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Time to upgrade drinking water protections

By Noah M. Sachs

One year ago today, residents of Charleston, West Virginia learned that their entire drinking water supply had become contaminated by MCHM, a toxic chemical used to wash coal. Ten thousand gallons of MCHM had spilled into the Elk River from a corroding, 76-year old storage tank located upstream of the city's drinking water intake pipes.Three hundred thousand citizens lost their water for over a week, and hundreds sought emergency care. Downtown Charleston became a ghost town, with hotels and businesses shuttered.

The Charleston chemical spill should have been a national wake-up call about toxic chemical threats to water supplies. Outside West Virginia, which enacted comprehensive drinking water protection legislation in April, no state has upgraded its standards for chemical storage tanks or drinking water protection. The gaping legal holes in federal environmental law remain unplugged. A year later, it seems, we're acting as if this is just water under the bridge.

Meanwhile, major risks to our nation's water supply continue. Industries routinely store large quantities of toxic chemicals – as much as 100 million gallons – right next to rivers that serve as drinking water sources, such as the Shenandoah, the Ohio, and the Mississippi. Barges also travel these source waters carrying hazardous chemicals and oil, and spills are common. According to Bloomberg, publicly-traded companies reported more than 3,000 chemical and oil spills in 2013 alone.

To protect the public, Congress should enact comprehensive standards governing chemical storage tank construction, maintenance, and inspections. Neither the Clean Water Act nor the Safe Drinking Water Act currently regulates land-based storage of chemicals near waterways. And while there are penalties on the books for chemical spills, there are essentially no federal standards aimed at prevention.

Congress ducked the real problem when it amended the Safe Drinking Water Act in 1996 and provided no regulatory tools to protect water supplies from upstream chemical spill risks. The amendment obligated states to *study* these upstream risks, but bowing to agricultural interests and the chemical industry, Congress did not require any steps to remedy them, leading to the patchwork of ineffective voluntary programs that we have today.

As a result of this regulatory vacuum, most local water suppliers are at the mercy of industrial plants upstream to voluntarily monitor their own chemical tanks, many of which were built decades ago.

In Charleston, it was a neighbor who reported the spill, and no one knows how long the tanks were leaking before the first report.

The water utility, West Virginia American Water, was caught off guard, unable to prevent the total contamination of its supply. It had long been aware of the tanks upstream, but like most large water utilities in the United States, it relies on a series of sand, gravel, and carbon filters that can't block major chemical contamination. The utility, like most in the U.S., has no alternative drinking water intake.

In the wake of the Charleston spill, it's clear that drinking water protection should be based on three principles:

First, protecting drinking water means we have to protect watersheds. Businesses that store large volumes of toxic chemicals near rivers are creating a risk to the public and should be subject to some public oversight.

Second, we need minimum standards for construction, inspection, and maintenance of chemical storage tanks. Set-back and secondary containment requirements should be imposed for tanks near source waters.

Third, tank owners should prepare public communication and spill response plans, in concert with state regulators. Prompt public notification, less than an hour after leak detection, is essential.

In many ways, anti-regulatory West Virginia is leading the nation on addressing chemical risks to water supplies. Its new legislation, passed unanimously, requires an annual inspection and inventory of every storage tank in the state, and the state has just issued draft rules on monitoring, secondary containment, and leak detection. Each tank owner will be required to implement a spill response plan.

In the absence of federal leadership, other states should follow West Virginia's lead and enact their own programs to address the threat of chemical spills.

In Washington, bipartisan legislation, the Chemical Safety and Drinking Water Protection Act, was introduced in 2014 by Sens. Manchin (D-W.Va.), Rockefeller (D-W.Va.), and Boxer (D-Calif.). The bill obligated states and the EPA to establish programs to protect surface waters from risks from chemical storage tanks. Congress needs to take this issue up again when it reconvenes this month, and make it a priority.

The Charleston spill is a stark reminder that the vulnerability of water systems cannot be addressed by imposing new requirements on water systems alone. We have to look upstream to the real source of the problem. Industries that store toxic chemicals near our waterways are putting millions of Americans at risk.

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