

Document Retention and Access to Information Provisions

324.XXXXX Retention of documents; information required to be furnished; requirements; refusing information; administrative penalties; powers of attorney general; injunction; civil fine; availability of information to public; protection of information; administrative subpoena; witness fees and mileage; court order; contempt; information defined.

- (1) Except as provided under subsections (2) or (3), the following persons shall retain all information and documents related to the use, storage, control, or disposal of hazardous substances by the person; the presence of environmental contamination at a property; the person's monitoring and compliance with all applicable environmental permits, statutes or rules intended to prevent a release or threat of release; copies of all disclosure and notices, including proof of delivery, required under this part and provided by the person; and all information and document relating to the corporation, limited liability company, partnership or other business entity, or individual including information identified in subsection (5):
 - (a) A person who owns or operates property at which a release, threatened release, suspected release, or a facility exists.
 - (b) A person who is responsible for an activity causing a release, threatened release, or suspected release, at a property or the existence of a facility.
 - (c) A person who has received notice from the department that the person may be liable under subsections xxxxx (liability – causation), xxxxx (liability – failure to conduct inquiry) or xxxxx (liability – exacerbation) of this part.
 - (d) A person who is an affiliate or insider of a debtor and the debtor is a person who is covered by (a) through (c) of this subsection.
 - (e) A person who is not covered by subdivisions (a) through (d), but who is otherwise liable to undertake response activities under this part, including but not limited to, section xxxxx (due care).
- (2) The obligation of a person under subsection (1)(a) through (d) to retain information and documents under subsection (1) shall continue until the earliest of the following:
 - (a) The property is no longer a facility as defined under subsection xxxxx(x) (facility definition)
 - (b) The ten year anniversary following achievement of unrestricted cleanup criteria at the property or completion of all operation and maintenance and monitoring at the facility.
- (3) The obligation of a person under subsection (1)(e) to retain information and documents under subsection (1) shall continue until both of the following are met:
 - (a) The person is in compliance with the applicable disclosure and notice requirements under section xxxxx (notices and disclosures).
 - (b) The person's possessory interest in the property has terminated.
- (4) To determine the need for response activity or selecting or taking a response activity or otherwise enforcing this part or a rule promulgated under this part, a person shall, upon reasonable notice from the directors or their authorized representative, furnish all information the person may have relating to any of the following at a property or a facility:

- (a) The identification, nature, and quantity of materials that have been or are generated, treated, stored, handled, or disposed of at a property or a facility or transported to a property or a facility, including the past and present contents of all containers.
 - (b) The location, construction and condition of all containers present at a property or a facility.
 - (c) The identification, including the nature and extent of any release, threatened release, suspected release, potential for release, or a facility and the results of any investigations.
 - (d) Information pertaining to compliance with all environmental permits, statutes or rules that are intended to prevent a release or threat of release.
- (5) To collect information for the purpose of identifying if a person is liable under this part or is an insider or affiliate of a debtor who is a person who is liable under this part or to otherwise enforce this part or a rule promulgated under this part, a person shall, upon reasonable notice from the directors or their authorized representative, furnish all information the person may have relating to the following:
- (a) If the person subject to a request under this section is a corporation, information that may be required to be furnished includes all information required to be maintained or available to shareholders under sections 485, 487 or 488 or information relating to the disposition of corporate property and assets pursuant to section 751 and 753 of Act No. 284 of Public Acts of 1972, being sections 450.1485, 450.1487, 450.1488, 450.1751 or 450.1753 of the Michigan Compiled Laws.
 - (b) If the person subject to a request under this section is a limited liability company, the information that is required to be furnished includes all information required to be maintained under section 213 of Act No. 23 of Public Acts of 1994, being section 450.4213 of the Michigan Compiled Laws.
 - (c) All assumed names under which the person is conducting business.
 - (d) Information relating to the ability of a person to pay for or perform response activities under this part, including, but not limited to:
 - i. indemnification agreements
 - ii. insurance policies,
 - iii. ability to pay/for required response activity: subdivision (d)(iii) applies only if the person has asserted an inability to pay in response to a request or demand by the department for response activity.
- (6) Upon reasonable notice, a person required to furnish information pursuant to subsection (4) or (5) shall either:
- (a) Grant the directors or their authorized representatives access at all reasonable times to any place, property, or location to inspect and copy the required information.
 - (b) Copy and furnish to the directors or their authorized representatives the required information.
- (7) Beginning on the effective date of this part, the department may impose a penalty pursuant to section xxxxx (penalties) on any person who refuses or fails to furnish the information requested under subsection (4) or (5).
- (8) If refused information under subsections (4) or (5), for the purposes of enforcing the information gathering authority provided in this section, the attorney general, on behalf of the state, may do either of the following:

- (a) Petition the court of appropriate jurisdiction for a warrant authorizing access to any information pursuant to this section.
 - (b) Commence a civil action to compel compliance with a request for information pursuant to this section, to authorize information gathering provided for in this section, and to enjoin interference with the exercise of the authority provided in this section.
- (9) In a civil action brought pursuant to subsection (8), if there is a reasonable basis to believe there may be a release, threatened release, suspected release, or the existence of a facility, the court shall, in the case of interference or noncompliance with information requests pursuant to subsections (4) or (5), enjoin interference with and direct compliance with the requests unless the defendant establishes that, under the circumstances of the case, the request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- (10) In a civil action brought pursuant to subsection (8), if there is a reasonable basis to believe there may be a release, threatened release, suspected release, or the existence of a facility, the court may assess a civil fine not to exceed \$25,000.00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1), (4) or (5).
- (11) Information obtained by the directors or their authorized representatives under subsection (4) or (5) shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. A person who provides information pursuant to subsections (4) or (5), or the person in charge of a facility at which photographs or videotapes are taken pursuant to subsection xxxxx(1)(c) [*Access to Property*], may designate the information that the person believes to be entitled to protection as if the information was exempt from disclosure as being either trade secrets or information of a personal nature under section 13(1)(a) or (g) of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws, and submit that specifically designated information separately from other information required to be provided under this section.
- (12) Notwithstanding subsection (11), the following information obtained by the directors or their authorized representatives pursuant to this section shall be available to the public:
- (a) The trade name, common name, or generic class or category of the hazardous substance.
 - (b) The physical properties of a hazardous substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.
 - (c) The hazards to the public health, safety, or welfare, or the environment posed by a hazardous substance, including physical hazards, such as explosion, and potential acute and chronic health hazards.
 - (d) The potential routes of human exposure to the hazardous substance at the facility being investigated, entered, or inspected under this section.
 - (e) The location of disposal of any waste stream released or threatened to be released from the facility.

- (f) Monitoring data or analysis of monitoring data pertaining to disposal activities related to the facility.
 - (g) Hydrogeologic data.
 - (h) Groundwater monitoring data.
 - (i) Information or data collected under Part 148, Environmental Audit Privilege and Immunity, except as provided under section 14802(2) of Part 148.
- (13) To collect information for the purpose of identifying persons who are liable under this part or to otherwise enforce this part or a rule promulgated under this part, the attorney general, may by administrative subpoena, require the attendance and testimony of witnesses and production of papers, reports, documents, answers to questions, and other information the attorney general considers necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. If a person fails or refuses to obey the administrative subpoena, the circuit court for the county of Ingham or for the county in which that person resides has jurisdiction to order that person to comply with the subpoena. A failure to obey the order of the court is punishable by the court as contempt.
- (14) As used in this section, "information" includes, but is not limited to, documents, facsimiles, electronic mail, electronic databases; materials; records; photographs; and videotapes. Information and documents required to be retained or furnished under this section shall be retained and furnished in all formats, hard copy and electronic, in which the information or document exists.