HEARING OFFICER'S REPORT

TO: The Honorable Gregory Patterson
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Smith, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 1203:**
Reporting of a Discharge of a Pollutant or Air Contaminant

DATE: October 1, 2026

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, February 25, 2026, at 6:00 p.m. via the State of Delaware's Zoom Video Communication Platform by the Department of Natural Resources and Environmental Control ("DNREC," "Department") to receive comment on proposed amendments ("Amendments") to 7 DE Admin. Code 1203 - *Reporting of a Discharge of a Pollutant or Air Contaminant* ("Regulation"). Pursuant to 7 *Del.C.* § 6028, the Department is proposing revisions to the reporting requirements for discharge of a pollutant or air contaminant, as well as to update the Regulations to meet the *Delaware Administrative Code Style Manual*.

The Regulation establishes requirements for reporting to the Department when discharges and environmental releases of pollutants or air contaminants meets or exceeds the limits established in the Delaware Reportable Quantity ("DRQ") table. The pollutant or air contaminant reporting requirements and reportable quantities are for Delaware specific chemicals, substances, and waste, as well as federal chemicals listed under the *Comprehensive Environmental Response, Compensation, and Liability Act*, Section 112(r) of the *Clean Air Act*, or Section 311 of the *Clean Water Act* of 1980. These reporting requirements apply to releases of pollutants or air contaminants to the air, surface water, groundwater, and land.

The DRQ table was last updated in 2004; however, some reportable quantities have since been updated at the state and federal levels. As a result, the Regulation may not reflect current state or federal requirements. The Divisions of Waste and Hazardous Substances, Water, Watershed Stewardship, and Air Quality, met periodically between late 2024 and into 2025 to review the outdated provisions of the Regulation.

Through these meetings, the Department reviewed needed updates to the DRQ table by identifying and correcting chemical discrepancies, assessing the internal distribution process for "6028 Incident Reports," and identify needed improvements to the *Delaware Environmental Release Notification System.*

Many revisions to the DRQ table were necessary to improve consistency with applicable state and federal reporting levels. During the beginning stages of the promulgation process, the Department initially proposed removing federal chemicals and their associated reportable quantities from the DRQ table and replacing that with a reference to the U.S. Environmental Protection Agency ("EPA") *List of Lists*, as guidance for the regulated community. However, upon further review the Department determined that continuing to maintain and publish its own list through the DRQ table would provide greater regulatory control and clarity for the regulated community than relying on the EPA's *List of Lists*.

The Department's decision was based, in part, on the fact that the EPA provides many lists, each offering different amounts of reportable quantities for a specific chemical, with each list expressing those quantities in different measurements. By maintaining its own list, the Department can evaluate the applicability of specific chemicals and reportable quantities to the Regulation and make revisions, as appropriate. The Department further intends to conduct this review on an annual basis to allow the Department to remain responsive to changes in federal reporting requirements while retaining the Department's discretion to determine whether such changes are appropriate for incorporation into Delaware's DRQ table.

As a result of this determination, the Department proposed amendments to update necessary requirements for reporting discharges of chemicals, substances, and waste, including revisions to their reportable quantities. In addition, the Department proposed to add definitions for clarity and proposed non-substantive revisions throughout the Regulation.

In alignment with EPA's definition, the Department proposed amendments to add a definition for "Person". This proposed definition establishes the individuals who may be responsible for the reporting requirements when a release occurs. Also defined in the proposed amendments were "contained" and "impervious". The Department included these new terms to clarify when and whether a person needs to report a discharge.

Moreover, the proposed amendments also clarify the reporting requirements for when a release and discharge occur. The amendments clarify when a release or discharge occur it must be reported immediately upon knowledge of the release, and where applicable, to activate an emergency site plan. To ensure a quicker response time after a discharge or release occurs, the Department also proposed reducing the amount of time an owner or operator must submit a 6028 Incident Report to the Department from 30 to 15 days.

The proposed amendments further clarifies that the person reporting a discharge to the Department is responsible for determining, at the time of reporting, whether the discharge exceeds the applicable DRQ. The amendments also resolve conflicting provisions concerning infectious waste by expressly subjecting such releases to notification and written reporting requirements, for consistency throughout the Regulation.

The Department also proposed many revisions to the DRQ table and reportable quantities. To improve consistency with federal requirements and to simplify reporting, the Department proposed consolidating petroleum products listed under hazardous substances and waste. Specifically, the proposed amendments eliminate distinctions

between heating oil, motor fuel, and used oil and instead established consistent reporting requirements by generalizing the type of petroleum and distinguish them as aboveground and underground petroleum discharges. Under the proposed amendments, an aboveground petroleum discharge must be reported, unless it is contained, while all underground petroleum discharges must be reported. Likewise, the proposed amendments revise the DRQ table for petroleum changing above ground and underground, to reflect "all" (meaning any amount is reportable), changing it from 150 gallons and 25 gallons, respectively.

In addition to amending the DRQ table for hazardous substances and waste, the Department also proposed adding animal and vegetable oils, fats, and greases, with a reportable quantity of 25 gallons.

Regarding reportable quantities (DRQs), the proposed amendments revise 3-bromopropyne, benzoyl peroxide, dibenzoyl peroxide, and hydrogen listed under the chemicals and substances table. The Department revised the DRQ for 3-bromopropyne from 500 pounds to 1 pound due to the chemical's highly toxic and extremely hazardous properties, determining that the lower quantity is more appropriate and protective. The proposed amendments also remove benzoyl peroxide from the DRQ table because benzoyl peroxide and dibenzoyl peroxide refer to the same chemical. Accordingly, the Department revised the DRQ for dibenzoyl peroxide from 500 pounds to 100 pounds, establishing a more conservative quantity for reporting purposes. Lastly, the Department proposed reducing the DRQ for hydrogen from 6000 pounds to 300 pounds to account for technological changes in the transportation and use of hydrogen in Delaware.

The Department proposed several non-substantive amendments to conform the Regulation to the *Delaware Administrative Code Style Manual* while preserving the existing intent of the regulatory language. These proposed revisions include grammatical corrections, renumbering of sections and corresponding cross-references, and modernization of outdated drafting conventions, such as "including but not limited to" and replacing that with "including" to improve readability and consistency with current

drafting standards. These amendments are editorial in nature and do not alter any substantive regulatory requirements.

The Department has the statutory basis and legal authority to act with regard to the proposed Amendments consistent with 7 *Del.C*. § 6028. The Department published its initial proposed Amendments in the February 1, 2026, *Delaware Register of Regulations*. Thereafter, the Department *revised* the proposed Amendments, that were thoroughly vetted at the public hearing held on February 25, 2026. The revisions include grammatical corrections to the definition and references to "Environmental Emergency Notification and Complaint Number", removing asterisks within Table A, and correcting a technical glitch that caused chemicals listed on Table A to be stricken and underlined, appearing as they were removed and added to the Table, however; they were not intended proposed amendments. The revisions are non-substantive in nature; therefore, no further action is needed from the Department.

At said hearing there were five (5) members of the public in attendance. Pursuant to Delaware law, the hearing record ("Record") remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on March 12, 2026, with a total of 3 written comments received by the Department during the regulatory development process.

After the record closed, the Department's Division of Waste and Hazardous Substances staff prepared a Technical Response Memorandum ("TRM") and supplemental TRM, attached hereto as Appendix "B" and "C", respectively, at the request of this Hearing Officer.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents: (1) a verbatim transcript; (2) nine (9) documents introduced by Department staff at the public hearing held on February 25, 2026, and marked by this Hearing Officer at the time of the hearing accordingly as Department Exhibits 1-9; (3) a Technical Response Memorandum ("TRM"); and (4) a supplemental TRM. The Department's person primarily responsible for the drafting and overall promulgation of the proposed Amendments, Eileen Butler, Planner V, Division of Waste and Hazardous Substances, developed the Record with the relevant documents in the Department's files.

As stated previously, the public comment period closed on March 12, 2026, with a total of 3 written comments received by the Department. Subsequently a TRM was provided by the Department's expert staff that responded to concerns of the public and regulated community. Subsequent to the submission of the TRM, the Division of Waste and Hazardous Substances issued a supplemental TRM to provide additional clarification of the hearing record and to support the information and revisions presented and vetted during the public hearing.

The Department reviewed and addressed concerns regarding the reporting obligations, revisions to DRQs, and request for clarification throughout some proposed amendments and current provisions. The Department determined that additional revisions to the proposed amendments were needed for clarity. These revisions to the proposed amendments, as discussed in further detail below, are non-substantive in nature and no further noticing is required by the Department.

The Department received comment requesting clarification for the newly proposed terms, "contained" and "impervious". As currently proposed the Department included the reference to "impenetrable" for the definition for "impervious" which resulted in uncertainty to the regulated community. To clarify the intent of the definition, the Department proposes revisions to clarify the performance and duration expected of an

impervious material. The Department proposes to revise the definition of impervious by adding, “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.”

Furthermore, the definition of “Contained” has been revised to enhance clarity regarding “impervious surface.” The Department proposes removing the phrase “any impervious surface” and replacing it with “any surface that prevents the released chemical, hazardous substance, or waste listed in Table A from reaching stormwater conveyances, surface water, groundwater, or adjacent land prior to remediation.” These amendments are intended to ensure regulatory consistency with the *Aboveground Storage Tank* regulations (7 DE Admin. Code 1352).

The Department also received comment expressing ambiguity of a current provision of the Regulation, subsection 4.4 (as the newly proposed numbered). The commenter expressed that when an incident of discharge occurs, the lowest constituent DRQ is sometimes unknown immediately, therefor they requested further clarification regarding mixture reporting requirements and clarification to “lowest constituent DRQ” of a mixture. In response to the concerns, while also considering the protection of the environment, the Department proposes to remove partial language within 4.4 to enable reporting based on available information and not requiring the composition to be immediately verified.

Commenters also expressed concern regarding the proposed amendments impacting reporting obligations and the lowering of DRQs, along with a request to implement federal requirements. As previously mentioned, while the Department initially proposed amendments to adopt the EPA List of Lists rather than maintaining and updating the DRQ Table within the Regulation, they determined that continuing to do so would provide greater regulatory control and clarity for the regulated community. As such, the Department proposed revisions for petroleum, hydrogen, and Dibenzoyl peroxide and benzoyl peroxide (combining those into one, as they are the same) and 3-Bromopropyne.

One commenter raised a concern regarding the proposed revisions to the petroleum provisions, asserting that the language in Section 4.6 could expand reporting requirements and place an additional burden on the regulated community. The Department considered the impact of the proposed revisions and determined that generalizing the types of petroleum would allow for ease of enforcement, not having to identify the type, but rather the amount. However, in consideration of the comments received regarding the potential of creating significant administrative and operational burdens for reporting "ALL" petroleum discharges, the Department proposes to revise the subsection 4.6 and reflect the same in Table A. Those revisions include: 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. Theses revisions to the proposed amendments also better align with the Department's existing underground and aboveground regulations associated with containment when a spill occurs and would also be consistent with our regional neighbors.

The Department also received comments regarding the proposed revisions to the list of chemicals and substances along with their DRQ amounts. One of concerns addressed the reduction for hydrogen, changing the DRQ from 6000 lbs. to 300lbs. while retaining an "F" designation. The proposed amendments establish an "F" designation next the DRQ for chemicals to mean it's a flammable substance that applies short term releases (immediate to 1 hour).

The Department determined that they would retain the 6000 lbs. release reporting for hydrogen even though hydrogen is often maintained in 300-pound containers. In addition, they realized that any substance accompanied by an "F" that discharges beyond the reportable quantity is of concern to the Department, regardless of its flammability. Therefore, the Department proposes to remove the proposed provisions of 4.8 as well the "F" for all chemicals listed with this designation, in the revised proposed amendments.

In summary, the Department carefully considered all public comments. As a result, including the proposed amendments vetted at the time of the hearing the Department has also revised the initially proposed amendments that include non-substantive revisions to improve clarity for the regulated community. While additional revisions to the DRQs were suggested during the public comment period, the Department considered those comments and provided its rationale for retaining the proposed DRQs as reflected in the TRM.

Accordingly, the Department's *revised* proposed Amendments are attached hereto as Appendix "A" for the Secretary's review.

I find that the Division of Waste and Hazardous Substance's TRM offers a detailed review of the *revised* proposed Amendments, identifies all the concerns raised by the public, and responds to the concerns in a balanced manner, accurately reflecting the information contained in the Record. Thus, the aforementioned TRM and supplemental TRM, are attached hereto as Appendix B and Appendix C, respectively, and are expressly incorporated herein as such.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the *revised* proposed amendments to the *Regulations Governing Reporting of a Discharge of a Pollutant or Air Contaminant* (7 DE Admin. Code 1203). I find that the *revised* proposed amendments will enable the Department to update the requirements for reporting discharges of a pollutants or air contaminants and update the Regulations to meet the *Delaware Administrative Code Style Manual*. These amendments will support the protection of public health and the environment while maintaining clear, effective, and practical requirements for the regulated community. I also find that the *revised* proposed amendments are necessary to comply with state law, and I recommend that the Secretary

adopt the *revised* proposed amendments as the final amendments to 7 DE Admin. Code 1203. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* §6028(b);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these *revised* proposed Amendments as final;

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on February 25, 2026, and during the 15 days subsequent to the hearing (through March 12, 2026), before making any final decision;

4. Promulgation of the *revised* proposed Amendments to *Governing Reporting of a Discharge of a Pollutant or Air Contaminant* (7 DE Admin. Code 1203) will enable the Department to update the requirements for reporting discharges of a pollutants or air contaminants and update the Regulations to meet the *Delaware Administrative Code Style Manual*. These amendments will support the protection of public health and the environment while maintaining clear, effective, and practical requirements for the regulated community;

5. The Department has reviewed the *revised* proposed Amendments in the light of the *Regulatory Flexibility Act*, consistent with 29 *Del.C.* Ch. 104, and has chosen Exemption B1, as the proposed amendments provide clarity for those persons responsible

for reporting releases, and also believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department has reviewed the *revised* proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets is not practical:

7. The Department's proposed regulatory Amendments, as initially published in the February 1, 2026, *Delaware Register of Regulations*, and the *revised* proposed amendments that are non-substantive in nature, is set forth in Appendix "A" hereto, and is adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

8. The Department shall submit the *revised* proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate; and

9. The Department shall serve and publish its Order on its internet site.

Theresa Smith
Public Hearing Officer

\ahear\ Reg.Amend.Governing Reporting of a Discharge of a Pollutant or Air Contaminant (7 DE Admin. Code 1203).2026
Attachments/Appendix:
Appendix A: *Revised* Proposed Reg. Amendments
Appendix B: Technical Response Memorandum
Appendix C: Supplemental Technical Response Memorandum