

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>Independent Regulatory Review Commission</p> <p>March 20, 2025</p>
<p>(1) Agency Environmental Protection</p>		<p>IRRC Number: 3432</p>
<p>(2) Agency Number: 7 Identification Number: 587</p>		
<p>(3) PA Code Cite: 25 Pa. Code § 91.33</p>		
<p>(4) Short Title: Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Campbell, 717.783.8727, laurcampbe@pa.gov Secondary Contact: High Garst, 717.783.8727, argarst@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking is intended to provide clarity and consistency as to which unauthorized discharges of a substance require immediate Department notification, while enabling the Department to meet its statutory duty to protect the waters of the Commonwealth from pollution and without changing which incidents are currently reportable. The proposed regulation incorporates a federal list of reportable quantities for substances designated as hazardous by the United States Environmental Protection Agency (EPA) under the Clean Water Act (CWA) that, if discharged in a quantity greater than or equal to the reportable quantities on the federal list, will require immediate Department notification. If the unauthorized discharge is less than the reportable quantities or involves a substance not included on the federal list, the proposed rulemaking provides factors that must be evaluated and documented in order to determine that an unauthorized discharge does not require immediate Department notification. However, under this proposed rulemaking, a responsible person may simply report an unauthorized discharge and avoid the requirement to evaluate and document the provided factors.</p>		

(8) State the statutory authority for the regulation. Include specific statutory citation.

This proposed rulemaking is authorized under sections 5(b)(1) and 402 of The Clean Streams Law (CSL) (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Environmental Quality Board (Board) to develop and adopt rules and regulations to implement the CSL (35 P.S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929, (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The proposed regulation is not required by federal or state law.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Department's existing regulation at § 91.33 requires immediate Department notification of certain unauthorized discharges to waters of the Commonwealth. These notification requirements for unauthorized discharges are an important part of the Department's implementation of the CSL's prohibition against pollution of the waters of the Commonwealth. More specifically, these notification requirements are a key part of the Department's implementation of section 401 of the CSL (35 P.S. § 691.401), which makes it unlawful for anyone to discharge any substance resulting in pollution of waters of the Commonwealth.

For authorized or permitted discharges, such as a discharge with a National Pollutant Discharge Elimination System (NPDES) permit, the location and characteristics of the discharge are known prior to the discharge occurring, which allows permit terms and conditions (such as effluent limits) to be developed, monitored, and enforced to ensure that the discharge will not cause or contribute to pollution of waters of the Commonwealth. For unauthorized discharges (such as spills), the location and characteristics of the discharge are not known prior to the discharge occurring, and many site-specific and situation-specific factors affect the risk that an unauthorized discharge will result in pollution of waters of the Commonwealth.

The immediate notification requirements of § 91.33 serve to ensure that the Department 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.

The Department 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 the Department's regional and district offices determine what immediate emergency response actions may be needed. The Department's Clean Water Program receives several hundred notifications or complaints each year. The most common notifications or complaints are related to discharges of sewage, but these notifications or complaints often involve fish kills, oily sheens in waterways, releases of materials resulting from traffic accidents, and many other incidents.

To provide more clarity, this proposed rulemaking specifies that immediate Department notification is required for an unauthorized discharge involving a substance in a quantity greater than or equal to the

reportable quantity listed in 40 CFR 117.3. This federal regulation lists reportable quantities for substances designated as hazardous by EPA under section 311(b)(2)(A) of the CWA (33 U.S.C. § 1321(b)(2)(A)). This section of the CWA directs EPA to develop regulations designating substances which, when discharged, “present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches” as hazardous substances. Section 311(b)(4) of the CWA then directs quantities of these hazardous substances, which may be harmful to public health or the welfare of the environment, to be determined by regulation (33 U.S.C. § 1321(b)(4)). Because the list at 40 CFR 117.3 was developed for this purpose, it is appropriate to regard such a discharge as creating a danger of pollution to waters of the Commonwealth. While the reportable quantities listed at 40 CFR 117.3 are not exhaustive of all possible substances that may cause or threaten pollution to waters of the Commonwealth, the quantities listed in those federal regulations are large enough that an unauthorized discharge involving those quantities of those substances would cause or threaten pollution of waters of the Commonwealth, making it appropriate to use for this purpose.

For substances that are in a quantity less than the reportable quantity listed in 40 CFR 117.3 or for substances that are not on the list, the proposed regulation establishes factors that a person responsible for an unauthorized discharge must evaluate and document in order to self-determine that an unauthorized discharge does not require immediate Department notification. This provides flexibility for persons with the capability to assess these factors quickly and determine on their own if notification to the Department is required. However, under this proposed rulemaking, a responsible person may simply report an unauthorized discharge and avoid the requirement to evaluate and document factors.

This proposed rulemaking benefits responsible persons by providing clarity on what spills of specific substances and quantities need to be reported by including the federal list of hazardous substances, and factors to be used to evaluate and document when an unauthorized discharge does not need to be immediately reported to the Department.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. The proposed regulation is not more stringent than federal standards, as there is no applicable federal standard.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania’s ability to compete with other states?

Spill regulations vary widely from state to state. For example Virginia’s reporting regulations are very similar to Pennsylvania’s and require prompt notification (but no later than 24 hours) for the discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into state waters or a discharge that may reasonably be expected to reach state water. New York’s regulations breakdown specific reporting requirements for sewage, hazardous waste and petroleum, and substances have reporting thresholds dependent on substance discharged. Both approaches described above are derived from the state laws of those respective states. Pennsylvania’s regulation is based on the Department’s responsibility to implement Pennsylvania’s Clean Streams Law. This regulation is not expected to affect Pennsylvania’s ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Section 91.33 is referenced in other regulations at 25 Pa. Code §§ 78a.66, 78.66, 83.312, 83.351, and 92a.41. Sections 78a.66, 78.66, and 92a.41. require reporting when there is pollution or threatened pollution in accordance with § 91.33. Because this rulemaking does not change what is pollution or threatened pollution, this rulemaking will not affect these other regulatory programs. Sections 83.312 and 83.351 establish that enough information must be contained in site-specific emergency response plans and site-specific contingency plans respectively, in order to comply with the notification requirements in § 91.33. Because these sections cross reference § 91.33 only in the context of plan requirements, these sections will not be directly impacted by this proposed regulatory amendment.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

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.

The Department is coordinating with the Small Business Ombudsman to ensure the small business community will be notified of their opportunity to submit comments on this proposed regulation during the 60-day public comment period following publication in the *Pennsylvania Bulletin*.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This regulation applies to any person responsible for unauthorized discharges to waters of the Commonwealth. Because unauthorized discharges are generally unanticipated (such as spills), the types and number of persons and entities that may be affected by the regulation are not readily identifiable. However, this rulemaking does not change which unauthorized discharge incidents require immediate Department notification, so this rulemaking would not change who already needs to comply with the unauthorized discharge notification requirement.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

See the response to question #15.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This rulemaking does not change which unauthorized discharges need to be reported and the Department does not expect the rulemaking to have any measurable financial, economic and social impact.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This regulation is intended to reduce uncertainty over which incidents must be immediately reported to the Department by providing a list of substances that require notification at specific quantities and factors that a person responsible for an unauthorized discharge must evaluate and document in order to self-determine that an unauthorized discharge does not require immediate Department notification. The Department does not expect this regulation to result in any measurable costs or adverse effects.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department does not expect the regulated community to incur any measurable expense or savings in order to comply with this requirement. No legal, accounting or consulting procedures are required.

This proposed regulation establishes that responsible persons can meet the requirements of § 91.33 by simply notifying the Department of an unauthorized discharge without consideration of the factors established in this proposed regulation. While responsible persons may choose to self-determine that an unauthorized discharge does not require immediate Department notification, they are not required to do so.

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department does not expect any local governments to incur any measurable expense or savings in order to comply with this requirement. No legal, accounting or consulting procedures are required.

This proposed regulation establishes that responsible persons can meet the requirements of § 91.33 by simply notifying the Department of an unauthorized discharge without consideration of the factors established in this proposed regulation. While responsible persons may choose to self-determine that an unauthorized discharge does not require immediate Department notification, they are not required to do so.

(21) Provide a specific estimate of the costs and/or savings to the state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department does not expect the state government to incur any measurable expense or savings in order to comply with this requirement. No legal, accounting or consulting procedures are required.

This proposed regulation establishes that responsible persons can meet the requirements of § 91.33 by simply notifying the Department of an unauthorized discharge without consideration of the factors established in this proposed regulation. While responsible persons may choose to self-determine that an unauthorized discharge does not require immediate Department notification, they are not required to do so.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Subsections (a.3) and (a.4) of the proposed rulemaking provide for additional paperwork requirements if responsible persons choose to self-determine that immediate Department notification is not required. Such paperwork is necessary for the Department to be able to verify that decisions made by responsible persons to not notify the Department about certain unauthorized discharges were correct.

However, as provided in subsection (a.2) of the proposed regulation, responsible persons can avoid these additional paperwork requirements by simply notifying the Department of an unauthorized discharge instead of performing their own evaluation.

(22a) Are forms required for implementation of the regulation?

The Department has developed a form that can be used to document a responsible person's evaluation and determination that an unauthorized discharge does not need to be immediately reported to the Department. Documentation may be conducted on the form provided by the Department, but the use of this form is not required. This regulation is broadly applicable to many types of spills across the commonwealth. Any documentation which accurately reflects the evaluation of the factors required under subsection (a.3) and supports a determination that the activity or incident did not cause or threaten pollution to waters of the Commonwealth, will satisfy the documentation requirements of subsection (a.3).

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

No new forms are required to implement this regulation. However, the Department has developed the attached form that may be used to document a responsible person's evaluation and determination that an unauthorized discharge does not need to be immediately reported to the Department.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 2024-25	FY +1 2025-26	FY +2 2026-27	FY +3 2027-28	FY +4 2028-29	FY +5 2029-30
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	“	“	“	“	“	“
State Government	“	“	“	“	“	“
Total Savings	“	“	“	“	“	“
COSTS:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	“	“	“	“	“	“
State Government	“	“	“	“	“	“
Total Costs	“	“	“	“	“	“
REVENUE LOSSES:						
Regulated Community	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable	Not Measurable
Local Government	“	“	“	“	“	“
State Government	“	“	“	“	“	“
Total Revenue Losses	“	“	“	“	“	“

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 (2021-22)	FY-2 (2022-23)	FY-1 (2023-24)	Current FY (2024-25)
Environmental Program Management	\$34,160,000	\$35,739,000	\$39,714,000	\$42,510,000
Environmental Protection Operations	\$98,036,000	\$102,719,000	\$116,450,000	\$125,881,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.**
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**
- (c) A statement of probable effect on impacted small businesses.**
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

Since this rulemaking does not change which unauthorized discharge incidents require immediate Department notification, this rulemaking would not change who must immediately notify the Department of unauthorized discharges and would not add additional compliance costs to responsible persons, including small businesses. Subsections (a.3) and (a.4) of the proposed rulemaking provide for additional paperwork requirements if responsible persons choose to self-determine that immediate Department notification is not required. Such paperwork is necessary for the Department to be able to verify that decisions made by responsible persons to not notify the Department about certain unauthorized discharges were correct.

However, as provided in subsection (a.2) of the proposed rulemaking, responsible persons can avoid these additional paperwork requirements by simply notifying the Department of an unauthorized discharge instead of performing their own evaluation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions are included in this proposed rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department considered developing a state-specific list of reportable quantities but determined that such an approach would be administratively unfeasible as the 86,000 miles of waterways across the Commonwealth are incredibly diverse – a spill that may be catastrophic to a small headwater stream may be innocuous in a large river. Additionally, waterway flows can vary significantly throughout the year due to seasonal precipitation patterns, which can be exacerbated even further under drought conditions.

Furthermore, the amount of a spilled substance is not the only factor that affects whether a spill will result in pollution – the location of the spill and any dilution or transformation of spilled substances that occur between the spill site and waters of the Commonwealth also affect whether the spill will result in pollution. To account for every possible material that could be spilled into the waters of the Commonwealth and then determine a reportable quantity for each that would be protective of all the diverse waters of the Commonwealth under all possible flow conditions would be a nearly impossible task for the Department to undertake. This proposed rulemaking is the least burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;**
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;**
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;**
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and**
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.**

Since this rulemaking does not change which unauthorized discharge incidents require immediate Department notification, this rulemaking would not change who must immediately notify the Department of unauthorized discharges and would not add additional compliance costs to responsible persons, including small businesses. Subsections (a.3) and (a.4) of the proposed rulemaking provide for additional paperwork requirements if responsible persons choose to self-determine that immediate Department notification is not required. Such paperwork is necessary for the Department to be able to verify that decisions made by responsible persons to not notify the Department about certain unauthorized discharges were correct.

However, as provided in subsection (a.2) of the proposed rulemaking, responsible persons can avoid these additional paperwork requirements by simply notifying the Department of an unauthorized discharge instead of performing their own evaluation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

A. The length of the public comment period: 60 days

B. The date or dates on which any public meetings or hearings will be held: May 15, 2025

C. The expected date of delivery of the final-form regulation: Quarter 2, 2026

D. The expected effective date of the final-form regulation: Upon publication in *Pennsylvania Bulletin* as final-form rulemaking.

E. The expected date by which compliance with the final-form regulation will be required: Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

F. The expected date by which required permits, licenses or other approvals must be obtained: No permits, licenses or other approvals will be needed to implement this regulation.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board is not proposing to establish a sunset date for these proposed regulations because they provide additional clarity to existing regulations that are needed for the Department to carry out its statutory authority. Once final and implemented, the Department will continue to closely monitor these proposed regulations for their effectiveness and recommend updates to the Board as necessary.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF CLEAN WATER

UNAUTHORIZED DISCHARGE NOTIFICATION EVALUATION FORM

Discharge Information		
Incident start date:	Incident end date:	Start time of discharge: <input type="checkbox"/> Estimated <input type="checkbox"/> Actual
End time of discharge: <input type="checkbox"/> Estimated <input type="checkbox"/> Actual	Substances Released:	
Volume of discharge, gals: <input type="checkbox"/> Estimated <input type="checkbox"/> Measured; explain:		
Concentration of substance(s): (include units): <input type="checkbox"/> Estimated <input type="checkbox"/> Measured; explain:		
Material Safety Data Sheet (MSDS) Attached? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Discharge Location		
Address:	Municipality: County:	Proximity to surface water:
Did substance reach waters of the Commonwealth: <input type="checkbox"/> Yes <input type="checkbox"/> No	Name of Receiving Water/Stream:	
Duration of discharge to waters of the Commonwealth: <input type="checkbox"/> Estimated <input type="checkbox"/> Actual; explain:		
Quantity of substance discharged to waters of the Commonwealth: <input type="checkbox"/> Estimated <input type="checkbox"/> Actual; explain:		
Responsible person/party: Name, title, email address and phone number:		
Discharged Substance Assessment		
Evaluate any harmful effects of each substance individually and any harmful synergistic or cumulative effects of multiple substances to protected water uses, public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational or other legitimate beneficial uses of waters of the Commonwealth, or to livestock, wild animals, birds, fish or other aquatic life:		
Evaluate the substance's persistence in the environment, including the substance's ability to be transformed or degraded by biological, chemical or physical processes:		
Evaluate the mobility of the substance in soil and water:		

Location Assessment

Identify the waters of the Commonwealth (e.g., surface waters, stormwater conveyances, wetlands, groundwater) impacted by or in proximity to the discharge:

Describe the protected uses of the waters of the Commonwealth impacted by or in proximity to the discharge:

Describe the waters of the Commonwealth's ability to assimilate the substances without causing any harmful impacts to:

1.) Public health and safety

2.) Domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses of waterways of the Commonwealth

3.) Livestock, wild animals, birds, fish or other aquatic life:

Describe the land use, soils, and geology of the impacted area(s) and how those factors mitigate or contribute to the substance's impact on the environment:

Describe the presence and qualities of relevant infrastructure, such as spill containment systems and the effectiveness of these systems in containing spill:

Describe the weather conditions before, during and after the incident and how those conditions mitigate or contribute to the substance's impact on the environment.

Describe the presence and implementation of adequate response plans, procedures and protocols and the effectiveness of these systems in regards to spill:

After evaluating these factors, please provide a written determination in the following section on why the spill does not require immediate Department notification.

Determination that Discharge Does Not Require Immediate Department Notification

DRAFT

Name:	Date:
Signature:	Phone Number:
Title:	
Email:	
<p>I certify under penalty of law that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. See 18 Pa. C.S. § 4904 (relating to unsworn falsification).</p>	

Incident Reporting Contact Information
Speak to a representative - do not leave a message!
After hours, call the regional office or the statewide 24-Hour Emergency Numbers

Southeast Regional Office

2 East Main St.

Norristown, PA 19401-4915

Main Telephone: 484-250-5900

24-Hour Emergency: 484-250-5900

Counties: Bucks, Chester, Delaware,
Montgomery and Philadelphia

Northeast Regional Office

2 Public Square

Wilkes-Barre, PA 18701-1915

Main Telephone: 570-826-2511

24-Hour Emergency: 570-826-2511

Counties: Carbon, Lackawanna, Lehigh, Luzerne,
Monroe, Northampton, Pike, Schuylkill,
Susquehanna, Wayne and Wyoming

Southcentral Regional Office

909 Elmerton Ave.

Harrisburg, PA 17110-8200

Main Telephone: 717-705-4700

24-Hour Emergency: 800-541-2050

Counties: Adams, Bedford, Berks, Blair,
Cumberland, Dauphin, Franklin, Fulton,
Huntingdon, Juniata, Lancaster,
Lebanon, Mifflin, Perry and York

Northcentral Regional Office

208 W. Third St., Suite 101

Williamsport, PA 17701-6448

Main Telephone: 570-327-3636

24-Hour Emergency: 570-327-3636

Counties: Bradford, Cameron, Clearfield,
Centre, Clinton, Columbia, Lycoming,
Montour, Northumberland, Potter,
Snyder, Sullivan, Tioga and Union

Southwest Regional Office

400 Waterfront Drive

Pittsburgh, PA 15222-4745

Main Telephone: 412-442-4000

24-Hour Emergency: 412-442-4000

Counties: Allegheny, Beaver, Cambria, Fayette,
Greene, Somerset, Washington and
Westmoreland

Northwest Regional Office

230 Chestnut St.

Meadville, PA 16335-3481

Main Telephone: 814-332-6945

24-Hour Emergency: 800-541-2050

Counties: Armstrong, Butler, Clarion, Crawford,
Elk, Erie, Forest, Indiana, Jefferson,
Lawrence, McKean, Mercer, Venango
and Warren

DEP Statewide 24-Hour Emergency Response: **800-541-2050**

PA Fish and Boat Commission: 855-347-4545

May be required to leave a message after hours.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

Independent Regulatory
Review Commission

March 20, 2025

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: **Amy M. Elliott**
(Deputy Attorney General)

1/29/2025

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-587

DATE OF ADOPTION November 12, 2024

BY Jessica Shirley
TITLE JESSICA SHIRLEY
ACTING CHAIRPERSON

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY

Randi Nelson

11/25/2024

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel -Independent Agency) -
(Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth

25 Pa. Code Chapter 91

PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 91]
Notification Requirements for
Unauthorized Discharges to Waters of the Commonwealth

The Environmental Quality Board (Board) proposes to amend Chapter 91 (relating to general provisions). This proposed rulemaking would amend § 91.33 (relating to incidents causing or threatening pollution) to read as set forth in Annex A.

This proposed rulemaking is intended to provide clarity as to which unauthorized discharges require immediate notification to the Department of Environmental Protection (Department) while also enabling the Department to meet its statutory duty to protect the waters of the Commonwealth from pollution. This proposed rulemaking would incorporate a Federal list of reportable quantities of 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 not required to be reported under the Federal list, this proposed rulemaking would establish factors that must be evaluated and documented in order to determine that an unauthorized discharge does not require immediate Department notification. However, under this proposed rulemaking a responsible person may simply report an unauthorized discharge and avoid the requirement to evaluate and document factors. This proposed rulemaking would not change which unauthorized discharge incidents require immediate Department notification.

This proposed rulemaking was adopted by the Board at its meeting of November 12, 2024.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Victor Landis, Program Manager, Data Management Division, Bureau of Clean Water, 11th Floor, Rachel Carson State Office Building, P.O. Box 8774, 400 Market Street, Harrisburg, PA 17105-8774, (717) 772-5646; or Adam Duh, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 783-8261. Persons with a disability may use the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at www.pa.gov/agencies/dep.html (select "Public Participation," then "Environmental Quality Board," then navigate to the Board meeting of November 12, 2024).

C. *Statutory Authority*

This proposed rulemaking is authorized under sections 5(b)(1) and 402 of The Clean Streams Law (CSL) (35 P.S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and

adopt rules and regulations to implement the CSL (35 P.S. §§ 691.1—691.1001), and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department.

D. Background and Purpose

The Department's existing regulation at § 91.33 requires immediate Department notification of certain unauthorized discharges to waters of the Commonwealth. These notification requirements for unauthorized discharges are an important part of the Department's implementation of the CSL's prohibition against pollution of the waters of the Commonwealth. More specifically, these notification requirements are a key part of the Department's implementation of section 401 of the CSL (35 P.S. § 691.401), which makes it unlawful for anyone to discharge any substance resulting in pollution of waters of the Commonwealth.

For authorized or permitted discharges, such as a discharge with a National Pollutant Discharge Elimination System (NPDES) permit, the location and characteristics of the discharge are known prior to the discharge occurring, which allows permit terms and conditions (such as effluent limits) to be developed, monitored and enforced to ensure that the discharge will not cause or contribute to pollution of waters of the Commonwealth. For unauthorized discharges (such as spills), the location and characteristics of the discharge are not known prior to the discharge occurring, and many site-specific and situation-specific factors affect the risk that an unauthorized discharge will result in pollution of waters of the Commonwealth. A primary purpose of the immediate notification requirements in § 91.33(a) is to ensure that the Department 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.

The Department 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 the Department's regional and district offices determine what immediate emergency response actions may be needed. The Department's Clean Water Program typically receives several hundred notifications or complaints each year. The most common notifications or complaints are related to discharges of sewage, but these notifications or complaints often involve fish kills, oily sheens in waterways, release of materials resulting from traffic accidents and many other incidents.

The purpose of this rulemaking is to provide additional clarity as to which unauthorized discharges require immediate Department notification while also enabling the Department to meet its statutory duty to protect the waters of the Commonwealth from pollution. 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 immediate Department notification. While this rulemaking would identify specific substances in quantities that must be reported if discharged to waters of the Commonwealth, this rulemaking would not change which unauthorized discharge incidents require immediate Department notification. Spills involving these substances currently require immediate Department notification under the existing regulation at § 91.33 because they create a danger of pollution. Under the current regulation, the

responsible person determines whether an unauthorized discharge requires immediate notification to the Department and, if not, the responsible person has no further obligations.

This proposed rulemaking would require that a person responsible for an unauthorized discharge must either report the discharge or consider specific factors about the discharge and document that consideration. If the responsible person does not report the discharge, that person would be required to create and retain a written analysis of the factors determining that an unauthorized discharge does not cause or threaten pollution. To provide further clarity to the regulated community regarding which unauthorized discharges must be reported and which must be recorded, the Department proposes factors to be analyzed to determine whether adverse impacts will occur from the unauthorized discharge.

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. Department staff then presented the revised draft proposed regulation to the Agricultural Advisory Board (AAB) on October 19, 2023. AAB members expressed general support for the draft proposed regulation. On October 26, 2023, Department staff also presented the revised draft proposed regulation to the Public Water System Technical Assistance Center (PWS TAC) Board, which 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.

E. Summary of Proposed Rulemaking

This proposed rulemaking would add subsections (a.1)—(a.5) and (d) to provide additional clarity about which unauthorized discharges require immediate Department notification and procedures for determining that an unauthorized discharge need not be reported to the Department.

Proposed subsection (a.1) clarifies that immediate Department notification is required for an unauthorized discharge involving a substance in a quantity greater than or equal to the reportable quantity listed in 40 CFR 117.3 (relating to determination of reportable quantities) if the substance discharges into waters of the Commonwealth. The Federal regulation in 40 CFR 117.3 lists reportable quantities for substances designated as hazardous by the United States Environmental Protection Agency (EPA) under section 311(b)(2)(A) of the Clean Water Act (CWA) (33 U.S.C. § 1321(b)(2)(A)). This section of the CWA directs the EPA to develop regulations designating substances which, when discharged, “present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches” as hazardous substances. Section 311(b)(4) of the CWA then directs quantities of these hazardous substances, which may be harmful to public health or the welfare of the environment, to be determined by regulation. Because the list at 40 CFR 117.3 was developed for this purpose, it is appropriate to regard such a discharge as creating a danger of pollution to waters of the Commonwealth. While the reportable quantities listed at 40 CFR 117.3 are not exhaustive of all possible substances that may cause or threaten pollution to waters of the Commonwealth, the quantities listed in those Federal regulations are large enough that an

unauthorized discharge involving those quantities of those substances would likely cause or threaten pollution of waters of the Commonwealth, making it appropriate to use for this purpose. Again, this regulation does not change what already requires immediate Department notification under the current regulation. The substances in the quantities identified in the list at 40 CFR 117.3 would already require immediate Department notification under the existing regulation. The addition of subsection (a.1) is intended only to clarify that such substances in these quantities, which discharge into waters of the Commonwealth, must be reported. Further, as discussed below, subsection (a.3) is intended to help a responsible person determine if immediate Department notification is required under subsection (a). Subsection (a.3) is not applicable to subsection (a.1). If a substance is discharged into waters of the Commonwealth, and the substance is listed in 40 CFR 117.3 and is discharged in a quantity equal to or greater than the quantity identified in 40 CFR 117.3, immediate Department notification is required regardless of any analysis conducted under subsection (a.3).

Proposed subsection (a.2) provides that a person who immediately notifies the Department of an unauthorized discharge in accordance with subsections (a) and (a.1) has satisfied the notification requirements under § 91.33. In cases where it may not be clear if an unauthorized discharge may cause or threaten pollution, this provision provides clarity that the responsible person can satisfy any notification obligations under § 91.33 by immediately notifying the Department about the unauthorized discharge. Further, this subsection makes it clear that a person has no obligation to evaluate the factors under subsection (a.3) if that person chooses to simply report under subsection (a). Under proposed subsection (a.2), a person can therefore make a decision to simply report an incident rather than conduct an analysis under subsection (a.3).

Proposed subsection (a.3) provides that a responsible person may determine that an unauthorized discharge does not require immediate Department notification under subsection (a) if the person evaluates and documents a series of factors and determines that no adverse impacts will occur from the unauthorized discharge. If any single one of the following factors, or a combination of the factors, can adequately establish that there is no risk of the substance reaching waters of the Commonwealth, no further analysis of the other considerations is necessary to determine that immediate Department notification is not required. Documentation may be recorded on the form provided by the Department, but the use of this form is not required. This regulation is broadly applicable to many types of spills across the Commonwealth. Any documentation which accurately reflects the evaluation of the factors required under subsection (a.3) and supports a determination that the activity or incident did not cause or threaten pollution to waters of the Commonwealth, will satisfy the documentation requirements of subsection (a.3). This may be the case when a spill occurs into secondary containment or where a spill response plan is used to immediately capture all of a substance with low mobility. As discussed above, the analysis authorized under subsection (a.3) may only be used to determine whether immediate Department notification is required under subsection (a). If a substance is released to waters of the Commonwealth as contemplated in subsection (a.1), immediate Department notification is required, regardless of any analysis conducted under subsection (a.3). The factors detailed in this subsection are listed below with a brief description of how to evaluate each factor:

- Paragraph (1)(i): The properties of the substance or substances involved in the unauthorized discharge including any harmful effects of each substance individually and any harmful synergistic or cumulative effects of multiple substances to protected water uses, public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational or other legitimate beneficial uses of waters of the Commonwealth, or to livestock, wild animals, birds, fish or other aquatic life.

This factor considers the ability of the substance(s) to negatively affect fish or other aquatic life, aquatic habitat, public and private water supplies, industrial water users, livestock and wildlife water supplies and downstream recreational activities. When evaluating this factor, the responsible person must be familiar with the properties of the substances discharged. If the responsible person does not know whether the substance has any harmful effects, the Department should be notified. Material Safety Data Sheets (MSDS) can be effective tools to identify the harmful effects of a substance. The more harmful that a substance is, on its own or in combination with other substances, the more likely it is that a release of that substance may pose a threat of pollution and requires immediate Department notification. Substances discharged that result in floating materials, sheens, scum, produce color, tastes, odors or turbidity or settle to form deposits are more likely to produce harmful effects that pose a threat of pollution which would require immediate Department notification.

- Paragraph (1)(ii): Persistence in the environment, including the substance's ability to be transformed or degraded by biological, chemical or physical processes.

When evaluating this factor, the responsible person must be familiar with the substance(s) discharged and its persistence in the environment. If the responsible person is unfamiliar with these properties, the Department should be notified. MSDS can be an effective tool to identify the properties of a substance. The more environmentally persistent that a substance is, the more likely it is that the substance will ultimately reach a water of the Commonwealth, increasing the threat of pollution to waters of the Commonwealth which would require immediate Department notification.

- Paragraph (1)(iii): The mobility of the substance(s) in soil and water;

When evaluating this factor, the responsible person should consider the ability of the substance to leach through soils to waters of the Commonwealth (including groundwater). The more mobile that a substance is, the more likely that the substance will reach a water of the Commonwealth, potentially posing a threat of pollution and requiring immediate Department notification.

- Paragraph (1)(iv): The concentration and quantity of the substance(s);

When evaluating this factor, the responsible person must know how much of a substance was discharged and how concentrated the substance is. If the concentration and quantity of the substance(s) are unknown, there is no practical way to determine the potential impact of the substance and in most cases the Department should be notified. If concentration and quantity are known, the responsible person should consider these factors, in conjunction with the potential harmful effects of the substance, to determine if the substance causes or threatens pollution.

Generally, substances in higher concentrations and larger quantities are more likely to pose a threat of pollution which would require immediate Department notification.

- Paragraph (2)(i): The location or locations involved, including proximity to nearby waters of the Commonwealth including ground water and surface water;

When evaluating this factor, the responsible person should consider the distance of the spill to a water of the Commonwealth. The responsible person should consider how likely it is for substance or substances to reach waters of the Commonwealth. If it is likely that a substance could flow or discharge into nearby waters of the Commonwealth, then there may be a threat of pollution which would require immediate Department notification. If the responsible person is unsure of the location of the nearest water of the Commonwealth, immediate Department notification should be made. If it can be determined that the substance will not flow or discharge into waters of the Commonwealth, no reporting is necessary.

- Paragraph (2)(ii)(A): The protected uses of waters;

If a responsible person determines that any protected use of the water will be affected by the substance, immediate Department notification is required.

- Paragraph (2)(ii)(B): The ability of the waters to assimilate the substance or substances without causing or threatening any harmful effects;

When evaluating this factor, the responsible person will consider the water body's ability to assimilate or dilute concentrations and quantities of a potentially polluting substance to a level where there may be no harmful effects associated with the discharge.

- Paragraph (2)(iii): Land use, soils and geology;

When evaluating this factor, the responsible person should consider depth to groundwater, whether the area has karst geology, whether there are any sinkholes in proximity to the spill, and how the land use would affect the potential for the substance to threaten pollution. Spills onto the ground surface in areas of high groundwater levels, sinkholes and karst geology are much more likely to affect groundwater and threaten pollution, increasing the likelihood that immediate Department notification is required. Impervious land cover increases the likelihood of the substance to threaten pollution from the washing of the substance into waters of the Commonwealth.

- Paragraph (2)(iv): The presence and qualities of any relevant infrastructure (such as spill containment systems);

When evaluating this factor, the responsible person should consider if relevant infrastructure is effective in containing the spill and preventing any pollution. A release that is fully contained in a properly designed spill containment system would not require immediate Department notification. If relevant infrastructure does not operate as designed, the spill may require immediate Department notification.

- Paragraph (3): The weather conditions before, during and after the unauthorized discharge;

When evaluating this factor, the responsible person should consider precipitation and its ability to “flush” spilled substances into waters of the Commonwealth. A spill of a liquid or semiliquid substance that may not reach waters of the Commonwealth during dry weather would likely pose a greater threat of pollution to waters of the Commonwealth if precipitation occurs before clean-up is complete. Spills that occur on snow covered ground would pose a greater potential of pollution to waters of the Commonwealth if snow melt occurs before clean-up is complete. If weather conditions are determined to increase the impact of the incident, it is more likely that immediate Department notification is required.

- Paragraph (4): The presence and implementation of adequate response plans, procedures or protocols;

When evaluating this factor, the responsible person should consider whether a response plan or other protocols effectively contained the spill. If such plans and protocols are not implemented, it is more likely that the spill requires immediate Department notification. If such plans and protocols are implemented and are successful at preventing the spill from reaching waters of the Commonwealth, Department notification is not required.

- Paragraph (5): The duration of the accident or other activity or incident.

When evaluating this factor, the responsible person should consider how long the discharge has been occurring. The longer the discharge occurs the more likely it is that the substance will reach waters of the Commonwealth, increasing the threat of pollution and increasing the likelihood that immediate Department notification is required.

Proposed subsection (a.4) provides that if a responsible person claims that immediate Department notification was not required for an unauthorized discharge, that person shall, if requested by the Department, provide documentation of the evaluation of the factors in subsection (a.3) along with a signed statement attesting to the document’s accuracy. The Department anticipates requesting this documentation in situations where there is evidence of pollution or when the department receives a complaint from the public. This provision would provide the Department with the ability to verify that decisions made by responsible persons to not notify the Department about certain unauthorized discharges were correct. This proposed subsection is broadly applicable to any person responsible for an unauthorized release. The proposed provision would require the responsible person to maintain the documentation and signed statement for 5 years.

Proposed subsection (a.5) provides that a responsible person has violated § 91.33 if the person failed to immediately notify the Department of an unauthorized discharge that caused or threatened pollution, endangered downstream users or caused damage to property as described in subsection (a). This is so, even if the responsible person conducts an analysis under subsection (a.3).

Proposed subsection (d) provides clarification that any additional reporting requirements in 25 Pa. Code (relating to environmental protection) still apply. For example, §§ 78.66(b) and 78a.66(b)(1)(ii) (relating to reporting releases; and reporting and remediating spills and releases) both require that certain spills be reported to the Department without regard to § 91.33.

Proposed subsection (d) clarifies that an operator may not avoid these reporting requirements by determining that a discharge does not cause or threaten pollution under proposed subsection (a.3) because § 91.33 does not affect any additional reporting requirements.

F. Benefits, Costs and Compliance

Benefits

As previously noted, the notification requirements for unauthorized discharges are an important part of the Department's implementation of the CSL, including the CSL's prohibition on pollution of waters of the Commonwealth. Protecting water quality provides economic value to present and future generations in the form of a clean water supply for human consumption, wildlife, irrigation and industrial use; recreational opportunities such as fishing (also for consumption), water contact sports and boating; and aquatic life protection. This proposed rulemaking attempts to clarify the reporting requirements, in part, by incorporating 40 CFR 117.3 as a list of reportable quantities of specific substances. Unauthorized discharges to waters of the Commonwealth that exceed the reportable quantities in 40 CFR 117.3 must be immediately reported to the Department under the proposed regulation. If the unauthorized discharge is less than the reportable quantities or involves substances not included on the list, this proposed rulemaking establishes factors that a responsible person must evaluate and document in order to determine that an unauthorized discharge does not require immediate Department notification. This requirement to evaluate and document the listed factors also applies to discharges involving the substances and quantities identified in 40 CFR 117.3, but which did not discharge to waters of the Commonwealth, to determine if there is a potential for substances to subsequently reach waters of the Commonwealth. This list and factors together will provide clarity as to which unauthorized discharges require immediate Department notification.

Compliance costs

This regulation applies broadly to any person responsible for unauthorized discharges. This proposed rulemaking establishes factors that a person responsible for an unauthorized discharge must evaluate and document to determine that an unauthorized discharge does not require immediate Department notification. The Department does not expect responsible persons to incur any measurable expense in order to comply with this requirement. This proposed regulation also establishes that responsible persons can meet the requirements in § 91.33 by simply notifying the Department of an unauthorized discharge without evaluating the factors established in this proposed rulemaking.

Compliance assistance plan

Since this proposed rulemaking will not add additional compliance costs, no compliance assistance plan is needed. Once this proposed rulemaking is finalized, the Department plans to

publish updated guidance to provide further clarification on which unauthorized discharges require immediate Department notification.

Paperwork requirements

Proposed § 91.33(a.3) and (a.4) provide for additional paperwork requirements for responsible persons to determine that immediate Department notification is not required. This paperwork is necessary for the Department to be able to verify that decisions made by responsible persons to not notify the Department about certain unauthorized discharges were correct. However, as proposed in § 91.33(a.2), responsible persons can avoid these additional paperwork requirements by simply notifying the Department of an unauthorized discharge.

G. Pollution Prevention

The Pollution Prevention Act of 1990, 42 U.S.C. §§ 13101—13109, established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The notification requirements for unauthorized discharges are major pollution prevention tools because these requirements enable the Department to be able to rapidly respond to and minimize any adverse environmental or public health impacts from unauthorized discharges to waters of the Commonwealth.

This proposed rulemaking includes spill containment systems and spill response plans as factors to evaluate when determining if an unauthorized discharge needs to be reported. By including the use of these factors to weigh when determining if a spill is not reportable, the importance of these spill containment systems and robust spill response plans in the context of spill reporting is highlighted and persons conducting activities that may result in spills will be encouraged to implement these practices proactively, which will prevent pollution.

H. Sunset Review

The Board is not establishing a sunset date for these regulations since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor the regulation for effectiveness and recommend updates to the Board as necessary.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 20, 2025, the Department submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Environmental Resources and Energy Committee and the House Environmental and

Natural Resource Protection Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. Public Comments

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding this proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by June 4, 2025.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

Comments may also be submitted to the Board by mail or express mail. Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. Public Hearing

The Board will hold a virtual public hearing to accept comments on this proposed rulemaking. The hearing will be held at 1 pm on May 15, 2025.

Persons wishing to present testimony at a hearing must contact Casey Damicantonio for the Department and the Board, (717) 783-8727 or RA-EPEQB@pa.gov, by 5 p.m. on May 8, 2025, to sign up to present testimony. Language interpretation services are available upon request. Persons in need of language interpretation services must contact Casey Damicantonio by 5 p.m. on May 8, 2025.

Oral testimony is limited to 5 minutes for each witness. Organizations are limited to designating one witness to present testimony on their behalf at one hearing. Witnesses attending a virtual

hearing may provide testimony by means of telephone or Internet connection. Video demonstrations and screen sharing by witnesses will not be permitted.

Witnesses are requested to submit a written copy of their verbal testimony by e-mail to RegComments@pa.gov after providing testimony at the hearing.

Information on how to access a virtual public hearing will be available on the Board's webpage found through the Public Participation tab on the Department's website at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board"). Prior to a hearing, individuals are encouraged to visit the Board's webpage for the most current information for accessing the hearing.

Members of the public wishing to observe a virtual public hearing without providing testimony are also directed to access the Board's webpage.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 783-8727 or through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

JESSICA SHIRLEY,
Acting Chairperson

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

MANAGEMENT OF OTHER WASTES

§ 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.

(a.1) Notification to the Department of substances identified under subsection (a) shall include those substances in a quantity greater than or equal to the reportable quantity listed in 40 CFR 117.3 (relating to determination of reportable quantities) that discharge to waters of the Commonwealth. Immediate Department notification of such a discharge is required regardless of any analysis conducted under subsection (a.3).

(a.2) A person who immediately notifies the Department, in accordance with subsections (a) and (a.1), has satisfied the notification requirements under this section and is not required to conduct an evaluation under subsection (a.3).

(a.3) The responsible person identified in subsection (a) may determine that an accident or other activity or incident does not require immediate Department notification under subsection (a) if the person evaluates and documents the following factors and determines that a toxic substance or another substance does not cause or threaten pollution of the waters, endanger downstream users or cause damage to property as described in subsection (a):

(1) The properties of the substance or substances involved including:

(i) Any harmful effects of each substance individually and any harmful synergistic or cumulative effects of multiple substances to protected water uses, public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational or other legitimate beneficial uses of waters of the Commonwealth, or to livestock, wild animals, birds, fish or other aquatic life.

(ii) Persistence in the environment, including the substance's ability to be transformed or degraded by biological, chemical or physical processes.

(iii) The mobility of the substance in soil and water.

(iv) The concentration and quantity of the substance.

(2) The location or locations involved, including:

(i) Proximity to nearby waters of the Commonwealth, including groundwater and surface waters.

(ii) Characteristics of nearby waters of the Commonwealth including:

(A) The protected uses of the waters.

(B) The ability of the waters to assimilate the substance or substances without causing or threatening any of the harmful effects noted in subparagraph (1)(i).

(iii) Land use, soils and geology.

(iv) The presence and qualities of relevant infrastructure, such as spill containment systems.

(3) The weather conditions before, during and after the incident.

(4) The presence and implementation of adequate response plans, procedures or protocols.

(5) The duration of the accident or other activity or incident.

(a.4) If requested by the Department, the responsible person identified in subsection (a) who claims that the Department need not have been notified of an accident or other activity or incident under this section shall provide the documentation required in subsection (a.3) along with a signed statement attesting to the document's accuracy.

(a.5) The responsible person identified in subsection (a) has violated this section if that person failed to immediately notify the Department of an accident or other activity or incident which caused or threatened pollution, endangered downstream users or caused damage to property as described in subsection (a) regardless of any analysis conducted under subsection (a.3).

(b) In addition to the notices in subsection (a), a person shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition thereto, within 15 days from the incident, shall remove from the ground and from the affected waters of this Commonwealth to the extent required by this title the residual substances contained thereon or therein.

(c) Compliance with this section does not affect the civil or criminal liability to which the person or municipality may be subject as a result of an activity or incident under the act, 30 Pa.C.S. (relating to the Fish and Boat Code) or another statute, ordinance or regulation.

(d) This section does not affect any additional reporting requirements in this title.



March 20, 2025

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Proposed Rulemaking: Notification Requirements for
Unauthorized Discharges to Waters of the Commonwealth (#7-587)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of the Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth proposed rulemaking for review by the Independent Regulatory Review Commission (Commission). The Environmental Quality Board adopted this rulemaking on November 12, 2024. This proposal is scheduled for publication in the *Pennsylvania Bulletin* on April 5, 2025, with a 60-day public comment period ending on June 4, 2025. A virtual public hearing is scheduled for May 15, 2025.

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 proposed rulemaking does not change which unauthorized discharge incidents require immediate Department notification.

As set forth in the Regulatory Review Act, the Department will consider any comments and recommendations made by the Commission, as well as the House Environmental and Natural Resource Protection Committee, the Senate Environmental Resources and Energy Committee and the public, prior to final adoption of the enclosed rulemaking.

Mr. David Sumner

- 2 -

March 20, 2025

Please contact me by e-mail at laurcampbe@pa.gov or by telephone at 717.772.5830 if you have any questions or need additional information.

Sincerely,



Laura Campbell
Regulatory Coordinator

Enclosures

From: [Shupe, Hayley](#)
To: [Campbell, Laura](#); mthomas@pahousegop.com; [Franzese, Evan B.](#)
Cc: [Nezat, Taylor](#); [Garst, High](#); [Reiley, Robert A.](#); [Griffin, Laura](#)
Subject: Re: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)
Date: Thursday, March 20, 2025 9:20:22 AM
Attachments: [Outlook-0qqaxnxm.png](#)

RECEIVED

Independent Regulatory
Review Commission

Received, Thank you!

March 20, 2025



From: Campbell, Laura <laurcampbe@pa.gov>
Sent: Thursday, March 20, 2025 9:15 AM
To: mthomas@pahousegop.com <Mthomas@pahousegop.com>; Franzese, Evan B. <EFranzese@pahouse.net>
Cc: Shupe, Hayley <HShupe@pahouse.net>; Nezat, Taylor <tnezat@pa.gov>; Garst, High <argarst@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Griffin, Laura <laurgriffi@pa.gov>
Subject: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth proposed rulemaking (7-587) for review by the House Environmental and Natural Resource Protection Committee. The rulemaking documents are attached in a zip folder and the cover letters for Representative Vitali and Representative Rader are attached separately.

A copy of the transmittal sheet is attached for your records – the House and Senate Committee chairs are receiving the rulemaking electronically.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,

Laura

Laura Campbell | Regulatory Coordinator
Department of Environmental Protection | Policy Office

RECEIVED

Independent Regulatory
Review Commission

From: [Bulletin](#)
To: [Campbell, Laura](#); [A.J. Mendelsohn](#)
Cc: [Griffin, Laura](#); [Garst, High](#); [Reiley, Robert A.](#)
Subject: [External] Re: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)
Date: Thursday, March 20, 2025 10:32:56 AM

March 20, 2025

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Good morning Laura!

Thank you for submitting this proposed rulemaking. As previously established, this proposed rulemaking is scheduled for publication in the Bulletin on April 5.

Enjoy the remainder of your week!

Leah

From: Campbell, Laura <laurcampbe@pa.gov>
Sent: Thursday, March 20, 2025 10:29 AM
To: Bulletin <bulletin@palrb.us>; A.J. Mendelsohn <amendelsohn@palrb.us>
Cc: Griffin, Laura <laurgriffi@pa.gov>; Garst, High <argarst@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>
Subject: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth proposed rulemaking (7-587). The rulemaking documents are attached in a zip folder. This is the official filing of proposed rulemaking 7-587. Preamble and annex files were provided on March 10, 2025, for initial processing.

A copy of the transmittal sheet is attached for your records – the House and Senate Committee chairs are receiving the rulemaking electronically.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,

Laura

Laura Campbell | Regulatory Coordinator
Department of Environmental Protection | Policy Office
Rachel Carson State Office Building
400 Market Street | Harrisburg, PA 17101
Phone: 717.772.5830 | Fax: 717.783.8926
(she/her/hers) laurcampbe@pa.gov | www.dep.pa.gov

From: [Eyster, Emily](#)
To: [Campbell, Laura](#); mosenbach@pasen.gov
Cc: [ntroutman@pasen.gov](#); [Garst, High](#); [Nezat, Taylor](#); [Reiley, Robert A.](#); [Griffin, Laura](#)
Subject: Re: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)
Date: Thursday, March 20, 2025 10:21:51 AM

March 20, 2025

Received. Thanks Laura!

Emily Eyster
Legislative Director, Office of Senator Carolyn T. Comitta
Executive Director, Senate Environmental Resources and Energy Committee
Cell: (717) 756-4702
Phone: (717) 787-5709
www.pasenatorcomitta.com

From: Campbell, Laura <laurcampbe@pa.gov>
Sent: Thursday, March 20, 2025 9:15 AM
To: mosenbach@pasen.gov <mosenbach@pasen.gov>; Eyster, Emily <Emily.Eyster@pasenate.com>
Cc: ntroutman@pasen.gov <ntroutman@pasen.gov>; Garst, High <argarst@pa.gov>; Nezat, Taylor <tnezat@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Griffin, Laura <laurgriffi@pa.gov>
Subject: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)

[EXTERNAL EMAIL]

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth proposed rulemaking (7-587) for review by the Senate Environmental Resources and Energy Committee. The rulemaking documents are attached in a zip folder and the cover letters for Senator Yaw and Senator Comitta are attached separately.

A copy of the transmittal sheet is attached for your records – the House and Senate Committee chairs are receiving the rulemaking electronically.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,

Laura

Laura Campbell | Regulatory Coordinator
Department of Environmental Protection | Policy Office
Rachel Carson State Office Building

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Independent Regulatory
Review Commission

March 20, 2025

From: [Osenbach, Matt](#)
To: [Campbell, Laura](#)
Cc: [Emily Eyster](#); [Troutman, Nick](#); [Garst, High](#); [Nezat, Taylor](#); [Reiley, Robert A.](#); [Griffin, Laura](#)
Subject: Re: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)
Date: Thursday, March 20, 2025 10:25:38 AM

Message received. Thank you!

Matt Osenbach
Director, Environmental Resources & Energy Committee
Office of State Senator Gene Yaw (R-23)
362 Main Capitol Building, Senate Box 203023
Harrisburg, PA 17120
T: (717) 787-3280
F: (717) 772-0575
www.SenatorGeneYaw.com



On Mar 20, 2025, at 9:19 AM, Campbell, Laura <laurcampbe@pa.gov> wrote:

CAUTION : External Email

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth proposed rulemaking (7-587) for review by the Senate Environmental Resources and Energy Committee. The rulemaking documents are attached in a zip folder and the cover letters for Senator Yaw and Senator Comitta are attached separately.

A copy of the transmittal sheet is attached for your records – the House and Senate Committee chairs are receiving the rulemaking electronically.

Please confirm receipt of this rulemaking by replying to all recipients.

Thank you,

Laura

Laura Campbell | Regulatory Coordinator
Department of Environmental Protection | Policy Office
Rachel Carson State Office Building
400 Market Street | Harrisburg, PA 17101
Phone: 717.772.5830 | Fax: 717.783.8926
(she/her/hers) laurcampbe@pa.gov | www.dep.pa.gov

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Independent Regulatory
Review Commission

From: [Marisa Thomas](#)
To: [Campbell, Laura](#); [Franzese, Evan B.](#)
Cc: [Shupe, Hayley](#); [Nezat, Taylor](#); [Garst, High](#); [Reiley, Robert A.](#); [Griffin, Laura](#)
Subject: RE: [EXTERNAL]: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)
Date: Thursday, March 20, 2025 9:41:02 AM

March 20, 2025

Received.

Thank you!

Marisa Thomas
Administrative Assistant II

Office of State Representative Brenda Pugh
120th Legislative District
422 Irvis Office Building
Harrisburg, PA 17120-2092
Phone: (717) 787-3798

Office of State Representative Jack Rader
176th Legislative District
423 Irvis Office Building
Harrisburg, PA 17120-2176
Phone: (717) 787-7732

From: Campbell, Laura <laurcampbe@pa.gov>
Sent: Thursday, March 20, 2025 9:16 AM
To: Marisa Thomas <Mthomas@pahousegop.com>; Franzese, Evan B. <EFranzese@pahouse.net>
Cc: Shupe, Hayley <HShupe@pahouse.net>; Nezat, Taylor <tnezat@pa.gov>; Garst, High <argarst@pa.gov>; Reiley, Robert A. <rreiley@pa.gov>; Griffin, Laura <laurgriffi@pa.gov>
Subject: [EXTERNAL]: Delivery of Proposed Rulemaking - Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (7-587)
Importance: High

Good morning,

Pursuant to Section 5(a) of the Regulatory Review Act, please find attached the Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth proposed rulemaking (7-587) for review by the House Environmental and Natural Resource Protection Committee. The rulemaking documents are attached in a zip folder and the cover letters for Representative Vitali and Representative Rader are attached separately.

A copy of the transmittal sheet is attached for your records – the House and Senate Committee chairs are receiving the rulemaking electronically.

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Review Commission

March 20, 2025

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Thank you,

Laura

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**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-587

SUBJECT: Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

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Review Commission

TYPE OF REGULATION

March 20, 2025

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>	
<i>HOUSE COMMITTEE ON ENVIRONMENTAL & NATURAL RESOURCE PROTECTION</i>			
3.20.2025	Hayley Shupe (via electronic delivery)	MAJORITY CHAIR	<u>Representative Greg Vitali</u>
3.20.2025	Marisa Thomas (via electronic delivery)	MINORITY CHAIR	<u>Representative Jack Rader, Jr.</u>
<i>SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY</i>			
3.20.2025	Matt Osenbach (via electronic delivery)	MAJORITY CHAIR	<u>Senator Gene Yaw</u>
3.20.2025	Emily Eyster (via electronic delivery)	MINORITY CHAIR	<u>Senator Carolyn Comitta</u>
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>			
3.20.2025	Leah Brown (via electronic delivery)	EXECUTIVE DIRECTOR	<u>David Sumner</u>
<i>ATTORNEY GENERAL (for Final Omitted only)</i>			
<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>			
<i>(via electronic delivery)</i>			