

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.

(a.1) Notification to the Department of substances identified under subsection (a) shall include those substances in a quantity greater than or equal to the reportable quantity listed in 40 CFR 117.3 (relating to determination of reportable quantities).

(a.2) A person who immediately notifies the Department, in accordance with subsections (a) and (a.1), has satisfied the notification requirements under this section and is not required to conduct an evaluation under subsection (a.3).

(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 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):

(1) The properties of the substance or substances involved including:

(i) Any harmful effects of each substance individually and any harmful synergistic or cumulative effects of multiple substances to protected water uses, public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses of waters of the Commonwealth, or to livestock, wild animals, birds, fish or other aquatic life.

- (ii) Persistence in the environment, including the substance's ability to be transformed or degraded by biological, chemical or physical processes.
- (iii) The mobility of the substance in soil and water.
- (iv) The concentration and quantity of the substance.

(2) The location or locations involved, including:

- (i) Proximity to nearby waters of the Commonwealth, including groundwater and surface waters.
- (ii) Characteristics of nearby waters of the Commonwealth including:
 - (A) The protected uses of the waters.
 - (B) The ability of the waters to assimilate the substance or substances without causing or threatening any of the harmful effects noted in subsection (a.3)(1)(i).
- (iii) Land use, soils and geology.
- (iv) The presence and qualities of relevant infrastructure, such as spill containment systems.

(3) The weather conditions before, during and after the incident.

(4) The presence and implementation of adequate response plans, procedures or protocols.

(5) The duration of the accident or other activity or incident.

(a.4) If requested by the Department, the responsible person identified in subsection (a) who claims that the Department need not have been notified of an accident or other activity or incident under this section shall provide the documentation required in subsection (a.3) along with a signed statement attesting to the document's accuracy.

(a.5) The responsible person identified in subsection (a) has violated this section if that person failed to immediately notify the Department of an accident or other activity or incident which caused or threatened pollution, endangered downstream users or caused damage to property as described in subsection (a).

(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.