



EHS Support and Advocacy for the Communications Industry

November 4, 2016

Jonathan P. Steverson, Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

Re: Notice of Proposed Rule 62-4.161, Public Notice of Pollution

Dear Mr. Steverson:

The Environmental, Health & Safety Communications Panel (“EHSCP” or “we”)¹ is pleased to provide comments in response to the Notice of Proposed Rule (NPR) 62-4.161-Public Notice of Pollution.

The EHSCP is a consortium of communications environmental, health, and safety professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the communications industry. The EHSCP strives to provide constructive input in the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the communications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies when issues arise concerning the communications industry. More information regarding the EHSCP may be found at www.ehscp.org.

After reviewing the emergency rule issued September 26, 2016 regarding notification of pollution incidents and the NPR, EHSCP believes that the emergency rule and the proposed rule, if it is finalized as proposed, will have negative unintended consequences. We believe our concerns can be addressed by clarifying the scope of incidents that truly justify public notification and providing a simpler, more systematic way of reporting to media.

Scope of “any incident at an installation resulting in pollution”

EHSCP understands that the promulgation of the emergency rule and the decision to proceed with rulemaking on the proposed rule resulted from recent incidents in Pinellas County and Polk

¹ The EHSCP member companies include AT&T, Bell, CenturyLink, Cincinnati Bell, Comcast, Crown Castle, Ericsson, Frontier Communications, Leducor Technical Services, Level 3 Communications, Nokia, Shentel, Sprint, T-Mobile, Verizon, and Windstream Communications.

County, Florida. The rules were directed at filling a perceived gap in the regulatory structure addressing the community and public rights to know. EHSCP supports the goal of increasing public awareness of events that may have an adverse impact on human health or the environment. However, we believe that the current proposal is overly broad. The proposal would create unnecessary and confusing burdens and likely result in a deluge of communication that will dilute the impact of the type of public notice that the proposal was intended to address.

The emergency rule and the proposed rule require reporting of pollution, but do not define the nature or scope of incidents covered. Guidance that the Department of Environmental Protection ("DEP") has issued to date has been helpful in clarifying the intent of the emergency rule and the circumstances in which it may become applicable. However, due to the potentially broad nature of the statutory definition of "pollution" cited, the first three weeks saw several hundred incidents reported, many of them truly inconsequential and of little interest to the community.

Pollution is defined at Chapter 403.031 of the Florida Statutes to include "any substances, contaminants, noise, or manmade or human-induced impairment of air or waters... which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property". Should the DEP and the regulated community strictly interpret that definition, tens if not hundreds of thousands of "incidents" could fall within its scope every week. Clearly we believe this is not the DEP's intent.

The numerous reports not only place a burden on those making the reports, but will also serve to obscure reports of the more serious incidents that the rule was intended to address. EHSCP believes that this concern could be addressed by focusing this current rulemaking on use of existing federal and state reporting requirements to provide the regulated community with clear definition of what must be reported while at the same time providing appropriate information to the public.

Using already established thresholds and other scientifically established limits could significantly reduce uncertainty and focus reporting requirements on matters that have a true potential for harm.

There are a number of reporting requirements already in place in both Florida and Federal regulations. Several Florida rules currently require reports of spills or discharges above specific thresholds and permit violations are routinely reported through the State Watch Office and elsewhere. Under Federal rules, the Emergency Planning and Community Right to Know Act of 1986 (EPCRA) establishes Local Emergency Planning Committees and the State Emergency Response Committee in each state to facilitate reporting and public awareness of the release of toxic chemicals into the air, water and the soil. It requires facilities to report particularly hazardous releases to those state and local entities. EHSCP strongly encourages the DEP to consider these established risk-based thresholds and to incorporate them, or similarly developed thresholds in any final rule.

In addition, we encourage DEP to consider an exemption from public reporting for those "pollution incidents" that are contained and cleaned up within 24 hours of occurrence and which

did not extend beyond the site of the release. This would further serve to prevent reporting burden related to inconsequential events as well as the potential “numbing effect” of over reporting on the public such that notification of pollution incidents that might truly impact public health or the environment get less attention.

Reporting to “local broadcast television affiliates and a newspaper”

EHSCP also is concerned about the requirement for each person subject to the rule to provide notice directly “to local broadcast television affiliates and a newspaper of general circulation in the area”. That requirement is both burdensome and vague, especially given the short time frame for notification. We expect some business entities may find it difficult to determine the appropriate ways to reach such entities within 24 hours. Others may choose television or newspapers to notify selectively, so that each media outlet gets different information. The nature and contents of the notice is also likely to vary widely between reporting entities.

One alternative would be to capture notifications in a database (which we believe is currently done by the DEP). That database can be made available to local media and publications at their discretion. By doing so, every media or print organization will have equal access to all information in a systematic and consistent format. Eventually, such a database could even be tailored to provide automatic notification to users of incidents meeting certain criteria (e.g., within specified zip codes or exceeding the threshold for community reporting under EPCRA).

As noted above, we share the goal of ensuring that the public is adequately informed of harmful pollution events and we look forward to participating in this rulemaking to ensure that goal is achieved. EHSCP appreciates the opportunity to provide comments and to participate in future discussions on the proposed rule.

If you have any questions concerning these comments, please contact the undersigned at your convenience.

Sincerely,

Gary Schongar
Chair, Environmental, Health & Safety Communications Panel
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