



June 2, 2025

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477

**Re: Proposed Rulemaking: Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth (25 Pa.Code Chapter 91). Submitted via eComment and [RegComments@pa.gov](mailto:RegComments@pa.gov).**

To Whom It May Concern:

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, appreciates the opportunity to submit comments for consideration on the proposed above-referenced rulemaking regarding Notification Requirements for Unauthorized Discharges to Waters of the Commonwealth.

The MSC was formed in 2008 and is currently comprised of approximately 150 member companies who are fully committed to working with local, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in natural gas production, gathering, processing, transmission, and utilization in the country, as well as the supply chain companies, contractors, professional service firms, and the skilled trades who work with the industry.

Please find our comments below.

#### Clarity and Consistency with Chapter 78a for Unconventional Oil & Gas Operations

Unconventional oil and gas operations are subject to specific spill reporting requirements found at 25 Pa. Code §78a.66. These requirements apply in addition to any requirements found in §91.33. The proposed amendment to §91.33 provides: “**(d) This section does not affect any additional reporting requirements in this title**”. The Preamble specifically notes §§ 78.66(b) and 78a.66(b)(1)(ii) as provisions that require reporting “without regard to §91.33”.

Pursuant to §78a.66(b)(1) a spill causing or threatening pollution of the waters of the Commonwealth as provided for in §91.33 must be reported and **any** spill of 5 gallons or more over a 24-hour period not completely contained must be reported regardless of what §91.33 says.

Spills must be reported in accordance with §78a.66(b)(2) which provides, in part, “In addition to meeting the notification requirements of § 91.33, the operator or other responsible party shall...” - followed by a list of additional steps that must be taken.

For spills on containment or of less than 5 gallons the proposed amendment to §91.33 **could** be helpful if structured correctly. Section 91.33 as proposed would allow an operator to evaluate containment

infrastructure (See §91.33 (a.3)(2)(iv)) or perform one of the other evaluations outlined in paragraph a.3 and conclude that notice was not required. However, no such analysis would end the requirement to report pursuant to §78a.66(b)(2) since that section requires notifications *in addition* to what is required by §91.33.

In short, the proposed amendment to §91.33 does not lessen the reporting burden placed on unconventional operators. However, it may impose two slightly different reporting requirements that are inconsistent between the two chapters (93 and 78a) and sow confusion among both operators and PA DEP compliance staff.

Notwithstanding the foregoing, the text of the regulation could be made clearer and would be consistent with the Department's explanation in the Preamble with the change suggested below. This could also prevent inspectors from asserting that all the factors have to be evaluated.

**(a.3) The responsible person identified in subsection (a) may determine that an accident or other activity or incident does not require immediate Department notification under subsection (a) if the person evaluates and documents ONE OR A COMBINATION OF the following factors and determines that a toxic substance or another substance does not cause or threaten pollution of the waters, endanger downstream users or cause damage to property as described in subsection (a):**

#### Alternative Option for Consideration

In the alternative, the MSC urges the Department to remove any potential for inconsistency or perceived inconsistency between Chapter 91 and Chapter 78a by either 1) clarifying in Chapter 91 that unconventional oil and gas operators are subject only to Chapter 78a (and/or Chapter 78 as it pertains to conventional operations) or 2) clarifying in Chapter 78a (and Chapter 78) that oil and gas operators are subject only to either these respective chapters (78a/78) or to Chapter 91 – but not both.

It is worth noting that the oil and gas industry often finds itself facing differing standards within the Pennsylvania code in a manner that is largely unique to this industry. This occurs when the Department, on one hand, chooses to regulate based on media (air, water, waste, etc.) and in another, chooses to regulate based on industry sector (oil and gas).

#### Conclusion

Thank you for your consideration of these comments. Should you desire any additional information or clarification, please do not hesitate to contact me.

Sincerely,

  
Patrick Henderson  
Vice President  
Government Affairs and Communications

