

Chapter NR 158

**CONTINGENCY PLAN FOR EMERGENCY ACTIONS
IN RESPONSE TO THE DISCHARGE OF
HAZARDOUS SUBSTANCES**

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Note: Chapter NR 158 is created pursuant to s. 144.76, Stats., ch. 377, laws of 1977 published on May 20, 1978.

NR 158.01 Purpose. The purpose of this chapter is to establish a state contingency plan to provide for efficient, coordinated and effective action to minimize damage to the air, land and waters of this state caused by the discharge of hazardous substances. The state contingency plan is designed to complement federal regional and national contingency plans developed to deal with oil and hazardous substances pollution.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.02 Applicability. The provisions of NR 158.03 through NR 158.10 establish actions and procedures for dischargers of hazardous substances, the department of natural resources, and other state and local agencies in responding to discharges of hazardous substances.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.03 Definitions. The following definitions are applicable to terms used in this chapter.

- (1) "Department" means the department of natural resources.
- (2) "Discharge" means, but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance.
- (3) "Discharger" means the person or persons having possession of or control over a hazardous substance being discharged or who cause a hazardous discharge.
- (4) "Hazardous substance" means any substance or combination of substances, including wastes, of a solid, liquid, gaseous or semisolid form which, because of its quantity, concentration or physical, chemical or infectious characteristic, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment. Such substances may include, but are not limited to, those which are, to the degree determined by the department, toxic, corrosive, flammable, irritants, strong sensitizers or explosive.

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(5) "Local agencies" means, but is not limited to, municipal police and fire departments, municipal health organizations, county offices of emergency government, county sheriffs, and emergency medical services.

(6) "Person" means an individual, owner or operator, corporation, partnership, association, municipality, interstate agency or state agency.

(7) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.04 Response phases and actions. The actions taken to respond to a hazardous substance discharge can be separated into 5 relatively distinct phases. For descriptive purposes, these are: discovery and notification; evaluation and initiation of action; containment; cleanup and disposal; and restoration of the environment. It must be recognized that elements of any one phase may take place concurrently with one or more other phases.

(1) **DISCOVERY AND NOTIFICATION.** Whenever the discharge of a hazardous substance occurs, it is of utmost importance that early notification take place so that prompt and effective actions can be taken to minimize the effect on human health, welfare and the environment. Therefore, when a discharge occurs the notification procedures as specified in NR 158.05 and 158.06 shall be taken.

(2) **EVALUATION AND INITIATION OF ACTION.** (a) *Evaluation of hazardous substance discharge.* In order to properly evaluate and deal with a hazardous substance discharge as much of the following information as possible should be obtained and provided when notification is made:

1. Name, address and telephone number of the person reporting the discharge;
2. Name, address and telephone number of the discharger;
3. Date, time, location and duration of the discharge;
4. Date and time notification is made;
5. Identity, physical state and quantity of the material discharged;
6. Physical, chemical, hazardous and toxicological characteristics of the substance;
7. Cause of incident and corrective measures being taken;
8. Source, speed of movement and destination or probable destination of the discharged substance;
9. Distance and direction to the nearest inhabited dwellings;
10. Areas affected including air sector, surface, ground or drinking waters;
11. Weather conditions existing at the scene;

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12. Communications equipment available at the scene.

(b) *Initiation of action.* Once notice of a hazardous substance discharge is received it may be necessary to obtain help from trained personnel capable of dealing with the situation. Until such time as trained personnel arrive at the discharge scene efforts should be directed toward the safety of persons potentially affected by the discharge.

(3) **CONTAINMENT.** Defensive actions are usually necessary to stabilize or deal with a discharge emergency before any cleanup and disposal can be accomplished. When needed, these actions shall be implemented as soon after the discharge occurs as practicable and may include, but are not limited to, the following procedures:

(a) *Protection of life and property.* For any agency responding to a hazardous substance discharge first consideration shall always be given to the preservation of human life and property. Actions necessary to carry out this responsibility will usually be carried out by local agencies trained to do so.

(b) *Establishment of decision-making authority at the discharge site.* At the scene of a hazardous substance discharge there may be several different groups of response personnel each with its own specific authorities and responsibilities. In these cases primary decision-making authority will rest with those having specific authority to deal with the highest priority as ranked in the list below. All other agencies roles and activities should be subordinated until the primary concern is eliminated. Subsequent responsibility should then progress to the agency having authority to deal with the next most immediate concern. When it is possible to cooperatively deal with more than one need at the same time, such actions should be simultaneously taken. In every case of decision-making, the consequence of each decision on the subsequent response phases and activities should be weighed and detrimental actions minimized. The priority for decision-making shall follow the ranking of these concerns:

1. Rescue and treatment of injured humans,
2. Prevention of injury to humans,
3. Protection of human dwellings,
4. Protection of potable water supplies,
5. Protection of food stuff and domestic animals used for foods,
6. Protection of the environment,
7. Restoration of transportation usage.

(c) *Establishment of a command post.* When deemed appropriate and in order to most effectively coordinate all actions at the discharge scene, a central control center should be established by the first agency responding. This control center should be located at a safe place near the discharge scene, have adequate communications capabilities and serve the following functions as necessary:

1. Request, assemble, inventory and dispatch responding personnel and equipment,

2. Maintain contact with and direct the activities of personnel at the site of the discharge,

3. Coordinate response activities in accord with the priority ranking established in par. (b) above.

4. Maintain contact with the other persons not at the discharge site who could provide technical assistance or recommend effective response actions.

5. Deal with news media personnel.

(d) *Control discharge source.* The discharge of a hazardous substance should be stopped as soon as possible in order to minimize the effect on human life, property and the environment and to reduce expenses associated with the response.

(e) *Halt or slow the spread of the substance.* The spreading of a hazardous substance should be stopped or slowed as soon as possible. Such actions may include, but are not limited, to the following:

1. Construction of earthen or mechanical barriers such as booms, dikes, or trenches,

2. Use of fog spray on certain gaseous emissions,

3. Avoiding flushing of hazardous substances,

4. Preventing damage to nonleaking containers,

5. Plugging or encapsulating leaking containers,

6. Neutralizing the hazardous substance,

7. Preventing substances from reaching sewer systems, surface waters or groundwaters,

8. Protecting substances from undesirable weather conditions.

(4) **CLEANUP AND DISPOSAL.** The cleanup and disposal techniques required are often influenced by the action taken to contain the discharge.

(a) *Cleanup activities.* Actions taken to recover the hazardous substance discharged to the land or waters of the state should comply with existing laws and may include, but are not limited to, the following:

1. Soaking up liquids with absorbants,

2. Use of skimmers or other mechanical collectors,

3. Vacuum dredging for sunken solids and liquids,

4. Chemical treatment of dissolved substances,

5. Aeration of contaminated waters,

6. Excavation of contaminated soils,

7. Installation of recovery trenches or wells.

(b) *Disposal requirements.* Improper disposal often results in merely relocating the hazardous substance discharge problem. All hazardous substances recovered during cleanup operations should be recycled if

possible. Non-recyclable hazardous substances and other wastes shall be taken to an approved site and disposed of in an approved manner, or stored in an approved manner and location pending the approval and selection of a disposal site. Approval for proper disposal of hazardous substances shall be obtained through the department.

(5) **RESTORATION OF THE ENVIRONMENT.** Restoration of the environment includes those actions necessary to return the environment as nearly as possible to its original condition before the hazardous substance discharge occurred. Such actions may include, but are not limited to, the replacement or removal of injured plant and animal life and contaminated soils.

(6) **SPECIAL CONSIDERATIONS.** (a) *Safety of personnel.* Many of the substances involved in incidents are of a toxic nature and pose an imminent threat to life. Therefore, any person, whether civilian or governmental, should exercise caution when entering the affected area until the substance has been identified and proper protection against the dangers has been taken.

(b) *Wildlife conservation.* Though the preservation of wildlife will not always be the most immediate need, whenever possible this factor shall be considered in developing and implementing any response actions.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.05 Discharger responsibilities. (1) **DISCOVERY AND NOTIFICATION REQUIREMENTS.** The discharger of a hazardous substance shall immediately notify the department or the designated statewide 24-hour emergency number provided by the division of emergency government, unless the discharge is specifically exempted under s. 144.76 (9), Stats. The information provided should include as many of the details outlined in NR 158.04 (2) (a) as are available.

(2) **CONTAINMENT, CLEANUP, DISPOSAL AND RESTORATION.** The discharger shall immediately initiate actions necessary to halt the discharge and to restore the environment to the extent practicable and shall minimize the harmful effects from any discharge to the air, lands or waters of the state. These actions may include, but are not limited to, containment, cleanup, storage, transportation, disposal, restoration or replacement of plants and wildlife and testing of the affected area. The discharger shall keep the department informed and shall secure necessary written approvals from the department for specific actions when such approvals are required by law.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.06 State and local agencies roles and responsibilities. (1) The department of local affairs and development's division of emergency government shall:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide a 24-hour toll-free or collect telephone number at which notice of any discharge may be received;

2. Maintain lists of state emergency response personnel;

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3. Designate a representative to work with the department to review, evaluate and recommend changes to improve the effectiveness of the contingency plan.

(b) When the discharge of a hazardous substance occurs:

1. Upon receiving notice of a hazardous substance discharge the division of emergency government shall attempt to secure as much of the information outlined in NR 158.04 (2) (a) as is available and notify federal, state and local agencies who have the authority to deal with the discharge as follows:

a. Immediately notify the department of any hazardous substance discharge notification received,

b. Immediately alert the national response center of any hazardous substances discharge notification received,

c. Promptly notify the department of agriculture, trade and consumer protection of discharges injuring crops, food, commercial feed, agricultural products or involving any agricultural chemicals such as pesticides, fertilizers or animal drugs.

d. Promptly notify the department of health and social services of discharges of radiation or discharges which may affect human health.

e. Promptly notify the department of labor, industry and human relations of discharges from flammable liquids storage facilities or discharges of anhydrous ammonia, explosives or LP gas.

f. Promptly notify the department of transportation of discharges of hazardous substances associated with the transportation systems including shipping, railroads, highways and pipelines.

g. Promptly notify police or fire departments responsible for the geographic area where the discharge occurs.

2. The division of emergency government shall support containment, cleanup and disposal activities necessary for responding to hazardous substance discharge by providing the following services:

a. Act as a central communications center and provide use of the mobile command center when necessary;

b. Direct inquiries concerning handling and disposal of hazardous substances to the department.

3. The division of emergency government shall be responsible for providing the following written reports and documentation:

a. Maintain a log of all discharge notices received,

b. Forward confirming written documentation to the department of all discharge notices received, including the agencies notified in each case, no later than the following working day after notice was received,

c. Compile an annual summary of all incidents handled for the preceding calendar year and provide a copy to the department.

2. The department of natural resources shall:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide the division of emergency government with a list of department personnel with telephone or radio call numbers who should be called by the division of emergency government when it receives notice of the discharge of a hazardous substance. This list shall be provided by the effective date of this rule and shall be updated as necessary to insure that prompt notification remains possible.
2. Maintain trained personnel capable of coordinating an effective response in the areas of investigation, containment, cleanup and disposal;
3. Acquire and maintain containment and cleanup equipment capable of being mobilized rapidly;
4. Prepare lists of readily available sources of non-department spill equipment and supplies.
5. Prepare lists of private contractors and other persons capable of performing or aiding with the containment, cleanup or disposal of a hazardous substance discharge;
6. Acquire and maintain reference and training materials relating to the investigation, containment, cleanup or disposal of discharges of hazardous substances;
7. Designate a representative to work with other agencies to review, evaluate and recommend changes to improve the effectiveness of the contingency plan.

(b) When the discharge of a hazardous substance occurs:

1. Upon receiving notice of a hazardous substance discharge the department shall:
 - a. Notify the appropriate department staff, who shall carry out any action the department deems necessary concerning hazardous substances discharges,
 - b. If the notice of discharge was not received from the division of emergency government, the department shall immediately call the statewide 24-hour emergency number,
 - c. Alert municipalities of discharges potentially affecting municipal water supplies.
2. When acting on a notice of discharge the department shall, when it deems necessary:
 - a. Verify that a discharge occurred and determine as much of the information outlined in NR 158.04 (2) (a) as possible.
 - b. Determine the specific geographic area affected and the effect of the discharge on the environment.
 - c. Determine whether the discharger has taken the actions necessary to stop the discharge and initiated other actions necessary for containment, cleanup, disposal and restoration of the environment.

3. When necessary to insure that the proper containment, cleanup and disposal actions are being taken to restore the environment as nearly as possible to its original condition the department shall:

a. Monitor the activities of the discharger to insure proper action is being taken.

b. Where action required by the discharger is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its agent may take any emergency action which it deems appropriate under the circumstances including containing, removing, storing or disposing of the hazardous substance.

c. Coordinate these activities with affected federal, state and local agencies.

4. Provide participating state agencies with copies of any written reports.

(3) The department of agriculture, trade and consumer protection shall:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide the division of emergency government with a list of personnel with telephone or radio call numbers who can be contacted by the division of emergency government when it receives notice of the discharge of a hazardous substance. This list shall be due by the effective date of this rule and shall be updated as necessary to insure that prompt notification remains possible;

2. See that agency personnel are properly trained in emergency response procedures pursuant to the agency's authorities and responsibilities under the laws which the agency administers.

3. Designate a representative to work with the department to review, evaluate and recommend changes to improve the effectiveness of the contingency plan.

(b) When the discharge of a hazardous substance occurs:

1. If the notice of the discharge was not received from the division of emergency government, immediately call the statewide 24-hour emergency number and provide as many of the details outlined in NR 158.04 (2) (a) as are available;

2. Assist in the identification of agricultural chemicals and contaminants of agricultural products, food or livestock and provide technical information, laboratory support and/or on scene assistance in dealing with agricultural chemicals or contaminated agricultural products during investigation, containment, cleanup and disposal activities;

3. Supervise the disposition of injured or dead domestic animals, adulterated food, and commercial feed;

4. Assist in the supervision of cleanup and disposal activities on farm crop and livestock lands;

5. Promptly provide the department with a copy of any written report prepared by the department of agriculture, trade and consumer protection;

6. Coordinate these activities with affected federal, state and local agencies.

(4) The department of health and social services shall:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide the division of emergency government with a list of personnel with telephone or radio call numbers who can be contacted by the division of emergency government when it receives notice of the discharge of a hazardous substance. This list shall be due by the effective date of this rule and shall be updated as necessary to insure that prompt notification remains possible;

2. See that agency personnel are properly trained in emergency response procedures pursuant to the agency's authorities and responsibilities under the laws which the agency administers.

3. Designate a representative to work with the department to review, evaluate and recommend changes to improve the effectiveness of the contingency plan.

(b) When the discharge of a hazardous substance occurs:

1. If the notice of the discharge was not received from the division of emergency government, immediately call the statewide 24-hour emergency number and provide as many of the details outlined in NR 158.04 (2) (a) as are available;

2. Notify local and federal public health agencies and practicing physicians of discharges of hazardous substances or discharges of ionizing radiation which affect or may affect the health of persons in the locality of the discharge;

3. When necessary, a. Determine the need for investigations, surveillance or monitoring programs to ascertain the impact of a hazardous substance discharge on human health;

b. Implement investigations, surveillance or monitoring programs for any adverse human health effects;

c. Direct the department as to those air, water, and soil samples to be acquired and tested as part of an investigation, surveillance or monitoring program relative to human health.

4. Provide technical information concerning the exposure of humans to hazardous substances and ionizing radiation;

5. Promptly provide the department with a copy of any written report which is prepared by the department of health and social services;

6. Coordinate these activities with affected federal, state and local agencies.

(5) The department of labor, industry and human relations shall:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide the division of emergency government with a list of personnel with telephone or radio call numbers who can be contacted by the division of emergency government when it receives notice of the discharge of a hazardous substance. This list shall be due by the effective date of this rule and shall be updated as necessary to insure that proper notification remains possible;

2. See that agency personnel are properly trained in emergency response procedures pursuant to the agency's authorities and responsibilities under the laws which the agency administers.

3. Designate a representative to work with the department to review, evaluate and recommend changes to improve the effectiveness of the contingency plan.

(b) When the discharge of a hazardous substance occurs:

1. If the notice of the discharge was not received from the division of emergency government, immediately call the statewide 24-hour emergency number and provide as many of the details outlined in NR 158.04 (2) (a) as are available;

2. Initiate and conduct investigations of known or suspected sources of flammable and combustible liquids discharges at fixed facilities and require corrective actions to remedy leaking conditions;

3. Investigate discharges of anhydrous ammonia, explosives and LP gas and require corrective actions pursuant to department of industry, labor and human relations regulations;

4. Promptly provide the department with a copy of any written report which is prepared by the department of labor, industry and human relations.

5. Coordinate these activities with affected federal, state and local agencies.

(6) The department of transportation shall:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide the division of emergency government with a list of personnel with telephone or radio call numbers who can be contacted by the division of emergency government when it receives notice of the discharge of a hazardous substance. This list shall be due by the effective date of this rule and shall be updated as necessary to insure that proper notification remains possible.

2. See that agency personnel are properly trained in emergency response procedures pursuant to the agency's authorities and responsibilities under the laws which the agency administers.

3. Designate a representative to work with the department to review, evaluate and recommend changes to improve the effectiveness of the contingency plan.

(b) When the discharge of a hazardous substance occurs:

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1. If the notice of the discharge was not received from the division of emergency government, immediately call the statewide 24-hour emergency number and provide as many of the details outlined in NR 158.04 (2) (a) as are available;

2. When necessary, provide traffic control at the discharge scene;

3. When necessary, arrange for the removal of wrecked vehicles and non-hazardous debris at the discharge scene;

4. Promptly provide the department with a copy of any written report which is prepared by the department of transportation;

5. Coordinate these activities with affected federal, state and local agencies.

(7) Local agencies. Local agencies which may become involved in hazardous substance discharges should:

(a) Prepare to deal with a hazardous substance discharge in the following manner:

1. Provide the division of emergency government with a telephone number which should be called when notice of the discharge of a hazardous substance within the local agency's jurisdiction is received.

2. Maintain trained personnel capable of carrying out the local agency's responsibilities in the event of a hazardous substance discharge.

(b) When the discharge of a hazardous substance within its jurisdiction occurs:

1. Any local agency which discovers or receives notification of a hazardous substance discharge from a source other than the division of emergency government should immediately contact the designated statewide 24-hour emergency number and provide as many of the details outlined in NR 158.04 (2) (a) as are available.

2. Every effort should be made to coordinate all phases of the response of a local agency with the activities of the department and other local, state, and federal agencies to insure an efficient and effective action is realized.

3. When a local agency becomes involved in a hazardous substance discharge not investigated by the department it is encouraged to promptly provide the department with documentation of its findings and actions.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.07 Access to property. The department may upon notice to the owner or occupant, enter any property, premises or place at any time for the purpose of responding to a hazardous substance discharge if such entry is necessary to prevent increased damage to the air, land or waters of the state. Notice to the owner or occupant shall not be required if the delay attendant upon providing it will result in imminent risk to public health or safety.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

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NR 158.08 Training of personnel. Training programs for emergency personnel are necessary to ensure proper, coordinated and effective response to discharges of hazardous substances. To provide this training the department shall:

- (1) Conduct annual training sessions to provide specific instruction on the control and the remedy of discharges of hazardous substances.
- (2) Direct the training to emergency response personnel including local agency officials and other personnel responsible for responding to emergencies caused by the discharges of hazardous substances;
- (3) Combine these training sessions with other training opportunities provided by the department or other agencies and local units of government where combined efforts will result in greater efficiency and effectiveness.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.09 Exemptions. The following discharges need not be reported to the department:

- (1) A discharge by any person holding a valid permit under ch. 147, Stats., with respect to substances discharged within the limits authorized by the permit.
- (2) Discharges by law enforcement officers or members of fire departments using hazardous substances in carrying out their responsibility to protect public health, safety or welfare. These persons are encouraged to report to the department any discharges of a hazardous substance occurring within the performance of their duties.
- (3) A discharge by any person discharging in conformity with a permit or program approved under ch. 144, Stats.
- (4) The application of a registered pesticide according to the label instructions.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.

NR 158.10 Severability. Should any section or portion of this chapter be declared invalid or unconstitutional for any reason, the remainder of the chapter shall not be affected.

History: Cr. Register, May, 1980, No. 293, eff. 6-1-80.