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Director Ratsep,

On behalf of the Chemical Industry Council of Delaware, we respectfully submit the following concerns and comments to the proposed amendments to regulatory requirements for reporting the discharge of a pollutant or an air contaminant as mandated in 7 Del.C. §6028.

### **Concerns**

#### **1) Delaware Reportable Quantities (DRQs) are being significantly lowered and expanded beyond federal standards**

- The proposal updates the Delaware Reportable Quantity (DRQ) table for the first time since 2004 and introduces many state-specific ("DE") thresholds that do not align with federal CERCLA/EPCRA reportable quantities. This will likely increase the number of reportable incidents, including small spills or releases previously considered low-risk.

#### **2) Required written follow-up timeline is cut in half (30 → 15 days)**

- The proposal shortens 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.

#### **3) Current small discharge exemptions for petroleum substances that are protective of the environment and public health**

- Under the existing framework, petroleum substances receive limited exemptions where containment measures already prevent migration to surface water or groundwater, ensuring environmental and public-health protection.
  - “Unless the petroleum substance is contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater, or is confined to the location of the discharge on an impervious surface. For discharges of petroleum substances that are contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater or are confined to the location of the discharge on an impervious surface, the following shall apply:
    - 3.5.1 Discharges of 25 gallons or more on land of motor fuel, jet fuel, heating oil, used oil or used petroleum substances must be reported.
    - 3.5.2 Discharges of 150 gallons or more to land of any other petroleum substance not listed above or not uniquely identified on the Section 3 list must be reported, if the discharge originates underground, is not contained, or has the potential to discharge or leak into stormwater conveyances, surface water, groundwater, or adjacent lands.”

#### **4) Petrochemical and fuel release reporting is much more stringent**

- Petroleum substances—including heating oil, motor fuel, and other products—have low state-specific reporting thresholds and a broad expectation of reporting unless fully contained. This is far stricter than federal petroleum policies, which largely exempt petroleum from CERCLA reporting.

#### **5) New definitions expand what counts as a “discharge,” increasing reportable events**

- Revisions to terms such as “contained,” “impervious,” and “environmental release” broaden the scope of what must be reported. Some defined standards (e.g., permeability for “impervious”) exceed typical industrial design practices.

#### **6) Over-reporting risk: more notifications without clear environmental benefit**

- With broader definitions and lower DRQs, the proposal is likely to cause increased state hotline notifications, including many low-impact incidents—without evidence that this will improve emergency response outcomes.

### **Suggestions:**

#### **1) Align Delaware’s DRQs with federal RQs unless a clear, risk-based justification exists**

- Request DNREC provide transparent, science-based reasoning for any state-specific (“DE”) thresholds or return those thresholds to federal values.

#### **2) Restore the 30-day written reporting deadline or allow extensions**

- Fifteen (15) days is not feasible for completing full investigations and corrective action plans. Depending on the type of release, cleanup may extend beyond 15 days after the incident.
- As proposed, even a 40-milliliter vial of oil dropped on land would require a DNREC hotline notification and a 15-day written report.
- Fifteen (15) days does not provide adequate time for a facility to: complete cleanup where necessary; allocate time and resources to prepare a detailed report in a reduced timeframe; conduct a thorough analysis of the facts and circumstances leading to the environmental release; and identify all measures proposed to prevent recurrence and remedy deficiencies in prevention, detection, response, containment, cleanup, or removal plan components.

#### **3) Reevaluate petroleum thresholds and limit reporting to true environmental releases**

- Request that DNREC justify why petroleum thresholds differ from federal standards or modify provisions to focus on releases with actual environmental impact.
- DNREC will receive an increased volume of spill notifications for petroleum releases and may not have the bandwidth to respond to the volume of reports.
- There are unintended consequences for reporting any petroleum substances to DNREC (e.g., administrative burden, diversion of resources from higher-risk incidents).

#### **4) Reevaluate termination of the current small discharge exemption**

- Eliminating the small discharge exemption will increase regulatory burden without demonstrable benefits to environmental or public health protection and will create administrative burdens for DNREC (e.g., hotline staffing, report review/approval).
- As proposed, even a 40-milliliter vial of oil dropped on land would require a DNREC hotline notification and a 15-day written report.

- The proposed petroleum reporting requirement would set a more stringent limit on petroleum products than any other chemical on the Delaware List of Chemicals and Reportable Quantities (Section 3, Table A), where the lowest RQ is 1 lb. for highly hazardous substances. For example, one drop of gasoline on a concrete pad would be reportable, while a 0.5-lb release of Aldrin to a water body would not be reportable.
- **Preferred approach:** Do not remove the existing exemptions for petroleum substances.
- **Alternative approach:** (if DNREC proceeds with removal): Adopt reduced RQs of 10 gallons for Section 3.5.1 substances (motor fuel, jet fuel, heating oil, used oil/used petroleum) and 75 gallons for Section 3.5.2 substances (other petroleum), as a step-down approach.

**5) Clarify key definitions to avoid unnecessary reporting**

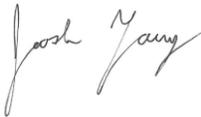
- Revise or clarify “contained,” “impervious,” and “environmental release” to reflect real-world industrial practices and engineering standards.

**6) Establish a stakeholder working group before finalizing the rule**

- Form a technical advisory group with industry, emergency responders, and environmental professionals to refine the rule for practicality and risk focus.

Thank you for this opportunity to share our concerns on this important piece of regulation. If you have any questions or if I may be of further service, please feel free to contact Josh Young at [Josh\\_Young@americanchemistry.com](mailto:Josh_Young@americanchemistry.com).

Sincerely,



Josh Young  
Executive Director  
Chemical Industry Council of Delaware