

**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

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Martin O'Malley
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Deputy Secretary

November 2, 2009

Thomas C. Cardaro, President
Maryland State Bar Association
520 W. Fayette Street,
Baltimore, MD 21201

RE: Controlled Hazardous Substance Notification Regulations – Proposed

Dear President Cardaro:

On October 23, 2009, the Maryland Department of the Environment's (Department) proposed new controlled hazardous substance notification regulations in the *Maryland Register*. The Department is providing you with information regarding these proposed regulations in hopes that you will share the information with members of your association.

The proposed regulations, pursuant to Section 7-222(d) of the Environment Article, would require responsible persons that possess evidence of a release of controlled hazardous substances (CHS) into the environment above certain regulatory levels to notify the Department. These regulations would require a Responsible Person to submit notification within 48 hours of discovering a release. In addition, the proposed regulations would require a Responsible Person to notify MDE if he or she possesses evidence of release that occurred. The Department estimates that the proposed regulations would become effective by January 31, 2010. 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.

The Department will host a workshop on these proposed regulations on November 10, 2009 at 10:00 a.m. at MDE's headquarters. Please e-mail me to RSVP at JCarroll@mde.state.md.us and indicate the number of people who may be attending from your organization. The Department also requests that you include any questions with your email to focus the workshop discussion on pertinent issues. Enclosed with this letter is a fact sheet on the proposed regulations. A copy of the notification standards and the CHS Notification Form are available on the Department's website at <http://www.mde.state.md.us>.

Sincerely,

James Carroll, Program Administrator
Land Restoration Programcc: Paul V. Carlin, Executive Director
Horacio Tablada, Director, Land Management Administration



Facts About...

Maryland's Controlled Hazardous Substance Reporting Notifications

The Controlled Hazardous Substance Act (Act) was amended in 2008 to require that Responsible Persons who have evidence of a release or threat of release of controlled hazardous substances (CHS) into the environment must notify the Maryland Department of the Environment (MDE). Section 7-222(d) of the Environment Article requires responsible persons to notify MDE if they possess evidence of a release of hazardous substances above certain regulatory levels beginning on October 1, 2009. The Department also is proposing notification standards in these regulations.

Who is a "Responsible Person"?

In general terms, Maryland's Controlled Hazardous Substance Act defines four types of responsible persons.

- Owner/Operator of a Vehicle or Site: The first type of responsible person is someone who owns or operates a vehicle or site that contains a hazardous substance. An example of this category includes a property owner who buys property without testing the property to find out if it is contaminated by hazardous substances.
- Owner/Operator of Site at Time of Disposal: The second type of responsible person is someone who owned or operated the site at the time the hazardous substance was disposed of. Examples include a person who owned a property where contaminated wastes were released onto the soil or into the ground.
- Arranger of Disposal, Treatment or Transport: The third category of responsible person is someone who arranged for the disposal, treatment or transport of hazardous substances. In this example, a person who owned or operated an industrial or commercial process that generated waste and sent the waste offsite for disposal is considered responsible for those wastes, even if the final disposal was on another property.

- Transporter: The final category of responsible person includes a transporter who delivers the hazardous substances to a facility for treatment and/or disposal.

Who is Not a "Responsible Person"?

The statute also defines twelve different categories of persons who are not "Responsible Persons". The twelve categories are listed below.

- Purchaser of property where hazardous substances were identified after the purchase but met the federal All Appropriate Inquiry requirements;
- 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 inculcable 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.

What Releases Are Exempt from the Notification Requirements?

Not all releases of hazardous substances require a responsible person to notify the Department. The regulations specifically exclude certain releases of hazardous substances into the environment from the notification requirement. A responsible person is not required to report a hazardous substance release if it occurred in one of the following scenarios:

- Applying pesticides and fertilizers used for their intended purposes and applied in accordance with label instructions;
- Using hazardous substances in a lawful and non-negligent manner by an individual for personal or domestic purposes;
- Reporting a release already reported to the Department in fulfillment of reporting requirements in this title or in another law or regulation;
- Reporting a release already reported to the United States Environmental Protection

Agency (EPA) in accordance with requirements of Section 103(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9603(c);

- Reporting a release of oil that is subject to regulation under COMAR 26.10;
- Reporting a release already being addressed under State or federal response authorities in compliance with instructions given by the Department, EPA, or the on-scene coordinator or remedial project manager acting on behalf of the Department or EPA;
- Reporting a release to a public water system regulated by the Department of the Environment; and
- Reporting a release into a publicly owned treatment works.

In addition, the Department may exempt a responsible person from the reporting requirements for a metallic constituent if the Department determines that the observed concentration of the constituent is a naturally occurring background concentration in the environment at the site. As an example, arsenic is a naturally occurring compound in certain geologic formations in Maryland. The discovery of arsenic may be excluded from the reporting requirements if it is determined to be a naturally occurring substance. However, such a determination must be made by the Department.

When Is a Responsible Person Required to Notify the Department?

The proposed regulations require a Responsible Person to submit notification within 48 hours 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.

The Department proposed these regulations in the Maryland Register edition of October 23, 2009. The Department estimates that the proposed regulations would become effective by



January 31, 2010. 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.

How Does a Responsible Person Notify the Department?

Any responsible person who has evidence of a release of a hazardous substance must submit a "Controlled Hazardous Substance Notification Form" to the Department. The form is posted on the Department's website. The Department will send the responsible person a letter acknowledging receipt of the notification form. The acknowledgement letter also will inform the responsible person that in accordance with Section 7-221 of the Environment Article, the Department shall cost recover for the time spent reviewing the notification form.

After completing its review of the notification, the Department shall contact the responsible person. If the Department determines that no further action is required, it will document this determination in a letter from the Controlled Hazardous Substance Enforcement Division.

What are the Notification Standards?

The proposed regulations establish notification Standards based on the U.S. Environmental Protection Agency's (USEPA) Risk-Based Criteria (RBC) published on May 19, 2009. For

carcinogens, the threshold notification standard calculated as 10 times the EPA RBC and has already been adjusted in the published table. The Department emphasizes both in the proposed regulations and in this fact sheet that the presence of one or more contaminants equal to or exceeding the notification standards do not constitute a known risk at a site and are not a substitute for site-specific risk assessment.

The Department has created two different notification standards for Residential and Industrial land uses. The notification standard for residential land uses applies to all sites that are zoned for residential use or are not restricted from being used for residential use. Examples of residential land use include sites where the current or planned use of the property allows exposure and access by all populations including infant, children, elderly, and infirmed populations. These properties typically include single-family and multi-family dwellings, hospitals and health care facilities, education facilities, day care facilities, playgrounds and other recreational areas. For industrial land use, the notification standard applies to sites not available for residential because of zoning requirements or land use restrictions. This category includes properties that are used for commercial or industrial purposes.

The notification standards are published on the Department's website for review at <http://www.mde.state.md.us>.

Contact:

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