

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF WASTE AND HAZARDOUS SUBSTANCES Waste Management Section

### 1375 Regulations Governing Hazardous Substance Cleanup

#### 1.0 General Provisions

##### 1.1 Statement of Authority and Purpose

1.1.1 The Regulations Governing Hazardous Substance Cleanup (Regulations) are promulgated in accordance with **7 Del.C. Ch. 91**, Delaware Hazardous Substance Cleanup Act (Act), **7 Del.C. Ch. 60**, Environmental Control, and **7 Del.C. Ch. 63**, Hazardous Waste Management. The goal of ~~these Regulations~~ **this regulation** is to implement the purposes declared in **7 Del.C. §9102**.

1.1.2 The Delaware Department of Natural Resources and Environmental Control (Department) is responsible for protecting, preserving and enhancing the environmental quality of the water, air, and land of the State. ~~The As per §9104(b) of the Hazardous Substance Cleanup Act authorizes authority is provided to~~ the Secretary of the Department to promulgate regulations implementing the provisions of the Act.

1.1.3 ~~These Regulations provide~~ **This regulation provides** a process to accomplish cleanups in order to protect public health or welfare or the environment, and to provide opportunities to encourage remedial activities at facilities to yield economic revitalization and redevelopment within the State.

1.1.4 The cleanup levels achieved through action pursuant to ~~these Regulations~~ **this regulation** shall be equivalent irrespective of the program under the Act pursuant to which the cleanup is conducted.

1.1.5 No person shall obstruct, hinder, delay or interfere with Department personnel in carrying out their duties under the Act.

##### 1.2 Applicability

1.2.1 ~~The requirements of these Regulations shall apply to any~~ **Any** facility or Certified Brownfield with a release or imminent threat of release and any person or Certified Brownfields Developer who conducts an investigation or remedial action at a facility or Certified Brownfield with a release or imminent threat of release **shall adhere to the requirements of this regulation.**

1.2.2 Pursuant to **7 Del.C. §9104(a)**, the requirements of ~~these Regulations~~ **this regulation** shall not apply to the following:

1.2.2.1 Releases excluded by **7 Del.C. §9103 (25) a-d**; or

1.2.2.2 Facilities where the sole contaminants are lead ~~and/or or~~ asbestos originating from either lead-based paint or asbestos-containing material applied to or contained within a structure on the facility and where the Department determines the facility is appropriately regulated and adequately addressed by another state or federal agency, ~~statute statute~~, or regulation.

1.2.3 The Department has the discretion to apply ~~these Regulations~~ **this regulation** to a release that is subject to regulation under **7 Del.C. Ch. 74** or **7 Del.C. Ch. 74A** under the following circumstances:

1.2.3.1 There is a change in land use from restricted to unrestricted; or

1.2.3.2 At the request of the owner or operator or Certified Brownfields Developer; and

- 1.2.3.2.1 There is a release of a hazardous substance that is subject to regulation under ~~these Regulations~~ this regulation; or
- 1.2.3.2.2 The Department determines that the application of ~~these Regulations~~ this regulation furthers the purposes of the Act.
- 1.3 Applicability of other Laws and Regulations
- 1.3.1 Nothing in ~~these Regulations~~ this regulation shall be construed to limit the ~~authority ability~~ of the Department to act pursuant to other ~~existing authorities laws and regulations regulations, or any lawful governmental authority.~~
- 1.3.2 Any action taken under the authority of ~~these Regulations~~ this regulation shall be in compliance with all applicable federal, state and local laws and regulations.
- 1.4 Plain Language Provision. Remedial investigation, risk assessment, cleanup plans and other reports and notices required to be submitted to implement the provisions of the Act and this regulation must contain an executive summary or special section that includes a plain language description of the information included in the report in order to enhance the opportunity for public involvement and understanding of the remediation proposed.
- 1.5 Plans and Reports. Any document submitted to the Department that includes work as a geologist or any engineer shall be signed off by that licensed supervising practitioner.
- 1.6 Enforcement. Any person who violates this regulation shall be subject to all appropriate legal sanctions including the provisions set forth in 7 DeIC. § 9109.
- 1.4 1.7 Severability
- 1.4.1 ~~\_\_\_\_\_~~ If any provision of ~~these Regulations~~ this regulation is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of ~~these Regulations~~ this regulation shall not be affected thereby.
- 1.5 1.8 Oversight
- 1.5.1 1.8.1 Concurrent Oversight
- 1.5.1.1 1.8.1.1 A person may obtain the Department's concurrent oversight of work on any aspect of a remedy by entering into a settlement agreement with the Department for that purpose.
- 1.5.1.2 1.8.1.2 By obtaining the Department's concurrent oversight of work, a person will be able to receive the Department's approval that the work which is proposed for a facility satisfies the requirements of the Act, ~~these Regulations~~ this regulation, and all applicable policies, procedures, and guidance.
- 1.5.1.3 1.8.1.3 The interim action, remedial action, and ~~operation and maintenance~~ Long-term Stewardship portions of a remedy shall not be performed by any person without the concurrent oversight of the Department except as provided under Section 12.0.
- 1.5.2 1.8.2 Subsequent Oversight
- 1.5.2.1 1.8.2.1 ~~A person may perform an initial investigation, facility evaluation, remedial investigation, or feasibility study without the concurrent oversight of the Department. A person may obtain subsequent oversight of an Initial Investigation, Facility Evaluation, Remedial Investigation, or Feasibility Study not performed with the Department's concurrent oversight by entering into a settlement agreement with the Department for it to review such prior work and determine whether it can be approved as satisfying the requirements of the Act, this regulation, and any applicable policies, procedures, and guidance.~~
- 1.5.2.2 ~~A person may obtain subsequent oversight of work not performed with the Department's concurrent oversight by entering into a settlement agreement with the Department for it to review such prior work and determine whether it can be approved as satisfying the requirements of the Act, these Regulations, and any applicable policies, procedures, and guidance.~~

~~1.5.2.3~~ 1.8.2.2 The Department, in its discretion, may not approve actions taken as per subsection 1.8.2.1 if a person does not obtain concurrent oversight. If the Department determines that any portion of the work does not satisfy the requirements of the Act, ~~these Regulations~~ this regulation, and any applicable policies, procedures, and guidance, it may require that additional remedial work be performed prior to approving the person's work or it may disapprove the work entirely.

1.8.2.3 Under no circumstances will Remedial Action taken without Department concurrent oversight be granted subsequent oversight or otherwise approved by the Department.

1.5.31.8.3 Emergency Oversight.

~~1.5.3.1~~ A person may undertake an emergency response action at a facility after initiation of a remedy pursuant to ~~these Regulations~~ this regulation without the Department's oversight provided the person notifies the Department of the details of the action taken, within 48 hours of the initiation of the emergency response action. This does not limit or relieve a person's liability under other existing federal or state laws or regulations for undertaking an emergency response action at a facility.

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