

Due Care Obligations

Sec 324.XXXXX Due Care; duties of owner or operator, residential tenant, having knowledge of facility; compliance with section.

- (1) A current owner or operator of real property, or a residential tenant, that has knowledge the property is a facility shall do all of the following with respect to hazardous substances at the property:
 - (a) Comply with subsection (2) and (4) of section xxxxx (*Immediate response activities*) as soon as the exigencies of the situation require, but not later than 48 hours from obtaining knowledge. For the purposes of this subsection compliance with section xxxxx(2)(e) may be achieved by discontinuing use, rendering inoperable, or properly abandoning the contaminated water supply system if there is a readily alternative water supply available.
 - (b) Provide reasonable cooperation, assistance, and access to persons that are authorized or obligated to conduct response activities at a property, including the cooperation and access necessary for the installation, operation, and maintenance of any response activity at the property. A person responding to a request for access may utilize the provisions provided in section xxxxx (*Access*).
 - (c) Comply with all activity and use limitations, or environmental covenants, or both, established or relied on in connection with the response activity at the property.
 - (d) Do not impede the effectiveness or integrity of any exposure controls, institutional controls, or remediation systems employed at the property in connection with a response activity.
 - (e) Take reasonable precautions to prevent the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions regarding the environmental contamination.
 - (f) Undertake measures as are necessary to prevent exacerbation of environmental contamination.
 - (g) Submit a Facility Notification pursuant to section xxxxx (*Facility determination and notification*) in the following time-frames:
 - (i) For a current owner or operator of property that has knowledge a facility exists on the property at the effective date of this part, within 30 days of the effective date of this part.
 - (ii) For a new owner or operator after the effective date of this part, that has knowledge that a facility exists on the property, within 30 days of the earlier of becoming the owner or operator of the property pursuant to section xxxxx (*Inquiry*).
 - (h) Within 45 days of Facility Notification or of discovery of containers not being lawfully used in operations at the property or not being lawfully stored:
 - (i) Remove, dispose or recycle above ground containers containing hazardous substances or a mixture of hazardous substances. Remove hazardous substances or mixtures of hazardous substances, sludge and vapors from above ground containers if removal of the container is not practical due to size or structural considerations. .

Due Care Obligations

- (ii) Remove hazardous substances or mixtures of hazardous substances, sludge, and vapors from below ground containers that are accessible from the surface without excavation. Pipelines, or other containers that traverse multiple properties, when not owned or controlled by the property owner or operator are not subject to this requirement.
 - (iii) The requirements of this subsection do not alter the obligations of a person to comply with other applicable laws and regulations to which the owner or operator is subject.
- (i) A person who is subject to section (3) or (4) is not subject to subsection (h)(i) to (iii) of this subsection shall within 45 days of the discovery of containers not being lawfully used in operations at the property or not being lawfully stored submit a notice to the department on a form created pursuant to section xxxxx.
- (i) The notice shall include all information known to the owner or operator about the number, type, size, and contents of the containers.
 - (ii) This notice is not required if registration of the container is required under other state or federal requirements.
- (j) Within 90 days of the Facility Notification prepare a due care evaluation that accomplishes the following:
- (i) Determines complete exposure pathways or pathways are likely to become complete, based on the current and intended future uses and the features of the property. Exposure pathways evaluation shall be conducted pursuant to section xxxxx (*Exposure pathway evaluation*).
 - (ii) Evaluates based on available data and information whether an unacceptable exposure or condition that requires immediate response activities exists. Evaluation of immediate response conditions shall be pursuant to section xxxxx (2), (4) and (5) (*Immediate response activities*).
 - (iii) Investigates each complete exposure pathway sufficiently to evaluate whether an unacceptable exposure or condition that requires mitigation exists or is likely to exist. Evaluation of unacceptable exposures shall be based on applicable cleanup criteria for the land use. The investigation shall include the collection of environmental samples of affected media for each complete and likely to be complete exposure pathway at locations that best represent the maximum hazardous substance concentrations to which exposure may occur unless one or more of the following conditions apply. The collected samples shall be analyzed for the hazardous substances of concern pursuant to section xxxxx (*Sampling methodology and data quality*).
 - (1) Field analysis is sufficient to determine that an unacceptable exposure or condition exists.
 - (2) Presumptive response activities will be taken to address exposure pathways identified in subdivision (i).
 - (3) Analytical data exist that represent the current conditions of the property and will allow a person to adequately evaluate the exposure pathways identified in subdivision (i). Existing data are acceptable only if the data are reliable and are consistent with the provisions of section xxxxx (*Sampling methodology and data quality*). Persons relying on data and information developed for purposes other than this evaluation shall assure the accuracy and reliability of the data and information.
 - (iv) Determines the response activities necessary to eliminate or mitigate unacceptable exposures and conditions. An owner or operator that is developing the property for

Due Care Obligations

future uses shall incorporate exposure controls for the end user into the building or property design and construction.

- (v) Determines the operation and maintenance requirements, and the frequency of monitoring and inspection necessary to verify that each response activity is and remains effective.

- (k) Within 90 days of Facility Notification or of having reason to believe that a hazardous substance is emanating from, or has emanated from, and is present beyond the property boundaries at a concentration in excess of the residential criteria, submit a Notice of Migration to the department and to the owner of affected adjacent property pursuant to section xxxxx (*Notice of migration*).
 - (i) If hazardous substances emanating from the property is migrating or likely to migrate into surface waters of the state on or adjacent to the property in concentrations that exceed applicable criteria, notification is made to the department.
 - (ii) This requirement to notify the department and the affected adjacent property owner shall be based on reasonable inferences that can be made from available data about the property, including but not limited to, data gathered through investigation undertaken to comply with subsection (j) or section xxxxx of this part (*Remedial obligations*).

- (l) Except as provided in subdivision (i), within 180 days of Facility Notification:
 - (i) Implement, perform, and continue to operate and maintain response activities as determined by subsection (j), including activity and use limitations, as necessary, to eliminate or mitigate unacceptable exposures and conditions.
 - (ii) If the hazardous substances at the property may present an unacceptable exposure or risk to utility workers or other persons conducting activities at the property in an easement, under the terms of a utility franchise, or pursuant to severed subsurface mineral rights or severed subsurface formations, then the owner or operator may satisfy the obligation to mitigate unacceptable exposures or risks to the utility workers or other persons by providing written notice, by a method that provides proof of delivery, of the general nature and extent of environmental contamination, and potential unacceptable exposures and conditions to all of the following:
 - (1) Easement holder of record.
 - (2) Utility franchise holder of record.
 - (3) The owner or operator of all utilities that serve the property.
 - (4) Owners or lessees of severed subsurface mineral rights or subsurface formations.
 - (5) If the person described in (1) to (4) of this subdivision is not an individual, then the notice shall be provided to the chief executive officer of the organization.The notice required shall be provided as soon as the exigencies of the situation require, but no later than 180 days after the Facility Notification.
 - (iii) Disclose to employees, tenants, lessees, public and private easement holders, holders of severed subsurface mineral rights or severed subsurface formations, contractors, and other affected parties, information about conditions and the activity and use limitations that are relevant to that person that adequately describes the precautions that shall be taken or activities that cannot be taken in order to prevent or mitigate the unacceptable exposure or condition on a form

Due Care Obligations

created pursuant to section xxxxx. Disclosure shall be provided pursuant to section xxxxx (*Disclosure*).

- (iv) Upon request of a person to whom information is provided under this subsection, the owner or operator of property who provided disclosure under this subsection shall provide all available information about the environmental contamination and environmental conditions at the property that he or she owns or operates which are relevant to the activities of the person who received notice.

- (m) Submit documentation of evaluation and implementation of due care response activities required in subsection (a) to (l) to the department using a form created pursuant to section xxxxx within the following time frames:
 - (i) A new owner or operator shall submit the documentation within 240 days of Facility Notification.
 - (ii) An owner or operator that has knowledge that the property is a facility at the effective date of this part shall submit the documentation in accordance with the schedule as shown in Table 1. The time frames specified in this subsection do not alter the ongoing due care requirements of a person who is subject to this section. The required documentation shall be available to the department upon request not later than 240 days after the effective date of this part.

TABLE 1

| Type of Property Use | Time-Frame |
|---|---|
| Sensitive and Institutional Populations | Within 1 years of effective date of this part |
| Gas Station, Dry Cleaner, Manufactured Gas Plant, Metal Foundry, Chemical production, Manufacturing plants, Processing plants, Assembly plants, Vacant or Occupied Industrial property, | Within 2 years of effective date of this part |
| Auto Repair or Maintenance, Laundries, Commercial, Retail, Office | Within 3 years of effective date of this part |

- (iii) Documentation shall include all of the following in a format provided by the department:
 - (1) A description of how compliance with subsection (a) to (l) has been achieved.
 - (2) A description of the removal of hazardous substances in containers required in (g), and supporting documentation including the containers removed, dispensation, and dates of removal.
 - (3) The findings and the basis of the immediate response evaluation from section xxxxx (*Immediate response*) and due care evaluation required in subsection (j), including but not limited to the investigation results, information on environmental contamination including the name, chemical abstract service number and concentration, exposure pathways, analytical data, maps, and necessary response activities.
 - (4) A description and documentation of the response activities implemented, and their purpose.

Due Care Obligations

- (5) Schedule for inspection and monitoring the response activities as determined in subsection (j).
 - (6) Schedule for operation and maintenance as determined in (j).
 - (7) Copies of any notices provided under subsection (a), (i), (k), (l)(ii) and (iii), and (p).
 - (8) Name, title, affiliation, address, contact information, and affiliation of the submitter.
 - (9) Property name, street address, or location of the property that is the facility.
 - (10) Local unit of government that has jurisdiction of the facility.
 - (11) County of the facility.
 - (12) Name, address, and contact of the property owner and operator.
 - (13) Name, title, affiliation, and contact information of the person responsible for the operation and maintenance, monitoring, and inspections.
 - (14) Map of the property showing property boundaries, adjacent property uses, buildings, utilities, sample locations, areas where response activities have been implemented, and other information pertinent to the due care evaluation.
 - (15) Other information relevant to the evaluation of effectiveness of the response activities conducted.
- (iv) If the owner or operator has a department-approved remedial action plan, a correction action plan audited by the department with no identified deficiencies, or a department approved R 299.5915 due care compliance analysis plan prior to the effective date of this statute that addresses all releases at the property and has been implemented at the facility, then additional documentation of compliance with subsection (j) to (m) is not required if conditions that determine exposures to hazardous substances at the property remain unchanged. The department-approved plan does not alter the continuing obligations of a person who is subject to this section. In the event of a subsequent release or discovery of environmental contamination, the owner and operator shall initiate the response activities necessary to comply with this section.
- (n) Submit an annual certification on the anniversary of the submittal date of the documentation required in subsection (m) on a form provided by the department verifying that the evaluations and response activities conducted in subsection (a) to (l) are being implemented, are still appropriate, and remain effective in preventing or mitigating conditions or exposures for which they were designed.
- (o) Re-evaluate the response activities required under subsection (a) to (l) and documentation the re-evaluation and any subsequent modification in the annual certification a minimum of every 5 years or when any of the following conditions occur:
- (i) There are changes or additions to the property use.
 - (ii) Complete exposure pathways change.
 - (iii) There are significant changes to the environmental conditions.
- (p) Disclose the documentation described in subsection (m) to subsequent purchaser or transferee in such a manner that adequately describe the response activities that have been implemented, precautions that shall be taken, or activities that cannot be taken in order to prevent or mitigate the conditions or exposures. Disclosure shall be made pursuant to section xxxxx (*Disclosure*).

Due Care Obligations

- (2) The requirements of this section shall apply to all of the following:
 - (a) Hazardous substances that have been released at the property.
 - (b) Discarded or abandoned containers that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, or welfare or to the environment.
 - (c) A threat of release of a quantity of hazardous substance which is or may become injurious to the public health, safety, or welfare, or to the environment.
- (3) The requirements of this section do not apply to hazardous substances being lawfully used in operations at the property or being properly stored at the property.
- (4) Residential home owner-occupants shall comply with this section except for subsection (1)(h) (i) to (iii), and to the reporting requirements in subsection (m) to (o).
- (5) The following persons shall comply with subsection (1)(b) to (d), (f), (i), and (p) of this section:
 - (a) An owner or operator of real property who has reason to know, or is otherwise notified that environmental contamination is migrating onto the property and has knowledge that environmental contamination does not originate on the property.
 - (b) Tenant of residential real property, if hazardous substance use is consistent with residential use.
 - (c) A person who owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral right or formations, unless there are surface operations on the property associated with the subsurface minerals or formations, and the origin of the release is not the result of current operations associated with the subsurface rights.
 - (d) A person who owns or operates the property but does not own or lease the severed subsurface mineral rights or severed subsurface formations for the property in the area of the operations and pipelines associated with the subsurface mineral or formations, when the origin of the release is the result of current operations associated with the subsurface rights.
 - (e) A person who holds an easement interest in a property or holds a utility franchise to provide services, for the purpose of conveying or providing goods or services, including but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.
 - (f) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This does not apply to property owned by the utility.
 - (g) A person purchasing or owning undeveloped rural, forest, or agricultural property. Undeveloped property for the purpose of this section means property that has never been built upon or used for any industrial purposes. Property that has never been built upon, but is or has been used for the production of agricultural crops other than commercial fruit production is considered undeveloped for this section.
- (6) The following persons shall comply with subsection (1)(b) to (d), (f), and (p) of this section:
 - (a) The state or local units of government that acquired ownership or control of a property under any of the following conditions until such time that the state or local units of government develops the property for its own use:
 - (i) Involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function,

Due Care Obligations

- (ii) Ownership or control of a facility is transferred by the state or by another local unit of government that is not liable under section xxxxx (*Liability*),
 - (iii) Ownership or control of a facility was acquired by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.
 - (iv) Ownership or control of the property was received through purchase, gift, condemnation, or transfer prior to June 5, 1995.
- (b) A state or local unit of government that holds or acquires an easement interest in a property, holds or acquires an interest in a facility by dedication in a plat, or by dedication pursuant to Act No. 283 of the Public Acts of 1909, being sections 220.1 to 239.6 of the Michigan Compiled Laws, or otherwise hold or acquires an interest in a property for a transportation or utility corridor or public right of way.
- (7) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

NOTE: In addition to the enforcement provisions of this part, the department may impose additional response activities, including but not limited to removal of source contamination and prevention of off-site migration, for complete failure to comply or for egregious violations of this section.