

3.0 Facility Identification & Prioritization

3.1 Notification Requirements

3.1.1 An owner or operator of a facility who has knowledge of a release of a hazardous substance at concentrations ~~at or~~ above the reporting levels ~~must shall~~ notify the ~~SIRS Department~~ in writing of the release ~~at least 30 calendar days~~ prior to undertaking land disturbing activities in any area potentially affected by the release.

~~3.1.1.1 An owner or operator shall submit the following to satisfy notification requirements:~~

~~3.1.1.1.1 Correspondence that provides:~~

~~3.1.1.1.1.1 Property address and tax parcel;~~

~~3.1.1.1.1.2 Current and future use of property;~~

~~3.1.1.1.1.3 If available, copy of Phase 1 or Phase II Environmental Site Assessment report, or equivalent investigation report, and laboratory data in an editable format; and~~

~~3.1.1.1.1.4 Any anecdotal evidence.~~

3.1.2 If during land disturbing activities there is evidence of a release that was not previously reported pursuant to Subsection 3.1.1, the owner or operator of a facility ~~must shall~~, within ~~twenty-four (24) 24~~ hours of learning of a potential release, notify the Department's 24 Hour Release Hotline by calling 800-662-8802.

3.1.2.1 Evidence of a release includes: appearance of a sheen, soil staining, or odors characteristic of hazardous substances; buried materials that may contain hazardous substances; or presence of ~~free product NAPL~~.

3.1.2.2 For notification made under Subsection 3.1.2 that is referred to ~~SIRS, SIRS the Department, the Department~~ will respond to the notice on a priority basis to determine if land disturbing activities can continue in the area potentially affected by the release without entering into a settlement agreement.

~~3.1.3 If regulated hazardous volatile organic compounds (VOCs) are detected in groundwater above reporting levels, or NAPL is detected, the owner or operator of the facility shall notify the Department in writing of the release regardless of whether land disturbing activities will be undertaken and provide detailed information on the findings within 30 days of confirmation that VOCs are present above reporting levels.~~

~~3.1.4 If regulated organic hazardous substances are detected in groundwater above reporting levels and a potable well is in use at the facility, or potable wells are located adjacent to the facility or the facility is located in a groundwater recharge area, the owner or operator of the facility shall notify the Department in writing of the release regardless of whether land disturbing activities will be undertaken and provide detailed information on the findings within 30 days of confirmation that organic hazardous substances are present above reporting levels.~~

~~3.1.33.1.5~~ If a Certified Brownfields Developer, prospective purchaser, or a person acting on behalf of the Certified Brownfields Developer, the prospective purchaser, or the owner or operator reports a release to the ~~SIRS Department~~ in compliance with Subsections 3.1.1, ~~and 3.1.2, 3.1.3, and 3.1.4~~, this notification requirement will be satisfied.

~~3.1.43.1.6~~ If the Department becomes aware of a release or evidence of a release that requires notification under this section, the Department will notify the owner or operator of the facility.

~~3.1.53.1.7~~ If notification is required or made under Section 3.1, the owner or operator shall not proceed or continue with land disturbing activities in any area potentially affected by the release without the written approval of the Department, which will not be unreasonably delayed or withheld. The Department may require a remedy before land disturbing activities can proceed or continue.

3.1.8 If an owner or operator fails to notify the Department of a release above reporting levels as specified in subsection 3.1 or fails to notify the Department of evidence of a release during land disturbing activities, then in accordance with 7 Del. C. §9109(f), the Secretary may issue an order to anyone who fails to report a release as required in subsection 3.1 of this regulation. If an owner or operator fails to comply with the Secretary's order, they may be subject to a civil penalty of up to \$10,000 per day for each day of non-compliance.

3.2 The Department shall establish an inventory of hazardous substance release facilities.

3.2.1 Facilities with a release or imminent threat of release of hazardous substances may be identified by the Department through a variety of mechanisms including any of the following:

3.2.1.1 Reports to or from, or investigations by, the Department, ~~including the Site Investigation and Restoration Section, Tank Management Section, Solid and Hazardous Waste Management Section, Emergency Prevention and Response Section, or Division of Water;~~ or from information provided in a Brownfield Certification application by a developer, a prospective purchaser, or a facility owner.

3.2.1.2 Reports to or from, or investigations by, local, state and federal government agencies including the Delaware Department of Health and Social Services, Delaware Department of Transportation, Delaware Emergency Management Agency, State Police or other law enforcement agencies, State Fire Marshal's Office or any Fire Department, United States Environmental Protection Agency, Department of Defense or other Federal agencies.

3.2.1.3 Reports to the Department from real estate transaction-related environmental assessments as part of all appropriate inquiry or AAI requirements.

3.2.1.4 Other reporting sources including potentially responsible parties, impacted public, neighboring facilities, contractors, consultants and other persons with sources of information about the existing releases.

3.2.2 A facility may be removed from the inventory of hazardous substance release facilities list and the priority list of facilities after the Department has determined that no further action is required at the facility.

3.3 Priority List

3.3.1 Applicability

~~3.3.1.2~~ 3.3.1.1 The Department shall establish a priority list of facilities from the inventory of hazardous substance release facilities where a further remedy has been determined to be necessary, based on the relative hazard ranking of the facility into categories using the Delaware Hazard Ranking Model. The relative priorities established in the priority list may be considered in the preparation of funding recommendations, and in determining the priority for remedies among facilities. The Department may conduct or require a remedy at a facility even if it is not included on the list.

3.3.2 Criteria for Placement of Facilities on Priority List

3.3.2.1 The Department shall objectively assess the relative degree of risk of each facility which is to be placed on the priority list using the Delaware Hazard Ranking Model established by the Department. Information obtained in the initial investigation, and any subsequent investigations and any additional data specified by the Department, will be included in the hazard ranking evaluation.

~~3.3.2.13~~ 3.3.2.2 Facilities may be placed on the priority list if, after the completion of an initial investigation, the Department has determined that further remedy is required at the facility. Placement of a facility on the priority list does not, by itself,

constitute a determination that persons associated with the facility are liable under the Act of ~~these Regulations~~ this regulation.

~~3.3.2.23.3.2.3~~ 3.3.2.3 Facilities placed on the priority list will be given a hazard ranking. The purpose of the hazard ranking is to estimate the relative potential risk posed by the facility to public health or welfare or the environment based on the information compiled during the initial investigation and subsequent investigations.

~~3.3.2.3~~ 3.3.2.3 The Department will objectively assess the relative degree of risk of each facility which is to be placed on the priority list using the Delaware Hazard Ranking Model established by the Department. Information obtained in the initial investigation, and any subsequent investigations and any additional data specified by the Department, will be included in the hazard ranking evaluation.

3.3.2.4 The Department will, upon request, make available to the facility owner and operator and any potentially responsible party known to the Department, the final hazard ranking results for a facility to be placed on the priority list.

3.4 Brownfields Certification and Funding

3.4.1 ~~In A property must first be certified as a Brownfield in order to qualify for the Brownfields Development Program, the property must be certified as a Brownfield. To receive initiate a Brownfields Certification for a property, the Brownfield applicant shall submit to the Department a complete Brownfields Certification Application to Form supplied by the Department seeking Brownfield Certification for the property. The property certification request Brownfields Certification Application Form can be initiated submitted by a Certified Brownfields Developer, the current property owner, the Department, or any public agency.~~

3.4.2 Application for Brownfield Developer Certification

3.4.2.1 Brownfield Certification ~~shall may~~ be provided only to those persons who apply for a certification from the Department. Such application ~~shall must~~ contain, at a minimum, the following information:

3.4.2.1.1 Name and address of the person seeking the certification, and their relationship to the property;

3.4.2.1.2 Address of the property including tax parcel designation;

3.4.2.1.3 Current use of the property and its zoning classification;

3.4.2.1.4 The proposed development or redevelopment plan;

3.4.2.1.5 Reason to believe that the property, the expansion, redevelopment, or reuse of which may be contaminated and why such contamination complicated may hinder the expansion, redevelopment, or reuse hindered by the reasonably held belief that the real property may be environmentally contaminated.

3.4.2.2 Upon request by the Department, the applicant shall provide:

3.4.2.2.1 Documentation regarding environmental investigations of the property, or chronic violator status of the applicant pursuant to **7 Del.C. §7904**.

3.4.2.2.2 The factual basis for concluding that the expansion, redevelopment or reuse of the property may be hindered by the reasonable belief that the real property is environmentally contaminated.

3.4.2.2.3 Certification that the Certified Brownfields Developer will comply with all applicable procedural requirements in accordance with this regulation.

3.4.2.3 All items contained in the application shall must be addressed by either providing the required information or stating that the item is not applicable. In the event that an item is considered not applicable, the Certified Brownfields Developer must include a written justification in the application that demonstrates to the satisfaction of the Department that the item is not applicable to the application.

3.4.2.4 After a Brownfield Certification Application is submitted to the Department, the Department shall review the application to determine whether the application is complete. After its review, the Department shall issue a letter to the applicant advising either (1) that the property is certified and/or or the developer is approved, (2) that the application is incomplete and incomplete, identifying the specific information that must be submitted or supplemented to make the application complete, or (3) that the certification is denied.

3.4.2.5 The applicant shall promptly update and/or or correct information previously submitted as part of the application whenever the applicant discovers that this information is incomplete or inaccurate within 30 days from the date of Department correspondence.

3.4.2.5.1 If subsequent information is not received by the Department within 30 days, the application may be denied.

3.4.3 Criteria for Brownfields Property Certification

3.4.3.1 The Department may certify all or part of a parcel of real property as a Certified Brownfield if the property meets the following criteria:

3.4.3.1.1 The expansion, redevelopment or reuse of all or part of the property is hindered by the reasonably held belief that the real property may be environmentally contaminated; and

3.4.3.1.2 All or part of the property is subject to either a current or prospective development or redevelopment plan; and

3.4.3.1.3 All or part of the property meets any ~~one (1)~~ 1 of the following conditions:

3.4.3.1.3.1 The expansion, redevelopment or reuse of the property may be hindered by the reasonably held belief that it may be environmentally contaminated; or

3.4.3.1.3.2 The property is or has been used in whole or part as:

3.4.3.1.3.2.1 A salvage yard;

3.4.3.1.3.2.2 A regulated Tank facility pursuant to 7 Del.C. Ch. 74 or 7 Del.C. Ch. 74A;

3.4.3.1.3.2.3 A drycleaner where any dry cleaning is performed onsite;

3.4.3.1.3.2.4 A historical tannery;

~~3.4.3.1.3.2.5 A RCRA (Subtitle C) treatment, storage, or disposal facility for which the US EPA or the State RCRA program has expressed in writing no further interest in remediating under these programs;~~

3.4.3.1.3.2.6 A permitted or non-permitted landfill or dump;

3.4.3.1.3.2.7 A property that contains potentially contaminated material;

3.4.3.1.3.2.8 A known hazardous substance release site that has not been remediated to the standard

applicable to the intended land use, including those facilities previously identified by the Department; ~~or~~

3.4.3.1.3.2.9 A National Priorities List (NPL) or Federal CERCLIS site that has a “No Further Interest” designation from the US EPA; ~~or as approved by the US EPA.~~

~~3.4.3.1.3.2.10 A property that is subject to Federal CERCLA Section 128(a), a State Response Program, designated by the US EPA.~~

3.4.3.2 A property that is subject to an enforcement action from any State or Federal environmental agency, and for which an administrative or judicial order is in effect or is proposed, ~~may will~~ not be eligible for Brownfield Certification, unless the enforcement action is resolved to the satisfaction of the Secretary.

3.4.3.3 A Certified Brownfields Developer shall be required, at a minimum, to perform a ~~facility evaluation~~ Remedial Investigation of the Certified Brownfield, as approved by DNREC, within ~~twenty-four (24) 12~~ months of entering into a BDA.

~~3.4.3.4 When the Department certifies a property as a Brownfield, or if there is a change in the use of the property, an Outreach Plan will be required to be developed and implemented by the Certified Brownfields Developer in cooperation with the Department.~~

~~3.4.3.4~~ 3.4.3.5 Any Brownfield Certification decision is made at the sole discretion of the Secretary.

~~3.4.3.5~~ 3.4.3.6 An inventory of Certified Brownfield properties will be made publicly available.

3.4.4 Criteria for Brownfields Developer Eligibility

3.4.4.1 In order for a person to obtain the rights and protections and assume the obligations of the status of Certified Brownfields Developer, the person must submit an application to the Department for approval of Certified Brownfields Developer status. At the time of application for the Certified Brownfields Development Agreement, an applicant cannot be a potentially responsible party at the property pursuant to **7 Del.C. §9105(a)(1)-(6)**, and cannot be affiliated with any other person that is liable for a release or imminent threat of release at the **property**. The existence of an affiliation will be determined pursuant to the provisions of **7 Del.C. §9105(c)(4)b.5**.

3.4.4.2 The Secretary has the discretion to deny Certified Brownfields Developer status to an applicant if the applicant, including any employees or agents thereof, or any entity affiliated with or controlled by the applicant, has been determined to have violated any federal, state, or local environmental law.

~~3.4.4.3 Prior to approval, the application must be complete and must contain all of the information required by the Department, including the information required by Section 3.4.2 of these Regulations.~~

3.4.5 Funding under Brownfield Certification

3.4.5.1 Upon the filing of a Brownfield Certification and Grant Application (BCA), the applicant may also choose to request financial assistance. Completion of the financial section of the BCA does not guarantee a commitment for funding, nor does it obligate the State of Delaware or any State agency to provide any form of financial assistance.

3.4.5.2 Submission of a funding request is optional and the decision to approve funding is at the discretion of the Department.

~~3.5~~ Facility Tracking

~~3.5.1 The Department may maintain a database recording the actions taken at facilities that have been identified with a release, an imminent threat of release, or an identified potential release of hazardous substances.~~

3.6 3.5 Record Keeping

~~3.6.1 3.5.1 The Department shall require the following record keeping procedures:~~

~~3.6.1.1 3.5.1.1 Any remedial activities remedy performed at a facility must be documented by the person performing the action owner, PRP, or Department-identified party, including their designated HSCA certified consultant. Such records may include factual documents, such as a CMMP, LTS Plan, LTS reports, agreements, information or data, relevant decision documents, and any other relevant, facility-specific documents or information. The formats of the documents may include, paper, audio, video, photographs, and electronic files.~~

~~3.6.1.2 3.5.1.2 An owner and all assigns and successors in interest, including any transferee, shall maintain a Long Term Stewardship Plan accessible on site at the discretion of the Department. Such plans must be maintained until such time that their use is no longer needed as per the Department. Records shall be retained for at least ten (10) years from the date of completion of remedial action, site closure, or Conditional No Further Action letter.~~

~~3.6.1.3 Records shall be retained by the person taking remedial action, unless the Department requires that they be submitted.~~

~~3.6.1.4 3.5.1.3 Upon filing for bankruptcy, The the owner shall provide all remedial records and data to the Department shall become the repository of any remedial records if the person files for bankruptcy.~~

~~3.6.1.5 The Department shall maintain its records in accordance with these Regulations.~~

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4.0 Potentially Responsible Parties

4.1 Identification

4.1.1 The Department may initiate identification of potentially responsible parties associated with the facility, as soon as practicable.

4.1.2 The Department may use existing information-gathering authorities and coordinate such investigation with other state, local, and federal agencies.

4.2 Potentially Responsible Party Notification

4.2.1 The Department may issue a notice letter to any person or entity it believes to be a potentially responsible party with respect to a facility as provided for in **7 Del.C. § 9105**. The **Department shall send a** notice letter **shall be sent** to the last known address of the potentially responsible party. A copy of the notice letter may be provided to the local unit of government in which the facility is located. The notice letter **shall will** provide the following:

4.2.1.1 The name of the person or entity the Department believes to be potentially liable;

4.2.1.2 A general description of the location of the facility;

4.2.1.3 The basis for the Department's position that the person has a relationship to the facility;

4.2.1.4 The basis for the Department's position that a release or imminent threat of a release of a hazardous substance may pose a threat to public health or welfare or the environment; and

- 4.2.1.5 The names of other persons or entities to which the Department has sent such a notice letter with respect to the facility.
- 4.2.2 The Department reserves the right to notify additional potentially responsible parties at any time, and to facilitate efforts by potentially responsible parties to identify additional potentially responsible parties.
- 4.3 Notice of Potential Liability
 - 4.3.1 In the event that a potentially responsible party for a facility cannot be located, the Department may publish in accordance with Section 8.0 of these Regulations, a public notice regarding a potentially responsible party which ~~shall~~ will provide the following:
 - 4.3.1.1 The names and last known addresses of a person that the Department believes to be a potentially responsible party for the facility;
 - 4.3.1.2 The address or a general description of the location of the facility;
 - 4.3.1.3 The basis for the Department's position that a release or imminent threat of a release of a hazardous substance at the facility may pose a threat to public health or welfare or the environment;
 - 4.3.1.4 The basis for the Department's position that the person or entity is a potentially responsible party under **7 Del.C. § 9105** for the facility; and
 - 4.3.1.5 The name and contact information of the person within the Department who the potentially responsible party can contact in order to obtain further information about the facility, and to enter into negotiations for a settlement agreement to address the release or imminent threat of release of hazardous substances at the facility.
- 4.4 Information Request
 - 4.4.1 If the Department determines that there is a reasonable basis to believe that there has been a release or an imminent threat of a release of a hazardous substance, the Secretary may require information or documentation relevant to the release from any person who may have pertinent information as described in **7 Del.C. § 9106**.

5.0 Settlement Agreements & Certified Brownfields Development Agreements

- 5.1 Settlement agreements and Certified Brownfields Development Agreements ~~shall~~ must include the following:
 - 5.1.1 The name and address of the potentially responsible party, the prospective purchaser, or the Certified Brownfields Developer, and any other affiliated corporation, entity, or other person that will perform or pay for a remedy at the facility or Certified Brownfield;
 - 5.1.2 The address and tax parcel number of the facility or Certified Brownfield in question;
 - 5.1.3 The name of the current owner of record, ~~and/or~~ and current operator or operators if applicable, of the facility or Certified Brownfield; and
 - 5.1.4 For agreements which require the performance of a remedy at a facility or Certified Brownfield, the Department may include a description of:
 - 5.1.4.1 The areas of the facility or Certified Brownfield where the remedy is to be conducted;
 - 5.1.4.2 The type of remedy to be performed;
 - 5.1.4.3 A schedule for implementation of the remedy; and
 - 5.1.4.3 5.1.4.4 Any financial or oversight resources to be provided by the Department.
- 5.2 Cost Recovery
 - 5.2.1 The Department may seek to recover costs from the potentially responsible parties or any person requiring oversight or review.

- 5.2.1.1 Recoverable costs from a potentially responsible party include all remedial costs incurred by the Department, natural resource damages, oversight, indirect and administrative costs, and costs associated with long-term stewardship activities.
- 5.2.1.2 Recoverable costs from a Certified Brownfields Developer include remedial costs incurred by the Department beginning upon its receipt of the application for Brownfield certification of the property. Recoverable costs may include, including oversight, indirect and administrative costs, and costs associated with long-term stewardship activities as specified in the Certified Brownfields Development Agreement, but excluding natural resource damage assessment and restoration costs not caused by the Certified Brownfields Developer and costs incurred by the Department prior to the Certified Brownfields Developer's submission of its application for admission into the Brownfields Development Program.
- 5.2.2 Remedial costs with regard to a specific facility or Certified Brownfield are calculated to reflect the actual costs incurred by the Department. Such costs are calculated for each facility or Certified Brownfield as set forth below.
- 5.2.2.1 The total number of direct hours expended by each employee of the Department with regard to a specific facility or Certified Brownfield is multiplied by the employee's hourly rate of wages and then the figures derived for each employee are added together.
- 5.2.2.2 The figure derived from Subsection 5.2.2.1 is added to a figure derived by multiplying the total figure from Subsection 5.2.2.1 by the current indirect cost rate.
- 5.2.2.3 The figure derived from Subsection 5.2.2.2 is added to a figure derived by multiplying the number of hours worked by each employee of the Department with regard to the specific facility or Certified Brownfield by the other employee costs rate for the employee.
- 5.2.2.4 All payments made by the Department to its contractors, consultants or vendors for the procurement of services, supplies or equipment for the specific facility or Certified Brownfield are added to the figure derived from Subsection 5.2.2.3.
- 5.2.3 Recoverable costs may include interest at the allowable interest rate upon all costs of the Department associated with a release or threat of release from the time they were incurred until the time they are paid. Additional costs may be incurred due to late or non-payment.

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