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March 12, 2026

Via Electronic Mail
Ms. Theresa Smith
Public Hearing Officer
DNREC Office of the Secretary
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Dover, DE 19901
DNRECHearingComments@delaware.gov

AND

Via Upload at ***https://dnrec.delaware.gov/public-hearings/comment-form/***

Subject: Delaware City Refining Company LLC Comments on Proposed Revisions to Regulations Governing Reporting of a Discharge of a Pollutant or an Air Contaminant;
Docket #2024-R-WHS-0021

Dear Ms. Smith,

We sincerely appreciate the opportunity to comment on the Department's proposed amendments to the regulations governing the Reporting of a Discharge of a Pollutant or Air Contaminant, 7 DE Admin. Code 1203, issued on February 1, 2026 (the "Proposed Rule"). On behalf of Delaware City Refining Company LLC, owner of the Delaware City Refinery ("DCR"), we offer the following comments on the Proposed Rule. We look forward to continuing to work cooperatively with the Department as the rulemaking process progresses.

I. Proposed Definitions

a. Comment

If finalized, the Proposed Rule would add definitions for the terms "contained" and "impervious" to 7 DE Admin. Code 1203-02. The Department's supporting materials presented at the public hearing on the Proposed Rule provide that the definitions are being proposed to achieve clarity to ensure people understand the meaning of the terms. We are concerned, however, that absent further revision to the proposed language, the regulation would become ambiguous rather than achieve clarity.

DCR offers that the ambiguity stems from the proposed definition of "impervious," which is "a material o[f] sufficient thickness[,] density and composition that is impenetrable, or has a permeability of less than 1 x 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." Initially, DCR believes the use of the word "impenetrable" is inappropriate in this context, as it is both (i) practically infeasible and (ii) internally inconsistent with other provisions of Regulation 1203.

i. *Practically infeasible.*

A cursory review of what it means for a material to be "impenetrable" reveals that there are only a handful of materials on Earth that are considered impenetrable, things like graphene, which is a tight lattice of carbon atoms; proteus, which is an aluminum structure composed of ceramic spheres; and, of course, diamonds. Therefore, common sense suggests that the Department may not have intended for the definition of "impervious" to impose a standard based on material impenetrability. Indeed, the inclusion in the same definition of a numeric maximum permeability standard as an alternative to demonstrating that a material is impenetrable seems to confirm this suggestion, insofar as a material that meets or does better than the permeability standard could – and likely would – still be far from impenetrable.

Recognizing that virtually no surface or subsurface materials facilities subject to Regulation 1203 are made of impenetrable materials, facility owners would therefore face the practical reality that to demonstrate a material is "impervious," they need to perform permeability testing on every intended containment material – and for every chemical – at the facility to show that it meets the maximum permeability standard of 1 x 10-^{7}cm/sec. This would be a tremendous burden that would seem to far exceed the Department's stated objective of the proposed amendments to Regulation 1203—to add clarity to the applicability provisions of the reporting requirements. By contrast, if the Department's intent with the proposed rulemaking is instead to require affected facilities to either rebuild intended containment systems using one of a handful of known impenetrable materials, or alternatively, perform extensive permeability testing on all such system materials, then the Department should make this significant policy shift clear in the final rule.

ii. *Internally inconsistent with other provisions of Regulation 1203.*

Subsection 3.2 of both the current and proposed versions of Regulation 1203 expressly exempt from reporting requirements "discharges (including petroleum substances) that are wholly contained within a building" unless and until a discharge later escapes the confinement of the building. Even then, reporting is required only if the substance is discharged in quantities exceeding the Delaware Reportable Quantity ("DRQ"). On its face, this provision is appropriate. But when interpreted by applying the proposed definitions of "contained" and "impervious," a building would need to be either wholly constructed of an impenetrable material or shown to have a permeability of less than 1 x 10^{-7} cm/sec. DCR submits that the Department did not intend for the Proposed Rule to have this result. Rather, the Proposed Rule's preservation of the current exemption from reporting requirements for discharges into buildings seems to confirm that any definition of "impervious" must include an alternative to the numeric maximum permeability

standard to account for the universe of buildings and other materials that are "of sufficient thickness[,] density and composition" to "prevent the discharge to stormwater conveyances, surface water, groundwater, or adjacent lands," even though such buildings or other materials are not impenetrable, nor have they been demonstrated through testing to have a permeability of less than 1 x 10^{-7} cm/sec. These types of containment facilities are designed to function in accordance with the spirit of Regulation 1203 and its overarching statutory directive, but under the Proposed Rule as drafted, they may not be considered adequate to satisfy the definitions of "contained" and "impervious."

To resolve the issues discussed above, DCR requests that the Department replace the requirement for "imperviousness" in the definition of "contained" (and therefore, remove the need for the proposed definition of "impervious") and instead incorporate the notion that a release may be "contained" under Regulation 1203 if it confined to an area of "sufficient impermeability" (an area of sufficient thickness, density, and composition) to contain a potential release until the release can be detected and fully recovered in a reasonably expeditious manner. If a material satisfies this proposed standard, then it is capable of containing a substance to prevent it from ever reaching stormwater conveyances, surface water, groundwater, or adjacent lands. This is consistent with the purpose of Delaware's statutory and regulatory program governing release reporting.[1]

b. Requested Revision to Proposed Rule

In this context, DCR believes federal and state Spill Pollution Prevention, Control, and Countermeasure regulations are particularly instructive. Regulations arising under these programs contemplate containment systems that are "*sufficiently* impervious" or "*sufficiently* impermeable" to contain both the quantity and type of oil so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs. *See, e.g.,* 7 DE Admin. Code 1351-B-1.4.2 (requiring that secondary containment systems for underground storage tanks be designed and constructed to contain any regulated substance released until it is "detected and removed"); 7 DE Admin. Code 1352-B-7.1.4 (stating that secondary containment for aboveground storage tanks must be designed and constructed to "prevent any regulated substance from reaching the surface water, groundwater, or adjacent land before cleanup occurs"); 40 C.F.R. § 112.7(c) (requiring that containment systems be "sufficiently impervious" to contain both the quantity and type of oil "so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs"); 25 Pa. Code §§245.1–245.612(d) (Pennsylvania's Storage Tank and Spill Prevention Program Regulations requiring that emergency containment for aboveground storage tanks "be sufficiently impermeable to contain any potential release for a minimum of 72 hours and until the release can be detected and fully

[1] This determination may be fact specific. By way of illustration, for a secondary containment area surrounding a storage tank, a facility owner would evaluate the type and volume of material stored in the tank and the maximum time it could take personnel to fully recover the entire volume if is all released from the tank. If the facility determines that the material of which the containment structure is composed is sufficiently thick and dense such that personnel could recover the maximum discharge volume before it enters any of the regulated environmental pathways, then such material should be deemed impervious for purposes of Regulation 1203.

recovered in an expeditious manner."); N.J.A.C. 7:1E-2.6(c)(3)(i) (New Jersey's regulations governing discharges of petroleum and other hazardous substances require that secondary containment for aboveground storage tanks be constructed of impermeable materials *unless* the existing containment system can "protect ground water for the period of time needed to clean up and remove a leak, up to the entire volume of the largest tank utilizing the system."). These states, the federal government, and in fact Delaware itself recognize that some measure of permeability is permitted to the extent that the containment measure is able to prevent material from leaking into the environment until it can be cleaned up. Certainly, outright impenetrability is not required by any of these analogous regimes.

Should the Department decide to retain the impervious definition and requirement, based on the foregoing, DCR requests that the Department revise the definition of "impervious" in the Proposed Rule as follows:

> ***"Impervious" means: (i) a material of sufficient thickness, density and composition to contain any potential release of a chemical, hazardous substance, or waste listed on Table A to prevent the discharge to stormwater conveyances, surface water, groundwater, or adjacent lands, for at least the period of time needed to recover the release; or (ii) a material that has a permeability of less than 1 x 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.***

Finally, DCR is requesting clarification from the Department as to whether "impervious" as used in the proposed definition of "contained" is intended to modify both "surface" and "repository," or whether "impervious" is intended to modify "surface" only.

II. Proposed Subsection 3.6

a. Comment

The Proposed Rule in Section 3.6 purports to drastically reduce by half the number of days that an owner or operator must provide written follow-up to the Department after the initial notification of a release of a DRQ of a listed substance. As informed by its own experience, DCR believes that in virtually all instances, the proposed 15 days (down from the current 30 days) is insufficient to complete the field investigation, root cause analysis, corrective action plan, drafting, and internal QA/QC process necessary to develop accurate information to satisfy the requirements of the written report. This evaluation is also sometimes conducted with third parties which require their own time to investigate and conduct their own internal review and approval process prior to providing DCR with that information.

DCR recognizes the Department's desire to prioritize communication with the regulated community and the public through press releases and other publications. However, to the extent

the Department finalizes the proposed change, DCR expects it and other facilities will be forced to confront the difficult decision of whether to submit the written report on time but with potentially inaccurate or incomplete information, or to take the additional time needed to develop accurate and complete information but submit the report late. The Department's purposes for requesting the written report would not seem to be served in either case. If the Department issues a press release based on inaccurate or incomplete information, the distribution of misinformation among interested citizens and the regulated community could be injurious to both the reporting facility and to the Department.

b. Requested Revision to Proposed Rule

DRC requests that the Department maintain the current reporting deadline for a written follow-up report at 30 days, which deadline is also consistent with the deadline under the federal Emergency Planning and Community Right-to-Know Act (EPCRA). If the Department determines to finalize the change as proposed, DRC is requesting the Department's rationale as to why it is seeking to reduce the time allotted to provide a follow-up report, particularly when said reduction has the potential to compromise the report's completeness and accuracy.

III. Proposed Subsection 4.6 and DRQs for Petroleum Substances

a. Comment

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. DRC submits that these changes have effectively done away with de minimus spill quantities to the point where it will impose onerous reporting requirements upon the regulated community and inundate the Department with functionally frivolous paperwork.

The elimination of this requirement means that every industrial and commercial facility, small business, municipality and others would be required to report any subsurface or surface releases which are not contained in an impervious barrier in quantities ***greater than 1 molecule***. This will inundate the Department's notification system with unnecessary reporting of numerous spills with minimal to no risk to the environment and would not satisfy the purpose and spirit of the regulation, which is to provide notice when discharges of petroleum substances and other substances occur in amounts that are actually likely to affect the environment. DCR is further concerned that this inundation could delay review and management of significant spills for both the Department and regulated entities. Moreover, removing the DRQs for petroleum also significantly increases the stringency of the reporting trigger, which, on its face, seems incongruous with the proposed change in this Subsection 4.6 to eliminate the requirement to submit a written report for releases of petroleum substances that are not underground, or that are contained.

b. Requested Revision to Proposed Rule

DCR therefore respectfully suggests that the Department consolidate and retain the current DRQs for petroleum substances specified in the existing rule at 25 gallons for releases of all petroleum substances that originate underground or are outside of containment with the potential to leak into stormwater conveyances, surface water, groundwater or adjacent lands, as offered in the table below:

	DRQ (in pounds except where noted)
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~~ substances originating aboveground unless contained	25 gal.~~*ALL~~
DE * Petroleum substances~~, heating oil, motor fuel, used oil~~ originating underground	25 gal.~~*ALL~~

IV. Proposed Changes for Hydrogen in Table A

a. Comment

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 lb***, while retaining the "F" designation. The proposed new DRQ is a mere **5%** of the current value. Yet, the Department has provided no explanation – technical or otherwise – for its proposal to revise the DRQ for hydrogen so drastically.

Hydrogen is not an extremely hazardous substance (EHS), and it is non-toxic and non-poisonous. Hydrogen's regulatory classification under all relevant programs remains the same as it has been historically, begging the question of why the Department believes there is justification for materially reducing the DRQ now. It has and is considered a flammable substance under the federal Clean Air Act, Section 112(r)(7). Hydrogen has and continues to have a diffusion constant of 0.756 cm^2/sec. @ 20 °C which is 3.6 times greater than that of methane (0.21 cm^2/sec. @ 20 °C) which means that although it is a flammable gas, when released it is diluted into a non-flammable concentration very quickly. Hydrogen releases are also very buoyant (six times more so than methane) which means that an outdoor release of hydrogen will not linger at a release or leak point and will rise very quickly in the atmosphere. As such, it does not pose anything approaching a threat significant enough to warrant such a drastic DRQ reduction.

From a permitting standpoint, the Department should consider that existing air permits, for example, are based on the current DRQ for hydrogen. Reduction to the proposed extent would significantly affect the permitting bases for processes that historically and currently allow for the venting of hydrogen in the normal course based on the current DRQ for hydrogen.

b. Requested Revision to Proposed Rule

DRC respectfully submits that the Department should retain the hydrogen DRQ at the current value of 6000 lb with the flammable substance with the designation "F". In the alternative, DRC respectfully requests the Department's clarification as to its reasoning for reducing the DRQ so significantly. DCR notes that DNREC signaled that it was updating its DRQs generally because the "regulation is static and was last updated in 2004 and may not reflect changes made at the state or federal level." There has been no change or updates to federal RQ for hydrogen (no federal RQ exists under the CERLA or EPCRA programs).

V. Other Flammable Chemicals Contained in Table A

Although the DRQs for the following substances have not been revised in the Proposed Rule, in the spirit of the Department's intent to update the regulation to reflect changes made at the federal level, DCR respectfully recommends designating the following chemical compounds as flammable substances with the "F" designation to make these DRQs consistent with their federal counterparts and to achieve further clarity in the rule:

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

These substances are not EHSs but they are listed as flammable liquids or gases and accordingly are regulated under 40 CFR Part 68 (Table 3 to §68.130.) DRC's suggested designation of these compounds is consistent with the other flammable compounds contained in Table A of Regulation 1203 for Chemical and Substances such as: Isobutane, 2-Methyl-1-butene, 3-Methyl-1-butene, Pentane, 1-Pentene, 2-Pentene, (E)-, 2- Pentene, (Z)-, Propadiene (allene), Propane, Propylene and Propyne. It would enhance clarity in Regulation 1203 to apply consistent designations for all flammable compounds; absent such a change, the regulation could be misinterpreted.

Sincerely,

Thomas S. Godlewski, Jr.
East Coast Environmental Manager

cc: