DELAWARE DEPARTMENT OF
NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

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MEMO

Subject Docket #2024-R-WHS-0021, 7 DE Admin. Code 1203
Date June 4, 2026

To Theresa Smith, DNREC Hearing Officer
From Eileen Butler, Planner V
Thru Tim Ratsep, Director, Division of Waste and Hazardous Substances
CC

On February 25, 2026, you presided over a virtual public hearing beginning at 6:00 PM. The subject of the public hearing was proposed revisions to the regulations governing the Reporting of a Discharge of a Pollutant or Air Contaminant (7 DE Admin. Code 1203). This is a Department-wide regulation. The Division of Waste and Hazardous Substances has taken the lead to amend the regulation in consultation with the Divisions of Air Quality, Water, and Watershed Stewardship. The responses below reflect the positions of each Division mentioned above.

Comments were submitted in writing by:

Josh Young	Chemistry Industry Council of Delaware	3/12/26
Michael Quaranta	Delaware Chamber of Commerce	3/12/26
Thomas Godlewski, Jr.	Delaware City Refining Company	3/12/26

This memorandum provides a summary of the comments received and the Department's response. Each comment received is attached to this document, and the public hearing transcript containing no comments made orally at the hearing, is posted on the Department's website at https://dnrec.delaware.gov/events/public-hearing-reporting-pollutant-discharges/

A majority of the comments received were similar in nature and will be summarized below, with the Department response to follow.

Comment 1

Delaware Reportable Quantities (DRQs) are being significantly lowered and expanded beyond federal standards. Align Delaware's DRQs with federal RQs unless a clear, risk-based justification exists.

Response

The Department disagrees. The DRQs listed in the regulation have been implemented with these quantities for over 22 years. The suggestion that "[T]his will likely increase the number of reportable incidents, including small spills or releases previously considered low-risk." has not been realized for two decades. Only 3 chemical reportable quantities have been proposed to be amended. One is being combined (Dibenzoyl peroxide and benzoyl peroxide) as it is the same chemical listed twice, with the more conservative reportable quantity determined by the Division of Air Quality to be appropriate. 3-Bromopropyne is extremely hazardous and highly toxic, and it was determined by the Accidental Release Prevention Program that the 500-pound reportable quantity was a serious mistake and suggested the more appropriate and protective 1 pound instead. Lastly, the reportable quantity for hydrogen was considered to be reduced to better capture currently unregulated manufacturing practices. Often hydrogen is maintained in 300-pound containers.

Comment 2

The proposed amendments would shorten the written follow-up reporting deadline from 30 days to 15 days, even though root-cause analysis, sampling, and corrective action planning often require more time. We request that DNREC either restore the 30-day reporting window or allow automatic extensions when additional time is needed.

Response

The Department disagrees. Industry has shown that they are capable of providing a report within 15 days that contains root-cause analysis, and subsequent corrective action. When a release is significant and the Delaware Environmental Release Notification System (DERNS) report does not initially capture the amount and scale of the release during the release event, the Department has a responsibility to communicate that information to the public. However, the Department may consider a compromise where the facility that has experienced a release would provide the Department with the required information, even to a limited extent, within 15 days; and then if necessary, request an extension up to 15 days, depending on the release, to provide additional information as it becomes available from continued root-cause analysis and sampling activities.

Comment 3

The amended regulation proposes to add definitions for “contained”, “impervious”, and “environmental release.” One commenter suggested the definition proposed for “impervious” included the word “impenetrable” and that inclusion was inappropriate. Comments received on this issue focused on the concern that no releases would be considered “contained” due to the definitions proposed in the regulation.

Response

The Department has taken the comments into consideration and recommends adding additional clarifying language to the proposed regulation, excluding “environmental release” as it mirrors the statutory definition.

After discussing the amended language with the Aboveground Storage Tank and Environmental Release Programs the Department recommends amending the language for “contained” to mean “any surface that prevents the released chemical, hazardous substance or waste listed on Table A from reaching stormwater conveyances, surface water, groundwater, or adjacent land before cleanup occurs” and amending the definition for "Impervious" to add language at the end so that the definition would state “a material of sufficient thickness, density and composition that is impenetrable, or has a permeability of less than 1×10^{-7} cm/sec. to the released chemical, hazardous substance or waste listed on Table A and that will prevent the discharge to stormwater conveyances, surface water, groundwater, or adjacent lands for a period of at least as long as the maximum anticipated time during which the released chemical, hazardous substance or waste will be in contact with the material. This amended language (identified here as underlined language) would provide regulatory consistency with Admin. Code 1352, *Aboveground Storage Tank* regulations.

Comment 4

Proposed subsection 4.6, and the corresponding changes to Table A, eliminate the DRQ of 25 gallons for petroleum substances, heating oil, motor fuel and used oil, and 150 gallons for petroleum substances other than heating oil, motor fuel and used oil. Proposed subsection 4.6 eliminates this requirement. Table A has been amended to require that “all” discharges that are not contained within an impervious barrier, either originating underground or having the potential to discharge to the environment be reported. The concern is that these changes will result in onerous reporting requirements for the regulated community that will inundate the Department with paperwork.

Response

The Department disagrees. The Department acknowledges that some constituents have higher concentrations of contaminants of concern. For example, gas has a higher concentration of benzene than does diesel fuel. However, when it comes to a spill, differentiation creates confusion. Combining all petroleum products for reporting purposes will make it easier for enforcement officers and for those reporting, which will result in consistency. If there is a spill of a petroleum substance, then it will get reported. No need to determine the type of petroleum.

However, after internal review the Department has determined that reporting "All" spills will be difficult to enforce. Yet, protecting natural resources remains the focus for this requirement. Therefore, to ensure consistency with existing underground and aboveground regulations associated with containment when a spill occurs, and to also be consistent with our regional neighbors, the Department proposes to amend the draft as follows:

> If a petroleum spill of any amount occurs underground – reporting is required;
> If a petroleum spill occurs aboveground and is contained – reporting is not required; and
> If a petroleum spill occurs aboveground and is not contained – reporting is required when 5 gallons or more is released or there is a likelihood for the release to reach stormwater conveyances, surface water, groundwater, or adjacent lands.

That said, the chart is proposed to be amended as follows:

Hazardous Substances and Wastes

DE	Animal and vegetable oils, fats, and greases	25 gal.
DE	* Infectious waste	ALL*
DE	* Petroleum ~~subs., other than heating oil, motor fuel, used Oil 150 gal.*~~ substances originating aboveground	5 gal. unless contained or impacts water resources or adjacent lands
DE	* Petroleum substance~~s, heating oil, motor fuel, used oil~~ originating underground	~~25 gal.*~~ ALL
DE	~~*10,000 gallons sewage~~ Sewage	10,000 gal*.

Comment 5

The current rule sets a DRQ of 6000 lbs. for hydrogen and specifies that it is a flammable substance with the designation "F". The proposed rule would significantly reduce the DRQ for hydrogen to 300 lbs. while retaining the "F" designation. What is the reason for this reduction in DRQ for hydrogen? We recommend retaining the hydrogen DRQ at the current value of 6000 lbs.

Response

The Department agrees. After internal discussion, the Department will not seek to reduce the DRQ for hydrogen.

Comment 6

It was recommended that the Department update the regulation to reflect changes made at the federal level and designate the following chemical compounds as flammable substances with the "F" designation to make the DRQs consistent with federal requirements:

Butane, Butene, 2-Butene-cis, 2-Butene-trans, 1-Butene, 2-Butene, Cyclopropane, Cyclohexane, Ethane, Ethylene, Isopentane (2-Methyl butane).

Response

The Department disagrees. After internal discussion it has been determined that the "F" designation, along with subsection 4.8 will be proposed for removal from the regulation. Any release of the chemicals specified in Comment 6 above, along with the chemicals and substances accompanied by an "F" in the regulation beyond the reportable quantity is of concern to the Department, regardless of its flammability. Further, this is a Delaware regulation. Although it was initially thought to point to the EPA list of lists, after internal review and consideration, it was determined, rather, to move in the opposite direction and maintain our own state list of reportable quantities when deemed appropriate by the Department.

Comment 7

Mixture reporting and "lowest constituent DRQ" rules need practical clarification. The proposal applies the lowest constituent DRQ to mixtures unless the mixture composition is "known." In many real-world industrial or R&D settings, the composition may not be immediately known during an emergency response. We request that DNREC:

- provide clear practical guidance for mixtures during initial spill response,

- allow reporting based on reasonably available information, and
- provide safe-harbor language to avoid penalties when composition cannot be immediately verified.

This change will make the rule more workable across diverse industries, including research campuses.

Response

The Department agrees. Currently subsection 4.4 states that "When any incident of discharge occurs involving more than one 1 chemical or chemical category listed in this Section, the DRQ for the total discharge shall be the lowest DRQ of any constituent of that total, unless the mixture is known. In this case, the word "known" means that a determination of constituent levels is made either by direct testing or by calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, the discharge is subject to these notification requirements only when a constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ."

The Department recommends the following: "When any incident of discharge occurs involving more than one 1 chemical or chemical category listed in this Section, the DRQ for the total discharge shall be the lowest DRQ of ~~any~~ each constituent ~~of that total, unless the mixture is known. In this case, the word "known" means that a determination of constituent levels is made either by direct testing or by calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, the discharge is subject to these notification requirements only when a constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ~~." Such a change will remove any unknowns, is protective of the environment, allows for reporting based on available information, and composition does not need to be immediately verified.

Comment 8

There is a concern that definitional changes and lower DRQs will result in increased reporting requirements. A request for the establishment of a Stakeholder Working Group has been made, due to the breadth and depth of the proposed changes.

Response

The Department disagrees. With proposed changes to the definitional language, and only a negligible 0.002% change in DRQs (3 of 1,409) recommended for lower reportable quantities, the Department does not believe there is such a need.

Conclusion

The Department has considered the public comments on the proposed amendments to 7 DE Admin. Code 1203. The Department does not believe that the technical comments warrant a substantive change to the proposed regulations. However, certain comments did result in amending definitional language and some changes to reportable quantities for hydrogen and petroleum substances.

The Department recommends that the Secretary adopt the proposed recommendations included in this document as well as those proposed and published in the Register of Regulations as the final amendments to 7 DE Admin. Code 1203.

Attachments: Public comments