

Regulation 1203 Reporting of a Discharge of a Pollutant or an Air Contaminant
(Formerly Regulation known as 6028)

Effective Date April 1, 1991, Revised December 11, 2002 and July 11, 2004

1.0 General Provisions

1.1 The purpose of this Regulation is to describe the requirements for reporting the discharge of a pollutant or an air contaminant as mandated in 7 Del. C., Section 6028.

1.2 Information obtained through the provisions of this Regulation shall be made available for public inspection in accordance with 29 Del. C., Chapter 100 and Department of Natural Resources and Environmental Control (Department) Freedom of Information Act (FOIA) regulations except where such information is of confidential nature as defined in 7 Del. C., Section 6014.

1.3 The list of chemicals and substances subject to the reporting requirements of this Regulation and the associated Delaware Reportable Quantity (DRQ) for each chemical and substance is contained in Section 3.0. The Department may, after providing proper public notice and an opportunity for public hearing, add or delete chemicals or substances or change the DRQ of any chemical or substance.

1.4 The reporting requirements under this Regulation are in addition to and not in lieu of, any other discharge reporting requirement found in any other state, federal, county or local government statutes, permits, regulations or ordinances.

1.5 [Reserved]

1.6 Definitions

"Delaware Reportable Quantity" (DRQ) – means the reportable quantity of chemicals, substances or mixtures listed in Section 3.0 of this regulation notwithstanding any reporting requirements by other state, federal, county or local government statutes, regulations or ordinances. To be reportable, the DRQ is based on the total quantity discharged over a rolling 24-hour period.

"Discharge" - means any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping, or disposing into the environment of any chemical or substance listed in Section 3 but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, waterborne vessel or pipeline pumping station engine. Discharge includes any environmental release.

"Environmental Emergency Notification and Complaint Number" – means the 24-hour DNREC telephone number(s) used for reporting the discharge of a pollutant or an air contaminant.

"Environmental Release" – means any spillage, leakage, emission, discharge, or delivery into the air or waters or on or into the lands of this State, of any sewage of 10,000 gallons or more, oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, or this Regulation.

"Extremely Hazardous Substance" – means substances listed in 40 CFR Part 355 Appendices A and B as amended May 7, 1996.

"Heating oil" - means petroleum that is one of nine technical grades. These are: No. 1; No.2; No.4-light; No.4-heavy; No.5-light; No.5-heavy; No.6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels used as substitutes for one of these fuels such as kerosene or diesel when used for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Motor Fuel" - means petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, jet fuel, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Petroleum Substance" - means oil of any kind or in any form, including but not limited to petroleum, fuel oil, heating oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Vegetable-based oils such as soybean oil are not included.

"Sewage" - means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

2.0 Reporting Requirements

2.1 Applicability

2.1.1 Unless otherwise stated in this Section, any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air or a pollutant, including petroleum substances, into surface water, groundwater or land in excess of any DRQ specified under this Regulation, shall report such discharge to the Department as soon as the person has knowledge of said environmental release or discharge while activating the appropriate emergency site plan unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.

2.1.2 Discharge in compliance with a validly issued state or federal permit(s) or in compliance with other state and federal regulations is exempt from the reporting requirements of this Regulation.

2.1.3 An owner or operator responsible for a transportation related discharge may meet the requirements of this Regulation by providing the information indicated in 2.4 to the 911 operator and, if applicable, to the responding Department representative at the scene. For the purposes of this paragraph, a "transportation related discharge" means a discharge during transportation when the stored chemical or substance is moving under active shipping papers and has not reached the ultimate consignee.

2.1.4 This Regulation does not apply to the proper application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et. seq. as amended August 3, 1996).

2.1.5 Any discharge that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8 (b) is exempt from reporting requirements of this regulation except:

2.1.5.1 Initial notifications as required by 40 CFR part 302.8 (d) and (e).

2.1.5.2 "statistically significant increase" as defined in 40 CFR 302.8(b),

2.1.5.3 notification of a "new release" as defined in 40 CFR 302.8(g) (1), or

2.1.5.4 notification of a change in the normal range of the release as required under 40 CFR 302.8(g) (2).

2.1.5.5 Telephone notification required by 40 CFR 302.8 to the State of Delaware State Emergency Response Commission (SERC) shall be fulfilled by notifying the Department. Written notification reports required by 40 CFR 302.8 and sent to the EPA regional office shall serve as written notification to the State of Delaware SERC when copied to the Department. (Reference: 40 CFR 302.8 as promulgated on July 24, 1990).

2.2 Discharges (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements of this Regulation. Should such a wholly contained discharge be discharged outside the building at a later time for any reason, that eventual discharge, when exceeding the DRQ, shall activate these reporting requirements.

2.3 [Reserved]

2.4 For the purpose of this regulation, notification of any reportable incident under Sections 2.1 or 2.4 by a person to the Department can be in person to Department staff or by telephone communication to the Department's Environmental Emergency Notification and Complaint Number. The notification must contain the following information which details the facts and circumstances of the discharge to the maximum extent practicable at the time of notice:

2.4.1 Facility name and/or location of the discharge.

2.4.2 Type of incident, e.g. discharge, fire, explosion, associated with discharge and whether assistance from outside emergency responders, e.g. 911, has been requested.

2.4.3 The chemical or substance involved with the incident of discharge including the Chemical Abstract System (CAS) number for the chemical or of the constituent chemicals when a mixture is discharged.

2.4.4 An indication of whether the chemical or chemicals are an extremely hazardous substance.

2.4.5 An estimate of the quantity of any such chemical(s) or substance(s) that was discharged into the environment.

2.4.6 The beginning time and the duration of the discharge.

2.4.7 The medium or media, e.g. soil, groundwater, surface water, air, etc., into which the discharge occurred.

2.4.8 Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

2.4.9 Proper precautions to take as a result of the discharge, including evacuation.

2.4.10 The name(s) and telephone number(s) of the person(s) to be contacted for further information.

2.4.11 Such other information as the Department may require.

2.5 Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department updating the information required under section 2.4 and including the following additional information to the extent known:

2.5.1 Part I.

2.5.1.1 Actions taken to respond to and contain the release in the form of a chronology,

2.5.1.2 Any known or anticipated acute or chronic health risks associated with the release, and

2.5.1.3 Where appropriate, advice regarding medical attention necessary for exposed individuals.

2.5.2 Part II.

2.5.2.1 The facts and circumstances leading to the environmental release including a detailed identification of the pathway through which the discharge to the environment occurred and potential environmental impacts,

2.5.2.2 Measures proposed to prevent such a discharge from occurring in the future and to remedy the deficiencies, if any, in the prevention, detection, response containment, cleanup or removal plan components,

2.5.2.3 Such other information which the Department may require.

Except where section 2.5 Part II information is of confidential nature as defined in 7 Del. C., § 6014, all written information obtained through this subsection shall be made available to Local Emergency Planning Committees (LEPCs) and the public.

2.5.3 The Department reserves the right to require a written follow-up report for any environmental release, regardless of the substance or quantity, if there is concern for public health and safety or environmental welfare has been adversely affected. At the Department's discretion, the Department may require said person to file a written follow-up report, within 30 days or any shorter time as required by validly issued state or federal permits or by any pertinent regulations, setting forth all details contained in Sections 2.4 and 2.5.

2.5.4 The written follow-up report shall be in a format approved by the Department and submitted to the appropriate addresses for report submissions provided by the Department. The Department may establish procedures for notification and submission of written reports by computerized and electronic methods, including but not limited to, the submission of information through the internet.

3.0 Chemicals, Substances and Mixtures and Associated Reportable Quantities.

3.1 The purpose of this Section is to detail those chemicals, substances and mixtures applicable to the reporting requirements of this Regulation and to identify the DRQ at which reporting of the chemical or substance release or discharge is required.

3.2 The table A List attached to this Section contains all chemicals and chemical categories and DRQ's that are subject to the reporting requirements of this Regulation. Notification of the discharge of a DRQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, zinc or any other solid substance on the DRQ list is not required if the mean diameter of the particles discharged is larger than 100 micrometers (0.004 inches).

3.3 When any incident of discharge occurs involving more than one (1) chemical or chemical category listed in this Section, the DRQ for the total discharge shall be the lowest DRQ of any constituent of that total, unless the mixture is known. In this case, the word "known" means that a determination of constituent levels is made either by direct testing or by calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, the discharge is subject to these notification requirements only when a constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ.

3.4 In all cases, discharges of infectious waste, as defined in Title 7 Chapter 64 § 6402, of any quantity or of any type occurring outside of a medical or health care facility are subject to the notification requirements of Section 2.4 of this regulation and the written requirements of Section 2.5.

3.5 In all cases, discharges of petroleum substances of any quantity or of any type are subject to these notification requirements 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 3.0 Table A List, must be reported.