



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



BUREAU OF CLEAN WATER

Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth Draft Proposed Rulemaking

Public Water System Technical Assistance Center Board
October 26, 2023

Josh Shapiro, Governor

Richard Negrin, 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 in 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 factors.
- 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*

- During excavation activities, a homeowner's water service line is cracked and the water discharged from the broken line is contained on the homeowner's property and doesn't reach any storm drains or surface waters.

▶ Examples – Notification *May Be Required*

- A potable water line break that runs across a long vegetated area before reaching the nearest surface water.
- Discharges of other chlorinated water, such as from a swimming pool or spa, may require immediate notification to DEP if the discharge is not dechlorinated and appropriately managed. Further information can be found in DEP's fact sheet Management of Swimming Pool, Hot Tub, and Spa Water Discharges (3800-FS-DEP4251).

Examples – *Notification Required*

- High-volume discharge of hyper-chlorinated potable water following a water main repair.

The TGD

- The Department will likely be re-revising the associated technical guidance document (TGD) as this rulemaking moves through the rulemaking process.

Request for support from PWS TAC Board

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



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