

October 6, 2020

Submitted by e-mail via [ecomment@pa.gov](mailto:ecomment@pa.gov)

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

**Re: Comments on Draft Technical Guidance: Notification Requirements for Spills, Discharges, and other Incidents of a Substance Causing or Threatening Pollution to Waters of the Commonwealth  
DEP ID 383-4200-003**

**COMMENTS OF**  
**THE PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION**

The Pennsylvania Independent Oil & Gas Association (PIOGA) respectfully submits the following comments regarding the Department of Environmental Protection's notice published in the Pennsylvania Bulletin on August 8, 2020, 50 Pa.B. 4091, soliciting public comments on the above-referenced draft technical guidance document (TGD).

PIOGA is a nonprofit trade association, with nearly 400 members, representing Pennsylvania independent oil and natural gas producers, both conventional and unconventional, as well as marketers, service companies and related businesses, and landowners and royalty owners. PIOGA member operators are subject to provisions of the Clean Streams Law, 35 P.S. §§ 691.1-691.1001 *et seq.*, and the Chapter 91 and Chapter 92a regulations recited in the draft TGD. The Association and our members, therefore, have a direct interest in the draft TGD.

**Comment: The only additional guidance in the draft TGD paraphrases an existing regulatory requirement and thereby broadens the scope of the existing requirement and adds confusion rather than helpful guidance.**

PIOGA has only one overall comment.

DEP states that the purpose of this TGD "is to provide guidance on the immediate notification requirements for spills, discharges, and other incidents of a substance *causing or threatening pollution* to waters of the Commonwealth." (Emphasis added). But the only guidance provided goes beyond this stated purpose by broadening the existing regulatory requirement in 25 Pa. Code 91.33(a) beyond immediate notification for spills, etc. of a substance *causing or threatening pollution* to spills, etc. of a substance that "*may* endanger downstream users, *may* result in pollution, *may* create a danger of pollution, or may damage property."

The draft TGD recites the existing regulatory requirements, including this one that is the subject of the draft TGD:

25 Pa. Code § 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. (Emphasis added).

The basis for this draft TGD is that this provision “does not provide a threshold amount of a substance that triggers mandatory notification requirements under this section.” (p.2). The short answer to DEP’s concern is that the threshold amount is already defined in the regulation as any quantity that “*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.”

Despite this clear requirement in the regulation, DEP’s answer (p.2) is to make the standard more subjective and uncertain:

However, notification should be provided to DEP about any quantity of a substance that spills, discharges, or otherwise enters waters of the Commonwealth if the release *may* endanger downstream users, *may* result in pollution, *may* create a danger of pollution, or *may* damage property.

PIOGA appreciates the Department’s initiative in trying to address what it views as a deficiency in the regulation but doesn’t see any reason to issue this TGD. DEP’s recommendation that “a Responsible Party err on the side of notification” is better communicated in a form other than a formal TGD, such as a Frequently Asked Question (FAQ) document or Press Release.

Accordingly, PIOGA requests that DEP rescind the draft Bureau of Clean Water TGD.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kevin J. Moody". The signature is written in a cursive, flowing style.

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Kevin J. Moody  
General Counsel  
Pennsylvania Independent Oil & Gas Association