

DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE DIVISION

ENVIRONMENTAL CONTAMINATION RESPONSE ACTIVITY

(By authority conferred on the department of environmental quality by section 20104 of 1994 PA 451, MCL 324.20104 and Executive Order No. 1995-18, MCL 324.99903)

PART 10. COMPLIANCE WITH SECTION 20107a OF ACT

R 299.51001 Definitions.

Rule 1001. As used in this part:

(a) "All appropriate inquiry" means the inquiry necessary to determine what response activity is needed to comply with section 20107a of the act.

(b) "Belowground" means buried under soil or debris. "Belowground," when used to describe containers, does not include containers that are in basements or vaults or are otherwise under the ground surface in structures that allow visual inspection of the container.

(c) "Container" means a barrel, drum, tank, vessel, surface impoundment, pipeline, or other receptacle, regardless of size, that contains a hazardous substance.

(d) "Mitigate" means to reduce exposure to the degree that the exposure is no longer unacceptable, consistent with R 299.51013. With respect to fire and explosion hazards, "mitigate" means to eliminate the threat of fire and explosion.

(e) "Property" means the real property owned or operated by a person who is subject to section 20107a of the act.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51003 Applicability; compliance with section 20107a of act generally; documentation of compliance.

Rule 1003. (1) The requirements of this part apply to a person who is subject to section 20107a of the act and to conditions about which he or she has knowledge, based upon all appropriate inquiry.

(2) For purposes of compliance with part 10 of these rules, an acquiring agency under 1980 PA 87, MCL 231.51 et seq., and known as the uniform condemnation procedures act, shall not become the owner or operator of a property that is a facility or a portion of a facility until possession of the facility or portion of the facility has been transferred to the acquiring agency.

(3) A person who is subject to section 20107a of the act shall, except as provided in R 299.51019, undertake response activity as necessary to comply with section 20107a of the act and these rules on the property that he or she owns or operates and provide notices as described in R 299.51017 with respect to a hazardous substance that he or she has reason to believe is emanating from, or has emanated from, and is present beyond, the boundary of the property that he or she owns or operates.

(4) The requirements of section 20107a of the act apply to all of the following:

(a) Discarded or abandoned containers that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, or welfare or to the environment.

(b) A threat of release of a quantity of hazardous substance that is or may become injurious to the public health, safety, or welfare or to the environment.

(c) Hazardous substances that have otherwise been released at the property.

The requirements do not apply to hazardous substances being lawfully used in operations at the property or being properly stored at the property.

(5) A person who is subject to section 20107a of the act shall maintain documentation of compliance with section 20107a of the act and shall provide the documentation to the department upon request. All of the following provisions apply to the documentation of compliance:

(a) With regard to section 20107a(1)(b) of the act, required documentation shall consist of all of the following:

(i) Identification of exposure pathways that are complete, or are likely to become complete, in light of the intended use of the property and the features of the property, including potential exposure barriers such as structures or pavement.

(ii) Information about the concentrations of hazardous substances to which persons may be exposed in each pathway identified through the analysis described in paragraph (i) of this subdivision, unless a reasonable evaluation of the conditions at the property supports the conclusion that quantification of hazardous substance exposures is not necessary to determine that there is no unacceptable exposure under R 299.51013.

(iii) A description of the response activity or other measures, such as work schedule adjustments or personal protective equipment, if any, that are or may be required to mitigate any unacceptable exposures in compliance with R 299.51013.

(iv) Records about the implementation of any response activity or other measures not evident through inspection.

(v) Copies of any notices provided under R 299.51013(6), R 299.51015, and R 299.51017.

(b) If compliance with section 20107a of the act is accomplished by measures that are evident as the result of inspection, such as fences, pavement, or the presence of buildings, then ongoing documentation, beyond the initial analysis of the measures, is not required.

(c) If a department-approved remedial action plan has been implemented at a facility, then additional documentation of compliance with section 20107a(1)(b) of the act is not required if conditions that determine exposures to hazardous substances at the property remain unchanged.

(6) Except as provided in R 299.51017(4)(c), the documentation required by subrule (5) of this rule shall, for a person who became the owner or operator of a facility before March 11, 1999, be available to the department upon request not later than March 11, 2000. For a person who became the owner or operator of a facility on or after March 11, 1999, the required documentation shall be available to the department upon request not later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure. The time frames specified in this subrule do not alter the continuing obligation of a person who is subject to section 20107a of the act to be in compliance with the law and these rules.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51005 Compliance with other laws and regulations.

Rule 1005. (1) The obligation of a property owner or operator to comply with all laws and regulations applicable to hazardous substances is unaffected by part 201 of the act and these rules, except as provided in sections 20129a(5) and 20142 of the act.

(2) Other laws and regulations that may be relevant to the management of hazardous substances include, but are not limited to, the following:

(a) Part 55 of the act (air pollution control).

(b) Part 111 of the act (hazardous waste management).

(c) Part 115 of the act (solid waste management).

(d) Part 211 of the act (underground storage tank regulation).

(e) Part 213 of the act (leaking underground storage tanks).

(f) Part 615 of the act (supervisor of wells).

(g) Act No. 207 of the Public Acts of 1941, as amended, being S29.1 et seq. of the Michigan Compiled Laws, and known as the fire protection code.

(h) The toxic substances control act, 15 U.S.C. S2601 et seq.

(i) The resource conservation and recovery act, 42 U.S.C. S6901 et seq.

(j) Rules and regulations promulgated under the laws listed in subdivisions

(a) to (i) of this subrule.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51007 Compliance with section 20107a(1)(a) of act.

Rule 1007. (1) The result of an activity undertaken by the owner or operator of a property is not exacerbation through an increase in response activity costs if the activity satisfies both of the following conditions:

(a) Any resulting increase in response activity cost is small in relation to the total cost of response activity that would be required to satisfy the relevant land use-based cleanup criteria and other requirements of sections 20120a and 20120b of the act or section 21301a of the act, as appropriate to the facility, at the time the activities are undertaken. Examples of such response activity include, but are not limited to, the placement of pavement or landscaping cover that constitutes a barrier to direct contact.

(b) The activity undertaken provides environmental or public health benefits.

(2) There may also be other circumstances that an owner or operator can demonstrate are not a change in facility conditions which increase response activity costs.

(3) Notwithstanding subrules (1) and (2) of this rule, if a determination is made under section 20107a(2) of the act that an action constitutes exacerbation, then the determination of the amount owed as increased response activity costs shall be reduced based on consideration of the public health or environmental benefits, or both, provided by the action.

(4) This rule shall not modify the burden of proof set forth in section 20107a(2) of the act.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51009 Compliance with section 20107a(1)(b) of act; discarded or abandoned aboveground containers.

Rule 1009. (1) To be in compliance with section 20107a(1)(b) of the act with respect to a container at the property that is on or above the ground surface, and with respect to the portion of a container that is partially on or above the ground surface, an owner or operator shall manage the container in a manner that can be reasonably expected to prevent a release from the container in a quantity which is or may become injurious to the public health, safety, or welfare or to the environment. However, if the container is too large to allow it to be moved practically to inspect the integrity of the entire container, then the owner or operator shall prevent a release in a quantity that is or may become injurious to the public health, safety, or welfare or to the environment that would be evident from inspection of the visible portions of the container and the surrounding surface.

(2) If containers are located inside a structure that, upon reasonable inquiry, is determined to be deteriorating, then the owner or operator shall take reasonable and prudent measures to assure that deterioration of the structure does not lead to damage to the containers which may result in a release.

(3) If a release occurs from a container as a result of a failure to comply with subrule (1) or (2) of this rule, then the owner or operator shall stop the release and take all other steps necessary to comply with requirements applicable to a new release.

(4) The requirements of this rule shall be in addition to the requirements of other applicable laws and regulations to which the owner or operator is subject, except as provided in sections 20129a(5) and 20142 of the act.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51011 Compliance with section 20107a(1)(b) of act; belowground containers.

Rule 1011. (1) To be in compliance with section 20107a(1)(b) of the act with respect to belowground containers at the property, an owner or operator shall prevent or eliminate any unacceptable exposure to hazardous substances in, or released from, a belowground container and shall eliminate any fire and explosion hazard resulting from hazardous substances in, or released from, a belowground container.

(2) Compliance with section 20107a of the act does not require that belowground containers be emptied, unless a container must be emptied to satisfy a performance standard under this rule. Other requirements to which the owner or operator is subject may require belowground containers, such as underground storage tanks, to be emptied. R 299.51005 identifies some other potentially applicable laws and rules.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51013 Unacceptable exposure; mitigation.

Rule 1013. (1) Except as provided in subrule (6) of this rule, the requirements of section 20107a(1)(b) of the act and these rules to mitigate unacceptable exposure shall be satisfied if a person does all of the following:

(a) Eliminates the exposure or reducing the exposure to the degree that it is no longer unacceptable as that term is described in subrules (3), (4), and (5) of this rule.

(b) Undertakes response activity at the property as necessary to mitigate off-property risks resulting from erosion of surface soils at the property or from dispersion of particulate or volatile hazardous substances in surface soils at the property.

(c) Complies with R 299.51005, R 299.51009, R 299.51011, and R 299.51015 to R 299.51019 with regard to conditions at the property.

(2) In evaluating compliance with section 20107a(1)(b) of the act, exposure pathways shall be considered pertinent only if they are or may be complete in light of the intended use of the property and the features of the property, including potential exposure barriers such as structures or pavement.

(3) Except as provided in subrules (4) and (5) of this rule, exposure to hazardous substances is an unacceptable exposure for the purposes of section 20107a(1)(b) of the act if concentrations of hazardous substances to which persons may be exposed exceed an applicable criterion developed by the department under section 20120a(1)(a) to (e) of the act.

(4) A site-specific evaluation may be conducted to document that conditions at a property do not result in an unacceptable exposure. In these cases, comparison of exposure concentrations to criteria developed by the department under section 20120a(1)(a) to (e) of the act is not required. Except as provided in subrule (5) of this rule, an evaluation relied upon under this subrule shall be consistent with the risk management objectives set forth in section 20120a of the act and risk assessment methods acceptable to the department.

(5) As described in this subrule, a site-specific evaluation to document that conditions at the property do not result in an unacceptable exposure through inhalation of indoor air may be based on a demonstration of compliance with 1974 PA 154, MCL 408.1001 et seq., and the rules promulgated under 1974 PA 154. This subrule applies only when all of the following conditions are satisfied:

(a) The risk being evaluated results from inhalation by workers of hazardous substances in indoor air within an active commercial or industrial workplace that is regulated by 1974 PA 154, MCL 408.1001 et seq., and the rules promulgated under 1974 PA 154.

(b) The exposure to hazardous substances from environmental contamination is a portion of the exposure to which workers are otherwise subject from process-related sources of the same hazardous substance.

(c) The risk to the non-worker population, if any, from inhalation of indoor air at the property has been evaluated according to the requirements of subrule (3) of this rule or a site-specific evaluation has been conducted for the non-worker population according to risk assessment methods acceptable to the department, and the risk is not unacceptable on the basis of the risk management objectives set forth in section 20120a of the act.

(6) If the hazardous substances present at the property may present an unacceptable exposure to utility workers or other persons conducting activities at the property in an easement, under the terms of a utility franchise, or pursuant to severed subsurface mineral rights or severed subsurface formations, then the owner or operator may satisfy his or her obligation to mitigate unacceptable exposures to the utility workers or other persons by providing written notice, by a method that provides proof of delivery, of the general nature and extent of contamination and potential unacceptable exposures to all of the following:

(a) Easement holders of record.

(b) Utility franchise holders of record.

(c) The owner or operator of all public utilities that serve the property.

(d) Owners or lessees of severed subsurface mineral rights or subsurface formations. If the person described in subdivisions (a) to (d) of this subrule is not an individual, then the notice shall be provided to the chief executive officer of the organization. The notice required under this rule shall be provided as

soon as the exigencies of the situation require, but not later than 9 months after the effective date of this amendatory rule or the deadline set forth in R 299.51003(6), whichever is applicable.

(7) Upon request of a person to whom information is provided under subrule (6) of this rule, the owner or operator of property who provided notice under subrule (6) of this subrule shall provide all available information about conditions at the property that he or she owns or operates which are relevant to the activities of the person who received notice under subrule (6) of this rule. The owner or operator of a property who is subject to section 20107a of the act shall also provide, to other persons conducting activities at the property with the knowledge or permission of the owner or operator, information about conditions at the property that are relevant to the person's activities at the property.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51015 Notice to department of discarded or abandoned containers.

Rule 1015. (1) Except as provided in subrules (2), (3), and (4) of this rule and in R 299.51021, an owner or operator who is subject to section 20107a of the act shall notify the department, in writing, of the presence of discarded or abandoned containers at the property that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, or welfare or to the environment. The owner or operator shall provide the required notice by September 11, 1999, within 45 days of becoming the owner or operator, or within 45 days of acquiring knowledge of the discarded or abandoned containers, whichever is later. The notice required by this rule shall include all information known to the owner or operator about the number, type, size, and contents of the discarded or abandoned containers.

(2) The notification requirement of subrule (1) of this rule does not apply to an owner or operator who disposes of discarded or abandoned containers and their contents according to all applicable laws and regulations by September 11, 1999, within 45 days of becoming the owner or operator, or within 45 days of acquiring knowledge of the discarded or abandoned containers, whichever is later. If the response activity is not complete within 45 days, then an owner or operator shall give notice that would otherwise have been required by subrule (1) of this rule to the department within 14 days after the end of the 45-day period provided in this subrule to complete the response activity.

(3) In place of the notice required by subrule (1) of this rule, a person who owns or operates an underground storage tank that is subject to notice or registration requirements, or both, under other state or federal requirements shall comply with the notice or registration requirements.

(4) If an owner or operator discloses a baseline environmental assessment under section 20126(1)(c)(ii) of the act, and the baseline environmental assessment includes identification of discarded or abandoned containers at the property on a form provided by the department for that purpose, then separate notice under subrule (1) of this rule is not required. Identification of an underground storage tank in a baseline environmental assessment does not eliminate or modify the obligation of an owner or operator to comply with any notice or registration requirements applicable to the underground storage tank under other state or federal requirements.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51017 Notice to department and to affected adjacent property owners of contamination migrating beyond boundaries of property owned or operated by person subject to section 20107a of act; special provisions for notice by permittees under part 615 of act and by easement holders.

Rule 1017. (1) A person who is subject to section 20107a of the act and who has reason to believe that a hazardous substance is emanating from, or has emanated from, and is present beyond his or her property boundaries at a concentration in excess of criteria developed by the department under section 20120a(1)(a) of the act shall provide notice to the department and to the owner of the affected adjacent property as required in subrules (4) and (5) of this rule, except that subrules (4) and (5) shall not apply for permitted releases. The notices required by this subrule shall also be made if hazardous substances emanating from his or her property enter surface waters of the state on or adjacent to the property in concentrations that exceed generic GSI criteria established under R

299.5716. The requirement to notify the department and the affected adjacent property owner shall be based on reasonable inferences that can be made from available data about the facility, including, but not limited to, data gathered through investigation undertaken to comply with section 20114(1)(a) of the act.

(2) A person who holds a permit for an oil and gas well under part 615 of the act and is subject to section 20107a of the act, shall provide the notice required by this rule to the department and to owner of the surface rights of the property if a release from the oil and gas exploration or production activities results in hazardous substance concentrations in excess of criteria developed by the department under section 20120a(1)(a) or (17) of the act on property where the well or related surface activity exists. This notice is required in addition to the migration notice required by subrule (1) of this rule, if applicable.

(3) A person who holds an easement and is subject to section 20107a of the act, shall provide notice, as called for in subrule (1) of this rule, to the department and to the grantor of the easement, or the grantor's successor in interest, if any, if there is a release from the easement holder's activities that results in hazardous substance concentrations in excess of criteria developed by the department under section 20120a(1)(a) or (17) of the act on property where the easement exists. Such notice shall be in addition to the notice required by subrule (1) of this rule, if applicable to the release in question.

(4) A person shall provide the notice required by subrule (1) of this rule to the department and to the affected adjacent property owner, in writing, within the following time frames:

(a) Except as provided in subdivision (c) of this subrule, with regard to conditions that were not known to the owner or operator before March 11, 1999, notice shall be provided within 45 days after the owner or operator has reason to believe that hazardous substances have migrated, or are likely to have migrated, beyond the property boundary.

(b) Except as provided in R 299.51021 and subdivision (c) of this subrule, with regard to conditions that were known to the owner or operator before March 11, 1999, notice shall have been provided by June 9, 1999.

(c) If a person is required to provide additional notice as a result of these amendatory rules, then the additional notice shall be made and included in the documentation of compliance required by R 299.51003(5) not later than 9 months after the effective date of these amendatory rules.

(5) The department may prescribe a form to be used for reports made under this rule. All of the following information shall be included in a report provided under this rule:

(a) The location of the property.

(b) The name, address, and telephone number of the property owner or operator who is submitting the notice.

(c) The name, address, and telephone number of a contact person familiar with the content of the notice.

(d) The name, chemical abstract service number, and maximum measured concentration of the hazardous substance or substances that have migrated, or are likely to have migrated, up to or beyond the property boundary.

(6) A person who has provided the notice required by section 21309a of the act is not required to make the notice to affected adjacent property owners called for in subrule (1) of this rule.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51019 Mitigating fire and explosion hazards; action and notice required.

Rule 1019. (1) An owner or operator who is obligated to mitigate a fire or explosion hazard under section 20107a(1)(b) of the act shall provide immediately notify the local fire department of the hazard and shall take such other steps as are reasonable and prudent under the circumstances to mitigate or eliminate the hazard.

(2) If initial action does not permanently abate the fire and explosion hazard, then, within 7 days after notice is provided under subrule (1) of this rule, the owner or operator shall provide written notice to the department. The notice shall include all of the following information:

(a) A description of the conditions that resulted in a fire or explosion hazard.

(b) The date and time that notice was provided to the local fire department.

(c) A description of the response provided by the local fire department.

(d) A description of conditions which remain that may require additional action to mitigate fire or explosion hazards due to hazardous substances at the property.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51021 Applicability of rules to persons who have received affirmative determinations of compliance with section 20107a of act under section 20129a of act.

Rule 1021. If, before March 11, 1999, a person received a determination from the department under section 20129a of the act that the person's proposed use of a facility satisfies the person's obligations under section 20107a of the act, then these rules shall not be applied retroactively to impose additional obligations upon the person or alter the department's determination with regard to the compliance analysis that was submitted. If the department's affirmative determination was conditioned on the implementation of response activity, then this rule shall apply to the owner or operator only if the response activity was implemented in a timely manner.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.