



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



BUREAU OF CLEAN WATER

Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth

Revised Draft Proposed Rulemaking

Water Resources Advisory Committee

May 16, 2024

Josh Shapiro, Governor

Jessica Shirley, Acting Secretary

Existing Regulations

25 Pa. Code § 91.33. Incidents causing or threatening pollution.

(a) If, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters—including sewers, drains, ditches or other channels of conveyance into the waters—or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

Statutory Basis

- Notification requirements for unauthorized discharges to waters of the Commonwealth are an important part of DEP's Clean Water Program implementing the Commonwealth's Clean Streams Law

Statutory Basis – Clean Streams Law

- Section 401. Prohibition Against Other Pollutions.--It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein defined. Any such discharge is hereby declared to be a nuisance.

Statutory Basis – Clean Streams Law

- “Waters of the Commonwealth” defined broadly to include “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.”

Statutory Basis – Clean Streams Law

- "Pollution" shall be construed to mean contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters. **The department shall determine when a discharge constitutes pollution, as herein defined, and shall establish standards whereby and wherefrom it can be ascertained and determined whether any such discharge does or does not constitute pollution as herein defined.**

Context within DEP's Clean Water Program

- For **authorized/permitted discharges** (such as discharges with NPDES permit coverage), the location and characteristics of the discharge are known prior to the discharge.
- Permit terms and conditions (such as effluent limits) are designed to ensure that the discharge will not cause or contribute to pollution.

▶ Context within DEP's Clean Water Program

- For **unauthorized discharges** (such as spills), the location and characteristics of the discharge are **not** known prior to the discharge.
- Many site-specific and situation-specific interacting factors affect the risk that any spill or other unauthorized discharge will result pollution.
- For unauthorized discharges, the way it is ascertained if a discharge constitutes pollution is by the responsible party notifying DEP of the discharge, then DEP investigating and assessing the incident to determine if the discharge did or did not constitute pollution.

Context within DEP's Clean Water Program

- In this respect, the notification requirements in Chapter 91 ensure DEP receives the information needed to meet its statutory obligation in the Clean Streams Law to determine when a particular unauthorized discharge constitutes pollution by assessing the effects of the discharge against the relevant standards.
- However, determining if a pollution incident has occurred is a longer-term process that may occur over the course of several days or weeks following an incident. A primary purpose of the immediate notification requirements in 25 Pa. Code 91.33(a) is to ensure DEP receives information needed to assess if and what kind of emergency response needs to be mobilized to prevent pollution and property damage and to protect public health and safety.

▶ Context within DEP's Clean Water Program

- DEP typically receives notification about unauthorized discharges through the Department's regional or statewide emergency contact phone lines or through the Department's online [Environmental Complaints](#) tool.
- Based on information provided in these notifications, staff in DEP's regional and district offices determine what immediate emergency response actions may be needed.
- In most years, DEP's Clean Water Program receives several hundred such notifications or complaints. The most common notifications/complaints are related to discharges of sewage, but these notifications/complaints often involve fish kills, oily sheens in waterways, release of materials resulting from traffic accidents, and many other incidents.

Goals of this Rulemaking

- Making notification requirements for unauthorized discharges to waters of the Commonwealth as straightforward for the public, the regulated community, and DEP to understand and apply as consistently as possible across the Commonwealth while also enabling DEP to meet its constitutional and statutory duty to protect the waters of the Commonwealth from pollution.
- DEP intends this rulemaking to provide the public, the regulated community, and DEP staff increased clarity and a basis for consistency as to which unauthorized discharges require DEP notification and which do not.
- This rulemaking would not expand the set of unauthorized discharge incidents that require immediate DEP notification.

Draft Proposed Amendments

- Let's review the draft proposed regulatory language.

▶ Examples – Notification *Not Required*

- Minor spill of motor oil onto the ground surface where the contaminated soil can be immediately removed and there is no possibility of the substance reaching waters of the Commonwealth, including groundwater, surface waters, or storm sewers
- Release of materials from a facility that are collected by appropriate secondary containment and there is no possibility of the substance reaching waters of the Commonwealth

▶ Examples – Notification *May Be Required*

- Spill of non-liquid materials into waters of the Commonwealth. Examples of such incidents can include spills of soybeans, gravel, or plastic pellets into a stream.
- An accident involving a truck hauling food processing residual (FPR) waste that results in 6,000 gallons of FPR waste being spilled on the roadway and flowing into an adjacent vegetated field.

Examples – Notification *Required*

- Sanitary sewer overflows that reach waters of the Commonwealth.
- A homeowner's heating oil tank is damaged or malfunctions, drains to a sump pump, which discharges the home heating oil to a water of the Commonwealth.
- A discharge of an unknown amount of styrene to a stream that results in a fish kill.

The TGD

- The Department intends to revisit the technical guidance document (TGD) on this topic once the rulemaking is finalized.
- The Department intends to include updated practical examples of when reporting may or may not be required in the updated TGD.

Request for support from WRAC

- The Department requests the committee's support for this revised draft proposed rulemaking.



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