Response:** EPA has reviewed available databases and state regulatory program information related to this regulatory action, including the NRC database. This information has provided a baseline for analyses related to this regulatory action. However, the available information is limited in detail and may be incomplete or have inaccuracies. EPA seeks to augment this data by using the ICR to access incident data collected in follow up reports (under EPCRA section 304) that are maintained by the states. This information can clarify and/or bolster existing NRC data, providing a higher level of confidence in baseline analyses that use NRC data.
33	EPA does not need Tier II reports submitted to the States under EPCRA to propose an accidental release prevention regulation. There is no correlation between Tier II reports and accidental releases of hazardous substances. Better information on the numbers of facilities engaged in activities involving hazardous substances is available from the Census Bureau using the North American Industry Classification System (NAICS) system. EPA already knows this system well. **EPA Response:** Facility data related to CWA HS allow EPA to tally facilities based on the reported presence of CWA HS, providing a more accurate estimate of the facility universe than NAICS codes. EPA investigated using the NAICS system early in the process and found that it only provides a rudimentary estimate of the number of facilities that may have CWA HS based on industrial process or product.
34	We are mindful that EPA is proposing a voluntary ICR. It is likely that a few States will supply the information; however, many will not as they will view the request as putting them in the posture of violating EPCRA. It is true that EPA does not receive Tier II reports and we recognize that they and many other federal agencies would like to have this data. That does not, however, make it easy or even lawful for the SERCs to comply. The access to information provisions of EPCRA do not provide authority for the State Emergency Response Commissions to provide the entire Tier II database to EPA or any other federal agency requesting the data. Even if we treated EPA as a member of the public, SERCs cannot provide the entire Tier II database to EPA or other federal agencies. **EPA Response:** EPA recognizes that some states may choose not to participate.

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	However, EPA conducted a consultation with seven states (PRA allows up to nine entities) in the summer of 2017 as part of the ICR process. Two of nine states declined to participate, but of the seven who participated, most indicated that they would provide both Tier II data and spill impact data for CWA HS discharged to water, if available. Several states have already provided Tier II data, or links to websites where the data can be obtained.
35	There is no reason that EPA could not tier the Clean Water Act accident prevention rule just as it did for RMP. There is also no reason that the same accident prevention requirements could not apply under the Clean Water Act. EPA need not invent something new when it can adapt an existing program. **EPA Response:** These comments are outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
Commenter: Environmental Justice Health Alliance; People Concerned About Chemical Safety; Natural Resources Defense Council; Coming Clean; Alaska Community Action on Toxics; Clean and Healthy New York; Clean Water Action/ Clean Water Fund; Just Transition Alliance; New Jersey Work Environment Council, West County Toxics Coalition, U.S. PIRG, & Earthjustice	
36	General overarching comment(s): The questions in the proposed ICR seek basic information necessary to understand the threats hazardous-substance spills pose to our communities: where these harmful chemicals are stored; in what quantity; how often spills are occurring; and what laws currently apply to help prevent spills. They do not, however, go far enough. These questions should be expanded to fully capture the information needed to develop strong federal hazardous-substance spill prevention rules. EPA should also open a docket to allow other entities to submit information, including best practices for spill prevention, prior to EPA's issuance of a proposed rule next summer. **EPA Response:** The ICR is intended to compile basic information to assist the agency in the rulemaking process. Specifically, information requested from respondents is expected to assist the agency to estimate: 1. a "facility universe" data for which a regulation may apply; 2. the number of CWA HS discharges to jurisdictional waters, as well as the impacts of those discharges; and 3. the number of facilities that are covered by state programs, in addition to federal requirements. EPA disagrees with the suggestion to open a separate docket for collecting information on best practices for spill prevention. EPA has adequate access to information on spill prevention practices by reviewing other federal and state spill prevention regulations and industry standards and practices.
37 (a)	To ensure EPA gets the information it needs from states, tribes, and territories, we recommend that EPA modify the questions in its proposed ICR as follows: EPA should request information about all spills, not just spills that reach bodies of water **EPA Response:** EPA disagrees with this comment. EPA intends to assess the number

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	of CWA HS discharges to jurisdictional waters and the impacts of those discharges to evaluate appropriate spill prevention requirements.
(b)	EPA should also request information regarding the location of each spill (e.g., street address or GPS coordinates). **EPA Response:** EPA disagrees with the comment. Specific location information and GPS coordinates of spills have no bearing on determining appropriate spill prevention practices nor do they provide information to characterize the causes and impacts of those discharges.
(c)	Question 4 of the proposed ICR is also incomplete without a request for information, if available, about the cause of each documented spill. EPA should request information about the cause of documented spills from each state, tribe, and territory that tracks such data. **EPA Response:** EPA agrees and has added a request to include cause information of CWA HS discharges to water, as available.
(d)	In question 5 of the proposed ICR, EPA proposes to ask about effects on public water system intakes caused by hazardous-substance spills "to navigable waters." The scope of the statutory phrase "navigable waters" is hotly contested and may make responding to the question more difficult than intended. EPA should either (a) remove the phrase "to navigable waters" from the question altogether, or (b) replace the phrase with "to surface waters" (mirroring question 6). **EPA Response:** EPA agrees that there is the potential for confusion associated with the term "navigable waters" and has amended the survey to request information on CWA HS discharges to surface waters.
(e)	EPA should request more information about the content of state, tribal, and territorial spill-prevention requirements. This proposed request for information about analogous state spill prevention is appropriate and necessary for EPA to design an effective federal spill-prevention rule. First, this question should be directed not only at "state[s]," but also the tribes and territories to whom EPA will send the final ICR. Second, this question should contain sub-questions on (reporting requirements, coverage for all 40 CFR 116.4 HS, threshold triggers, limitations on types of facilities covered, and provisions for citizen enforcement) to help EPA better evaluate the relevance and compare the scope of each jurisdiction's spill prevention regulations. **EPA Response:** EPA agrees that the survey questions should also request information about tribal and territory discharge prevention requirements and has amended the question accordingly. However, EPA disagrees that additional questions about state requirements are necessary. Once EPA receives information about the state/tribal/territory requirements, we will review the requirements to assess relevant CWA HS discharge prevention requirements.
(f)	EPA should request from each state, tribe, and territory any data it has on compliance and enforcement rates for spill-prevention regulations within its jurisdiction. **EPA Response:** EPA disagrees with the suggestion to request information on

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	compliance or enforcement rates. EPA does not believe this information is relevant to determining appropriate CWA discharge prevention requirements.
38	EPA should open a docket (well before it issues its proposed rule), to allow local governments, community groups, businesses, and other interested parties to submit information relevant to the proposed rule, including local spill-prevention regulations; data on spills, the risks of spills, and the environmental and public health harms from spills; and best practices related to spill prevention and response. **EPA Response:** EPA disagrees with the suggestion to broaden the universe of respondents on the survey. EPA provided multiple opportunities for public input on the regulatory action in 2016. The public will also have an opportunity to comment on the proposed regulatory action upon proposal and publication in the Federal Register.
Commenter: Anonymous #1	
39	STOP ENVIRONMENTAL ACTVIST from Damaging pipeline infrastructure NOT GOOD FOR AMERICA, U.S. Representative Kristi Noem OCT 23 2017 urged the U.S. Department of Justice to evaluate the security of America's pipeline infrastructure. A Letter Signed by Noem and more than 80 MEMEBERS of CONGRESS, the letter highlights recent attempts to disrupt the transmission of oil and natural gas through pipelines. In some instances, individuals have used blow torches to burn holes in pipelines or promoted violence against oil and gas company employees. Noem is seeking more information from the Department on any policy changes needed to better secure this critical infrastructure. "When an individual burns a hole through a pipeline currently in operation, there is a high probability this could ignite the contents, killing not only the perpetrator but other innocent victims," wrote Noem in the letter. "We realize the Department of Justice faces unique challenges when confronting these crimes... But maintaining safe and reliable energy infrastructure is a matter of national security." Multiple media sources have reported recent attempts to disrupt the transmission of oil and natural gas through interstate and international pipeline infrastructure. In some instances, individuals have used blow torches to burn holes in pipelines or promoted violence against oil and gas company employees. In April, a newspaper in Colorado went as far as publishing a letter to the editor that stated, "If the oil and gas industry puts fracking wells in our neighborhoods, threatening our lives and our children's lives, then don't we have a moral responsibility to blow up wells and eliminate fracking and workers?" While we are strong advocates for the First Amendment, violence toward individuals and destruction of property are both illegal and potentially fatal. Damaging pipeline infrastructure poses multiple risks to humans and the environment. When an individual burns a hole through a pipeline currently in operation, there is a high probability this could ignite the contents, killing not only the perpetrator but other innocent victims. It also has the potential to cause property and environmental damage, as well as disrupt services to communities and consumers. Recent incidents of individuals attempting to shut down lines by turning valves at pump stations illustrate the danger. Operation of pipeline facilities by unqualified personnel could result in a rupture - the consequences of which would be devastating. Even though

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	some activists commit these acts of sabotage to raise awareness about climate change, they only create the serious risk of harm to the environment they claim to care about. We realize the Department of Justice (DOJ) faces unique challenges when confronting these crimes, including identifying suspects amidst the rural and remote infrastructure across the country. But maintaining safe and reliable energy infrastructure is a matter of national security. With this information in mind, we request that you respond to the following questions: 1. Do existing federal statutes, including the Patriot Act and Pipeline Safety Act, adequately arm the DOJ to prosecute criminal activity against energy infrastructure at the federal level? 2. Has the DOJ taken any prosecutorial or investigative action against those involved with the highly publicized October 11, 2016, attempted sabotage of four major crude oil pipelines in multiple states? If not, please explain the DOJ's reasoning for not pursuing this case. 3. Does the DOJ intend to pursue federal prosecutorial or investigative action of any individuals who knowingly and willfully damaged or destroyed interstate or international pipeline infrastructure? 4. Do the attacks against the nation's energy infrastructure, which pose a threat to human life, and appear to be intended to intimidate and coerce policy changes, fall within the DOJ's understanding of 18 U.S.C. Section 2331(5) Unnecessary permitting delays, costly regulatory requirements and uncertainty in the leasing process have discouraged oil and gas development on federal lands. For example, the Bureau of Land Management (BLM) issued Applications for Permits to Drill in an average of 257 days in 2016. By contrast, State agencies issued permits in just 30 days on average. America needs a reliable Gas and Oil Production, storage, PIPELINE transportation permitting process to increase American energy production. Remove government roadblocks and bureaucratic red tape that hinder and delay American energy production and American job creation. INVESTIGATE ENVIRONMENTAL ACTIVST. **EPA Response:** These comments are outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
Commenter: Anonymous #2	
40	Concerning the EPA's capacity ability to collect quantitative and qualitative information, I have a few comments about these processes. In addition, NPDES has regulatory capacities and principles that need to be emphasized, so in turn, the importance of the principles is emphasized and continuously considered in the future during data collection periods. First, I would like to highlight how NPDES demands the presence of a permit during discharge of pollutants, and how this process should be altered. Overall, NPDES is an effective segment of the permitting system approved by the EPA and/or the states. However, we need to consider the implications of certain chemicals and pollutants that are being dumped into fresh and salt water sources. This permitting system sometimes allows permits to be granted to entities who are reaching beyond their boundaries in the disposing of pollutants, and they seldom receive negative repercussions.

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	Analyzing of the laws and the regulations set forth by the EPA brings us back to the route of why they were created: to keep our environment safe, enjoyable, and free of harmful pollutants and carcinogens. For our most valuable resource on Earth, water, this is no different. Criteria for keeping this resource clean and available to the general public and private entities should be critical, thus maintaining the cleanliness and integrity of the water made available to every individual. Heightening the qualifications and restrictions in the permitting system within NPDES will ensure that those who are given permits to dispose their pollutants are of greater trustworthiness. This alternative seeks to restructure the foundation of the regulations and the criteria established regarding permits. Harmful substances and pollutant spills can be further prevented if a re-evaluation of NPDES and EPA regulations is considered, especially if the permit system is altered in a slight way to disallow individuals and groups from discharging pollutants into important water sources. Secondly, while another large task, water quality criteria should be more standardized across states to discontinue the present confusions about body of water and use classifications. Most states have different use classifications, and deservedly so. There is a plethora of biomes and environments within the confines of the United States, and this gives rise to the different classifications. Despite this, these classifications should be restructured. More specifically, NPDES should be restructured, so future more future confusion can be avoided. A system should be devised, one that establishes the criteria of certain defined and understood biomes and their relationship with water. Some states are more representative of a wetland biome, for example. States would be paired together, if the water ecosystems and biomes present are similar. Therefore, we wouldn't have 50 different ways to view water quality criteria and standards, but maybe 10-12 different and appropriate ways to classify the water based upon the ecosystems and biomes in these states. The question arises, what about states that have different biomes throughout, compared to those that are relatively consistent? Because of this question, the water criteria and standards would not be based upon state borders, but geographic borders created based upon the prevalence of a biome. Another example, California, is a large state that is the home to many diverse ecosystems. This state could have three different geographical borders, that cut through other states as well, dividing the majority of the biomes and pairing them in the same geographical border based upon their similarities. While confusing at first to create, these geographical borders would limit discrepancy and confusion amongst water quality criteria and unify the meanings of use classifications. **EPA Response:** These comments are outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
Commenter: Anonymous #3	
41	Wind Turbines Kill 100,000 of bats a year, which Hurt FARMERS. Bats help reduced PESTICIDES on crops, and seed pollinate the forest which helps keep water clean. Loss of bats could lead to... agricultural losses ...estimated at 3.7 billion 53 billion per year...to farmers and crops not counting the forest. Taking billions from farmers and forest, for wind farms is a waste money and totally nonsense, and wind farms are not on demand energy, the work 18 to 30% of the time. waste.

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	EPA Response: These comments are outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].
Commenter: Anonymous #4	
42	TAX REFORM STOP THE REGULATIONS AND COST OF REGULATION INFORCEMENT, SAVE BILLIONS ...Regulatory dark matter, Federal Register is probably the most frequently cited measure of regulation's scope, which unintentionally highlights the abysmal condition of regulatory oversight and measurement. At the end of 2014, the page count stood at 78,978, the fifth-highest level in the Register's history. Both 2010 (81,405 pages) and 2011 (81,247 pages) were all-time record years. The 79,435 count in 2008 under George W. Bush holds the third-highest title. In keeping with the modern "pen-and-phone" ethos, of six all-time-high Federal Register page counts, five have occurred during the Obama administration. stressed accountability, noting that much law comes from agencies rather than elected lawmakers: while agencies issued 3,541 rules in 2014, Congress passed 129 laws that were signed by the president. it took 9.453 billion hours in 2013 to complete the paperwork requirements from 22 executive departments and six independent agencies. Looked at that way, 9.5 billion hours of paperwork equivalent of 13,488 full human lifetimes, not other directives, mandates, or restrictions involved in actually carrying out regulation. Compliance officers driven by complicated new laws, regulations, and fines. per-employee regulatory costs for firms of fewer than 50 workers can be 29% greater than those for larger firms. cost estimates of the regulatory enterprise range from few billion the Office of Management and Budget bothers to proclaim (recall from part 5 that OMB has presented costs for 157 rules since 2000), through the $2.028 trillion annually the National Association of Manufacturers (NAM) estimated in 2014 (Crain and Crain, 2014: 1), into the stratosphere according to an academic estimate of dozens of trillions in LOST GDP annually. 1994 regulatory costs at $647 billion in 1995 dollars (US GAO, 1995), which around $990 billion in 2013 dollars even assuming no new regulation in 20 years. (SBA), with various levels of critique and venom, have noted annual costs in the hundreds of billions, some well in excess of $1 trillion converted into today's dollars. NAM's 2012 total annual regulatory costs in the economy of $2.028 trillion. Each element of regulatory costs demands a dissertation for those affected but the largest components portrayed are legacy economic regulation, environmental regulation, and paperwork burdens. In the modern United States after Dodd-Frank and the Affordable Care Act the health services and financial components can be expected to expand. In any event, $1.88 trillion omits much: most regulations' costs are never tabulated and some entire classes of government intervention such as antitrust, government manipulation of money, credit, and interest rates, and restricted access to resources are ignored by officialdom. In both the 112th and 113th Congresses, the House passed the REINS Act (Regulations from the Executive in Need of Scrutiny, H.E. 367) to require an expedited congressional vote on all major or significant rules before they are effective. Congress needs to broaden the REINS objection to any controversial rule, whether or not tied to a cost estimate that deems it a major rule. Furthermore, in the era of regulatory dark matter, the requirement for congressional approval should extend further to guidance documents and other agency decrees. Congress should also explore allocating regulatory cost

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	authority among agencies in a "regulatory budget", while distinguishing between categories like economic, health/safety, and environmental regulations. A "budget" would create incentives promoting other supervisory mechanisms like central review, cost analysis, and sunsets, and inspire agencies to "compete" with one another in terms of lives they save or some other regulatory benefit rather than think within their own box. There were 72 laws passed by Congress and signed by the president in 2013 (US GPO, 1995-2014); agencies, implementing laws passed earlier issued 3,659 RULES AND REGULATIONS, 51 rules for every law. Legislatures rarely control spending, unaccountable bureaucracies, economic, environmental, and social interventions escalate. On occasions regulatory liberalization and is able to mobilize for reform, the inspiration is often smaller business burdens and job concerns. Regulatory Flexibility Act has directed federal agencies to assess their rules' effects on small businesses and describe regulatory actions under development. The 1996 Congressional Review Act (CRA) requires agencies to submit reports to Congress. Unfunded Mandates Reform Act of 1995 (P.L. 104-4) AND regulatory process is the post-New-Deal Administrative Procedure Act (APA) of 1946 (P.L. 79-404), **EPA Response:** These comments are outside the scope of the information contained in the Federal Register Notice [EPA–HQ–OLEM–2017–0444; FRL–9967–75–OLEM].