

Title 26

DEPARTMENT OF THE ENVIRONMENT

Subtitle 14 Hazardous Substances Response Plan

Notice of Proposed Action

The Secretary of the Environment proposes:

Under COMAR 26.14.02 Investigating, Evaluating, and Responding to Hazardous Substance Releases,

- (1) To repeal Regulation .02 Discovery, and
- (2) To adopt new Regulations .02 Definitions.; .02-1 Incorporation by Reference.; .02-2 Site Discovery and Reporting.; .02-3 Release Reporting Procedures.; .02-4 Hazardous Substance Release Reporting Thresholds.; and .02-5 Background Levels.

**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.

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.**

A. On issuing agency:

B. On other State agencies:

C. On Local Governments:

D. On regulated industries or trade groups:

E. On other industries or trade groups

F. Direct and indirect effects on public.

**Revenue**

(R+/R-)

**Expenditure**

(E+/E-)

(R+), (E+)

E+

E+

**Benefit (+)**

**Cost (-)**

(-)

(-)

(+)

**Magnitude**

Undeterminable

Minimal

Minimal

**Magnitude**

Minimal

Minimal

Undeterminable

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

A. 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. The Department can seek reimbursement for time spent reviewing the notifications, but cost recovery will probably not be sought for small expenditures, and the Department's expenditures may therefore exceed its revenue.

B. and 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. and 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 Business**

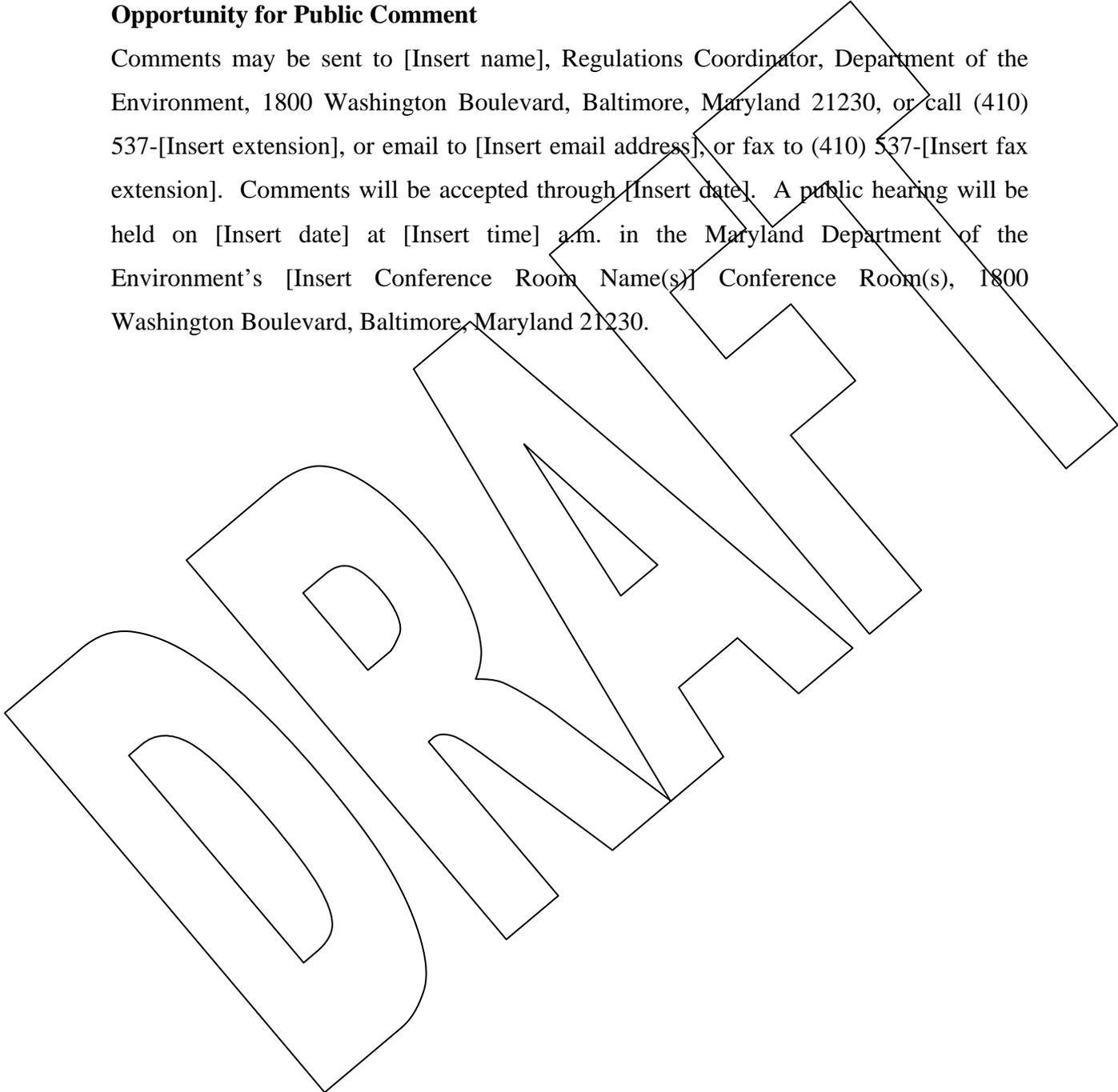
The proposed action will have minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to [Insert name], Regulations Coordinator, Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230, or call (410) 537-[Insert extension], or email to [Insert email address], or fax to (410) 537-[Insert fax extension]. Comments will be accepted through [Insert date]. A public hearing will be held on [Insert date] at [Insert time] a.m. in the Maryland Department of the Environment's [Insert Conference Room Name(s)] Conference Room(s), 1800 Washington Boulevard, Baltimore, Maryland 21230.



**26.14.02.02**

**.02 [Discovery] Definitions.**

[Methods of discovery by the Department of a site that has the potential for, or has demonstrated, release of a hazardous substance include:

- A. Report by owners, employees, or users of the site;
- B. Report or complaint by citizens, or State or county agencies, of an observed or suspected release or discharge of hazardous substances, or of information concerning health-related effects; and
- C. Investigations or inspections by the Department to identify hazardous sites.]

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

B. Terms Defined.

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

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

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

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

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

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

**BEGIN ALL NEW MATERIAL**

**.02-1 Incorporation by Reference.**

The Controlled Hazardous Substance Notification Standards (Maryland Department of the Environment) as amended, 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;
- (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  
when:

(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 public or 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) thirty (30) days after the effective date of these regulations ; or

(b) fifteen (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,

(a) the address;

(b) latitude and longitude;

(c) the 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) Mailing address and telephone number of the responsible person or his representative and

(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 identified in the evidence possessed by the responsible person resulting from the release;

(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;
- (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. The thresholds in Controlled Hazardous Substance Notification Standards (Maryland Department of the Environment) as amended, incorporated by reference in .02-1, apply as follows:

(1) The residential soil screening level in site soil or sediment if the site is zoned for residential use or is not restricted from being used for residential use;

(2) The industrial soil screening level in site soil or sediment if the site is not available for residential use because of zoning requirements or other land use restrictions;  
or

(3) The water screening level in site groundwater, surface water, a seep on the site, or a public or private drinking water supply well on the site.

**.02-5 Naturally Occurring Levels of Hazardous Substances.**

If the person submitting the notification 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.

**END ALL NEW MATERIAL**

DRAFT