



Maryland Department of the  
Environment

## FACTS ABOUT:

### *Guidance on Maryland's Hazardous Substance Reporting Notifications and Notification Standards*

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## Introduction

In 2008, the Maryland General Assembly passed a law instructing the Maryland Department of the Environment (MDE) to develop regulations requiring “Responsible Persons” to disclose environmental sampling results to the State. The purpose of the law is to identify the locations of potential hazardous substance sites in the State and ensure that appropriate safeguards are in place and adequate cleanup is conducted to protect public health and the environment when historical contamination is discovered. The draft regulations to implement Section 7-222(d) of the Environment Article were published October 23, 2009. MDE is providing a fact sheet with answers to anticipated common questions about the proposed regulations.

This document is divided into two sections. The first section is entitled “Frequently Asked Questions (FAQs) about the Hazardous Substance Reporting Notification.” In this section, MDE has collected the questions from numerous interested parties about the regulations and compiled its responses. This section will be updated as additional questions and answers are available.

The second section is entitled “Hazardous Substance Notification Standards.” This section contains the hazardous substance notification standards to be used by a responsible person and his or her agent in determining whether to submit a hazardous substance release notification form to MDE. MDE intends to update this section every four years, although it reserves its right to update the table in situations where new information about a hazardous substance merits a change.

MDE has consulted with the Division of State Documents (DSD) regarding the difficulties it encountered in preparing the Hazardous Substance Notification Standards table for publication in the Maryland Register. According to DSD, Section VI A.(2) of the Incorporation by Reference manual provides exceptions for publishing certain pertinent information in the Maryland Register when doing so .”..present(s) such special technical difficulties that it would be unduly expensive or burdensome to publish the document in the Maryland Register and COMAR.”

In this instance, the Hazardous Substance Notification Standards table meets this criterion, and thus MDE is incorporating it by reference. MDE shall publish this guidance document on its website and provide it to the depository libraries located throughout Maryland on CD.

## 1. **Frequently Asked Questions (FAQs)**

### **How do I know if I am required to submit the report?**

The law applies to "responsible persons." Responsible person is a term defined by Maryland law. For most sites, this will include an owner or operator of the property where the sample was taken. The obligation is not limited to current owners. For example, a prior owner or operator who has retained a copy of a sampling result meeting the criteria will also be required to report the result to MDE. It does not matter whether the owner or operator performed the test as the only issue is whether the owner or operator is in possession of the results. If that person provides the current owner a copy of the results, the current owner likely will be required to report it to MDE.

### **Am I a responsible person if I own the property as a result of inheritance or due to foreclosure?**

There are several exemptions under the law. Some of these are:

- Owners of property where hazardous substances were identified after the purchase but met the federal requirements for All Appropriate Inquiry by investigating a property's past history to determine whether hazardous substances may have been released into the soil or groundwater at the property;
- Person who inherited a contaminated property;
- Person who holds indicia of ownership in the contaminated property but did not participate in the day-to-day management of the site;
- A holder of a mortgage or deed of trust on a contaminated site but did not participate in the day-to-day management of the site;
- A fiduciary with legal title to a contaminated site for the purpose of administering an estate or trust but did not participate in the day-to-day management of the site or directly cause the discharge of hazardous substances;
- A holder of a mortgage or deed of trust on a contaminated site and foreclosed on the property but did not participate in the day-to-day management of the site;
- A holder of a mortgage or deed of trust who acquires title to an eligible property in the Voluntary Cleanup Program and complies with all requirements and conditions;
- A lender who takes action to protect or preserve a mortgage or deed of trust on a contaminated property to stabilize, contain, remove or prevent the release or threat of release of hazardous substances so long as it takes action to notify the Department in advance;

- A person who receives a response action plan approval letter as an inculpable person under the Voluntary Cleanup Program; or
- A person who owns real property that is impacted by contamination from a contiguous or similarly situated real property.

### **How do I know whether a sample result must be reported?**

If you are a responsible person, you are required to report sample results under these circumstances: (1) a sample result exceeds the screening levels established in the Hazardous Substance Notification Guidance document; or (2) the sample results show a "hazardous substance" (as defined in the regulations) floating as "free product" in groundwater in excess of reportable quantities under federal law, or that was disposed without a permit or is in an abandoned container; or (3) unpermitted disposal of industrial waste has occurred on the site. Soil and groundwater data, collected as part of a Phase 2 Environmental Site Assessment, and other sampling reports may show at least some sample results that exceed the proposed regulatory reporting numbers and may need to be reported to MDE. The proposed regulations include a table containing 677 hazardous substances with notification standards for people to compare their highest sample results in the reports to see whether they must notify MDE of the presence of hazardous substances on their property. If the sample results are below the notification standard, a person does not have to notify MDE.

### **Am I required to disclose old reports?**

The proposed regulations do not require that potentially responsible persons search their records to determine if they possess information that must be reported. MDE intends to exercise enforcement discretion in the event that notification is filed late because the responsible person was unaware for a time that he possessed the information. As stated in Section 7-201(d)(1) of the Environment Article, a responsible person that possesses a sample result or other environmental assessment that indicates the release of a hazardous substance into the environment, at or above the notification standards shall report the finding immediately to the Department. There is no statutory provision for "grandfathering" prior sample results still in a responsible person's possession. For example, a soil sample result from 1980 that a responsible person currently has in his or her possession must be disclosed even if the responsible person no longer owns the property.

### **If I am a consultant, do I have to notify MDE?**

The law requires only that responsible persons submit notification. Of course, a consultant may notify MDE of a release of hazardous substances into the environment on behalf of a client.

### **When is reporting required?**

The proposed regulations require a Responsible Person to submit notification within 15 days of discovering a release. In addition, the proposed regulations require a Responsible

Person to notify MDE if he or she possesses evidence of release that occurred. Since the statute will not be in effect until the regulations are finalized, the Department will accept voluntary notifications submitted by responsible persons during the interim period.

### **Are there any exemptions?**

Yes, the regulations do not require reporting of properly applied pesticides and fertilizers, de minimus residential use of hazardous substances, releases previously reported to MDE or the EPA, or oil releases already subject to other provisions of MDE regulations. For example, if the property is or has been in the Voluntary Cleanup Program, is being regulated under the State Superfund Program or any RCRA or CERCLA regulatory authority, then the responsible person does not need to submit data for this property.

### **Is any provision made for naturally occurring substances?**

Yes, if a responsible person demonstrates to MDE that the hazardous substances are naturally occurring, the results are not required to be reported. In many areas of Maryland, arsenic is a naturally occurring substance that is present in the soils above the MDE screening levels. MDE's "Cleanup Standards for Soil and Groundwater, June 2008 Interim Final Guidance" has a table in Appendix 2 that provides anticipated typical concentrations (ATC) of naturally occurring substances throughout Maryland. The ATC represents the mean concentration plus one standard deviation. The ATC represents a value that either matches or exceeds the majority of background concentration samples. ATC values were calculated for metals and trace elements in each of the three provinces of the state of Maryland identified in this study.

### **If I am required to file a report, how is it submitted to MDE?**

In addition to the proposed regulations, MDE has posted on its website the Hazardous Substance Notification form for responsible persons to use when submitting the information required by Section 7-222(d). The form requires that the responsible person provide a summary of historic and current operational activities, proximity to humans, and details regarding the impact of the release including on soil sediment, groundwater and surface water.

### **What are the threshold levels and how is the appropriate level determined? Does the property's current land use determine the appropriate level?**

The reporting thresholds are the existing MDE screening standards, which in the past have previously existed as guidance. The current use of the property determines whether a responsible person applies the residential or industrial notification standards. For example, the residential soil screening levels apply to any site zoned for residential use. If the property is restricted to commercial or industrial purposes, the industrial notification standards apply.

## **After reporting occurs, how will MDE respond?**

Within 48 hours of receipt of the notification, MDE will send the responsible person a letter acknowledging receipt. If MDE determines that the reported release does not represent a risk to public health or the environment, a No Further Action (NFA) letter will be provided. If an NFA is not appropriate, then MDE will request the property participates in either the Voluntary Cleanup Program or the Controlled Hazardous Substance (State Superfund) program.

## **Am I required to report a discovery of contamination in a public or private water supply well?**

A responsible person must notify MDE if he or she discovers contamination in a public or private water supply well at a concentration above the notification standards. MDE will review the information provided to determine whether further action is needed to address the discovery. In certain instances, the presence of a hazardous substance may be exempt from the notification standards. For example, the presence of the hazardous substance in a public or private water supply well may be a naturally occurring background concentration in the environment at the site. The proposed regulation also does not absolve a person of any reporting obligations that may exist in a permit or that may be required under other statutory or regulatory requirements.

## **What is the relationship between a Phase I Environmental Site Assessment and the proposed regulation?**

A responsible person who commissions a Phase I Environmental Site Assessment (ESA) performed in accordance to the most recent ASTM standard or 40 CFR 312 will possess a report that documents whether any recognized environmental conditions requiring further investigation are present on the property. The two standards cited above do not require a person to collect samples of environmental media to determine whether a hazardous substance has been released into the environment. It serves only as a guide for the end user to direct an environmental professional to perform additional investigation. Environmental professionals have prepared site assessment reports that include limited environmental sampling for many decades. For example, MDE was provided historic environmental sample results on the soils in Swann Park in Baltimore City. After reviewing the data, MDE worked with the City of Baltimore and Honeywell to address the historic contamination at the public park. In such instances, a responsible person possessing such a report would be required by the proposed regulation to notify the Department of the presence of a hazardous substance if it exceeded the notification standards.

## **What does the "E" stand for in the Screening Level Table? Why is there a "+" or "-" following each "E" in the number?**

The numbering in the Screening Level Table is in scientific notation. For example, the residential soil notification standard for ALAR is 2.70E+1 milligrams per kilogram (mg/kg) or 27 mg/kg. The use of "+" or "-" indicates where the decimal point is moved in the number. The notification standard for acrolein in groundwater is 4.20E-1 micrograms per liter (ug/L), or 0.42 micrograms per liter.

## **How will MDE evaluate a notification form submitted by a responsible person?**

Step 1: Upon receipt of the CHS Notification Form, MDE will prepare an acknowledgement letter to the party(s) submitting the notification form within two (2) days of receipt. The letter will state that MDE shall review the notification form and determine whether additional action is required. It also will state that MDE's actions are taken under the authority of the Controlled Hazardous Substance Act and that MDE shall cost recover for its efforts.

Step 2: The property that is described in the notification form shall be entered into the Brownfield Master Inventory (BMI). In accordance with Section 7-223 of the Environment Article, MDE is publishing a master list of all sites at which MDE has reason to believe or has been notified that hazardous substances may be present. The information in the list shall include the general description of the site, its geographical location, the basis for the listing, and the status or findings of the preliminary site assessment.

- A. The BMI listing shall indicate if this is the initial notification.
- B. If the notification form claims that the site is a "Naturally Occurring Site (NOS)," MDE shall delay listing the site on the BMI while the site is under review. If the site is determined to be a NOS site, MDE shall pursue no further action for the naturally occurring substances on the property.

3. MDE shall evaluate the form and accompanying documents within 45 days of receipt. At the conclusion of the review, MDE shall prepare and submit a letter to the party that submitted the notification regarding the status of the notification. The letter shall state one of three courses of action.

- A. MDE completes its review and determines that no further action is warranted regarding the hazardous substances identified at the site. Under this scenario, MDE shall issue a No Further Action letter to the person submitting the notification form.
- B. MDE completes its review and determines that additional site investigation is required. Under this scenario, MDE is requesting additional investigation because it has identified data gaps in the submitted documentation. The data gaps may be a result of an incomplete site history, minimal

environmental sampling, the use of high detection limits by the laboratory, or other issues that affect the ability of MDE to make a conclusive determination regarding the site.

C. MDE completes its review and determines that there is sufficient evidence available to require a remedial response. Such a determination does not mean that the person submitting a notification form will not be required to conduct additional sampling.

Under 3A, 3B or 3C, the person submitting the notification form may elect to conduct assessment and/or cleanup activities under the oversight of either the Controlled Hazardous Substance Enforcement Division or the Voluntary Cleanup Program.

### **Who do I contact for further clarification?**

For questions or clarifications concerning the applicability of the proposed regulations, please contact Jim Carroll, Manager, Land Restoration Program at (410) 537-3437 or by email at [James.Carroll@Maryland.gov](mailto:James.Carroll@Maryland.gov).

## **2. Hazardous Substance Notification Form**

MDE has developed a Hazardous Substance Notification Form (“Notification Form”) for responsible persons to use when notifying the Department that they possess evidence of a release of hazardous substances. This form also is available as a standalone document on MDE’s website.

# HAZARDOUS SUBSTANCE RELEASE OR INDICATION OF A RELEASE NOTIFICATION FORM

**Mail to: Maryland Department of the Environment  
Land Restoration Program  
1800 Washington Blvd, Suite #625  
Baltimore, MD 21230-1719**

*Instruction: Please complete the form to the best of your ability. If you do not know the answer, enter "DK". If you believe the question is not applicable, enter "NA".*

## **PART I -- PROPERTY INFORMATION** (Please type or print legibly)

The information provided in this form is for:     Initial Release Notification         Supplemental Notification

Site or Facility Name

Site Street Address

Site City

County    [N/A]

Zip

Tax Map / Parcel ID No.  
& Acreage:

Zoning Designation

Latitude

Longitude

Property Tax Account  
Identification No.

EPA ID No. (if applicable)

### **Current Property Owner**

Name

Mailing Address

City

State

Zip

Tel. No.

Fax No.

E-mail Address

**Is Party submitting report different than the Current Property Owner?**    Yes     No

### **Facility Operator Contact Person**

Name

Title

Mailing Address

City

State

Zip

Tel. No.

Fax No.

E-mail Address

**Is Party submitting report different than the Current Property Owner?**    Yes     No

### **Name of Person Filing Notification**

Name

Title

Mailing Address

City

State

Zip

Tel. No.

Fax No.

E-mail Address

### **Site Contact Person / Agent of Person Filing Notification**

Name

Title

Mailing Address

City

State

Zip

Tel. No.

Fax No.

E-mail Address

**PART I -- PROPERTY INFORMATION (Continued)**

**STATEMENT OF CERTIFICATION**

I certify that the information submitted is, to the best of my knowledge and belief, true, accurate and complete..

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**PART II -- RELEASE OR INDICATION OF A RELEASE INFORMATION**  
Please provide the following information for EACH release at the site. If additional space is needed to answer any of the following questions, attach additional pages, as necessary.

- (1) Source of this release (i.e., drums, tanks, spills, wastepiles etc.). Provide specific information on the suspected or known source of the release, including the source of this information:
  
- (2) Release date(s) and any known information about the history of the release, including the physical state of the material released (solid, powder/ash, liquid/gas, sludge) and the quantity of material released (lbs, cubic yards, etc.):
  
- (3) Describe those actions that have been taken to investigate, cleanup or otherwise remediate this release (e.g., removal of source of contamination; soil or water sampling performed; and monitoring wells installed and sampled).
  
- (4) Access to the area affected by the release. Check the appropriate box:
  - Inaccessible: A 24-hour surveillance system, or a completely closed barrier or fence to prevent entry.
  - Limited Access: Less than 24-hour surveillance system, and/or a barrier or fence that is partially open.
  - Unlimited Access: No surveillance, and no barrier or fence.
  - Unknown.
  
- (5) If the site is inaccessible or has limited access, then describe site surveillance systems, fences, security personnel or other barriers that would restrict access to the release.

**PART II – RELEASE OR INDICATION OF A RELEASE INFORMATION (Continued)**

(6) For soil releases, indicate the type of material covering this release, by checking the appropriate box below.

- A permanent or otherwise maintained, essentially impenetrable non-earthen material such as concrete or asphalt
- An engineered and maintained earthen material or compacted fill or a high density synthetic material
- Loose earthen fill or native soil
- No cover
- Other – Please specify:

(7) Describe the type and thickness of the material covering the contaminated soil or wastes.

(8) Are any areas beyond the property boundaries affected by this release?  Yes  No  Unknown

If yes, provide details on the potentially affected properties. Include address(es) and information about the nature and extent of the release of hazardous substance(s) on impacted surface soil, subsurface soil, groundwater, surface water, and indoor air.

(9) Indicate whether the residence, playground, day care, school or nursing home are on the property affected by the release **OR** provide the approximate distance from the edge of the area affected by the release to the nearest residence, playground, day care, school or nursing home.

- On affected property
- Less than 300 feet
- 301 to 1000 feet
- 1001 to 5280 feet
- Greater than 1 mile
- Unknown

(10) Provide the name and address of the nearest residence, playground, day care, school or nursing home (if known).

**Name**

**Address**

(11) Indicate the distance between the area affected by the release and the nearest drinking water well (including wells located on the site).

- Less than 0.5 miles
- 0.5 to 1 mile
- 1 to 2 miles
- 2 to 3 miles
- Greater than 3 miles
- Unknown

(12) Provide the name of the property owner and address of the location of the closest drinking water well (if known).

**Name**

**Address**

### **PART III – REQUIRED ATTACHMENTS**

- SCALED SITE MAP:** Attach a scaled site map that shows known or suspected sources as well as the locations of all samples collected at the site. The site map should include outlines of buildings as well as covered ground areas (e.g., parking lots or other paved areas). A legend should be provided to explain any symbols used on the map.
  
- U.S.G.S. TOPOGRAPHIC MAP:** Along with this form, you **MUST** submit a U.S.G.S. topographical map (1:24000) with the geographic center and boundaries of the site clearly marked. U.S.G.S. topographic maps are available for purchase at the Maryland Geological Survey at <http://www.mgs.md.gov/esic/fs/fs4.html> or at (410) 554-5505. Also, the U.S.G.S. topographic map can be printed from Terra Server USA website available at <http://terraserver-usa.com/>.



