

Environmental Quality Board to Consider Proposed Notification Rules for Unauthorized Spills into Waters of the Commonwealth

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In November 2024, the Pennsylvania Department of Environmental Protection (PADEP) submitted to the Pennsylvania Environmental Quality Board (Board) a proposed rule that would establish notification requirements for persons reporting unauthorized discharges to waters of the Commonwealth under 25 Pa. Code § 91.33. 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. PADEP's proposed rule references 40 C.F.R. § 117.3 to identify a list of reportable substances and quantities that require immediate PADEP notification if discharged into waters of the Commonwealth and outlines five categories of factors for consideration when determining if an unauthorized discharge does not require immediate PADEP notification. Those five categories are:

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

PADEP's **preamble** to the proposed rule provides that

[i]f 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. 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.

PADEP's proposed rulemaking further requires a person to maintain documentation regarding a decision not to notify PADEP of an unauthorized discharge and a signed statement attesting to the document's accuracy must accompany the documentation if it is provided to PADEP at PADEP's request.

The Board adopted the proposed rule at its November 12, 2024, meeting. The proposed rule will be published in the *Pennsylvania Bulletin* for a 60-day public comment period.

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