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# Worst-Case Spill Regulations/Clean Water Act: Natural Resources Defense Council Law Suit Alleging U.S. Environmental Protection Agency Failure to Undertake a Non-Discretionary Duty

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Three environmental organizations filed a Complaint for Declaratory and Injunctive Relief (“Complaint”) in the United States District Court for the Southern District of New York against the United States Environmental Protection Agency (“EPA”) alleging a failure to undertake a non-discretionary duty. See 1:19-cv-02516.

The environmental organizations filing the Complaint include:

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

NRDC alleges that EPA has violated a non-discretionary duty to issue worst-case spill regulations, therefore violating the Clean Water Act.

NRDC states that as part of the Oil Pollution Act of 1990 Congress amended the Clean Water Act to address what it describes as “the worst chemical spills at the most dangerous industrial facilities.” It further states Congress mandated that the:

President shall issue regulations which require an owner or operator of certain industrial facilities 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. . . (codified at 33 U.S.C. § 1321(j)(5)(A)(k)).

The statute describes a “worst-case discharge” as the “largest foreseeable discharge in adverse weather conditions,” including a discharge “resulting from fire or explosion.” The worst-case spill regulations are stated to encompass, among other facilities, any “onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.” The plans required by such regulations address issues such as training, equipment testing, drills, and response actions needed to prevent and mitigate worst-case spills, etc.

The regulations were required to be enacted no later than 24 months after the date of enactment of the Oil Pollution Act. EPA was delegated the responsibility to issue the regulations for non-transportation-related facilities.

NRDC alleges that EPA has failed to issue such regulations. The organizations seek a declaration that EPA has failed to perform its non-discretionary duty to promulgate the regulations along with an injunction setting what is described as an expeditious, enforceable schedule for the federal agency to initiate and complete a rulemaking.

A copy of the Complaint can be found [here](#).