

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Subpart C. PROTECTION OF NATURAL RESOURCES  
ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

§ 91.33. Incidents causing or threatening pollution.

(a) If, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters—including sewers, drains, ditches or other channels of conveyance into the waters—or is placed so that it might discharge, flow, be washed or fall into them, it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

**(1) If the risk of pollution to waters of the Commonwealth, property damage or endangering downstream users is unknown or uncertain under subsection (a)(2), it is the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department.**

**(2) When deciding under subsection (a) whether an incident would endanger downstream users, result in pollution or create a danger of pollution, or would damage property, a person shall consider the following factors:**

**(i) The properties of the substance or substances involved, including but not limited to:**

**(A) The effects on protected water uses of each substance individually and any synergistic or cumulative effects of multiple substances, including toxicity to humans and aquatic life.**

**(B) Persistence in the environment, including the substance's ability to be transformed or degraded by biological, chemical or physical processes.**

**(C) The mobility of the substance in soil and water.**

**(D) The concentration and quantity of the substance.**

- (I) **An activity or incident described in subsection (a) involving a quantity of substance greater than the reportable quantity listed in 40 CFR 117.3 (relating to determination of reportable quantities) must be immediately reported to the Department.**
    - (II) **An activity or incident described in subsection (a) involving a quantity of substance less than the reportable quantity listed in 40 CFR 117.3 or a substance not listed in 40 CFR 117.3 must be comprehensively evaluated using the factors described in paragraph (2) to determine if the properties of the substance could endanger downstream users of the waters of the Commonwealth or would otherwise result in pollution or create a danger of pollution of the waters of the Commonwealth.**
  - (ii) **The location or locations involved, including but not limited to:**
    - (A) **Proximity to nearby waters of the Commonwealth, including groundwater and surface waters.**
    - (B) **Characteristics of nearby waters of the Commonwealth, including but not limited to:**
      - (I) **The protected uses of the waters.**
      - (II) **The flow of the waters.**
    - (C) **Land use, soils and geology.**
    - (D) **The presence and qualities of relevant infrastructure, such as spill containment systems.**
  - (iii) **The weather conditions before, during and after the incident.**
  - (iv) **The presence and implementation of adequate response plans, procedures or protocols.**
  - (v) **The duration of the discharge.**
- (3) If requested by the Department, a person who claims that the Department need not have been notified of an incident under this section shall explain in a signed statement, under penalty of law, why the incident would not endanger downstream users, result in pollution or create a danger of pollution, or damage property, based on the factors listed in subsection (a)(2).**

- (b) In addition to the notices in subsection (a), a person shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition thereto, within 15 days from the incident, shall remove from the ground and from the affected waters of this Commonwealth to the extent required by this title the residual substances contained thereon or therein.
- (c) Compliance with this section does not affect the civil or criminal liability to which the person or municipality may be subject as a result of an activity or incident under the act, 30 Pa.C.S. (relating to the Fish and Boat Code) or another statute, ordinance or regulation.