



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



BUREAU OF CLEAN WATER

Guidance on Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth Under Pennsylvania's Clean Streams Law (383-4200-003)

Oil and Gas Technical Advisory Board

April 25, 2022

Tom Wolf, Governor

Patrick McDonnell, Secretary

Purpose

Guidance on the notification requirements for unauthorized discharges of a substance that would cause or threaten pollution to waters of the Commonwealth, endanger downstream users, or damage property as required by 25 Pa. Code § 91.33 and 25 Pa. Code § 92a.41

Background

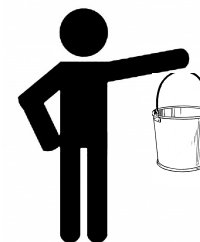
- An **initial draft** of this Technical Guidance Document (TGD) was published August 8, 2020 (50 Pa.B. 4091) with a 60-day public comment period. Ten comments were received.
- A **revised draft** was published October 16, 2021 (51 Pa.B. 6559) with a 60-day public comment period. Comments were received from 639 commenters.
 - 19 unique comments, including comments from PIOGA and the Marcellus Shale Coalition
 - 582 identical form letter comments
 - 38 variants of the form letter comment.

Unauthorized Discharges

- For purposes of this TGD, the term “**unauthorized discharge**” includes any unauthorized (unpermitted) discharging, bypassing, spilling, leaking, emitting, escaping, overflowing, leaching, or disposing of a substance into waters of this Commonwealth – or placing a substance so that it might discharge, flow, be washed, or fall into waters of this Commonwealth.
- Unauthorized discharges can occur as a result of a variety of activities and incidents, including, but not limited to transportation-related accidents, pipe or pipeline breaks, or equipment malfunctions.

Whom Does It Apply To?

'Responsible Party'



- Person in charge of substance
- Person owning or in possession of premises, facility, vehicle, or vessel from or on which substance is discharged or placed

Related Regulations

- **25 Pa. Code § 91.33**
 - Incidents causing or threatening pollution
- **25 Pa. Code § 92a.41(b)**
 - NPDES permitted facilities and activities



Incident Response

- **Ensure the safety of self and others**
- **Stop the discharge, if possible**
- **Contact emergency services (911)**
- **Call the applicable DEP regional number, or the statewide emergency response number at 800-541-2050 as soon as possible**
- **Impact to aquatic life: Pennsylvania Fish & Boat Commission 855-347-4545**

Notification Requirements

- **25 Pa. Code § 91.33**
 - Immediate reporting by phone
 - DEP, downstream users
- **25 Pa. Code § 92a.41(b)**
 - § 91.33 immediate reporting
 - “as soon as possible, but no later than four hours after the permittee becomes aware of the incident”

Changes from Second Draft to Final

- **Clarify what incidents and activities can result in unauthorized discharges, and which unauthorized discharges require immediate DEP notification under 25 Pa. Code § 91.33(a)**
- **Identify specific notification requirements and guidance that may apply to unauthorized discharges from certain types of industrial activities (e.g., storage tanks, oil and gas wells, solid waste facilities)**
- **Clarify how standards for surface waters and groundwater relate to notification requirements for unauthorized discharges**

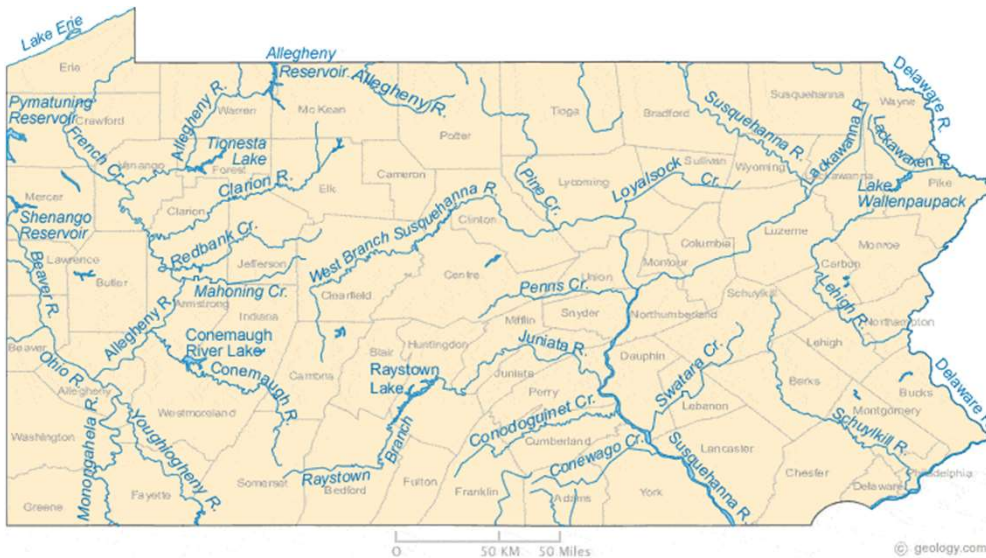
Changes from Second Draft to Final

- **Addition of factors to the example risk characterization framework, as recommended by commenters**
- **Revisions to several of the example scenarios and associated text to clarify the intent of the examples, and to clarify why each example scenario either requires, may require, or does not require immediate DEP notification**
- **Addition of a brief section regarding how DEP uses its enforcement discretion.**

Waters of the Commonwealth

Definition includes:

“... any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.”



Note:

DEP notification is not required for incidents where substances truly have no possibility of reaching a water of the Commonwealth (including the possibility of the substance flowing or being washed into waters of the Commonwealth) in a way that would cause or threaten pollution of waters of the Commonwealth, endanger downstream users, or damage property.

Be Advised

- **DEP strongly encourages notification be made to DEP for any unauthorized discharge where the risks of pollution to waters of the Commonwealth, property damage, or endangering downstream users are unknown or uncertain.**
- It is best to err on the side of caution and notify DEP when you are unsure of the impact an unauthorized discharge may have on waters of the Commonwealth.



Relevance to Oil and Gas

- The notification requirements of § 91.33 (to which this guidance pertain) are specifically included in both § 78.66(a) and § 78a.66(b)(1)(i).
- notification requirements in §§ 78.66(b) and (d) pertain to a “reportable release of brine” which § 78.1 defines as:
 - “Reportable release of brine—Spilling, leaking, emitting, discharging, escaping or disposing of one of the following:
 - (i) More than 5 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is equal or greater than 10,000 mg/l.
 - (ii) More than 15 gallons of brine within a 24-hour period on or into the ground at the well site where the total dissolved solids concentration of the brine is less than 10,000 mg/l.”

Relevance to Oil and Gas

- The notification requirements of § 91.33 (to which this guidance pertain) are specifically included in both § 78.66(a) and § 78a.66(b)(1)(i).
- § 78a.66(b)(1)(ii) requires an unconventional well operator or other responsible party to report to DEP any “spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by secondary containment.”

Relevance to Oil and Gas

- DEP believes this guidance document is entirely consistent with the DEP notification requirements §§ 78.66 and 78a.66.
- From the comment and response document for the rulemaking that added § 78.66 to Chapter 78:

“Section 78.66 was developed in response to an industry request regarding concern that the only safe way to assure compliance with Section 91.33 was to report every drip or leak, even if the amount was small and there was no potential for the substance to reach the waters of the Commonwealth. Section 78.66 was developed to address a de minimis amount of a brine spill that did not have to be reported... It should be noted that these amounts are thresholds for reporting releases of brine. Releases that threatened surface or ground water, or release of oil or other substances such as fracturing fluids or drilling muds are subject to the reporting requirements of Section 91.33.”

Relevance to Oil and Gas

- DEP believes this guidance document is entirely consistent with the DEP notification requirements §§ 78.66 and 78a.66.
- Under § 91.33(a), DEP must be immediately notified of any spill or other unauthorized discharge of a substance at an oil and gas well which would result in pollution or create a danger of pollution of waters of the Commonwealth, endanger downstream users, or damage property, even if the incident involves less than a “reportable release of brine” as defined in § 78.1 or, as provided in § 78a.66(b)(1)(ii), less than five gallons of a regulated substance over a 24-hour period that is not completely contained by secondary containment.

Next Steps

- DEP anticipates publishing this TGD as final this summer





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