

October 5, 2020

Jessica Shirley, Director
DEP Policy Office
Rachel Carson State Office Building
P.O. Box 2063
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Electronic Comment Submission

RE: Guidance on Notification Requirements for Spills, Discharges and other Incidents of a Substance Causing or Threatening Pollution to Waters of the Commonwealth Under Pennsylvania's Clean Streams Law (DEP ID: 383-4200-003)

Per the PA Bulletin Notice dated August 8, 2020, Armstrong World Industries (“AWI”) is submitting comments related to the draft guidance notification requirements published in this notice. Armstrong World Industries is a designer and manufacturer of innovative commercial and residential ceiling, wall, and suspension system solutions in the Americas. We operate a network of manufacturing facilities in North America (including Marietta, PA), and have our corporate headquarters located in Lancaster, PA.

We agree with the Department’s aim of protecting waters of the Commonwealth, however we are concerned that this draft guidance still does not reconcile reporting requirement discrepancies between PA Clean Streams Law, and various Pennsylvania Department of Environmental Protection (“PADEP”) and federal programs.

We specifically point to these excerpts from the draft guidance:

Page 1 – “A Responsible Party for a spill, release, discharge, or other incident of any substance causing or threatening pollution to waters of the Commonwealth must “immediately notify the Department by telephone of the location and nature of the danger...” 25 Pa. Code § 91.33(a). “

Page 2 – “25 Pa. Code § 91.33(a) does not provide a threshold amount of a substance that triggers mandatory notification requirements under this section. 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. When there is some question regarding whether a spill or release requires notification of DEP or not, DEP recommends that a Responsible Party err on the side of notification. Notifying DEP of these incidents requires minimal effort (i.e., a phone call) and can help prevent or minimize hazards to the environment, public health, and public safety. The decision to notify DEP may also affect liability because failure to notify DEP can result in a civil penalty, pursuant to the Department’s exercise of its enforcement discretion.”

In both citations, and elsewhere in the draft guidance document, terms like “pollution”, “threatening pollution”, “endanger”, and “danger of pollution”, are not defined, and remain subject to interpretation. This has and will continue to create confusion in the regulated community. We are also concerned that this could create differing reporting interpretations between the various Department regional offices, and the central office in Harrisburg. Additionally, the guidance does not provide a listing of any specific examples of environmental or financial benefits to the Commonwealth from these additional reporting requirements.

We also respectfully disagree that reporting requires minimal effort. Due to the lack of clear definitions, the regulated community must spend significant time and effort to try to interpret these terms and evaluate when a spill or discharge must be reported. This is in contrast to federal reporting requirements which are already established for specific chemicals with reportable quantities (“RQs”), published in the List of Lists, and with PADEP reporting requirements already in place in areas such as the storage tank program.

Rather than issue guidance which only appears to add additional regulatory burden, without clear benefit to the Commonwealth, our request is that PADEP default to the existing extensive federal and state reporting rules and regulations.

Thank you for the opportunity and consideration of our comments.

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