



Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

June 1, 2025

**RE: Proposed Rulemaking [25 PA. CODE CH. 91] Notification Requirements for  
Unauthorized Discharges to Waters of the Commonwealth [55 Pa.B. 2589]**

To the Pennsylvania Department of Environmental Protection,

Three Rivers Waterkeeper (3RWK) and Protect PT (Penn-Trafford; PPT) appreciate the opportunity to comment on the proposed rulemaking: *Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth*, as released by the Department of Environmental Protection on Saturday, April 5th, 2025 in the PA Bulletin. 3RWK was founded in 2009 and works to improve and protect the water quality of the Allegheny, Monongahela, and Ohio Rivers. 3RWK is both a scientific and legal advocate for the community, working to ensure that our three rivers are protected and that our waters are safe to drink, fish, swim, and enjoy. PPT is a nonprofit dedicated to ensuring residents' safety, security, and quality of life by engaging in education and advocacy to protect the economic, environmental, and legal rights of the people in Westmoreland and Allegheny counties. Together, we work to protect our waterways – our most precious natural resource and source of our drinking water.

We request that PA DEP does NOT adopt the proposed rulemaking as written. The current Pennsylvania Clean Streams Law has clear reporting and public notification requirements



for when a spill occurs, which allow regulatory agencies to respond to pollution events quickly and efficiently. Reducing these reporting requirements would hinder the ability of these agencies to take action when pollution enters our waterways. The changes to the law would benefit polluters and industry at the expense of the public's right to clean water. Although the proposed rulemaking states that it intends to provide clarity as to which unauthorized discharges require immediate notification to the DEP, the incorporation of a federal list of reportable quantities of specific hazardous substances adds an extra step that could lead to more pollutants entering our waterways.

We appreciate PADEP's ongoing efforts to reduce water pollution in our streams. At first glance, the steps outlined in the proposed rulemaking themselves seem like a useful way to differentiate between varying levels of concern and action. Our concern is that the ambiguity of this document's guidance will provide polluters a loophole to reduce their reporting rates, resulting in less accountability and weaker protections for our waterways. Ultimately, the proposed rulemaking will negatively impact our drinking water, public health, and valuable natural resources. We ask the DEP to propose clear pollution reporting rulemaking that provides a distinction between a reportable and non-reportable release without creating loopholes for polluters. These guidelines should be clear, concrete and measurable; without room for interpretation that emboldens polluters. We also specifically ask that the DEP add a cumulative impact understanding of spills that better addresses the scientific and protectionary concerns that smaller, multiple sourced, and continuous spills can create in our waterways. Lastly, we ask that the DEP reconsider the language of the proposed rulemaking to better reflect Federal statutory requirements. The addition of arbitrary and ambiguous steps in the reporting process will lead to more time being spent deciding whether or not to report to DEP, prolong response times, and

allow for more pollution to enter the environment. These changes could lead to confusion, or instances of industries not reporting due to how they perceived the situation. Thus, it would be best practice for when spills first occur, the DEP should *always* be notified *immediately*, and updated over time, when more information becomes available. To this end, we outlined the areas of concern in the proposed rulemaking below.

**I. The proposed rulemaking creates a loophole for polluters to avoid reporting their spills and releases.**

The proposed rulemaking creates a loophole for industries and individuals to avoid reporting a potentially harmful pollution release. The language of the document provides polluters with far too much discretion when determining when to report to DEP, and, as a result, provides inadequate protection to downstream property owners and waterway users. The policy creates a clear conflict of interest, parties responsible for causing pollution will also be responsible for the cleanup without oversight of the release if it is not formally reported. When polluters are incentivized to report as few accidents as possible, they cannot be given deference for when to report. Furthermore, this proposed rulemaking provides a legal release of responsibility as the polluter could always claim that they did not think it was worthy of reporting based on their discretion allowed by this proposed rulemaking. When spills occur, best practice would be for the DEP to *always* be notified *immediately*, and updated over time when more information becomes available. The PA DEP has the skill set to triage incidents based on given data, expertise and experience. Some spills may not require on-site investigations but should still be documented immediately and recorded permanently. The PA DEP, as a third party who holds a mission “to protect Pennsylvania's air, land, and water resources and to ensure the

health and safety of its citizens through a cleaner environment”. The PA DEP is responsible for making appropriate decisions regarding the severity of spills and the appropriate response required to protect the waters of our commonwealth. It is impossible for a facility to be impartial regarding their own spills and pollution releases.

The terms of the risk assessment framework are too generic and arbitrary to accurately determine the risk of a release. Paragraph (2) (iv) states, “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”. The first problem is the ambiguous nature of the determination that the responsible party has to make - what is “adequate for contained”?; What is the “timeframe for containment”?; What is required if material subsequently leaks out of containment?. The proposed rulemaking requires that parties responsible for spills determine for themselves whether their infrastructure is effective or not, and could lead to improperly contained pollution escaping into our environment - via leaks into stormwater and groundwater, improperly equipped water treatment facilities for the contaminant in question, and other unforeseen methods.

Furthermore, the proposed framework provides inadequate metrics for determining whether a stream is “small” or “large”, and no metric for determining the difference between what constitutes a “large volume” and “high concentration,” from a “small volume” or “low concentration” spill. The actual toxic and hazardous potential is not considered. The proposed rulemaking also does not provide distance markers to determine what makes a nearby user

“distant” or “near.” Even if these terms are defined and fleshed out through other guidance, the lack of specific measurable definitions creates an unreasonable amount of uncertainty that will lead to reduced protection for waterways. This furthers a standard which gives polluters discretion to determine when it is appropriate to report a spill, while providing unclear and vague standards to determine that reportability. This does not provide polluters with greater clarity for when to report an accident, it instead establishes a framework where polluters can claim opacity and vagueness to rationalize reducing the number of incidents they report. In instances where polluters are caught having failed to report a release, they can point to the vagueness of the framework as justification for not reporting. Only in the most heinous of circumstances would they ever be held accountable.

**II. There is a significant gap in the proposed rulemaking between an unreportable drop of pollution and a reportable, tanker truck size release or greater.**

The proposed rulemaking over-simplifies the issues of ongoing pollution, considering only pollution from a single source or incident rather than the reality of concurring pollution from multiple ongoing sources. Small releases that are deemed unreportable individually, compounded with multiple sources or incidences, would result in major cumulative impacts. The rulemaking does not consider that pollutants often remain in a river’s ecosystem for years, accumulate over time from various entities and incidents, compounding the effects of small individual releases. A facility is unaware of other facilities they may have spilled in a similar timeframe, and their combined effect could be particularly hazardous compared to the single

releases. Thus, it is necessary for the PA DEP to be notified immediately of all spills to have a holistic knowledge of what is released into our environment.

While we understand that the proposed rulemaking cannot predict every situation where a release is or is not reportable, it is necessary to close the gap between the extreme examples and reduce the questionable gray area for releases. What happens when a petrochemical industry has a slow leak into a major drinking source impacting the health of millions of people? That spill is not a tanker spilling into our waterways and would not appear to be required to be reported but it would have devastating impacts to safe drinking water and our natural resources. The consequence of such uncertainty will result in individuals and industries opting to not report a release, relying on the gray areas of the proposed rulemaking to reduce their liability. The lack of consistent and adequate reporting will lead to unforeseen harm to the Commonwealth's waterways, environment, and its citizens.

### **III. Facilities and industries historically have a bad track record when self-reporting pollution.**

When a facility has a NPDES permit, they are required to submit monitoring data (eDMR, electronic discharge monitoring report) to the DEP (often monthly, sometimes quarterly or biannually). However, many facilities do not do this reliably. Although there are meant to be consequences for failing to submit eDMR data, fines or other penalties are rarely applied. We cannot trust these industries to report their own monitoring data, and thus cannot trust these industries to report when they have spills.

#### **IV. The proposed rulemaking fails to appreciate the cumulative impacts of pollution.**

The proposed rulemaking fails to address the impacts that multiple polluters have when simultaneously releasing small quantities of pollution into the Commonwealth's waterways. While a small amount of pollution may not have serious, long-term effects on a river's ecological health, the cumulative effect of multiple releases has profound consequences on a river's ecosystem. Pollution can come from a single source or from many different sources, and oftentimes multiple sources are owned by the same entity. Therefore, the proposed rulemaking's understanding of pollution is overly simplistic as it is currently written. There will be harmful consequences to the Commonwealth's waterways if small quantities of pollutants are unreported, due to the cumulative effects from multiple sources or cumulative effects of a single source through multiple releases.

The proposed rulemaking does not require a polluter to notify DEP or downstream users of the waters of the Commonwealth when there is a release that the polluter deems to be small enough to not warrant a report. When multiple polluters each release what they deem to be 'small' quantities of pollution into the river without reporting, the cumulative effect of these releases will drive significant harm to the river's ecosystem and use as a natural resource. By not considering the major cumulative impacts of multi-point-source pollution, the proposed rulemaking reduces crucial protections for our drinking water and natural resources. The proposed rulemaking is too simplistic, and should be amended to set more stringent standards on reporting for small or accidental releases.

Furthermore, the proposed rulemaking does not realistically consider that pollutants can remain in a river's ecosystem for years. Individual releases of small quantities of a pollutant can continue to cause harm to a river's health long after the initial release. As discussed above, this problem is then compounded by multiple people, entities, and incidents releasing pollutants that will combine in the ecosystem for a significant amount of time. Over time, pollutants that do not break down immediately, or are considered forever chemicals, such as PFAS, would aggregate in our waterways. This proposed rulemaking allows 'small' pollution incidents to go unreported, accumulate, and cause harmful effects on the river and its users. At the very least, an additional consideration should be added to the framework for the longevity of a chemical in the receiving waterbody, or risk ignoring the long-term, cumulative effects of pollution.

#### **V. The proposed rulemaking conflicts with Federal law.**

Due to the subject matter of the proposed rulemaking concerning navigable waterways and water supplies, it is important to consider how this rulemaking will interface and interact with federal statutory provisions. There are specific provisions in both the Safe Drinking Water Act and the Clean Water Act that the commenters believe DEP should consider for the formation of this proposed rulemaking.

First, under § 1442(a)(1)(6) of the Safe Drinking Water Act, EPA (and by extension DEP) must study, examine, and put forth standards for "preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems." Commenters are concerned that for the reasons outlined above the proposed rulemaking will result in too low of a reporting rate from polluters for agencies to effectively execute this



provision of the SDWA. The proposed rulemaking's language gives too much freedom to polluters and incentivizes polluters to report as few spills and accidents as they "reasonably" can. An industry's "reasonable" level of pollution is very different from those drinking the polluted waters, and inadequate reporting will skew agency data about the health of our waterways.. If this proposed rulemaking is implemented, DEP and public water system managers will be working to study and protect those water supplies with an incomplete picture of our waterway's pollution.

Moreover, the Clean Water Act speaks directly to the close attention that States must give to prevent, clean, and track spills and accidents into waterways. § 1314(e) of the CWA outlines how EPA must work with state agencies to set effluent standards for both permitting and, "[for] any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under § 1317(a)(1) or § 1321 of this title, to control plant site runoff, **spillage or leaks**, and sludge or waste disposal." 33 U.S.C. § 1314(e) (emphasis added). Specifically, when addressing minor oil spills, § 1321(a) of the act is used to understand the impacts of even minor oil spills, instructing the agency to "...provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, **prevent accidental spills** during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances." 33 U.S.C. § 1321(a) (emphasis added).

The vagueness of non-defined terms and lack of specific requirements within the guidance will likely result in lowered reporting rates in pollution and spill incidents, which will lead to lower restoration rates, and fewer preventative measures being taken by polluters. This will make it more difficult for DEP to control the effects of these spills and therefore the DEP



will fail to fulfill its requirements under the CWA. Under the Safe Drinking Water Act, the EPA and the DEP must study and set standards for preventing and detecting spills that degrade water sources for the public. Lower reporting rates, as a result of the proposed rulemaking's loopholes, will give agencies an incomplete picture of the total pollution affecting a waterway, and hinder the agency's ability to fulfill its requirement. The proposed rulemaking would serve to reduce reporting and make tracking of pollutants harder, in direct conflict with the fundamental purpose and requirements of both the Clean Water Act and the Safe Drinking Water Act. We ask that DEP establish clearer and stronger reporting requirements into this rulemaking policy.

The commenters are concerned that this proposed rulemaking provides too much deference to polluters to determine when they should report a spill or release. The current guidance proposed in this rulemaking will allow many significant pollution releases and spills to go unreported, harming the Commonwealth's waterways and citizens. The proposed rulemaking also fails to consider the cumulative impacts from different sources and the long-term effects of multiple accidental releases. It adds ambiguous steps that make reporting spills confusing and creates the opportunity for bias and mistakes to occur, leading to more pollution entering our waterways. PA DEP must take the responsibility to decide to report away from industry, and require spill reporting, regardless of size, with next steps to be determined after regulatory agencies are informed.

Additionally, this proposed rulemaking raises concerns when considering the Clean Water Act and Clean Drinking Water Act. We understand that not all pollution circumstances can be outlined, but we believe the issues outlined in this letter, if resolved, would greatly improve the technical guidance of this document. Thus, we urge DEP to reconsider this rulemaking and



provide clarity on the concerns outlined above. We thank you for your careful consideration of our concerns. If any questions regarding our comments arise, do not hesitate to reach out to us.

Thank you for your time and consideration,

Sincerely,

Heather Hulton VanTassel, PhD  
Executive Director, Three Rivers Waterkeeper  
[Heather@threeriverswaterkeeper.org](mailto:Heather@threeriverswaterkeeper.org)

Yvonne Sorovac, MS  
Environmental Scientist, Protect PT  
[yvonne@protectpt.org](mailto:yvonne@protectpt.org)