

Facts About...

Maryland's Controlled Hazardous Substance Reporting Notifications

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..

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 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 of Maryland's voluntary cleanup program; 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?

Regardless of the date of the sampling event, old reports need to be submitted if they meet the reporting criteria and you are a responsible person. The regulations do not "grandfather" prior sample results still in your 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 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. 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 CHS Notification for responsible persons to use when submitting the information required by Section 7-222(d). The form requires that 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 ASTM E1527-05 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.

Is it too late to provide comments on these regulations?

No, the regulations were proposed on October 23, 2009 and are available for public comment until November 23, 2009. During this period interested parties have the opportunity to submit comments to MDE prior to the finalization of the regulations.

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; or

Art O'Connell, Chief, CHS Enforcement Division at 410-537-3437.