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DEPARTMENT OF ENVIRONMENTAL PROTECTION



BUREAU OF CLEAN WATER

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

Environmental Quality Board Meeting
November 12, 2024

Josh Shapiro, Governor

Jessica Shirley, Acting Secretary

Statutory Authority

Pennsylvania Clean Streams Law (CSL)

- Unlawful for anyone to discharge any substance resulting in pollution of waters of the Commonwealth
- Broadly defines “waters of the Commonwealth” and “pollution”
- Requires DEP to determine when a discharge constitutes pollution



Background

- Therefore, DEP needs to be notified of unauthorized discharges that cause or threaten pollution to waters of the Commonwealth.
- This information is needed to assess if and what kind of emergency response must be mobilized to prevent pollution and property damage and to protect public health and safety.



Background

- For authorized/permitted discharges (such as discharges from wastewater treatment plants 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.



Background

- 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 factors affect the risk that a spill or unauthorized discharge will result in pollution.



Background

Section 91.33 requires the person responsible for an unauthorized discharge to immediately notify DEP if the discharge results in pollution, creates a danger of pollution of the waters, or would damage property.



Purpose of this Rulemaking

- This proposed rulemaking would provide additional clarity and consistency as to which unauthorized discharges require immediate DEP notification.
- This rulemaking would not expand the set of unauthorized discharge incidents that require immediate DEP notification.



Proposed Rulemaking

- Add list of reportable substances and quantities, established under the Federal Clean Water Act, that require immediate DEP notification if discharged into waters of the Commonwealth
- Person responsible for an unauthorized discharge may determine that the discharge does not require immediate notification only after considering the factors listed in the proposed rulemaking and documenting the consideration of those factors



Factors to Consider

- Five categories of factors to consider to determine if an unauthorized discharge does not need immediate DEP notification:
 - Properties of the substance or substances involved
 - Location or locations involved
 - Weather conditions before, during and after the incident
 - Presence and implementation of adequate response plans, procedures or protocols
 - Duration of the accident or other activity or incident



Proposed Rulemaking

Person who decides not to immediately notify DEP must maintain that documentation to provide to DEP, upon request, along with a signed statement attesting to the document's accuracy.



Proposed Rulemaking

- Person responsible for an unauthorized discharge can satisfy the requirements under § 91.33 by simply notifying DEP of the unauthorized discharge without considering the factors established under this proposed rulemaking
- Clarify that if a person fails to immediately report an incident which caused or threatened pollution, endangered downstream users or caused damage to property as described in § 91.33(a), that person has violated § 91.33.



Who is affected

- Any person responsible for unauthorized discharges to waters of the Commonwealth
- Proposed regulation does not change which unauthorized discharges require immediate DEP notification
- Proposed regulation does not change who needs to immediately notify DEP of unauthorized discharges



Advisory Bodies

- Initial draft proposed regulation presented to the Water Resources Advisory Committee (WRAC) on September 21, 2023
 - WRAC members expressed concerns – DEP made several revisions to address them
- Revised draft proposed regulation presented to the Agricultural Advisory Board (AAB) on October 19, 2023
 - AAB members expressed general support for the draft proposed regulation



Advisory Bodies

- Revised draft proposed regulation presented to the Public Water System Technical Assistance Center Board on October 26, 2023
 - Supported moving forward to the EQB
- Presented revised draft proposed regulation to WRAC on May 16, 2024
 - Supported moving forward to the EQB



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.





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