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SR TEG approval - Amended explanations previously objected in public session by SR TEG

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Category

Environment

Question asked

Are oil/chemical spills to be reported under DR E2-4 paragraph 28 or elsewhere?

ESRS reference

Disclosure Requirement E2-4 paragraph 28; ESRS E4 Disclosure requirements IRO-1 paragraph AR 9 (b) i; ESRS S1 Disclosure Requirement SBM-3 paragraph 14 (b); ESRS S2 Disclosure Requirement SBM-3 paragraph 11 (c); ESRS S3 Disclosure Requirement SBM-3 paragraph 9 (b)

Key terms

Oil spill; chemical spill; pollution of air, water and soil; incident

Background

Disclosure Requirement E2-4 paragraph 28 requires undertaking to disclose pollutants emitted to air, water and soil. As per E2-6 paragraph 41, the undertaking shall complement this information with “any relevant contextual information including a description of material incidents and deposits whereby pollution had negative impacts on the environment and/or is expected to have negative effects on the undertaking’s financial cash flows, financial position and financial performance with short-, medium- and long-term time horizons”.

Disclosure Requirement E2-4 paragraph AR25 explicitly indicates Best Available Techniques Reference Documents (BREFs) as a reference source for disclosing pollution-related information. It states: “Where the undertaking’s activities are subject to Directive 2010/75/EU [...] on industrial emissions (IED) and relevant Best Available Techniques Reference Documents (BREFs), [...], the undertaking may disclose [...]: (a) a list of installations operated by the undertaking that fall under the IED and EU- BAT Conclusions; (b) a list of any non-compliance incidents or enforcement [...]; (c) the actual performance, as specified in the EU-BAT conclusions for industrial installations, and comparison of the undertaking’s environmental performance against “emission levels associated with the best available techniques” the (BAT-AEL) as described in EU-BAT conclusions; (d) the actual performance of the undertaking against “environmental performance levels associated with the best available techniques” (BAT-AEPLs) [...]; and (e) a list of any compliance schedules or derogations granted by competent authorities [...] that are associated with the implementation of BAT-AELs”.

The Best Available Techniques (BAT) Reference Document for the Refining of Mineral Oil and Gas provides further information on the techniques for the “Prevention of spillages and leaks”, including of “oil spill debris”, in “refining of mineral oil and gas” activities. In particular, it identifies the pollutants contaminating water through spillages and leakages, which are accidental in nature. It is important, therefore, to account for pollutants as well as incidents when reporting. Within the ESRS, pollutants are to be reported under Disclosure Requirement E2-4 paragraph 28 (a), which requires undertakings to “disclose the amounts of [...] **each pollutant** listed in Annex II of Regulation (EC) No 166/2006 [...] **emitted to air, water and soil**, with the exception of emissions of GHGs which are disclosed in accordance with ESRS E1 Climate Change”. To this end, the European Pollutant Release and Transfer Register (E-PRTR) Regulation mentions “spilling” as a particular type of pollutant “release” (Art.2(10)) and lists several chemicals which may be prone to spillage as a single pure substance (ammonia, hydrochloric acid, toluene, vinyl chloride, etc) as well as several that may be spilled as part of complex chemical substances such as crude oil gasoline or diesel (e.g. benzene, naphthalene, PAHs, phenols, etc.) (Annex II "Pollutants"). It is to

Amended explanations

be noted that this Disclosure Requirement prompts undertakings to report all pollutants, irrespective of whether their facilities fall under E-PRTR scope or not.

Likewise, Disclosure Requirement E2-1 paragraph 15 (c) refers to the implementation of policies related to “incidents and emergency situations”. On this note, Article 5(2) of the E-PRTR specifies that operators shall make sure that their disclosures “include information on releases and transfers resulting as totals of all deliberate, accidental, routine and non-routine activities”.

~~E-PRTR is concerned with the reporting of amounts from spills and accidents as an annual pollutant emission load.~~ In addition to environmental consequences, oil spills also have social implications (e.g., historically, on local communities). This is indeed reflected in the ESRS as “incidents” and “spills” are also referred within the social standards: in ESRS S1 Disclosure Requirement SBM-3 paragraph 14 (b), ESRS S2 Disclosure Requirement SBM-3 paragraph 11 (c), and ESRS S3 Disclosure Requirement SBM-3 paragraph 9 (b). This indicates the further requirement to disclose on the social implications of spillages, in addition to the environmental ones in E2, in alignment with the principle that ESRS are mutually interacting with one another. Based on the same principle, biodiversity loss (ESRS E4) is directly impacted by pollution (ESRS E2 paragraph 7(c)). To this extent, it is relevant to also take into consideration the “**Spills of polluting effluents**” referred to as an example of policy transition risk, in ESRS E4 Disclosure requirements IRO-1 paragraph AR9(b)i, suggested to be considered when carrying out the materiality assessment.

Each of the afore-mentioned ESRS includes an “**Interaction with other ESRS**” section. Within this context, ESRS E2 paragraph 7(c) indicates “Pollution as a direct impact driver of biodiversity loss” (ESRS E4). Moreover, ESRS E2 paragraph 8 states that “Material negative impacts on affected communities from pollution-related impacts attributable to the undertaking are covered in ESRS S3 Affected communities”. In turn, ESRS S3 “shall be read in conjunction with [...] ESRS S1 Own workforce, ESRS S2 Workers in the value chain and ESRS S4 Consumers and end-users” (ESRS S3 paragraph 5).

ESRS 2 paragraph 61 further expands on how to navigate the reporting of information under mutual interaction: “The corresponding disclosures shall be located alongside disclosures prescribed by the relevant ESRS. When a single policy or same actions address several interconnected sustainability matters, the undertaking may disclose the required information in its reporting under one topical ESRS and cross reference to it in its reporting under other topical ESRS”.

Answer

Where spills can result in material pollution-related impacts, ESRS E2 Disclosure Requirement IRO-1 and ESRS E2-1, E2-2 and E2-3 provide the requirements to support the provision of disclosures about pollution-related materiality assessment and about policies, actions and targets for preventing pollution incidents.

As to metric disclosures on oil or chemical spills the undertaking shall disclose metrics under ESRS E2-4, by:

- 1) reporting on chemical releases to air, water and soil as prescribed by E2-4 referring to E-PRTR (European Pollutant Release and Transfer Register) Regulation, which mentions “spilling” as a particular type of pollutant “release” in Art.2(10)); and/or
- 2) developing entity-specific metrics (ESRS 1 paragraph 11) on spills following the requirements of ESRS 2 Metrics MDR-M.

Additionally, depending on the actual impacts of the spillage event originating the pollution release, undertakings shall report those impacts in accordance with relevant disclosures to be provided under ESRS E4 (biodiversity) Disclosure Requirement IRO-1, as well as Disclosure Requirement SBM-3 in ESRS S1 (own workforce), S2 (workers in the value chain) and S3 (affected communities), if material.

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Reporting the impacts of spills under the afore-mentioned several ESRS topics may require different metrics, for example: number, type, substance name and volumes of spills, for pollution; number of animals killed or area affected, for biodiversity; number of deaths or injuries, for own workforce; etc. Currently, there are no specific metrics concerning spills in the ESRS, nor are there requirements related to the spillage of complex substances that may trigger pollution through different types of pollutants. For this purpose, when an undertaking includes a metric developed on entity-specific basis, it shall follow the requirements of ESRS 2 Metrics MDR-M. The forthcoming sector standards may develop sector-specific disclosures related to spills.

In terms of presentation of the disclosures provided following the requirements of different topical standards, the undertaking can provide specific information within the scope of a certain topical standard (e.g. pollution), then cross-referencing it under other interconnected topical standards (e.g. E4, S1) when addressing a variety of interconnected sustainability matters (ESRS 2 paragraph 61).

Supporting material

[Best Available Techniques \(BAT\) Reference Document for the Refining of Mineral Oil and Gas.](#)

[Regulation \(EC\) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register.](#)