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Chapter NR 706

HAZARDOUS SUBSTANCE DISCHARGE NOTIFICATION AND SOURCE CONFIRMATION REQUIREMENTS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

Subchapter I — General Provisions

NR 706.01 Purpose. The purpose of this chapter is to adopt by administrative rule notification requirements for discharges of hazardous substances. In order to retain authorization to implement the federal underground storage tank program in Wisconsin, subch. III contains requirements that are mandated by U.S. EPA, that are only applicable to discharges from underground storage tanks. This chapter is adopted pursuant to ss. 227.11 (2) and 292.11, Stats.

Note: The following portions of 40 CFR part 280 have been included in the text of this chapter: s. 280.34(a)(2); portions of s. 280.34(a)(3); s. 280.34(b)(5); s. 280.50(a) to (c)(1); s. 280.51; s. 280.52; s. 280.53; s. 280.61(1); s. 280.62(a)(5); portions of s. 280.63(a)(1) to (3); portions of s. 280.63(b); portions of s. 280.72(a); s. 280.72(b); and s. 280.73. Additional portions of s. 280.34(a)(3) are included in chs. NR 708, 716, 722 and 724. Additional portions of s. 280.63(a)(1) to (3) and (b) are included in chs. NR 708 and 716. Additional portions of s. 280.72(a) are included in ch. Comm 10.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

NR 706.02 Applicability. (1) This chapter applies to hazardous substance discharges that are subject to the requirements of s. 292.11, Stats.

(2) Subchapter II applies to all persons who have responsibility under s. 292.11, Stats., for any hazardous substance discharge that may occur. Subchapter III contains additional requirements that only apply to the owners and operators of underground storage tank systems that are subject to regulation under 42 USC s. 6991 *et seq.* and 40 CFR part 280, or ch. Comm 10, for hazardous substance discharges that are related to the underground storage tank system.

Note: The definition of “underground storage tank” in s. NR 700.03, which applies to this chapter, is based on the definition of “underground storage tank” in ch. Comm 10, which includes certain farm and residential motor fuel storage tanks and heating oil tanks that are excluded from the federal UST program definition in 42 USC s. 6991.

(3) Persons and facilities subject to the release notification requirements in CERCLA section 103(a), 42 USC 9603(a), or the emergency notification and notification requirements in s. 323.60, Stats., and 42 USC 11004, 11021, 11022 and 11023, are required to comply with those requirements in addition to complying with the notification requirements of this chapter, except that notification of a hazardous substance discharge which is given to the department in compliance with the requirements of this chapter constitutes notification of the state emergency response board as required by s. 323.60, Stats., if the notification contains all of the information specified in 42 USC 11004(b)(2).

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; corrections in (3) made under s. 13.92 (4) (b) 7., Stats.

NR 706.03 Definitions. In this chapter:

(1) “Discharge” has the meaning specified in s. 292.01 (3), Stats.

Note: Section 292.01 (3), Stats., provides that: “‘discharge’ means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping”. However, it should be noted that under s. NR 706.05 the department has interpreted the hazardous substance discharge notification requirements in s. 292.11 (2), Stats., to apply only when a hazardous substance is spilled in such a way that it is discharged to the environment. A hazardous substance that is “discharged” into a secondary containment structure, that is completely contained and can be recovered with no discharge to the environment, is not subject to the discharge notification requirements in s. 292.11 (2), Stats.

(2) “Fertilizer” has the meaning specified in s. 94.64 (1) (e), Stats., except that it does not include nitrates or other forms of nitrogen found in the environment that cannot be attributed to a discharge.

Note: Section 94.64 (1) (e), Stats., defines “fertilizer” to mean “any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. ‘Fertilizer’ includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.”

(3) “Hazardous substance” has the meaning specified in s. 299.01 (6), Stats.

Note: “Hazardous substance” is defined in s. 299.01 (6), Stats., to mean: “any substance or combination of substances including any waste of a solid, semisolid, liquid, or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.”

(4) “Impervious” means incapable of being penetrated by a discharged substance.

Note: Asphalt and concrete, if intact and undamaged, are considered impervious surfaces. However, if hazardous substances are capable of penetrating asphalt or concrete due to cracks or holes, or repeated discharges, the surface would not be considered impervious.

(5) “Nonhousehold pesticide” has the meaning specified in s. 94.681 (1) (c), Stats., except that it does not include pentachlorophenol, inorganic arsenical wood preservatives and coal tar creosote.

Note: Section 94.681 (1) (c), Stats., defines “nonhousehold pesticide” as “a pesticide that is not a household pesticide.” “Household pesticide” is defined in s. 94.681 (1) (a), Stats.

(6) “Pesticide” has the meaning specified in s. 94.67 (25), Stats.

Note: Section 94.67 (25), Stats., defines “pesticide” to mean “any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.”

(7) “Petroleum products” mean gasoline products, diesel-like products and light crude oils, medium grade crude oils and intermediate products, and heavy crude oils and residual products.

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Note: This definition is intended to include gasoline, diesel fuel, kerosene, jet fuel, hydraulic oils, lubricating oils, and machine oils.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.

Subchapter II — General Discharge Notification Requirements

NR 706.05 Discharger responsibilities. (1) DISCHARGE NOTIFICATION. (a) Unless the discharge is specifically exempted under s. NR 706.07, persons who cause the discharge to the environment of a hazardous substance or who possess or control a hazardous substance which is discharged to the environment shall immediately notify the department of the discharge. For the purpose of determining if a substance is hazardous and whether its discharge is required to be reported, responsible parties shall consider the quantity, concentration and physical, chemical and infectious characteristics of the substance and the location where the discharge occurred, and whether the substance has been discharged to the environment. A hazardous substance that is “discharged” into a secondary containment structure, that is completely contained and can be recovered with no discharge to the environment, is not subject to the discharge notification requirements in s. 292.11 (2), Stats.

Note: The department believes that the dictionary definition of “immediate”, i.e. “occurring at once; next in line,” does not lend itself to quantification. An across-the-board time-period can’t be specified. In uncomplicated spill situations, responsible parties are expected to provide notice to the department within a matter of a few minutes after they learned of the spill. In other situations, especially where emergency action of some kind is being taken by the responsible party or where the responsible party does not have access to a telephone, notification may not be possible for several hours, but would still be considered “immediate” if promptly given.

(b) Hazardous substance discharges shall be reported to the department by telephoning, telefaxing or visiting a department office during normal business hours or by telephoning a department-designated 24-hour hotline telephone number after normal business hours.

Note: The 24-hour hotline operated by the division of emergency management in cooperation with the department can be reached at 1-800-943-0003. Directories for the telephone numbers of the department’s offices can be found in local telephone books and in various department guidance documents.

(c) The notification required by this subsection shall contain the following information to the extent practicable:

1. Name, address and telephone number of the person reporting the discharge.
2. Name, address and telephone number of the discharger, or owner and operator of the UST system and any other potentially responsible persons.
3. Date, time, duration and location of the discharge including street address, if appropriate, county, town, city or village, 1/4, 1/4 section, township, range, and legal description of lot, if located in a platted area.
4. Identity, physical state and quantity of the material discharged.
5. Physical, chemical, hazardous and toxicological characteristics of the substance.
6. Cause of the discharge.
7. Immediate actions being taken and the name of the contractor or other person performing the action.
8. Source, speed of movement and destination or probable destination of the discharged hazardous substance.
9. Actual or potential impacts to human health or the environment, including actual or potential impacts to drinking water supplies.
10. Weather conditions existing at the scene, including presence of precipitation and wind direction and velocity.
11. Other agencies on-scene during the spill incident.

(2) CONTAINMENT, CLEANUP, DISPOSAL AND RESTORATION. Responsible parties shall comply with the requirements of chs.

NR 700 to 726 for response actions to discharges of hazardous substances.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

NR 706.07 Exemptions. (1) STATUTORY EXEMPTIONS. The following persons are not required to notify the department of a hazardous substance discharge that falls within any of the following categories:

(a) Any person holding a valid permit under ch. 283, Stats., is exempt with respect to substances discharged within the limits authorized by the permit.

(b) Law enforcement officers or members of fire departments using hazardous substances in carrying out their responsibility to protect public health, safety or welfare are exempt.

Note: These persons are encouraged to voluntarily report to the department any discharges of a hazardous substance occurring within the performance of their duties.

(c) Any person discharging in conformity with a permit or program approved under chs. 280 to 299, Stats., is exempt with respect to substances discharged within the limits authorized by the permit or program.

(d) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates, is exempt with respect to that pesticide or fertilizer application.

(2) DE MINIMIS EXEMPTIONS. (a) Except when reporting is required under par. (b), the following discharges do not require notification to the department:

1. A discharge of gasoline or another petroleum product that is completely contained on an impervious surface.

2. A discharge of gasoline if less than one gallon is discharged onto a surface that is not impervious or runs off an impervious surface.

3. A discharge of a petroleum product other than gasoline if less than 5 gallons is discharged onto a surface that is not impervious or runs off an impervious surface.

4. A discharge of a dry fertilizer if the amount is less than 250 pounds.

5. A discharge of a liquid fertilizer if the amount is less than 25 gallons, unless the reportable quantities listed for chemicals in 40 CFR part 117 or 302 are more restrictive, in which case the values in 40 CFR part 117 or 302 apply.

6. A discharge of pesticides registered for use in Wisconsin if the amount discharged when diluted as indicated on the pesticide label would cover less than one acre of land if applied according to label instructions, unless the reportable quantities listed for chemicals in 40 CFR part 117 or 302 are more restrictive, in which case the values in 40 CFR part 117 or 302 apply.

7. A discharge of substances specifically listed in 40 CFR part 117 or 302 if the amount discharged in any 24 hour period is less than the amount listed in 40 CFR part 117 or 302. If responsible parties are uncertain about how to interpret or apply 40 CFR part 117 or 302, they may report any discharge to the department.

Note: Notification requirements under this rule may not meet the obligations for responsible parties to report hazardous substance releases to the federal government. Questions on federal requirements should be directed to the US EPA Superfund hotline at 1-800-535-0202.

(b) Whenever, in light of site-specific conditions, any of the following criteria apply, hazardous substance discharges which would otherwise be exempt from notification under par. (a) shall be reported as required in s. NR 706.05:

1. The discharged substance has not evaporated or has not been cleaned up in compliance with the requirements of chs. NR 700 to 726.

2. The discharged substance has adversely impacted or threatens to adversely impact the air, lands or waters of the state either as a single discharge or when accumulated with previous

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discharges, even though the degree of the impact or threatened impact may not have been thoroughly evaluated.

Note: Where there is a sheen on surface water or the discharged substance has entered or is on the verge of entering the waters of the state, typically via a storm sewer, or drainage ditch, the department would consider the discharged substance to adversely impact or threaten to adversely impact the waters of the state.

3. The discharged substance has caused or threatens to cause acute or chronic human health impacts if immediate action, such as evacuation or in-place sheltering, is not taken. If the responsible party is unsure about potential human health effects, the responsible party shall consult with local or state health officials, and the responsible party shall make a notification decision based on that consultation.

4. The discharged substance presents or threatens to present a fire or explosion hazard or other safety hazards, such as slippery conditions on a roadway.

Note: In determining whether a threat exists under subd. 1., 2., 3., or 4., the standard of conduct to which the responsible party must conform is that of a reasonable person under the site-specific circumstances.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

Subchapter III — Discharge Notification and Source Confirmation Requirements For Underground Storage Tank Systems

NR 706.11 Discharger responsibilities. (1) DISCHARGE NOTIFICATION. (a) Owners or operators of UST systems shall immediately notify the department of a spill, overflow or other discharge or suspected discharge of a hazardous substance to the environment that is related to the UST system, except as provided in s. NR 706.15 (2) and (4).

Note: The term "UST" which is an acronym for "underground storage tank" is defined in s. NR 700.03.

(b) Evidence which indicates that a discharge of a hazardous substance to the environment has occurred or may have occurred includes, but is not limited to: visible soil contamination; the presence of free product or vapors in soils, basements, sewers or utility lines, or on surface water or groundwater in the surrounding area; and the receipt of reports, environmental assessments or routinely gathered monitoring data which indicates that a discharge of a hazardous substance has occurred or may have occurred.

(2) ADDITIONAL INFORMATION. The owner or operator of an UST system shall document and submit to the department, within 72 hours of the original notification, any additional information that the owner or operator obtains concerning the discharge which was not included at the time of the original notification, unless otherwise directed by the department.

(3) CLOSURE ASSESSMENT REPORTS. The owner or operator of an UST system shall submit to the department any tank closure assessment report that is generated to document compliance with the requirements of s. Comm 10.734 or 10.805, regardless of whether a discharge of a hazardous substance was detected during the site assessment.

Note: Sections Comm 10.734 and 10.805 no longer exist since the repeal and recreation of Chapter Comm 10, effective 12-1-08.

(4) CONTAINMENT, CLEANUP, DISPOSAL AND RESTORATION. The owner or operator of an UST system shall comply with the requirements of chs. NR 700 to 726 for response actions to discharges of hazardous substances.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.

NR 706.13 Indication of a discharge from an UST discharge monitoring system. (1) When the discharge monitoring system of an UST system indicates that a discharge of a hazardous substance to the environment may have occurred, the owner or operator of the UST system shall determine immediately whether the indication was due to a malfunction of the discharge monitoring equipment.

(2) If the discharge monitoring equipment is found to be malfunctioning, and there is no other reason to suspect that a discharge of a hazardous substance to the environment has occurred, the owner or operator of the UST system shall repair, recalibrate or replace the equipment in accordance with all applicable statutes and rules. Notification of the department is not necessary if there is no reason to suspect a discharge.

(3) If the discharge monitoring equipment is found to be working correctly, the owner or operator of the UST system shall immediately report the suspected or confirmed discharge to the department in accordance with the requirements of s. NR 706.05.

(4) If testing or inspection of discharge monitoring equipment is inconclusive, the owner or operator of the UST system shall conduct another test, expand the scope of the inspection, conduct tank system tightness tests, or excavate the area where a discharge is suspected, as necessary, to determine whether or not a discharge of a hazardous substance has occurred.

(5) If investigation of unusual operating conditions, such as the erratic behavior of product dispensing equipment, the sudden loss of product from the system, or an unexplained presence of water in the tank, indicates that a release may have occurred, the owner or operator of the UST system shall immediately report the suspected or confirmed discharge to the department in accordance with the requirements of s. NR 706.05.

Note: Chapter Comm 10 contains requirements governing methods of release detection for underground storage tanks.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

NR 706.15 UST discharge source confirmation.

(1) EVIDENCE OF A DISCHARGE. (a) If there is evidence of the discharge of a hazardous substance to the environment which may be from an UST system, the owner or operator of the UST system shall, within 10 days of discovery of the evidence, undertake all steps necessary to determine whether the UST system is the source of the discharge.

(b) Evidence of a discharge which may be from an UST system includes, but is not limited to, visible soil contamination and the presence of free product or vapors in soils, basements, sewers or utility lines, or on surface water or groundwater in the surrounding area.

(2) SYSTEM INTEGRITY TESTS. (a) When a discharge monitoring system indicates a hazardous substance discharge may have occurred or there is other evidence of a hazardous substance discharge to the environment, the owner or operator of the UST system shall conduct the appropriate tests for tightness specified in ch. Comm 10 to determine whether a leak exists in the tank or the attached piping, or both.

(b) Further investigation is not required if the test results for the system, tank and piping do not indicate that a leak exists and if there is no other indication of a discharge of a hazardous substance from the UST system.

(c) If the tests do not indicate that a leak exists, but there is other evidence of a hazardous substance discharge to the environment which may be associated with the UST system, the department may require the owner or operator of an UST system to undertake other measures to determine whether contamination is associated with the UST system, including the identification and investigation of potential migration pathways from the UST system to the location where contamination is discovered.

(3) SITE CHECK. (a) If there is evidence of the discharge of a hazardous substance to the environment which may be from an UST system, but system integrity tests conducted under sub. (2) do not indicate that a leak exists, the owner or operator shall collect samples for laboratory analysis from areas where contamination is most likely to be present at the UST site, unless the presence and source of the discharge have been confirmed in a site check conducted to comply with s. Comm 10.734.

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Note: Section Comm 10.734 no longer exists since the repeal and recreation of Chapter Comm 10, effective 12-1-08.

(b) In selecting sample types, sample locations and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release.

(4) NOTIFICATION OF A CONFIRMED DISCHARGE. When UST system integrity test results or sampling results indicate that a discharge of a hazardous substance has occurred, the owner or operator of the UST system shall report the confirmed discharge immediately in accordance with the requirements of s. NR 706.05 and exemptions and exceptions in s. NR 706.07.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; corrections in (2) (a) and (3) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543.

NR 706.17 Underground storage tank response action status report. The owner or operator of every UST system for which a response action has been taken to respond to the discharge of a hazardous substance that is related to the UST system shall annually report to the department on the status of all response activities undertaken to restore the environment to the extent practicable and to minimize the harmful effects to the environment of the discharge from the UST system. This annual report shall be on a form supplied by the department, and shall be submitted by June 30th of each year, until the case has been closed by the department in accordance with ch. NR 726.

Note: Copies of the annual status report form required by this section are available from the Underground Storage Tank program in the Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.