

Chapter NR 158

NOTIFICATION OF THE DISCHARGE OF
HAZARDOUS SUBSTANCES

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NR 158.01 Purpose. History: Cr. Register, May, 1980, No. 293, eff. 6-1-80; r. Register, April, 1994, No. 460, eff. 5-1-94.

NR 158.02 Applicability. History: Cr. Register, May, 1980, No. 293, eff. 6-1-80; r. Register, April, 1994, No. 460, eff. 5-1-94.

NR 158.03 Definitions. In this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Discharge" has the meaning specified in s. 144.76 (1) (a), Stats.

Note: Under s. 144.76 (1) (a), Stats., "discharge" means, but is not limited to, "spilling, leaking, pumping, pouring, emitting, emptying or dumping."

- (3) "Discharger" means the person or persons having possession of or control over a hazardous substance being discharged or who cause a hazardous discharge.

- (4) "Hazardous substance" has the meaning specified in s. 144.01 (4m), Stats.

Note: Section 144.01 (4m), Stats., defines "hazardous substance" to mean "any substance or combination of substances including any waste of a solid, semisolid, liquid, or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosive as determined by the department."

- (5) "Local agencies" means, but is not limited to, municipal police and fire departments, municipal health organizations, county offices of emergency government, county sheriffs, and emergency medical services.

- (6) "Person" means an individual, owner or operator, corporation, partnership, association, municipality, interstate agency or state agency.

- (7) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80; am. (intro.), (2), (4), Register, April, 1994, No. 460, eff. 5-1-94.

NR 158.04 Response phases and actions. History: Cr. Register, May, 1980, No. 293, eff. 6-1-80; r. Register, April, 1994, No. 460, eff. 5-1-94.

NR 158.05 Discharger responsibilities. (1) **DISCOVERY AND NOTIFICATION REQUIREMENTS.** The discharger of a hazardous substance shall immediately notify the department or the designated statewide 24-hour emergency number provided by the division of emergency government, unless the discharge is specifically exempted under s. 144.76 (9), Stats. The information provided should include as many of the following details as are available:

- (a) Name, address and telephone number of the person reporting the discharge.
- (b) Name, address and telephone number of the discharger.
- (c) Date, time, location and duration of the discharge.
- (d) Date and time notification is made.
- (e) Identify, physical state and quantity of the material discharged.
- (f) Physical, chemical, hazardous and toxicological characteristics of the substance.
- (g) Cause of incident and corrective measures being taken.
- (h) Source, speed of movement and destination or probable destination of the discharged substance.
- (i) Distance and direction to the nearest inhabited dwellings.
- (j) Areas affected, including areas where air, land, surface water, groundwater or drinking water have been impacted.
- (k) Weather conditions existing at the scene.
- (l) Communications equipment available at the scene.

(2) **CONTAINMENT, CLEANUP, DISPOSAL AND RESTORATION.** The discharger shall immediately initiate actions necessary to halt the discharge and to restore the environment to the extent practicable and shall minimize the harmful effects from any discharge to the air, lands or waters of the state. These actions may include, but are not limited to, containment, cleanup, storage, transportation, disposal, restoration or replacement of plants and wildlife and testing of the affected area. The discharger shall keep the department informed and shall secure necessary written approvals from the department for specific actions when such approvals are required by law.

(3) Microbiological and radiological samples shall be analyzed by the state laboratory of hygiene or a laboratory approved or certified by the department of health and social services. Other laboratory test results submitted to the department under this chapter shall be performed by a laboratory certified or registered under ch. NR 149. The following tests are excluded from this requirement:

- (a) Physical tests of soil.
- (b) Physical tests of waste.
- (c) Air quality tests.
- (d) pH measurements.

- (e) Chlorine measurements.
- (f) Temperature measurements.
- (g) Dissolved oxygen measurements.

Note: The requirement in this section to submit data from a certified or registered laboratory is effective on August 28, 1986.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80; cr. (3), Register, April, 1986, No. 364, eff. 8-28-86; am. (1), (3) (a) to (g), Register, April, 1994, No. 460, eff. 5-1-94.

NR 158.07 Response actions. Upon notification to the department in accordance with s. NR 158.05, responsible parties shall conduct one or more of the necessary response actions in subs. (1) to (5), either at the direction of the department, or where site or facility conditions warrant a response action, or both, unless the department determines no further action is warranted in accordance with s. NR 158.09:

- (1) Emergency or non-emergency immediate action in accordance with this chapter.
- (2) Interim action, in accordance with this chapter and, as applicable, ch. NR 724.
- (3) Site investigation, in accordance with the requirements of ch. NR 716.
- (4) Remedial action, in accordance with the requirements of chs. NR 722 and 724.
- (5) Preventive measures plan required by a department-issued order, issued pursuant to s. 144.76 (4), Stats., to minimize or eliminate any further hazardous substance discharges.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (intro.), Register, March, 1995, No. 471, eff. 4-1-95; am. (4), Register, April, 1995, No. 472, eff. 5-1-95.

NR 158.09 No further response action. (1) **GENERAL.** Responsible parties may request in writing that the department determine that no further action is necessary to respond to a hazardous substance discharge, in accordance with the requirements of this section. Unless sub. (2) is applicable, the department shall determine no further response action is required if the department determines that the responsible parties have taken all necessary response actions to restore the environment, to the extent practicable, and if the hazardous substance discharge and contaminated environmental media pose no threat to the public health, welfare and safety and the environment, considering all of the following criteria:

- (a) The type of hazardous substance discharged, including the toxicity, mobility and volume of the hazardous substances.
- (b) The duration of the discharge.
- (c) Time until the discharge was responded to and properly contained or eliminated.
- (d) Any mitigation efforts that may have accelerated the migration of the hazardous substances, such as any fire mitigation methods.

(e) Weather conditions at the site or facility, such as any precipitation that may have accelerated the migration of the discharge, from the time of the discharge until the response was completed.

(f) Migration potential of the discharge, including soil conditions, proximity to surface water bodies, location of drains or storm sewers, depth to groundwater and the integrity of any containment area.

(g) The nature and scope of any immediate action conducted.

(h) The results of any sampling conducted to confirm the adequacy of the response, taken in accordance with s. NR 708.05 (3) (c).

(i) Visual and olfactory evidence of contamination.

(j) Actual or potential environmental impacts.

(k) Proximity of contamination of receptors.

(l) Present and anticipated future land use.

(m) Whether or not routes of exposure are protective and the environment has been restored to the extent practicable.

(n) Any other information that the department considers relevant.

(2) The department shall require responsible parties to conduct a site investigation in accordance with ch. NR 716 if a hazardous substance discharge from an UST meets any of the following conditions:

(a) There is evidence that groundwater wells have been affected by a discharge of a hazardous substance, including evidence found during the release confirmation procedures in ch. NR 705.

(b) Free product is found to need recovery in compliance with s. NR 708.13.

(c) There is evidence that contaminated soils may be in contact with groundwater.

(3) **REOPENING A CASE.** The department may require that additional response actions be conducted by responsible parties pursuant to chs. NR 700 to 726 if additional information indicates that residual contamination at a site or facility poses a threat to public health, safety or welfare or the environment.

Note: Although the department may determine at this time that no further response action is necessary pursuant to chs. NR 700 to 726, the site, facility or portion of the site or facility may be subject to the regulations and requirements of other department programs.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

NR 158.11 Exemptions. The following discharges need not be reported to the department:

(1) A discharge by any person holding a valid permit under ch. 147, Stats., with respect to substances discharged within the limits authorized by the permit.

(2) Discharges by law enforcement officers or members of fire departments using hazardous substances in carrying out their responsibility to protect public health, safety or welfare. These persons are encouraged to

report to the department any discharges of a hazardous substance occurring within the performance of their duties.

(3) A discharge by any person discharging in conformity with a permit or program approved under ch. 144, Stats.

(4) The application of a registered pesticide according to the label instructions.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80; renum. from NR 158.09, Register, April, 1994, No. 460, eff. 5-1-94.