

FREQUENTLY ASKED QUESTIONS

Environmental Protection Performance Standards at Oil and Gas Well Sites

Reporting and remediating spills and releases
(§ 78a.66)

The purpose of this Frequently Asked Questions (FAQ) document is to highlight changes in and address questions about the new regulations. This FAQ should not be used in lieu of reference to the 2012 Oil and Gas Act, 25 Pa.Code Chapter 78a and other applicable laws and regulations. The answers outlined in this FAQ are intended to supplement existing requirements. Nothing in this document shall affect statutory or regulatory requirements.

This document is not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. The Department may supplement or amend this document at any time as necessary without notice.

- 1) Can you please confirm the statement “spills on containment are no longer reportable?”

Section 78a.66(b)(1)(ii) requires an operator or other responsible party to report “[a] spill or release of 5 gallons or more of a regulated substance over a 24-hour period that is not completely contained by secondary containment.” Accordingly, spills of regulated substances that are completely contained within secondary containment are not required to be reported. However, there may be situations where completely contained spills on secondary containment threaten to pollute Waters of the Commonwealth and must be reported in accordance with Section 78a.66(b)(1)(i) in the manner required by Section 91.33. (posted 04/21/21)

- 2) Does Section 78a.66 apply to spills or releases on public roads?

Section 78a.66(a) states that the Section “applies to reporting and remediating spills or releases of regulated substances on or adjacent to well sites and access roads.” Section 78a.66 does not apply to public roads. Responsibilities for transportation incidents and spills on public roads have many potential liability issues and reporting obligations which are case specific. (posted 04/21/21)

- 3) If you have a spill of 42 gallons or less that does not pollute or threaten waters of the Commonwealth that is remediated by visibly removing the impacted soil, and you inform the Department of this, do you still have the coordination with the Department’s Environmental Cleanup and Brownfields (ECB) program?

No, if the spill was completely visually remediated there is no coordination with ECB. However, ECB could potentially be involved for spill cases involving 42 gallons or less where for example there was a slow leak over a long time period and/or spill migrated through highly permeable soils making a total visual cleanup unachievable. (posted 04/21/21)

- 4) With regard to clean ups at well site – is an OG-71 approval necessary for rig pit and tank cleaning when decontaminating to move the rig or equipment from one pad to

another? This is all done on containment, and with use of super suckers and vac trucks to contain the fluid.

No, routine well site cleaning/decontamination operations that are properly contained within secondary containment with complete waste recovery and off-site disposal do not typically require an OG71 for onsite processing approval. (posted 04/21/21)

- 5) Is the Alternative Method under Act 2 still an option?

No. The provisions in Section 78a.66 replace DEP's *Addressing Spills and Releases at Oil & Gas Well Sites or Access Roads*, Technical Guidance, No. 800-5000-001, for unconventional operations including the alternative remediation option for unconventional well sites and access roads. (posted 04/21/21)

- 6) Does the Act 2 reference in Section 78a.66 mean that you must go through the complete Act 2 administrative process? And will the operator ultimately get a release of liability? It makes sense to require public notice if an operator is remediating a spill or release to the site-specific standard, but if the operator is using the statewide health standard or the background standard, then why is public notice needed?

Yes. For spills or releases to the ground of greater than or equal to 42 gallons or that pollute or threaten to pollute waters of the Commonwealth, the operator or other responsible person must demonstrate attainment of one or more of the standards established by Act 2 and Chapter 250 (relating to administration of land recycling program). All three standards contain administrative and public notice requirements. Public notification to the municipality and the public via the newspaper notice, and publication in the Pennsylvania Bulletin are not required for background or Statewide health standard remediations if the final report demonstrating attainment of the standard is submitted within 90 days of the release.

The ultimate release of liability will be dependent upon demonstration of attainment of Act 2 Standards, including supporting documentation of any required reports such as initial report, interim remedial action, site characterization, remedial action plan and final remedial action completion report. Act 2 provides a procedure to remediate and receive relief of environmental liability relating to a release of a regulated substance addressed under various environmental statutes, including the Clean Streams Law, the Solid Waste Management Act, and the Hazardous Sites Cleanup Act. Many substances that are spilled at sites regulated under the Oil and Gas Act are regulated as waste under the Solid Waste Management Act or as pollutants under the Clean Streams Law (see, for example, Sections 3273 and 3273.1 of the 2012 Oil and Gas Act, 35 Pa.C.S. §§ 3273, 3273.1). If these wastes and pollutants are regulated substances as defined under Act 2 and have contaminated soils and groundwater, they must be addressed under Act 2. (posted 04/21/21)

- 7) Has the Department given any thought to issuing a technical guidance document or updated oil/gas spill policy to ensure transparency and that expectations and obligations are being met within this regulatory section?

The Department will review and update the *Addressing Spills and Releases at Oil & Gas Well Sites or Access Roads*, as necessary to properly reflect the regulations in Chapter

78a. The scope of Section 78a.66 applies to reporting and remediating spills or releases of regulated substances on or adjacent to well sites and access roads. (posted 04/21/21)

- 8) Are there any circumstances where confirmation samples will be required for releases that are less than 42 gallons that do not threaten waters of the Commonwealth?

There may be circumstances where confirmation samples may be required for these types of spills. If a spill cannot be adequately remediated by using visual clean up option (for example production brine spill into saturated soil conditions) confirmation for proper remediation and managing the impacted soil in accordance with the Department's regulations may require confirmation samples and/or field instrument testing. (posted 04/21/21)

- 9) Which Department program will be responsible for oversight of section 78a.66 clean-ups? Oil and Gas or ECB?

Oversight will depend on complexity of site-specific remediation situations along with program staffing. (posted 04/21/21)

- 10) Do all spills greater than 42 gallons (including those not threatening the "waters of the Commonwealth") fall into the releases requiring Act 2 participation?

Yes, in accordance with Section 78a.66(c)(2), for spills or releases to the ground of greater than or equal to 42 gallons, the operator or other responsible person must demonstrate attainment of one or more of the standards established by Act 2 and Chapter 250 (relating to administration of land recycling program) and the other provisions in this section. Act 2 provides a procedure to remediate and receive relief of environmental liability relating to a release of a regulated substance addressed under various environmental statutes, including the Clean Streams Law, the Solid Waste Management Act, and the Hazardous Sites Cleanup Act. Many substances that are spilled at sites regulated under the 2012 Oil and Gas Act are regulated as waste under the Solid Waste Management Act or as pollutants under the Clean Streams Law (see, for example, sections 3273 and 3273.1 of the 2012 Oil and Gas Act, 35 Pa.C.S. §§ 3273, 3273.1). If these wastes and pollutants are regulated substances as defined under Act 2 and have contaminated soils and groundwater, they must be addressed under Act 2. (posted 04/21/21)

- 11) If meeting Act 2 standards, will an operator obtain relief from further remediation liability protection for the site?

Yes, but see Question 18, below. (posted 04/21/21)

- 12) Please clarify that only the Act 2 cleanup standards have to be met. Will cleanup reports be required to be published in the PA Bulletin? Will public notice be required?

Yes. For spills or releases to the ground of greater than or equal to 42 gallons or that pollute or threaten to pollute waters of the Commonwealth, the operator or other responsible person must demonstrate attainment of one or more of the standards established by Act 2 and Chapter 250 (relating to administration of land recycling program). Demonstration of attainment of an Act 2 standard consists of both a

substantive demonstration and meeting procedural requirements, including public notice. Accomplishing one or more of the Act 2 standards within 90 days waives the requirement for public notification. See Question 19, below. (posted 04/21/21)

13) Does Section 78a.66 apply to compressor stations or pipelines?

No. This Section only applies to reporting and remediating spills or releases of regulated substances on or adjacent to well sites and access roads. (posted 04/21/21)

14) Is groundwater considered to be waters of Commonwealth for reporting purposes?

Yes, this would include springs, wells, shallow and deep groundwater including seasonal high groundwater. Section 1 of the Clean Streams Law defines “waters of the Commonwealth” as:

Waters of the Commonwealth shall be construed to include any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth. (posted 04/21/21)

15) What are examples of “threatening to pollute waters of the Commonwealth?”

There are many examples where “threats” to pollution of the waters of the Commonwealth can occur. Some typical examples in oil and gas industry are:

- Spills into soils that can easily migrate into streams, wetlands, shallow and seasonal high groundwater, surface channels and ditches and/or where weather conditions could accelerate the threat circumstance.
- Primary and secondary containment issues where a serious threat can occur from overflows, integrity issues or damage to containment.
- Transportation and fluid pumping incidents (vehicles and well development pipelines) where an accident or integrity issue threatens waterways.
- Well fire and/or well control issues where firefighting runoff and/or uncontrolled release of well fluids threaten waterways.

Section 78a.66(b)(1)(i) does reflect some existing uncertainty in the explicit boundaries to the requirements for spill and release reporting under section 91.33. See, e.g., *Milco Industries, Inc., and Municipal Authority of the Town of Bloomsburg v. Commonwealth of Pennsylvania, Department of Environmental Protection* (2002 Pa.Envirn. LEXIS 51), where the Environmental Hearing Board considered the Department’s authority to issue a Clean Streams Law order to address a “danger of pollution”:

The Department has the authority to issue an order to a person if it finds that that person's activity creates a danger of pollution of the waters of the Commonwealth. 35 P.S. § 691.402(a). The Department has the authority to issue an order requiring a person to cease operations if a condition existing in or on the

operation is creating a danger of pollution of the waters of the Commonwealth. 35 P.S. § 691.610.

Neither party has referred us to any case law elaborating upon exactly what constitutes a “danger” of water pollution. Milco argues convincingly that the term should not include every conceivable circumstance in which a creative mind can conjure up a set of circumstances that could theoretically cause pollution. At the other extreme, a “danger” is obviously something less than actual, proven pollution. The appropriate definition doubtless lies somewhere between these two extremes, and whether a “danger” exists sufficient to support an order will undoubtedly require a case-by-case analysis. Beyond these truisms, a more refined analysis will need to await an adjudication by the full Board following the hearing on the merits. (posted 04/21/21)

- 16) If there is a less than 5 gallon spill near the edge of the well pad not on containment but that does not pollute the waters of the Commonwealth or threaten to pollute the waters of the Commonwealth, then there is no need for Section 91.33(a) or 78a.66(b)(1)(i) notification, correct?

Yes. (posted 04/21/21)

- 17) If an operator submits its final report demonstrating attainment of the applicable standard within 90 days, does the operator have to submit a site characterization report (§ 78a.66(c)(2)(iii)), a remedial action plan (§ 78a.66(c)(2)(v)) or remedial action completion report (§ 78a.66(c)(2)(vi))?

Section 78a.66(2)(iv) provides: “The report under subparagraph (iii) may be considered to be a final remedial action completion report if the interim remedial actions meet all of the requirements of an Act 2 cleanup standard.” Therefore, the operator or responsible party need not submit a site characterization report (§ 78a.66(c)(2)(iii)), a remedial action plan (§ 78a.66(c)(2)(v)) or remedial action completion report (§ 78a.66(c)(2)(vi)) if the site characterization is complete and the interim remedial actions address the contamination. This may be done before the 180-day timeframe for site characterization is completed. (posted 04/21/21)

- 18) Is remediation completed under 25 Pa. Code § 78a.66 eligible for cleanup protection under Chapter 5 of Act 2?

For spills and releases to the ground of greater than or equal to 42 gallons or that pollute or threaten to pollute waters of the Commonwealth, the operator or other responsible person must demonstrate attainment of one or more of the standards established by Act 2 or Chapter 250. The ultimate release of liability will be dependent upon demonstration of attainment of Act 2 Standards, including supporting documentation of any required reports such as initial report, interim remedial action, site characterization, remedial action plan and final remedial action completion report. See 35 P.S. § 6026.301(a). (posted 04/21/21)

- 19) Will public notice be required?

Public notification to the municipality and the public via the newspaper notice, and publication in the Pennsylvania Bulletin are not required for background or Statewide

health standard remediations if the final report demonstrating attainment of the standard is submitted within 90 days of the release. (posted 04/21/21)