

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/18/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/31/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

26 14 02 02, .02-1, .02-2, .02-3, .02-4, .02-5

3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator

Ed Hammerberg

Telephone Number

(410) 537-3356

Mailing Address

1800 Washington Blvd.

City State Zip Code

Baltimore MD 21230

Email

ehammerberg@mde.state.md.us

5. Name of Person to Call About this Document

Edward Hammerberg

Telephone No.

(410) 537-3356

Email Address

ed.hammerberg@maryland.gov

6. Check applicable items:

- New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

- Repeal of Existing Regulations

Recodification

- Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes - No

8. Incorporation by Reference

- Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Sari Levin, Assistant Attorney General, (telephone #(410) 537-3034) on 7/22/14. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert M. Summers, Ph.D.

Title

Secretary of the Environment

Telephone No.

(410) 537-4187

Date

8/28/14

Title 26
DEPARTMENT OF THE ENVIRONMENT
Subtitle 14 HAZARDOUS SUBSTANCE RESPONSE PLAN

26.14.02 Investigating, Evaluating, and Responding to Hazardous Substance Releases

Authority: Environment Article, §§4-405(a)(7), 7-208(e)(10), 7-208(f), and 7-222(d),
Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of the Environment proposes to Repeal regulation .02 and adopt new regulations .02, .02-1, .02-2, .02-3, .02-4 and .02-5 under COMAR 26.14.02, Investigating, Evaluating, and Responding to Hazardous Substance Releases.

Statement of Purpose

The purpose of this action is to require that a responsible person who is in possession of a sample result or other environmental assessment that indicates the presence of a released hazardous substance or substances in the environment at or above a threshold established by the Department to report the finding promptly to the Department. The proposed action would implement the requirements of Environment Article §7-222(d), Annotated Code of Maryland.

Since the 1980's, federal law has required that any person in charge of a facility from which there is a release in excess of certain quantities immediately notify the National Response Center. There are properties, however, that were contaminated earlier or to which hazardous substances in smaller amounts were released over a period of time. In the course of environmental assessments or other activities, such contamination is sometimes detected. The major provisions of this action establish threshold reporting standards and require a responsible person to report to the Department the presence of a hazardous substance in the environment at or above those threshold levels. The purpose of the reporting is to identify the locations of potential hazardous substance sites in the State so that appropriate safeguards are in place and adequate cleanup is conducted to protect public health and the environment when historical contamination is discovered.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

Although the proposal will have some economic impact, it is not expected to be significant. The proposal requires that responsible persons comply with the release reporting requirements. In those instances where a release or threat of a release of a hazardous substance into the environment has been determined to occur, the responsible person will incur an unknown fiscal burden to investigate and potentially remediate a release of a hazardous substance. The extent of this fiscal burden would be dependent upon the nature and extent of contamination.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
(1) Review of notifications	(E+)	Undeterminable
(2) Cost recovery for review of notifications	(R+)	Undeterminable
B. On other State agencies:	(E+)	Minimal
C. On local governments:	(E+)	Minimal

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Minimal
E. On other industries or trade groups:	(-)	Minimal
F. Direct and indirect effects on public:	(+)	Undeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A(1). The action will increase the workload of the Controlled Hazardous Substance Enforcement Division because it will likely receive an increased volume of notifications of hazardous substance releases, but a defensible estimate the the number of notifications that may be received and their complexity is not available

A(2). The Department can seek reimbursement for time spent reviewing the notifications, but cost recovery will probably not be sought for small expenditures. A defensible estimate the the number of notifications that may be received and their complexity is not available, so the amount of revenue received cannot be estimated.

B. Under current law, the definition of “responsible person” does not include a State or local government except in the case of gross negligence or willful misconduct. These situations are likely to be rare. Accordingly, these regulations are anticipated to have minimal impact on State or local operations or finances.

C. Under current law, the definition of “responsible person” does not include a State or local government except in the case of gross negligence or willful misconduct. These

situations are likely to be rare. Accordingly, these regulations are anticipated to have minimal impact on State or local operations or finances.

D. The cost of reporting information already in the possession of a responsible person is expected to be minimal, whether the responsible person is a regulated industry, another industry, a business or a person. 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. Subsequent to notification, responsible persons could incur costs to investigate and potentially remediate the contamination. The range of costs associated with such activities depends on the nature and extent of contamination. Although this liability exists under current law, requiring notification to MDE could result in earlier expenditures. This action is not anticipated to have a significant impact on operations or finances of industry or trade groups.

E. The cost of reporting information already in the possession of a responsible person is expected to be minimal, whether the responsible person is a regulated industry, another industry, a business or a person. 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. Subsequent to notification, responsible persons could incur costs to investigate and potentially remediate the contamination. The range of costs associated with such activities depends on the nature and extent of contamination. Although this liability exists under current law, requiring notification to MDE could result in earlier expenditures. This action is not anticipated to have a significant impact on operations or finances of industry or trade groups.

F. The proposed action is not expected to have any direct or indirect economic impacts on the public. Public health risks may be reduced if contaminated sites are discovered and addressed earlier because of the notification.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Mr. James Carroll, Manager, Land Restoration Program, Maryland Department of the Environment, 1800 Washington Blvd., Suite 625, Baltimore, MD 21230-1719, or call 410-537-3437, or email to james.carroll@maryland.gov, or fax to 410-537-3472. Comments will be accepted through 12/1/14. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2014

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Hazardous Substance Control Fund

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The cost of reporting information already in the possession of a responsible person is expected to be minimal, whether the responsible person is a regulated industry, another industry, a business or a person. 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. Subsequent to notification, responsible persons could incur costs to investigate and potentially remediate the contamination. The range of costs associated with such activities depends on the nature and extent of contamination.

G. Small Business Worksheet:

Impact Statement Part C — Legislative Information

Part C requests agencies to provide information required by the Department of Legislative Services in its report to the AELR Committee. Answer the questions in the space provided. Part C is not printed in the Maryland Register.

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to

small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries of the proposed regulation are listed below:

- Potential future purchasers of real property;
- Residential or commercial owners and/or users of real property;
- Adjoining real property owners; and
- Communities in which the real property subject to the notification regulations are located.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

The regulation will not affect income or purchasing power of households as the regulation exempts household hazardous waste from regulation.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

The proposed regulations are not intended to benefit any single industry or type of business activities. The regulations require that a responsible person with evidence of a release or possible release of a hazardous substance must notify the Department. The Department does not possess sufficient information to estimate whether Maryland establishments are disproportionately small business and what impact it will have on those entities.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur

additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

The proposal requires that a responsible person, as defined in Section 7-201 (t)(2) of the Environment Article, notify the Department if he or she possesses evidence of a release or threat of release of hazardous substances into the environment. As a result of the regulation, the responsible person must review the evidence they possess prior to filling out the six page notification form and submitting it to the Department. The Department does not possess sufficient information to describe how many Maryland establishments may be adversely affected or if small businesses will bear a disproportionate financial burden. Based on Delaware's experience with similar regulations, the impact is anticipated to be minimal.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

It is anticipated that Maryland businesses subject to public financial disclosure requirements shall be better able to establish and report their asset retirement obligations. However, the Department does not have information as to how many Maryland businesses are subject to such requirements. The other positive impact for Maryland businesses is that responsible persons will be better able to establish a basis for addressing potential liability issues associated with the release or threat of release of hazardous substances. The Department does not possess sufficient information to estimate how many Maryland establishments may be positively affected by the regulations.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

The regulations are not anticipated to have any long term economic impacts on Maryland businesses. Federal law requires any purchaser to conduct all appropriate inquiry prior to purchasing a property if the purchaser seeks to be afforded environmental liability protection. Typically, financial institutions also require prospective purchasers to perform environmental due diligence prior to acquiring real property. In this instance, the notification regulations have the benefit of streamlining the all appropriate inquiry process.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

The Department does not possess sufficient information to estimate the economic impact relating to the six categories listed above.

Attached Document:

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 14 HAZARDOUS SUBSTANCE RESPONSE PLAN

Chapter 02 Investigating, Evaluating, and Responding to Hazardous Substance Releases

Authority: Environment Article, §§4-405(a)(7), 7-208(e)(10), [and] 7-208(f), and 7-222(d), Annotated Code of Maryland

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Department" means the Department of the Environment.

(2) "Disposal" has the meaning stated in COMAR 26.13.01.03B(15).

(3) "Hazardous substance" has the meaning stated in Environment Article, §7-201, Annotated Code of Maryland.

(4) "Possess" with respect to a sample result or other environmental assessment means to have knowledge of, or custody of, the result or assessment.

(5) "Release" has the meaning stated in Environment Article, §7-201, Annotated Code of Maryland.

(6) "Responsible person" has the meaning stated in Environment Article, §7-201, Annotated Code of Maryland.

(7) "Unpermitted" with respect to disposal means not authorized by a valid permit at the time of disposal.

.02-1 Incorporation by Reference.

In this chapter, the document "Hazardous Substance Notification Standards Guidance for the Hazardous Substance Reporting Notification Regulations" (Maryland Department of the Environment, June, 2014), is incorporated by reference.

.02-2 Site Discovery and Reporting.

A. The Department may use any reasonable method to discover that there has been a release, or that there is the potential for a release, of a hazardous substance at a site, including the following:

(1) *A report made by any of the following:*

(a) *A site owner;*

(b) *A person working at a site; or*

- (c) A user of a site;
- (2) A report, a complaint or other information submitted by a person of:
 - (a) An observed or suspected release or discharge of a hazardous substance; or
 - (b) Health-related effects known or suspected to be associated with a site; or
- (3) An observation, investigation or inspection by the Department of the site.

B. Required Reporting.

(1) The reporting required under this regulation is in addition to any reporting required by a permit or that is required under other local, State or federal statutory or regulatory requirements. Reporting under this regulation does not constitute, or substitute for, compliance with any other reporting requirement.

(2) Except for releases identified in §C of this regulation, a responsible person shall report immediately the indication of a release of a hazardous substance in accordance with the reporting procedure described in Regulation .02-3 of this chapter if:

- (a) A contaminant at or above the threshold level identified in Regulation .02-4 of this chapter is identified in:
 - (i) Surface or subsurface soils;
 - (ii) A private water supply well;
 - (iii) Site groundwater;
 - (iv) Surface water;
 - (v) A seep; or
 - (vi) Sediment;
- (b) Any of the following is detected:
 - (i) A hazardous substance underground as free-product, either as a light nonaqueous phase or a dense nonaqueous phase;
 - (ii) An amount of hazardous substance in the environment in excess of a reportable quantity under 40 CFR §302.4;
 - (iii) Waste material that was disposed of without a permit and that would be classified as a hazardous waste under federal or state law if removed; or
 - (iv) An abandoned container, tank, or engineered structure that contains more than trace residual amounts of a hazardous substance; or

(c) The site is one where unpermitted disposal of industrial waste occurred.

(3) Immediate reporting. For purposes of the reporting requirement under §B(2) of this regulation only, "immediately" shall mean as soon as practicable, but in any event before the later of the following deadlines:

- (a) 30 days after the effective date of these regulations;
- (b) 30 days after the discovery of a sample result or environmental assessment collected or performed before October 1, 2009 that indicates the release of a hazardous substance into the environment at or above the notification standards; or
- (c) 15 days after discovery by the responsible person that the criteria requiring reporting have been met.

C. Exemptions. The following releases are exempt from the reporting requirement of §B of this regulation:

- (1) Application of pesticides and fertilizers used for their intended purposes and applied in accordance with label instructions;
- (2) Lawful and non-negligent use of a hazardous substance by an individual for personal or domestic purposes;
- (3) A release previously reported to the Department in fulfillment of reporting requirements in this title, another law or regulation, or a permit;
- (4) A release previously reported to the United States Environmental Protection Agency (EPA) in accordance with requirements of Section 103(a) or (c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9603(a) and (c);
- (5) A release of oil that is subject to regulation under Environment Article, Title 4, Subtitle 4, Annotated Code of Maryland;
- (6) A release that is being addressed, or has been addressed by the Department or EPA on-scene coordinator, remedial project manager, or project manager who is acting on behalf of or with the approval of the Department or EPA;
- (7) A release authorized by federal or Maryland permits or approvals;
- (8) A permitted release in a public water system regulated by the Department of the Environment; and
- (9) A permitted release into a publicly owned treatment works.

.02-3 Release Reporting Procedures.

A. A person required to report the indication of a release of a hazardous substance by Regulation .02-2B of this chapter shall:

- (1) Provide the Department with the information listed in §B of this regulation on a form made available by the Department for that purpose;
- (2) Append to the form any required information that cannot be accommodated on the form; and
- (3) Submit the report to the Department by the deadline specified in Regulation .02-2B(3) of this chapter.

B. The responsible person shall include the following information in the report to the extent it is known or can be determined:

- (1) The location of the site where the hazardous substance is present, including the:
 - (a) Address;*
 - (b) Latitude and longitude;*
 - (c) Location of the site noted on a United States Geological Survey (USGS) topographic map or other map of equivalent detail acceptable to the Department; and*
 - (d) Property tax account identification number;**
- (2) The mailing address and telephone number of the responsible person and his representative;*
- (3) The current zoning classification of the property;*
- (4) A list of hazardous substances identified in the sample result or other environmental assessment possessed by the responsible person;*
- (5) For each detection of a hazardous substance at or above the notification level, the environmental medium in which it was detected and all analytical results or other environmental assessment for that hazardous substance;*
- (6) The name and address of the property owner and site operator;*
- (7) A summary of historic and current operational activities at the property;*
- (8) Information on the proximity of human receptors to the release;*
- (9) A summary of actions taken to investigate and remediate any contamination that has resulted from the release that triggered the reporting requirement;*
- (10) The location and address of any property or area known or suspected to be affected by the release;*
- (11) The extent to which environmental media have been affected;*
- (12) Environmental media affected by the release, including:
 - (a) Surface soil;*
 - (b) Subsurface soil;*
 - (c) Sediments;*
 - (d) Groundwater;*
 - (e) Surface water; and*
 - (f) Indoor air; and**
- (13) Any other information requested by the Department.*

.02-4 Hazardous Substance Reporting Thresholds.

A. This regulation establishes reporting thresholds for contaminants in environmental media. These thresholds do not necessarily indicate a risk to public health or the environment.

B. For the purposes of determining whether reporting is required under Regulation .02-2B(2)(a) of this chapter, a person shall apply the reporting thresholds in the Hazardous Substance Notification Standards included in the document "Hazardous Substance Notification Standards: Guidance for the Hazardous Substance Reporting Notification Regulations," incorporated by reference in Regulation .02-1 of this chapter, as follows:

- (1) For soil or sediment on the site, the reporting threshold for a hazardous substance is the:
 - (a) Residential soil reporting threshold, if the site is zoned for residential use or is not restricted from being used for residential use; and*
 - (b) Non-residential soil reporting threshold, if the site is not available for residential use because of zoning or other land use restrictions;**
- (2) For a private drinking water supply well on the site, the reporting threshold for a hazardous substance is the lower of the:
 - (a) Maximum contaminant level (MCL) for the hazardous substance, if any, identified in the Hazardous Substance Notification Standards; or*
 - (b) Reporting threshold for water; and**
- (3) For water on the site other than drinking water supply wells, including groundwater, surface water, or a seep at the site, the reporting threshold is the reporting threshold for water.*

.02-5 Naturally Occurring Levels of Hazardous Substances.

If a person submitting a notification to fulfill the reporting requirements of Regulation .02-2B of this chapter asserts that detection of levels at or above the applicable threshold of one or more hazardous substances is due to naturally occurring levels of those substances, that person shall indicate that assertion and explain the basis for it in an appendix to the reporting form.

Incorporation by Reference
APPROVAL FORM

Date: September 17, 2014
COMAR: 26.14.02.02-1

Edward Hammerberg
Department of the Environment
Waste Diversion and Utilization Program
1800 Washington Boulevard
Baltimore, MD 21230-1719

Dear Ed:

The document entitled Hazardous Substance Notification Standards, Guidance for the Hazardous Substance Notification Standards, is approved for incorporation by reference.

Please note the following special instructions: None.

Attach a copy of this approval form when submitting an emergency or proposed regulation to the AELR Committee and when submitting a proposed regulation to DSD for publication in the Maryland Register. If submitting through ELF, include as part of the attachment.

Any future changes to the incorporated documents do not automatically become part of the regulation. If there are subsequent changes to the incorporated documents, and the agency wishes those changes to become a part of its regulations, the agency must amend the regulation incorporating the documents.

Please call us if you have any questions.

Sincerely,
Gail S. Klakring
Senior Editor