

Limited Liability Relief

Section XXXXX: Limited Liability Relief; required documentation; department approval

- (1) Upon the determination that a facility has achieved a category 3 status, a person may petition the MDEQ for limited liability relief. The petition shall be submitted on a form created pursuant to section xxxxx and contain the information described in subsection (2).
- (2) A petition for limited liability relief for a facility shall include the following:
 - (a) Documentation that demonstrates the Category 3 status was achieved in compliance with all statutory time frames or within the time frames specified in an MDEQ-approved extension.
 - (b) If not previously submitted, the information required pursuant to section xxxxx (2)(i)(*Remedial obligations - uncontrolled risk*), or the information required pursuant to section xxxxx (1)(d)(*Remedial obligations – controlled risk*).
 - (c) Documentation that demonstrates that the disclosures required pursuant to section xxxxx (*Disclosures*) have been made.
 - (d) Documentation that all persons who received notice regarding the facility conditions pursuant to section xxxxx (*Notice to affected persons*) have received notice that the person intends to petition for limited liability relief.
 - (e) An explanation of the activity and use limitations to be imposed at the facility, and how the limitations will be effective in preventing or controlling unacceptable exposures. The explanation must also include:
 - (i) Copies of the proposed environmental covenant pursuant to section xxxxx (*Environmental covenants*) for each property which comprises the facility where a environmental covenant is required to limit uses consistent with the cleanup criteria being relied upon
 - (ii) A written statement, signed and notarized, from the owner or owners, including easement holders whose rights are affected, of the property that he or she consents to the placement of the environmental covenant upon approval by the MDEQ of a petition for limited liability relief.
- (3) The minimum area covered by the petition shall be the facility created by a single release or multiple releases that are commingled, whether within or beyond the boundary of the source property. The MDEQ may approve a petition that addresses more than one facility, provided each facility meets the requirements of this section.
- (4) If more than one facility exists at a property, the petition shall identify all areas of environmental contamination at the property that are not addressed by the petition. The information provided to the MDEQ must clearly demonstrate that the unaddressed areas are separate and distinct from the facility identified in the petition.
- (5) A petition submitted to the MDEQ seeking limited liability relief on the basis that no further response activities are required shall document that response activities have been implemented in all affected environmental media that satisfy the requirements of section xxxxx(1) (*Remedial obligations - controlled risks*) and this section.
- (6) A petition that relies on cleanup criteria developed pursuant to section xxxxx (*Criteria*) shall also consider other factors necessary to protect public health, safety, and welfare, and the environment, as specified by the MDEQ, if the MDEQ determines based on data and existing information that such factors are relevant to a specific facility, and that those factors require response activity in addition to that which satisfies the requirements of

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section xxxxx(1) (*Remedial obligations - controlled risks*) to address the facility-specific conditions.

- (7) The MDEQ shall not approve a petition unless the petitioner documents that the current zoning of the property addressed by the petition is consistent with the cleanup criteria being relied upon, or that the governing zoning authority intends to change the zoning designation so that those criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The MDEQ shall not grant final approval of a petition that relies on a change in zoning designation until the petitioner provides documentation that the zoning change has been made by the local unit of government.
- (8) If the property addressed by the petition is not zoned, then the petition shall include documentation of the current and reasonably foreseeable future use of the property and natural resources in question. A petition for property that is not zoned may rely on cleanup criteria developed under section xxxxx (*Criteria*) if the petition includes documentation that the intended use of the property is the current use or a reasonably foreseeable future use and the exposures associated with the intended uses are consistent with those used to calculate the cleanup criteria relied upon in the petition.
- (9) The MDEQ may approve a petition based on unrestricted site-specific criteria that satisfy the applicable requirements of this part.
- (10) The MDEQ may approve a petition for a facility at which a mixing zone has been authorized, provided the petition includes information which supports a conclusion that the discharge of venting groundwater from the facility is, and will remain, protective of the public health, safety, and welfare and the environment and post-petition monitoring is not required to verify that condition.
- (11) Upon receipt of a petition that contains the information necessary or required for the MDEQ to make its decision, the MDEQ will publish a notice of its receipt and provide a minimum of 30 days for public review and comment on whether the pending petition complies with the requirements of this part. (*Note: section xxxxx MDEQ-audit, review and approval will include public notice and response requirements*)
- (12) Upon receipt of a petition for limited liability relief that contains the information necessary or required for the MDEQ to make its decision, the MDEQ shall respond to the petition within 6 months of submittal of the pursuant to section xxxxx (*MDEQ audit, review and approval*). The MDEQ shall issue a written determination to the petitioner that does one of the following:
 - (a) Identifies information necessary or required for the MDEQ to approve the petition that has not been provided.
 - (b) Determines that the criteria for obtaining the limited liability relief have not been met, providing the specific reasons for the denial, and how the petitioner could meet the criteria, if possible.
 - (c) Approves, or conditionally approves that the criteria for obtaining the limited liability relief have been met.
- (13) If the MDEQ conditionally approves a petition for limited liability relief, in order to obtain final concurrence from the MDEQ, all environmental covenants approved by the MDEQ

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shall be recorded in accordance with section xxxxx (*Environmental covenants*) and all conditions imposed by the MDEQ have been satisfied. A person shall not record an environmental covenant indicating MDEQ approval unless the MDEQ has approved of the environmental covenant to be recorded.

- (14) Upon receipt of the following information, as applicable to the conditions of the facility, the MDEQ will issue a final written approval within 60 days:
 - (a) Copies of all recorded environmental covenants pursuant to section xxxxx (*Environmental covenants*).
 - (b) Documentation that notice of the activity and use limitations that are part of the petition for limited liability relief have been provided to the zoning authority of the local unit of government in which the facility is located.
 - (c) Other conditions determined necessary by the MDEQ with its conditional approval.
- (15) Upon MDEQ's final approval of a petition, the petitioner shall be provided contribution protection pursuant to section xxxxx (), protection for claims for injunctive relief pursuant to section xxxxx (), and cost recovery pursuant to section xxxxx (), with regard to the facility addressed in the petition. Approval of a petition by the Department does not affect the petitioner's or any other person's obligations under other parts of this act, or the petitioner's obligations to address a new release at the facility addressed in the petition.
- (16) The limited liability relief provided under this section is effective upon the MDEQ's final affirmation approval of the petition for the facility as identified in the petition and as legally surveyed and described in the environmental covenant(s). Claims for injunctive relief, cost recovery, or contribution for response activities costs prior to the MDEQ's final affirmation approval of the petition are not barred.
- (17) The limited liability relief provided to a person under this section is void, by operation of law, if either of the following conditions arise:
 - (i) Previously unknown environmental contamination is discovered that constitutes a facility for which the petitioner is liable.
 - (ii) MDEQ determines that the petition and related information submitted under this section contains material omissions or misstatements, or fraudulent information.