

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code Section 6028 (7 Del.C. §6028)

7 DE Admin. Code 1203

FINAL

ORDER

1203 Reporting of a Discharge of a Pollutant or Air Contaminant

Secretary's Order No.: 2026-WH-0038

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1203 - Reporting of a Discharge of a Pollutant or Air Contaminant

Date of Issuance: October 19, 2026

Effective Date of the Amendment: December 11, 2026

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department," "DNREC"), pursuant to 7 Del.C. §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to the proposed amendments ("Amendments") to Code 1203 - *Reporting of a Discharge of a Pollutant or Air Contaminant* ("Regulation"). The Department proposes to amend the Regulation for reporting discharges of pollutants or air contaminants, as well as to update the Regulations to meet the *Delaware Administrative Code Style Manual*. These Amendments support the protection of public health and the environment while maintaining clear, effective, and practical requirements for the regulated community.

The Department's Divisions of Waste and Hazardous Substances, Water, Watershed Stewardship, and Air Quality, met periodically between late 2024 and into 2025 to review provisions of the Regulation, that was last updated in 2004. Since that time, numerous state and federal requirements related to the Regulation have been updated. Accordingly, the Department determined that revisions were necessary to modernize the Regulation and better align its requirements with current state and federal standards.

In alignment with the U.S. Environmental Protection Agency ("EPA") and to provide greater clarity regarding when and by whom a release or discharge of a pollutant or air contaminant must be reported, the Department added, and subsequently revised, several definitions. The term "Person" was added to identify those individuals or entities that may be responsible for fulfilling the reporting requirements when a release occurs. The Department also added definitions for the terms "contained" and "impervious," which are used throughout the Regulation to clarify the circumstances under which a release or discharge is subject to the reporting requirements and subsequently revised the definitions to provide greater clarity for the regulated community.

In addition, to improve the timeliness of reporting, following a release or discharge, the Department revised the Regulation to establish more immediate response requirements. The Amendments require a release or discharge to be reported immediately upon knowledge of the occurrence and, where applicable, require activation of an emergency site plan. Additionally, to facilitate a timelier response following a release or discharge, the Department proposes to reduce the timeframe for an owner or operator to submit a 6028 Incident Report to the Department from 30 days to 15 days.

The Department also proposed amendments to further clarify and update the Regulation's discharge reporting requirements. The Amendments clarify that a person reporting a discharge is responsible for determining, at the time of reporting, whether the discharge exceeds the applicable DRQ. In addition, to resolve conflicting provisions concerning infectious waste, the Amendments expressly subject these releases to the Regulation's notification and written reporting requirements.

The Delaware reportable quantities ("DRQs") table consisting of chemicals, hazardous substances or wastes was revised to improve consistency with federal requirements and to simplify reporting. Under the table for Hazardous Substances and Wastes, the petroleum reporting requirements have been consolidated by eliminating distinctions among heating oil, motor fuel, and used oil. The types of petroleum have been generalized to aboveground and underground petroleum discharges. Under the *revised* proposed amendments, the Department has established the DRQ for petroleum substances originating aboveground, releases are reportable if 5 gallons or more of aboveground petroleum discharges occur and are not contained, or if there is a likelihood for the release to reach stormwater conveyances, surface water, groundwater, or adjacent lands. However, if the aboveground petroleum discharges are contained, reporting is not required. Reporting is required for all discharges of petroleum substances originating underground. Furthermore, the Amendments introduce a new requirement, adding animal and vegetable oils, fats, and greases with a 25-gallon discharge reporting quantity (DRQ).

The Amendments to the Table A under Chemicals and Substances revise 3-bromopropyne, reducing it from 500 pounds to 1 pound; remove benzoyl peroxide from the table because it is the same chemical as dibenzoyl peroxide, whose DRQ has been reduced from 500 pounds to 100 pounds; and as reflected in the revised proposed amendments, the DRQ for hydrogen maintains its DRQ of 6000 pounds, rather than the 300 pounds that was initially proposed. These revisions better align with the Department's existing regulations associated with containments when a spill occurs and would also be consistent with our regional neighbors.

In addition to the subsequent revisions made to what was initially proposed, the Department has also removed the “F” designation from chemicals listed in Table A. This designation was initially proposed to identify flammable substances that apply short term releases (immediate to 1 hour). However, regardless of flammability, any release established by the DRQ is a concern of the Department. Therefore, the proposed provisions related to the “F” designation have also been removed.

The Department also revised the proposed amendments by removing current language for clarity when reporting a discharge that involves a mixture of more than 1 chemical or chemical categories. Rather than requiring reporting of the lowest DRQ constituent of the mixture -which is often not known right away when a chemical mixture discharge occurs- the Department clarified that the DRQ for the total discharge shall be the lowest DRQ of each constituent.

Finally, 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 Amendments 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 published the initial proposed amendments in the February 1, 2026, *Delaware Register of Regulations*. Following publication, the Department identified discrepancies between the version of the proposed Amendments submitted for publication and the version ultimately published in the *Delaware Register of Regulations*. These discrepancies included grammatical errors to the definitions, references to “Environmental Emergency Notification and Complaint Number”, technical errors, removing asterisks within Table A, and 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 Department corrected these errors in the *revised* proposed amendments. The *revised* proposed amendments were non-substantive. Nevertheless, to ensure the accuracy and completeness of the administrative record, the Department identified the discrepancies at the public hearing.

The public hearing regarding this matter was held on February 25, 2026. There were five (5) members of the public in attendance at the Department’s virtual public hearing. The hearing record “Record”, consisting of nine (9) exhibits, was formally marked into the Record by Hearing Officer Theresa Smith. The revisions to the initial publication were fully vetted by the Department at the hearing and marked as a part of the Record by Hearing Officer Smith. Pursuant to 29 **Del.C.** §10118(a), the Record remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter on March 12, 2026.

Subsequent to the close of the public comment period, and at the request of the Hearing Officer, the Department’s expert staff in the Division of Waste and Hazardous Substances prepared a Technical Response Memorandum (“TRM”) and a supplemental TRM. The TRM and supplemental TRM, provides a detailed summary of the hearing record, comments received, along with the Department’s consideration of and responses to those comments. Following its review of the comments raised by the public comment process, the Department determined that certain proposed amendments were appropriate as drafted and required no further revisions. The Department also determined that certain comments warranted additional revisions to the initially proposed amendments. The *revised* proposed amendments discussed throughout this Report are non-substantive in nature, accordingly, no additional action is required from the Department.

I find that the Department’s TRM and supplemental TRM offers a detailed review of the *revised* proposed amendments, identifies the concerns voiced in the public comments received in this matter, and responds to the same in a balanced manner, accurately reflecting the information contained in the Record.

Hearing Officer Theresa Smith prepared her report dated October 1, 2026 (“Report”), which expressly incorporated the Department’s *revised* proposed amendments into the hearing record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the *revised* proposed amendments as attached to the Report as Appendix “A.”

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these *revised* proposed amendments, pursuant to 7 **Del.C.** §§ 6001(c), 6010, and 6028. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Reasons and Conclusions

Currently pending before the Department are the proposed regulatory amendments to 7 DE Admin. Code 1203 - *Reporting of a Discharge of a Pollutant or Air Contaminant*. Based on the record developed by the Department’s staff in the Division of Waste and Hazardous Substances, and established by the Hearing Officer’s Report, I find that the *revised* proposed regulatory amendments are well-supported and will enable the Department to update the requirements for reporting discharges of 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. Further, the proposed amendments, as published in the February 1, 2026, *Delaware Register of Regulations*, and subsequently revised, are consistent with the Department’s authority under 7 **Del.C.** §§ 6001(c), 6010, and 6028 to update the Regulation, clarify reporting requirements for the regulated community, and facilitate effective enforcement.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to adopt and enforce these proposed regulatory amendments pursuant to 7 **Del.C.** §§ 6001(c), 6010, and 6028;
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 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 virtual public hearing held on February 25, 2026, and during the days subsequent to the public hearing (March 12, 2026), before making any final decision;

4. Promulgation of the *revised* proposed amendments to 7 DE Admin. Code 1203 - *Reporting of a Discharge of a Pollutant or Air Contaminant*, as set forth herein, will enable the Department to update the requirements for reporting discharges of 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 *revised* 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 this 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 Hearing Officer's Report, including its established record and the *revised* proposed amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
8. The Department's proposed regulatory amendments, as published in the February 1, 2026, *Delaware Register of Regulations*, and subsequently revised, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect 10 days after their publication in the next available issue of the *Delaware Register of Regulations*;
9. The Department has an adequate Record of its decision, and no further public hearing is appropriate or necessary;
10. The Department shall submit this Order approving the *revised* proposed amendments as final regulations 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
11. The Department shall serve and publish its Order on its internet site.


Gregory Patterson
Secretary