

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment
(DLS Control No. 14-272)**

Overview and Legal and Fiscal Impact

These regulations require reporting of the release of a hazardous substance into the environment at or above a specified threshold.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of the Environment:

Hazardous Substances Response Plan: Investigating, Evaluating, and Responding to Hazardous Substance Releases:
COMAR 26.14.02.02, .02-1, .02-2, .02-3, .02-4, and .02-5

Legal Analysis

Background

Chapter 106 of 2008 requires a responsible person that possesses, on or after October 1, 2009, a sample result or other environmental assessment that indicates the release of a hazardous substance into the environment at or above a specified threshold to report the finding immediately to the Maryland Department of the Environment. Chapter 106 also required the department to take specified factors into consideration when determining a reportable threshold of a release of a hazardous substance, and to adopt regulations to implement these requirements on or before June 30, 2009. The draft regulations to implement Chapter 106 were published on October 23, 2009.

Summary of Regulations

The regulations repeal COMAR 26.14.02.02 and add COMAR 26.14.02.02, .02-1, .02-2, .02-3, .02-4, and .02-5. More specifically, the regulations:

- define specified terms;

- incorporate by reference the document *Hazardous Substance Notification Standards Guidance for the Hazardous Substance Reporting Notification Regulations* (Maryland Department of the Environment, June 2014);
- require a responsible person to report immediately to the department the indication of a release of a hazardous substance if a specified threshold or manner or type of occurrence is identified;
- specify the time within which a responsible person must report the indication of a release of a hazardous substance to the department;
- specify releases that are exempt from the reporting requirement;
- specify the information a person must submit to the department and the manner in which the information must be submitted;
- establish reporting thresholds for contaminants in environmental media; and
- require a person who asserts that a detection level is due to naturally occurring levels of the substance to indicate that assertion and explain the basis for it in an appendix to the reporting form.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 4-405(a)(7), 7-208(e)(10), 7-208(f), and 7-222(d) of the Environment Article as authority for the regulations. Specifically, § 7-222(d) requires the department to take certain factors into consideration when determining a reportable threshold for the release of a hazardous substance into the environment and to adopt regulations to implement the reporting requirements. This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The Department of Legislative Services has notified the department regarding the following technical corrections:

- fixing a typographical error in 26.14.02.02-2B(2)(b)(iii);
- changing the phrase “Department of the Environment” to “Department” in 26.14.02.02-2C(8); and
- switching the order of subsections (11) and (12) in 26.14.02.02-3B for clarity.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that special fund expenditures may increase by an indeterminate, but likely insignificant, amount resulting from the department's handling of additional reports of hazardous waste releases. Additionally, special fund revenues may increase by an indeterminate amount from the collection of reimbursements received by the department following the reporting of additional hazardous waste releases.

The Department of Legislative Services disagrees with this assessment, as the impact of the regulations has already been accounted for in the fiscal and policy note accompanying House Bill 977 (Chapter 106) of 2008. That fiscal and policy note indicated that general/special fund expenditures would increase as a result of the department's responsibilities in evaluating additional reports of hazardous waste releases; the fiscal and policy note also estimated that special fund revenues would increase from additional reimbursements paid following the report and subsequent mitigation for a release of hazardous waste.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal economic impact on small businesses in the State. The department explains that additional reports of hazardous waste releases will necessitate additional mitigation and remediation costs for some small businesses, but that such liability exists under current law. The Department of Legislative Services concurs with this assessment but notes that the fiscal and policy note for House Bill 977 has already accounted for the impact of the regulations.

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