

Liabe Party Identification Requirements Prior to Response Activity Expenditures and Enforcement Actions – State and Non-State

Section 324.XXXXX Liabe Party Identification Requirements Prior to Response Activity Expenditures and Enforcement Actions – State and Non-State

- (1) Prior to taking an enforcement action or the expenditure of funds for which recovery may be sought, persons, including the department, shall initiate appropriate actions to identify persons who are liable under this part for the costs being sought.
- (2) Except as provided in subsection (5), to be eligible to recover lawfully incurred costs, a person, including the department, shall, prior to incurring response activity costs, provide notice to all persons who are liable who have been identified, as described in this subsection. The notice, in the form of a letter mailed to the most recent known addresses of all identified persons who are liable, shall be provided in writing and shall include all of the following information:
 - (a) A description of the response activity proposed to be undertaken and a request that the person who is liable carry out those actions in a timely manner. The time allowed for the person to commit to conducting the response activities according to a schedule shall be included in the letter, and shall reflect the exigencies of the situation requiring response and the complexity of the requested response activities. The time allowed for this commitment shall ordinarily be 60 days.
 - (b) A description of the nature and extent of contamination believed by the person serving notice to require response activity.
 - (c) The reason why the person serving notice believes that the person receiving the notice is liable for the response activity.
 - (d) The names and addresses of other persons who are liable who have been or are being sent notice letters.
 - (e) The location and availability of files used by the person serving notice in developing this notice.
 - (f) Notification, if by the department, that if a person who is liable fails to adequately implement the required response activity, department may do either or both of the following if appropriate to protect the public health, safety, or welfare, or the environment:
 - (i) Request that the attorney general take enforcement action.
 - (ii) Undertake the required response activity utilizing public funds. Any expenditure of public funds for this purpose is subject to cost recovery actions by the state, including recovery of lawfully incurred costs, interest, fines, and penalties in accordance with this part.
 - (g) Notification, if by the person other than the department, that if a person who is liable fails to adequately implement the required response activity, the person serving notice may do either or both of the following if appropriate to protect the public health, safety, or welfare, or the environment:
 - (i) Initiate civil action in accordance with the provisions provided for in section xxxxx [*Civil Action - Non-State*].
 - (ii) Undertake the requested response activities utilizing its own funds. Any expenditure of such funds for this purpose is subject to cost recovery actions by the person noticing the liable party including recovery of lawfully incurred cost, interest, fines, penalties, and premiums in accordance with this part.

- (3) The notice described in this subsection shall be sent in hard copy form by a service that provides proof of delivery.
- (4) A copy of the notice described in this section shall be provided to the local unit of government in which the response activity will be undertaken, and the department, unless the local unit of government or the department is the person serving the notice.
- (5) The requirements of this section shall not apply when:
 - (a) A person who is liable is not identified after appropriate action taken under subsection (1).
 - (b) The notice process would unreasonably delay the response activity.
 - (c) The response activity in question is the provision of an alternate water supply.
- (6) A person who did not receive notice under this section may challenge the recovery of response activity costs in accordance with the following, as applicable:
 - (a) For response activity costs incurred by the state, the challenge shall be in accordance with the provisions of section xxxxx(5) (*Civil Actions – State*).
 - (b) For response activity costs incurred by a person other than the state, by establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.