

ISSUE BRIEF

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West Virginia Chemical Spill: Learn Lessons and Let States Lead

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On January 9, a leak in an above-ground storage facility spilled chemicals into the Elk River near Charleston, West Virginia, contaminating potable water affecting nine counties. But environmental pressure groups and big-government proponents are using the spill to serve their own agendas.

While the incident warrants investigation and thoughtful examination of the storage of chemicals, it does not warrant activist propaganda that diverts attention from determining what went wrong and how to better promote safety. Nor does the spill warrant immediate reactions such as overbearing federal regulations that do more harm than good.

Chemical Safety Issue, Not a Coal Issue. The chemical in question, MCHM, is used primarily for washing metallurgical coal. It is not used in energy production.¹ This has not stopped environmental organizations and anti-coal advocates from using the chemical spill as an opportunity to blame U.S. coal production.

Any push for alternative energy sources to replace coal-fired power plants is irrelevant. The incident in West Virginia is a chemical safety issue. If MCHM were a chemical produced for asphalt paving, there would be no labeling of the spill as a “roads issue.”

Chemicals should undoubtedly be treated with the care and attention they warrant, but they should also be recognized for playing a vitally important role in improving our standard of living. The more than 80,000 chemicals in the United States make life cleaner, healthier, more affordable, and more comfortable. Misplaced blame on the chemical’s purpose or function does nothing to increase safety. It is irresponsible to politicize the spill to promote an anti-coal agenda and shift attention from any real issues.

Private-Sector Responsibility. Businesses already have incentives to take the proper steps to mitigate risk, including preventing incidents such as this chemical leak. When they fail to meet the proper standards, they should be held liable. That is not to say that accidents will not occur from private-sector policing, but the fact that significant chemical storage accidents in the U.S. are rare suggests that there are not giant gaps in the federal and state regulatory system. A sensible approach is to deliberate thoughtfully on the facts as public officials, the private sector, and other relevant organizations collect pertinent information and allow the states to implement effective regulations, if necessary.

There will be lawsuits from private parties that the company will likely have to face, and possibly legal actions by the state. If Freedom Industries and/or any other parties are found liable, they—not the U.S. taxpayers or actual harmed parties—should be held responsible for the economic, environmental, and any other damages that they caused.

Any legal damages that Freedom Industries would have to pay if found liable may pale in comparison to the damage done to its reputation, which may be irreparable. Most people in the U.S. had like-

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ly never heard of Freedom Industries before the spill, but since the spill and subsequent water contamination, many will now view the company in a negative light because of this accident. The damage to the company could be so costly that it may cease to exist.

States, Not Washington, Should Adopt and Enforce Regulations. Congress should avoid hurried and thoughtless responses and resist efforts to impose new federal regulations without a clear, compelling assessment of what happened and what, if any, gaps exist in chemical storage regulations. States are fully capable of developing regulatory regimes that best meet their own unique needs.

There are likely more than enough chemical storage regulations on the state and federal books. Current regulations must be adequately enforced before new ones are piled on for the sake of political expediency. For instance, the leak was in violation of West Virginia's Department of Environmental Protection above-ground storage tank regulation that "requires that all above ground storage tanks have secondary containment that is appropriate considering the potential to contaminate groundwater."²

The chemical spill does not justify more regulations from Washington. Congress should recognize

that a federal, one-size-fits-all approach is unlikely to be the best solution. State and local regulators have the knowledge and the proper incentives to protect the environment while promoting economic growth. They understand site-specific challenges and can address concerns efficiently. Further, a federal approach could divert resources away from more pressing environmental issues for a state, such as protecting the public from more hazardous chemicals.

Sound Policy, Not Politics. The West Virginia chemical leak will motivate states to re-evaluate their respective chemical storage regulations and change them if necessary. Different regulations may be necessary depending on the proximity to a water source or a variety of other factors. Before any significant actions are taken on either the state or federal levels, policymakers should get the facts and make informed decisions based on sound policy and science, not political convenience.

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1. Brian Clark Howard, "What's the Chemical Behind West Virginia's River Spill?," *National Geographic*, January 10, 2014, <http://news.nationalgeographic.com/news/2014/01/140110-4-methylcyclohexane-methanol-chemical-spill-west-virginia-science/> (accessed January 23, 2014).
 2. West Virginia Department of Environmental Protection, Division of Water and Waste Management, Groundwater Program, "Aboveground Storage Tank Guidance Document," revised May 17, 2005, http://www.dep.wv.gov/wwe/programs/gw/documents/10260_above_ground_storage_tanks_guidance_document.pdf (accessed January 24, 2014).
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