

Environmental Quality Board Proposes Changes to Notification Rules for Unauthorized Spills into Waters of the Commonwealth

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On April 5, 2025, the Environmental Quality Board (EQB) published a public notice proposing to amend 25 Pa. Code § 91.33 (relating to incidents causing or threatening pollution). See 55 Pa. Bull. 2589 (Apr. 5, 2025). This proposed rule intends to clarify which unauthorized discharges require immediate notification to the Pennsylvania Department of Environmental Protection (PADEP) but does not change which unauthorized discharge incidents require immediate PADEP notification.

Section 91.33 currently requires the person responsible for an unauthorized discharge to immediately notify PADEP if a discharge results in pollution, creates a danger of pollution of the waters of the Commonwealth, or would damage property. The proposed rule would require a person responsible for unauthorized discharges to either report the discharge to PADEP immediately, or create and retain a written analysis of certain factors determining that an unauthorized discharge does not cause or threaten pollution. A signed statement attesting the document's accuracy must accompany the documentation if it is provided to PADEP at PADEP's request. The proposed rule would require analysis of the following factors:

1. the properties of the substance or substances discharged;
2. the location or locations involved;
3. the weather conditions before, during, and after the incident;
4. the presence and implementation of adequate response plans, procedures, or protocols; and
5. the duration of the accident or other activity or incident.

If any one of the above 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 factors is required to determine whether immediate notification to PADEP is required. The proposed rule also allows the person responsible to choose to report an unauthorized discharge rather than undertaking the evaluation and documentation of the above-listed factors.

The proposed rule also incorporates a federal list of reportable quantities—by referencing 40 C.F.R. § 117.3—that if discharged in a quantity greater than or equal to those reportable quantities, must be immediately reported to PADEP without undergoing analysis of the above factors. While the reportable quantities listed at section 117.3 are not exhaustive of all possible substances that may cause or threaten pollution to waters of the Commonwealth, the quantities listed in the federal regulation are considered large enough by PADEP that an unauthorized discharge involving those quantities of those substances would likely cause or threaten pollution of waters in the Commonwealth, making it appropriate to incorporate in this regulation.

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