

EXECUTIVE SUMMARY

Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth 25 Pa. Code Chapter 91

This proposed rulemaking consists of changes to Chapter 91 (relating to general provisions), specifically amendments to § 91.33 (relating to incidents causing or threatening pollution).

Purpose and Summary of the Proposed Rulemaking

The purpose of this rulemaking is to provide additional clarity as to which unauthorized discharges require immediate Department of Environmental Protection (Department) notification while also enabling the Department to meet its statutory duty to protect the waters of this Commonwealth from pollution. The proposed rulemaking incorporates a federal list of reportable quantities for specific hazardous substances that if discharged in a quantity greater than or equal to those reportable quantities must be immediately reported to the Department. If the unauthorized discharge is less than the reportable quantities or involves substances not included on the federal list, the proposed rulemaking provides factors that a person responsible for an unauthorized discharge must consider and document to determine that Department notification is not required. However, under this proposed rulemaking, a responsible person may simply report an unauthorized discharge and avoid the requirement to consider and document those factors.

The Department intends this rulemaking to provide the public and Department staff increased clarity and a basis for consistency as to which unauthorized discharges require Department notification and which do not. This rulemaking would not change which unauthorized discharge incidents require immediate Department notification.

Affected Parties

This regulation applies to any person responsible for unauthorized discharges to waters of the Commonwealth. However, this rulemaking does not change which unauthorized discharge incidents require immediate DEP notification, so this rulemaking will not change who must immediately notify DEP of unauthorized discharges.

Outreach and Advisory Committees

Department staff delivered a presentation of the draft proposed regulation to the Water Resources Advisory Committee (WRAC) on September 21, 2023. At that initial presentation, WRAC members expressed concerns about the rulemaking. Following the initial presentation to WRAC, the Department made several revisions to the draft proposed regulation to address the members' concerns. Including revisions made following the initial presentation to WRAC, Department staff presented the draft proposed regulation to the Agricultural Advisory Board (AAB) on October 19, 2023. AAB members expressed general support for the draft proposed regulation. Department staff also presented the draft proposed regulation to the Public Water System Technical Assistance Center (PWS TAC) Board on October 26, 2023. The PWS TAC

Board also supported the draft proposed regulation moving forward. Department staff presented the revised draft proposed regulation to WRAC on May 16, 2024, which WRAC supported moving forward to the Board.

Recommendation

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as proposed rulemaking with a 60-day public comment period.