



October 6, 2020

Technical Guidance Coordinator  
Department of Environmental Protection  
Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063

**Re:** Draft Technical Guidance: Notification Requirements for Spills, Discharges, and other Incidents of a Substance Causing or Threatening Pollution to Waters of the Commonwealth (383-4200-003). Submitted electronically to [ecomment@pa.gov](mailto:ecomment@pa.gov) and via <https://www.ahs.dep.pa.gov/eComment/>

To Whom It May Concern:

The Marcellus Shale Coalition (“MSC”), a regional trade association with a national membership, hereby submits the following comments to the Pennsylvania Department of Environmental Protection (“PADEP” or the “Department”) regarding PADEP’s proposed Technical Guidance Document (“TGD”) entitled Notification Requirements for Spills, Discharges, and other Incidents of a Substance Causing or Threatening Pollution to Waters of the Commonwealth.

The MSC was formed in 2008 and is currently comprised of approximately 125 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing and transmission in the country, as well as the suppliers and contractors who partner with the industry.

The MSC submits the following comments regarding the Department’s proposed TGD.

### **General Comments**

The MSC recommends that the Department retract the proposed TGD. Based upon multiple operator and member inputs, the proposed TGD fails to provide direction and guidance beyond that which could otherwise be obtained from the relevant regulations set forth in 25 Pa. Code Chapters 91 and 92. In short, a TGD which seeks to provide clarity to Department staff and the regulated community – but in doing so, only adds to confusion – provides value to neither party.

The proposed TGD is largely a recitation of existing language contained in 25 Pa. Code § 91.33 that has been extremely challenging for both the regulated community and the Department staff to interpret and apply. Rather than attempting to address the numerous issues that are associated

with the implementation of the existing regulatory language, however, the Department has stopped short of that objective. With that observation in mind, the MSC strongly supports efforts to bring greater clarity to the circumstances that trigger reporting requirements and the procedures that are to be used to implement those requirements. The MSC is committed to working with the Department in a productive manner to produce a more useful TGD addressing these important issues.

Even though the proposed TGD is largely a recitation of existing regulatory language, the Department makes subtle but potentially important changes in its paraphrasing of that language which could be read to serve as an attempt to broaden the scope of the notification requirements under 25 Pa. Code § 91.33(a). Pennsylvania's regulations require that where a 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," immediate notification is required. 25 Pa. Code § 91.33(a) (emphasis added). The proposed TGD, however, more expansively requires immediate notification where a discharge "*may* endanger downstream users, *may* result in pollution, *may* create a danger of pollution, or *may* damage property." (emphasis added). If the Department's intention is to attempt to broaden the scope of regulatory requirements through guidance, it should clearly state so. If the Department is not seeking to broaden notification obligations, we suggest that the Department more precisely follow the existing regulatory language.

### Inconsistencies among PADEP Programs and Regulated Industries

A recurring theme that MSC members have raised with the Department over the years has been the disparate treatment of often similar activities under Pennsylvania's regulations when often the only difference is the industry performing the activity. This is particularly true with respect to the oil and gas industry as compared to other industries regulated by the Department.

The following highlights some of these discrepancies between the Oil and Gas Program and the Bureau of Clean Water Program regarding spill notifications and additional information:

Reporting/notification requirements	Oil and Gas (Ch 102/ESCGP, Ch 78a)	Bureau of Water (Ch 105, Ch 91, Ch 92)
Spill <1bbl to ground	2 hours + recommended email to WQS and Supervisor	N/A
Spill => 1bbl to ground	2 hours + recommended email + 15-day report	N/A
Spills threatening Waters of the Commonwealth or into waterway (regardless	O&G expects these to be reported within 2 hours + recommended email	4 hours + 5-day report Notify downstream users if possible

of quantity)		Within 15 days remove materials from ground/stream
BMP failure (inoperable/ineffective ECD)	24 hours + 5-day noncompliance report	N/A
BMP failure -- discharge into or threatening waterway	O&G expects 2 hours for notification + 5- day report – expect immediate removal of materials or could be cited CSL for each day	4 hours + 5-day report Notify downstream Remove materials within 15 days

### **Department Notification**

The proposed TGD contains a section on “how to notify the Department” which specifically states that the PADEP regional offices should be contacted between 8:00 am and 4:00 pm. However, operators have had the shared experience that when reporting to regional offices over the past year, many times the caller has been transferred to multiple offices with the call ultimately concluding with the need to leave a voice mail. It is extremely difficult to reach a live person to ensure the proper notification has been received by Department personnel. This situation has been exacerbated during the COVID-19 pandemic. The statewide emergency contact seems to be the most reliable way to notify the state and would be the preferred method for implementing this and other reporting obligations.

### **Conclusion**

On behalf of the MSC and its member companies, thank you for your consideration of these comments. Please do not hesitate to contact me should you have any questions or request any clarification.

Sincerely,



Jim Welty  
Vice President, Government Affairs