

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 1961

To protect surface water from contamination by chemical storage tanks, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the "Chemical Safety and
- 5 Drinking Water Protection Act of 2014".
- 6 **SEC. 2. PROTECTION OF SURFACE WATER FROM CONTAMI-**
- 7 **NATION BY CHEMICAL STORAGE TANKS.**
- 8 (a) IN GENERAL.—The Safe Drinking Water Act (42
- 9 U.S.C. 300f et seq.) is amended by adding at the end the
- 10 following:

1 **"PART G—PROTECTION OF SURFACE WATER**
2 **FROM CONTAMINATION BY CHEMICAL STOR-**
3 **AGE TANKS**

4 **"SEC. 1471. DEFINITIONS.**

5 "In this part:

6 "(1) **CHEMICAL.**—The term 'chemical' means a
7 chemical substance that is—

8 "(A) identified as a hazardous substance,
9 as defined in section 101(14) of the Com-
10 prehensive Environmental Response, Compensa-
11 tion, and Liability Act (42 U.S.C. 9601(14));

12 "(B) subject to emergency planning or re-
13 porting requirements of the Emergency Plan-
14 ning and Community Right-To-Know Act (42
15 U.S.C. 11001 et seq.); or

16 "(C) defined as a contaminant under sec-
17 tion 1401(6) of the Safe Drinking Water Act
18 (42 U.S.C. 300f(6)).

19 **"(2) COVERED CHEMICAL STORAGE TANK.**—

20 "(A) **IN GENERAL.**—The term 'covered
21 chemical storage tank' means an onshore, fixed,
22 above-ground bulk chemical storage container
23 (including any associated piping and appur-
24 tenances), or a combination of such storage
25 containers, from which a release of the chemical
26 from the tank or storage containers or combina-

1 tion of storage containers and tanks could pose
2 a risk of harm to a public water system.

3 “(B) EXCLUSIONS.—

4 “(i) IN GENERAL.—The term ‘covered
5 chemical storage tank’ does not include a
6 tank or container that is subject to a pro-
7 cedure, method, or other requirement pur-
8 suant to regulations promulgated under
9 section 311(j)(1)(C) of the Federal Water
10 Pollution Control Act (33 U.S.C.
11 1321(j)(1)(C)).

12 “(ii) ADDITIONAL EXCLUSIONS.—The
13 Administrator or State, as applicable, shall
14 consider and may adopt appropriate exclu-
15 sions—

16 “(I) based on applicable Federal
17 or State laws (including regulations)
18 that substantially meet the require-
19 ments and purposes of this Act; or

20 “(II) for covered chemical stor-
21 age tanks that the Administrator or
22 State, as applicable, determines would
23 not pose a risk of harm to a public
24 water system.

1 “(3) PROGRAM.—The term ‘program’ means a
2 chemical storage tank surface water protection pro-
3 gram established under section 1472.

4 “SEC. 1472. ESTABLISHMENT OF PROGRAMS.

5 “(a) IN GENERAL.—Not later than 2 years after the
6 date of enactment of this part, the Administrator or each
7 State exercising primary enforcement responsibility for
8 public water systems, as applicable, shall establish, di-
9 rectly or through delegation to any State agency the Gov-
10 ernor of the State determines is appropriate, a chemical
11 storage tank surface water protection program to provide
12 for the protection of public water systems from a release
13 of a chemical from a covered chemical storage tank.

14 “(b) PROGRAM REQUIREMENTS.—

15 “(1) IN GENERAL.—A program under sub-
16 section (a) shall provide for oversight and inspection
17 of each covered chemical storage tank in accordance
18 with the requirements described in paragraph (2) to
19 prevent the release of chemicals into surface water
20 supplies of public water systems, including a covered
21 chemical storage tank located in a source water area
22 identified under section 1453.

23 “(2) MINIMUM REQUIREMENTS.—At a min-
24 imum, the program shall include—

- 1 “(A) requirements for covered chemical
2 storage tanks, including—
- 3 “(i) appropriate standards of good de-
4 sign, construction, or maintenance;
- 5 “(ii) leak detection;
- 6 “(iii) spill and overflow prevention and
7 containment;
- 8 “(iv) inventory control for the purpose
9 of promptly determining the quantity of
10 chemicals released in the event of a spill;
- 11 “(v) an emergency response and com-
12 munication plan, including procedures for
13 immediately notifying, after discovery of a
14 chemical release, public water systems that
15 may be adversely impacted by the chemical
16 release, and other entities required by the
17 Emergency Planning and Community
18 Right-To-Know Act of 1986 (42 U.S.C.
19 11001 et seq.);
- 20 “(vi) an employee training and safety
21 plan;
- 22 “(vii) an inspection of the integrity of
23 covered chemical storage tanks, consistent
24 with appropriate standards;

1 “(viii) lifecycle maintenance, including
2 corrosion protection;

3 “(ix) notice to the Administrator and
4 the appropriate State agency of—

5 “(I) the existing information on
6 the potential toxicity of the stored
7 chemicals to public health and the en-
8 vironment that the Administrator or
9 State, as applicable, determines is rel-
10 evant to evaluate the risk of harm to
11 public water systems; and

12 “(II) safeguards or other pre-
13 cautions that can be taken to detect,
14 mitigate, or otherwise limit the ad-
15 verse effects of a release of the stored
16 chemicals; and

17 “(x) financial responsibility require-
18 ments, including proof of insurance, bond,
19 self-insurance, guarantee, or other similar
20 financial assurance instrument;

21 “(B) inspections of covered chemical stor-
22 age tanks, which shall occur—

23 “(i) for a covered chemical storage
24 tank listed under paragraph (3), annually

1 by a certified inspector on behalf of the
2 owner or operator of such tank;

3 “(ii) for a covered chemical storage
4 tank identified in a source water assess-
5 ment area under section 1453, not less fre-
6 quently than once every 3 years by the Ad-
7 ministrator or State, as applicable; and

8 “(iii) for any other covered chemical
9 storage tank, not less frequently than once
10 every 5 years; and

11 “(C) a comprehensive inventory of the cov-
12 ered chemical storage tanks in each State.

13 “(3) HIGH HAZARD COVERED CHEMICAL STOR-
14 AGE TANKS.—Not later than 2 years after the date
15 of enactment of this part, the Administrator or the
16 State, as applicable, shall develop a list of covered
17 chemical storage tanks from which a release of a
18 chemical from the tanks poses the greatest risk of
19 harm to public water systems in the State and the
20 greatest risk to public health.

21 “(c) INCORPORATION OF EXISTING STANDARDS.—In
22 establishing mandatory program requirements under sub-
23 section (b), the Administrator or a State, as applicable,
24 may, by reference, include appropriate—

1 “(1) requirements under State or Federal law,
2 including regulations, as in effect on the date on
3 which the program requirements are established; and

4 “(2) consensus standards.

5 “(d) NATIONAL PRIMARY DRINKING WATER REGU-
6 LATIONS.—For purposes of primary enforcement responsi-
7 bility, a program and any requirements under this part
8 shall be—

9 “(1) considered to be a part of the national pri-
10 mary drinking water regulations established under
11 section 1412; and

12 “(2) implemented and enforced in accordance
13 with this Act.

14 “(e) ADMINISTRATION.—A program shall be carried
15 out—

16 “(1) if the State exercises primary enforcement
17 responsibility for public water systems in that State
18 under this Act, by the State; or

19 “(2) by the Administrator if the State—

20 “(A) does not exercise primary enforce-
21 ment responsibility for public water systems in
22 that State under this Act; or

23 “(B)(i) exercises primary enforcement re-
24 sponsibility for public water systems in that
25 State; and

1 “(ii) expressly refrains from administering
2 and implementing a program under this part.

3 “(f) NOTIFICATION.—Not later than 2 years after the
4 date of enactment of this part, the State shall notify the
5 Administrator if the State—

6 “(1) exercises primary enforcement responsi-
7 bility for public water systems in that State under
8 this Act; and

9 “(2) refrains from establishing a program
10 under this part.

11 “(g) SEVERABILITY.—If a State does not implement
12 a program under this part, it shall not otherwise affect
13 the primary enforcement responsibility of the State under
14 this Act.

15 “(h) GUIDANCE.—The Administrator shall issue
16 guidance, subject to public notice and opportunity for
17 comment, and provide other technical assistance to States
18 carrying out programs and activities under this part.

19 **“SEC. 1473. CORRECTIVE ACTION ORDERS.**

20 “The Administrator under section 1472(e)(2) or the
21 State under section 1472(e)(1), as applicable, may issue
22 an order to the owner or operator of a covered chemical
23 storage tank to carry out this part.

1 **"SEC. 1474. RESPONSE COST RECOVERY.**

2 "If costs have been incurred by the Administrator or
3 the State, as applicable, for undertaking a response action
4 under this part relating to the release of a chemical, the
5 owner or operator of the covered chemical storage tank
6 shall be liable to the Administrator or the State for those
7 response action costs.

8 **"SEC. 1475. TRANSFER OF COVERED CHEMICAL STORAGE**
9 **TANKS.**

10 "(a) **IN GENERAL.**—Notwithstanding the inspection
11 schedule under section 1472(b)(2)(B), no person shall
12 transfer a covered chemical storage tank unless—

13 "(1) prior to the closing or completion of the
14 transfer, the transferor submits to the transferee the
15 results of a pretransfer inspection of the integrity of
16 the covered chemical storage tank, which shall be
17 conducted pursuant to any requirements set by the
18 Administrator under section 1472(e)(2) or the State
19 under section 1472(e)(1), as applicable; and

20 "(2) except as provided in subsection (e), the
21 transferor or the transferee agrees to take appro-
22 priate measures to address the results of the
23 pretransfer inspection prior to the date that is 1
24 year after the date on which the covered chemical
25 storage tank closes or transfer is complete.

1 “(b) QUALIFYING INSPECTIONS.—An inspection ear-
2 ried out not earlier than 1 year before the date on which
3 a covered chemical storage tank is transferred shall satisfy
4 the pretransfer inspection requirement described in sub-
5 section (a).

6 “(c) THIRD-PARTY INSPECTIONS.—An inspection
7 made by a qualified engineer on behalf of the owner or
8 operator of the tank shall satisfy the pretransfer inspec-
9 tion requirement described in subsection (a).

10 “(d) CALCULATION OF TIME PERIOD.—For a cov-
11 ered chemical storage tank subject to a pretransfer inspec-
12 tion under subsection (a)(1), the deadline for the next re-
13 quired inspection under section 1427(b)(2)(B) shall be
14 calculated from the date of the pretransfer inspection.

15 “(e) EXTENSION.—The Administrator or State, as
16 applicable, may extend the time period described in sub-
17 section (a)(2) for a reasonable time if the transferor or
18 transferee establishes, to the satisfaction of the Adminis-
19 trator or State, that the design and construction of the
20 appropriate measures taken under subsection (a)(2) can-
21 not reasonably be completed during the time period.

22 **“SEC. 1476. INFORMATION SHARING.**

23 “(a) INFORMATION FOR PUBLIC WATER SYSTEMS.—
24 Subject to subsection (c), the Administrator or State, as
25 applicable, shall make available to public water systems,

1 on request, information maintained by the Administrator
2 or State, as applicable, in accordance with section
3 1472(b)(2) relating to—

4 “(1) emergency response plans for covered
5 chemical storage tanks located within the same wa-
6 tershed as the public water system;

7 “(2) an inventory of each chemical held at the
8 covered chemical storage tanks described in para-
9 graph (1);

10 “(3) existing information on the potential tox-
11 icity of the stored chemicals to public health and the
12 environment that the Administrator or State, as ap-
13 plicable, determines is relevant to evaluate the risk
14 of harm to public water systems; and

15 “(4) safeguards or other precautions that can
16 be taken to detect, mitigate, or otherwise limit the
17 adverse effects of a release of the stored chemicals.

18 “(b) EMERGENCY RESPONSE PLANS.—

19 “(1) IN GENERAL.—A State or the Adminis-
20 trator, as applicable, shall submit a copy of each
21 emergency response plan submitted under section
22 1472(b)(2)(A) to—

23 “(A) the Administrator (or the State if the
24 Administrator is carrying out the program);
25 and

1 “(B) the Secretary of Homeland Security.

2 “(2) CONSISTENCY.—To the maximum extent
3 practicable, emergency response plans submitted
4 under section 1472(b)(2)(A) shall be integrated with
5 applicable area contingency plans under section
6 311(j)(4) of the Federal Water Pollution Control
7 Act (33 U.S.C. 1321(j)(4)).

8 “(c) INFORMATION.—

9 “(1) IN GENERAL.—The Administrator or a
10 State, as applicable, shall keep confidential informa-
11 tion reported to, obtained by, or otherwise submitted
12 to the Administrator or the State determines to be
13 national security sensitive or present a security risk
14 to a covered chemical storage tank.

15 “(2) EXCEPTIONS.—Paragraph (1) shall not—

16 “(A) apply to public health information;

17 “(B) apply to information required to be
18 disclosed under the Emergency Planning and
19 Community Right-To-Know Act of 1986 (42
20 U.S.C. 11001 et seq.) or any other requirement
21 under any law (including regulations); or

22 “(C) prevent the sharing of information
23 with the Administrator, the Secretary of Home-
24 land Security, a public water system, or a pub-
25 lic agency involved in emergency response.

1 “(3) EFFECT.—Nothing in this subsection af-
2 fects—

3 “(A) except as provided under paragraph
4 (2), any disclosure requirement or exceptions to
5 disclosure under any State law (including regu-
6 lations); or

7 “(B) any disclosure requirement or excep-
8 tions to disclosure under Federal law, including
9 section 552 of title 5, United States Code (com-
10 monly known as the ‘Freedom of Information
11 Act’).”.

12 (b) EMERGENCY POWERS.—Section 1431 of the Safe
13 Drinking Water Act (42 U.S.C. 300i) is amended—

14 (1) by redesignating subsection (b) as sub-
15 section (c); and

16 (2) by inserting after subsection (a) the fol-
17 lowing:

18 “(b) PETITIONS.—

19 “(1) IN GENERAL.—In any case in which the
20 Administrator is authorized to act under subsection
21 (a), the owner or operator of a public water system
22 may, but is not required—

23 “(A) to commence a civil action for appro-
24 priate equitable relief, including a restraining
25 order or permanent or temporary injunction, to

1 address any activity or facility that may present
2 an imminent and substantial endangerment to
3 the health of persons who are supplied by that
4 public water system; or

5 “(B) to petition the Administrator to issue
6 an order or commence a civil action under sub-
7 section (a).

8 “(2) RESPONSE.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), not later than 30 days after the date
11 on which the Administrator receives a petition
12 under paragraph (1), the Administrator shall
13 respond to the petition and initiate such action
14 as the Administrator determines to be appro-
15 priate.

16 “(B) SPECIAL RULE FOR EMERGENCIES.—
17 If the owner or operator of a public water sys-
18 tem submits the petition under paragraph (1)
19 in response to an emergency, the Administrator
20 shall respond not later than 72 hours after re-
21 ceipt of the petition.”.

22 (c) CONFORMING AMENDMENT.—Section 1414 of the
23 Safe Drinking Water Act (42 U.S.C. 300g-3) is amend-
24 ed—

25 (1) in subsections (a), (b), (e), (f), and (g)—

1 (A) by inserting after “public water sys-
2 tem” each place it appears “or a covered chem-
3 ical storage tank”; and

4 (B) by inserting after “public water sys-
5 tems” each place it appears “or a covered
6 chemical storage tank”; and

7 (2) in subsection (i)—

8 (A) by redesignating paragraphs (1)
9 through (3) as subparagraphs (A) through (C),
10 respectively, and indenting appropriately;

11 (B) by striking the heading designation
12 and all that follows through “means—” and in-
13 serting the following:

14 “(i) DEFINITIONS.—In this section:

15 “(1) APPLICABLE REQUIREMENT.—The term
16 ‘applicable requirement’ means—”;

17 (C) in paragraph (1)(A) (as so redesign-
18 nated)—

19 (i) by inserting a comma after
20 “1417”; and

21 (ii) by striking “or 1445” and insert-
22 ing “1445, or part G”; and

23 (D) by adding at the end the following:

- 1 “(2) COVERED CHEMICAL STORAGE TANK.—
- 2 The term ‘covered chemical storage tank’ has the
- 3 meaning given the term in section 1471.”.