

	OFFICE OF WASTE MANAGEMENT AND RADIOLOGICAL PROTECTION POLICY AND PROCEDURE	DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: January 6, 2009 Redrafted Date: Reformatted Date: November 5, 2012	Subject: Hazardous Waste Contingency Plan Implementation and Reporting Obligations Program Name: OWMRP-Hazardous Waste Program Number: OWMRP-111-22	Category: <input type="checkbox"/> Internal/Administrative <input checked="" type="checkbox"/> External/Non-Interpretive <input type="checkbox"/> External/Interpretive
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A Department of Environmental Quality (DEQ) Policy and Procedure cannot establish regulatory requirements for parties outside of the DEQ. This document provides direction to DEQ staff regarding the implementation of rules and laws administered by the DEQ. It is merely explanatory; does not affect the rights of, or procedures and practices available to, the public; and does not have the force and effect of law.

INTRODUCTION, PURPOSE, OR ISSUE:

Hazardous waste contingency plan implementation and reporting obligations need to be evaluated on an individual basis by the site emergency coordinator. In every case, both direct and indirect effects of a release from the facility/site of generation must be evaluated in determining its potential impact. The purpose of this policy document is to clarify the following three issues:

1. When the contingency plan must be implemented and the DEQ notified of the event even when there does not appear to be an off-site impact.
2. What is considered "immediate" as it relates to reporting these incidents to the DEQ.
3. How notification is to be accomplished. This policy is not intended to eliminate or address reporting requirements to any other governmental agency or immediate responders.

AUTHORITY:

Requirements to maintain a hazardous waste contingency plan to address potential emergency situations and to notify the DEQ with respect to those emergencies are contained in R 299.9607 (treatment, storage, or disposal facilities) and R 299.9306(1)(d) (generators that accumulate wastes on-site) of the rules promulgated pursuant to Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

In both cases, the rules incorporate the underlying federal requirement under Title 40 of the Code of Federal Regulations (CFR), Parts 264 and 265, respectively, and require the facility/generator to immediately notify the DEQ if there is a fire, explosion, or other release of hazardous waste or hazardous waste constituents that could threaten human health or the environment or if there is knowledge that a spill has reached surface water or groundwater. The provisions of 40 CFR §§ 264.51(b) and 265.51(b), require the contingency plan to be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

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STAKEHOLDER INVOLVEMENT:

Staff of the Office of Waste Management and Radiological Protection (OWMRP) invited representatives from each of Michigan's eleven commercial treatment, storage, and disposal facilities (TSDFs) and from two of Michigan's captive TSDFs (The Dow Chemical Company and Dow Corning Corporation) to participate in a work group to recommend actions that could be taken to minimize fire and/or explosion incidents at licensed TSDFs. Fourteen representatives from twelve of the invited TSDFs accepted the invitation to participate in the work group. The OWMRP provided the work group with a copy of the OWMRP's draft task force report for review and held a meeting with the work group to obtain input on the report's recommended actions. The OWMRP reviewed the input from the work group, incorporated suggestions from the work group into the report, and drafted a final report that was provided to each work group participant. The work group did not express any controversy with regards to the recommended actions that could be taken to minimize future fire and/or explosion incidents at TSDFs and, in general, the group agreed that implementation of the actions in the report could be beneficial .

DEFINITIONS:

"Immediately" means as soon as practicable after the occurrence giving rise to the notification requirement considering the need to initiate any emergency response actions necessary to mitigate imminent threats to human health or to the environment

PROCEDURES:

1. Conditions Triggering Contingency Plan Implementation and Notification Requirement

Reporting obligations pertaining to emergency incidents clearly apply to any incident that could or does adversely impact the environment or human health beyond the site at which hazardous waste is being handled. However, the protections afforded by hazardous waste regulations are not limited to impacts off-site. Pursuant to 45 Federal Register 33184 (May 19, 1980), "RCRA's [federal Resource Conservation and Recovery Act of 1976] mandate to protect human health and the environment is not limited to dangers occurring outside hazardous waste management facilities/site of generation. The Agency is concerned about the health and safety of personnel." Therefore, if an incident occurs that could threaten or does threaten human health or the environment at a facility/site of generation subject to contingency planning, that facility/generator is required to immediately implement the plan and report the incident to the DEQ.

Because of the potential for adverse health and environmental impacts, any incident that causes a release of hazardous waste or hazardous waste constituents directly to the environment requires reporting. In this context, a release to the environment includes, but is not limited to, the following:

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- A release of hazardous waste or hazardous waste constituents into the environment through air emissions from, for example, fires, explosions, and/or volatile fumes, even though the direct release was within secondary containment in a building.
- A fire and/or explosion because of its volatile nature and ability to cause the release of contaminants to the air.
- Any direct release to the surface waters or groundwaters of the state.
- Any other release of hazardous waste or hazardous waste constituents at any location where hazardous waste is being managed that could affect human health or the environment.

During these actual emergency situations, a facility/generator is to initiate the emergency procedures in the contingency plan. The DEQ recognizes that a site's emergency coordinator may determine that an incident does not require full implementation of the contingency plan. It may be determined, for example, that calling in outside response agencies is not necessary. Nevertheless, if any portion of the contingency plan is activated because of threats to human health or the environment, the DEQ must be notified, even though the plan is not activated in its entirety. (To assist in separating the notification obligation from implementing various components of the contingency plan, a facility/generator could amend its plan to incorporate a decision tree requiring DEQ notification upon conducting a subset of the plan activities, even though the plan is not fully implemented.)

Finally, there may be an incident that the site's emergency coordinator appropriately determines does not require reporting to the DEQ as discussed in this policy. However, if the facility/generator has reason to believe that the public has or may become aware of the incident, then the DEQ recommends that the facility/generator contact the local DEQ district office to inform them of the incident. In this way, DEQ staff will have knowledge of the incident should the public contact them.

2. Timing of Reporting to the DEQ

A facility/generator is to immediately notify the DEQ if there is a fire, explosion, or other release of hazardous waste or hazardous waste constituents that could threaten human health or the environment or if there is knowledge that a spill has reached surface water or groundwater. By way of example, a notification would be practicable and should be made commensurate with the earliest of any of the following or similar events:

- As soon as a governmental agency's assistance is requested.

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- As soon as a governmental agency responds to an incident, though not contacted by the facility/generator.
- When the immediate danger has been abated.
- When the potential for an emergency situation has been arrested.
- When the public becomes aware of the incident.
- When the facility/generator learns that a spill has reached surface water or groundwater.

3. DEQ Notification

Proper DEQ notification after business hours and on holidays is to be made through the Pollution Emergency Alerting System (PEAS), 1-800-292-4706. At all other times, notification will be made directly to the DEQ staff at the local DEQ district office where the incident occurred.

This notification must be made directly to a DEQ staff member or through the operators employed under PEAS. Voice mail and electronic notification does not constitute proper notification.

OFFICE CHIEF APPROVAL:



Elizabeth M. Browne, Chief
Office of Waste Management and Radiological Protection



Date