

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.20114 Owner or operator of facility; duties; response activity without prior approval; easement; applicability of subsections (1) and (3); effect of section on authority of department to conduct response activities or on liability of certain persons; determination of nature and extent of hazardous substance; "available analytical method" defined.

Sec. 20114. (1) Except as provided in subsection (4), an owner or operator of property who has knowledge that the property is a facility shall do all of the following with respect to a release for which the owner or operator is liable under section 20126:

(a) Subject to subsection (6), determine the nature and extent of the release at the facility.

(b) Make the following notifications:

(i) If the release is of a reportable quantity of a hazardous substance under 40 CFR 302.4 and 302.6 (July 1, 2012 edition), report the release to the department within 24 hours after obtaining knowledge of the release.

(ii) If the owner or operator has reason to believe that 1 or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of his or her property at a concentration in excess of cleanup criteria for unrestricted residential use, notify the department and the owners of property where the hazardous substances are present within 30 days after obtaining knowledge that the release has migrated.

(iii) If the release is a result of an activity that is subject to permitting under part 615 and the owner or operator is not the owner of the surface property and the release results in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use, notify the department and the surface owner within 30 days after obtaining knowledge of the release.

(c) Immediately stop or prevent an ongoing release at the source.

(d) Immediately implement measures to address, remove, or contain hazardous substances that are released after June 5, 1995 if those measures are technically practical, are cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment. At a facility where hazardous substances are released after June 5, 1995, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment.

(e) Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards.

(f) Initiate a remedial action that is necessary and feasible to address unacceptable risks associated with residual NAPL saturation, migrating NAPL, and mobile NAPL using best practices for managing NAPL, including, but not limited to, best practices developed by the American society for testing and materials or the interstate technology and regulatory council.

(g) Diligently pursue response activities necessary to achieve the cleanup criteria established under this part. Except as otherwise provided in this part, in pursuing response activities under this subdivision, the owner or operator may do either of the following:

(i) Proceed under section 20114a to conduct self-implemented response activities.

(ii) Proceed under section 20114b if the owner or operator wishes to, or is required to, obtain departmental approval of 1 or more aspects of planning response activities.

(h) Upon written request by the department, take 1 or more of the following actions:

(i) Provide a response activity plan containing a plan for undertaking interim response activities and undertake interim response activities consistent with that plan.

(ii) Provide a response activity plan containing a plan for undertaking evaluation activities and undertake evaluation activities consistent with that plan.

(iii) Pursue remedial actions under section 20114a and, upon completion, submit a no further action report under section 20114d.

(iv) Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

(v) Submit to the department for approval a response activity plan containing a remedial action plan that, when implemented, will achieve the cleanup criteria established under this part.

(vi) Implement an approved response activity plan in accordance with a schedule approved by the department pursuant to this part.

(vii) Submit a no further action report under section 20114d after completion of remedial action.

(2) Subsection (1) does not preclude a person from simultaneously undertaking 1 or more aspects of planning or implementing response activities at a facility under section 20114a without the prior approval of

the department, unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval, and submitting a response activity plan to the department under section 20114b.

(3) Except as provided in subsection (4), a person who holds an easement interest in a portion of a property who has knowledge that there may be a release within that easement shall report the release to the department within 24 hours after obtaining knowledge of the release. This subsection applies to reportable quantities of hazardous substances established pursuant to 40 CFR 302.4 and 302.6 (July 1, 2012 edition).

(4) The requirements of subsections (1) and (3) do not apply to a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws.

(5) This section does not do either of the following:

(a) Limit the authority of the department to take or conduct response activities pursuant to this part.

(b) Limit the liability of a person who is liable under section 20126.

(6) If a hazardous substance is released at a property and there is no available analytical method or generic cleanup criteria for that hazardous substance, the nature and extent of the hazardous substance may be determined by any of the following means, singly or in combination:

(a) If another hazardous substance with an available analytical method was released at the same location and has similar fate and mobility characteristics, determine the nature and extent of that hazardous substance as a surrogate.

(b) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to determine whether the hazardous substance has reached surface water.

(c) Develop and propose to the department an analytical method for approval by the department.

(d) In lieu of determining the nature and extent of the hazardous substance release, eliminate the potential for exposure in areas where the hazardous substance is expected to be located through removal, containment, exposure barriers, or land use or resource use restrictions.

(7) As used in this section, "available analytical method" means a method that is approved and published by a governmental agency, is conducted routinely by commercial laboratories in the United States, and identifies and quantitatively measures the specific hazardous substance or class of substances.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

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