

Chapter NR 706

HAZARDOUS SUBSTANCE DISCHARGE NOTIFICATION AND SOURCE CONFIRMATION REQUIREMENTS

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

NR 706.01 Purpose. The purpose of this chapter is to adopt by administrative rule notification requirements for discharges of hazardous substances. This chapter is adopted pursuant to ss. 227.11 (2) and 292.11, Stats.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. Register October 2013 No. 694, eff. 11-1-13.

NR 706.02 Applicability. (1) This chapter applies to hazardous substance discharges that are subject to the requirements of s. 292.11, Stats.

(2) Section NR 706.05 applies to all persons who have responsibility under s. 292.11, Stats., for any hazardous substance discharge that may occur. Section NR 706.11 contains additional requirements that only apply to the owners and operators of underground storage tank systems that are subject to regulation under 42 USC 6991 *et seq.* and 40 CFR part 280, or ch. ATCP 93, for hazardous substance discharges that are related to the underground storage tank system.

Note: The definition of “underground storage tank” in s. NR 700.03, which applies to this chapter, is based on the definition of “underground storage tank” in ch. ATCP 93, which includes certain farm and residential motor fuel storage tanks and heating oil tanks that are excluded from the federal UST program definition in 42 USC 6991.

(3) Persons and facilities subject to the release notification requirements in CERCLA section 103 (a), 42 USC 9603(a), or the emergency notification and notification requirements in s. 323.60, Stats., and 42 USC 11004, 11021, 11022 and 11023, are required to comply with those requirements in addition to complying with the notification requirements of this chapter, except that notification of a hazardous substance discharge which is given to the department in compliance with the requirements of this chapter constitutes notification of the division of emergency management as required by s. 323.60, Stats., if the notification contains all of the information specified in 42 USC 11004(b)(2).

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; correction in (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; CR 12-023: am. (2), (3) Register October 2013 No. 694, eff. 11-1-13; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2013 No. 695.

NR 706.03 Definitions. In this chapter:

(2) “Fertilizer” has the meaning specified in s. 94.64 (1) (e), Stats., except that it does not include nitrates or other forms of nitrogen found in the environment that cannot be attributed to a discharge.

Note: Section 94.64 (1) (e), Stats., defines “fertilizer” to mean “any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. ‘Fertilizer’ includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.”

(4) “Impervious” means incapable of being penetrated by a discharged substance.

Note: Asphalt and concrete, if intact and undamaged, are considered impervious surfaces. However, if hazardous substances are capable of penetrating asphalt or concrete due to cracks or holes, or repeated discharges, the surface would not be considered impervious.

(5) “Nonhousehold pesticide” has the meaning specified in s. 94.681 (1) (c), Stats., except that it does not include pentachlorophenol, inorganic arsenical wood preservatives and coal tar creosote.

Note: Section 94.681 (1) (c), Stats., defines “nonhousehold pesticide” as “a pesticide that is not a household pesticide or an industrial pesticide.” “Household pesticide” is defined in s. 94.681 (1) (a), Stats.

(6) “Pesticide” has the meaning specified in s. 94.67 (25), Stats.

Note: Section 94.67 (25), Stats., defines “pesticide” to mean “any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.”

(7) “Petroleum product” means any refined petroleum based substance or blend intended for use as motor fuel, turbine fuel, heating fuel, a lubricant, a coolant, or for machine cutting.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; CR 12-023: r. (1), (3), am. (7) Register October 2013 No. 694, eff. 11-1-13.

NR 706.05 General requirements for responsible parties. (1) DISCHARGE NOTIFICATION. (a) Unless the discharge is specifically exempted under s. NR 706.07, persons who cause the discharge to the environment of a hazardous substance or who possess or control a hazardous substance which is discharged to the environment shall immediately notify the department of the discharge. Discharges to the environment may include recent discharges, historic discharges, and discharges caused by the long-term application of a substance. A hazardous substance that is “discharged” into a secondary containment structure, that is completely contained and can be recovered with no discharge to the environment, is not subject to the discharge notification requirements in s. 292.11 (2), Stats.

Note: The department believes that the dictionary definition of “immediately”, i.e. “occurring at once; next in line,” does not lend itself to quantification. An across-the-board time-period can’t be specified. In uncomplicated hazardous substance discharge situations, responsible parties are expected to provide notice to the department within a matter of a few minutes after they learned of the discharge. In other situations, especially where emergency action of some kind is being taken by the responsible party or where the responsible party does not have access to a telephone, notification may not be possible for several hours, but would still be considered “immediate” if promptly given.

(b) Hazardous substance discharges shall be immediately reported to the department by telephoning the department-designated 24-hour hotline telephone number. The department may allow alternate notification procedures on a case-by-case basis.

Note: Use of the department-designated 24-hour hotline is for notification of spills. The hotline operated by the division of emergency management in cooperation with the department can be reached at 1-800-943-0003.

Note: If a notification of a natural gas discharge is made to the National Response Center in compliance with 49 C.F.R. § 191.5 (Code of Federal Regulations) it is not necessary to report under this chapter. The department does not re-

quire natural gas discharges which are not reportable to the National Response Center to be reported to the Department. The department will receive natural gas discharge notifications through the National Response Center.

(bm) Hazardous substance discharges discovered through soil, water or other analyses may be reported by telefaxing a completed discharge notification form provided by the department, or by alternate notification procedures approved by the department. Laboratory results shall be included with the completed discharge notification form.

Note: Use of the discharge notification form is intended only for notification of discharges typically found through tank closure assessment, phase II environmental assessments, or by other discoveries through soil, water or other media analysis. The discharge notification form can be obtained and submitted through the RR Program Submittal Portal at the following web address: <https://dnr.wisconsin.gov/topic/Brownfields/Submittal.html>.

(c) The notification required by this subsection shall contain the following information to the extent practicable or applicable:

1. Name, address, and telephone number of the person reporting the discharge.

2. Name, address, and telephone number of the discharger, or owner and operator of the UST system and any other potentially responsible persons.

3. Date, time, and duration of the discharge.

3m. Location of the discharge including street address, county, town, city or village, if appropriate, quarter-quarter section, township, range, geographic position obtained in accordance with the requirements of s. NR 716.15 (5) (d), and legal description of lot, if located in a platted area.

Note: The provisions in s. NR 716.15 (5) (d) require that all geographic position data shall be obtained and submitted to the department in accordance with the following requirements: 1) for properties that are not more than 200 feet wide or long, a single point geographic position shall be obtained at least 40 feet within the boundaries of the property, or as close to the center of the property as possible if the property is less than 80 feet wide or long. For properties that are more than 200 feet wide or long, coordinates describing the approximate location of the property's boundaries, forming a polygon, shall be obtained; and 2) geographic position data shall be originally collected in Wisconsin Transverse Mercator '91 or projected onto Wisconsin Transverse Mercator '91.

4. Identity, physical state, and quantity of the material discharged.

5. Physical, chemical, hazardous, and toxicological characteristics of the substance.

6. Cause of the discharge.

7. Immediate actions being taken and the name of the contractor or other person performing the action.

8. Source, speed of movement, and destination or probable destination of the discharged hazardous substance.

9. Actual or potential impacts to human health or the environment, including actual or potential impacts to drinking water supplies.

10. Weather conditions existing at the scene, including presence of precipitation and wind direction and velocity.

11. Other agencies on-scene during the discharge incident.

(2) CONTAINMENT, CLEANUP, DISPOSAL, AND RESTORATION. Responsible parties shall comply with the requirements of chs. NR 700 to 754 for response actions to discharges of hazardous substances.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: am. (title), (1) (a), (b), cr. (1) (bm), am. (1) (c) (intro.), 3., cr. (1) (c) 3m., am. (1) (c) 11., (2) Register October 2013 No. 694, eff. 11-1-13.

NR 706.07 Exemptions. The exemptions in this section are limited to notification or penalty provisions. Responsible parties shall comply with the response requirements of s. NR 706.05 (2) for all situations. While notification of the discharge is exempt under this section, a response to the discharge is still required under s. 292.11, Stats. The exemptions are as follows:

(1) STATUTORY NOTIFICATION EXEMPTIONS. The following persons are not required to notify the department of a hazardous substance discharge that falls within any of the following categories:

(a) Any person holding a valid permit under ch. 283, Stats., is exempt with respect to substances discharged within the limits authorized by the permit.

(bm) Any person discharging in conformity with a permit or program approved under chs. 280 to 299, Stats., is exempt with respect to substances discharged within the limits authorized by the permit or program.

(cm) Any person applying a registered pesticide according to the label instructions, or applying a fertilizer at or below normal and beneficial agronomic rates, is exempt with respect to that pesticide or fertilizer application.

(2) DE MINIMIS EXEMPTIONS. (a) Except when reporting is required under par. (b), the following discharges do not require notification to the department:

1. A discharge of gasoline or another petroleum product that is completely contained on an impervious surface.

2. A discharge of gasoline if less than one gallon is discharged onto a surface that is not impervious or runs off an impervious surface.

3. A discharge of a petroleum product other than gasoline if less than 5 gallons is discharged onto a surface that is not impervious or runs off an impervious surface.

4. A discharge of a dry fertilizer if the amount is less than 250 pounds.

5. A discharge of a liquid fertilizer if the amount is less than 25 gallons, unless the reportable quantities listed for chemicals in 40 CFR part 117 or 302 are more restrictive, in which case the values in 40 CFR part 117 or 302 apply.

6. A discharge of pesticides registered for use in Wisconsin if the amount discharged when diluted as indicated on the pesticide label would cover less than one acre of land if applied according to label instructions, unless the reportable quantities listed for chemicals in 40 CFR part 117 or 302 are more restrictive, in which case the values in 40 CFR part 117 or 302 apply.

7. A discharge of substances specifically listed in 40 CFR part 117 or 302 if the amount discharged in any 24 hour period is less than the amount listed in 40 CFR part 117 or 302. If responsible parties are uncertain about how to interpret or apply 40 CFR part 117 or 302, they may report any discharge to the department.

Note: Notification requirements under this rule may not meet the obligations for responsible parties to report hazardous substance releases to the federal government. Questions on federal requirements should be directed to the US EPA Superfund hotline at 1-800-535-0202.

(b) Whenever, in light of site-specific conditions, any of the following criteria apply, hazardous substance discharges which would otherwise be exempt from notification under par. (a) shall be reported as required in s. NR 706.05:

1. The discharged substance has not evaporated or has not been cleaned up in compliance with the requirements of chs. NR 700 to 754.

2. The discharged substance has adversely impacted or threatens to adversely impact the air, lands or waters of the state either as a single discharge or when accumulated with previous discharges, even though the degree of the impact or threatened impact may not have been thoroughly evaluated.

Note: Where there is a sheen on surface water or the discharged substance has entered or is on the verge of entering the waters of the state, typically via a storm sewer, or drainage ditch, the department would consider the discharged substance to adversely impact or threaten to adversely impact the waters of the state.

3. The discharged substance has caused or threatens to

cause acute or chronic human health impacts if immediate action, such as evacuation or in-place sheltering, is not taken. If the responsible party is unsure about potential human health effects, the responsible party shall consult with local or state health officials, and the responsible party shall make a notification decision based on that consultation.

4. The discharged substance presents or threatens to present a fire or explosion hazard or other safety hazards, such as slippery conditions on a roadway.

Note: In determining whether a threat exists under subd. 1., 2., 3., or 4., the standard of conduct to which the responsible party must conform is that of a reasonable person under the site-specific circumstances.

(3) EXEMPTION FROM PENALTIES. Law enforcement officers or members of fire departments using hazardous substances in carrying out their responsibility to protect public health, safety or welfare are exempted from the penalty requirements of s. 292.11 (9), Stats., but shall report to the department any discharges of a hazardous substance occurring within the performance of their duties.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; CR 12-023: cr. (intro.), am. (1) (title), r. (1) (b), renum. (1) (c) to (1) (bm), (1) (d) to (1) (cm), am. (2) (b) 1., cr. (3) Register October 2013 No. 694, eff. 11-1-13.

NR 706.11 Additional responsibilities for owners or operators of underground storage tank systems.

(2) ADDITIONAL INFORMATION. The owner or operator of an UST system shall document and submit to the department, within 72 hours of the original notification, any additional information that the owner or operator obtains concerning the discharge which was not included at the time of the original notification, unless otherwise directed by the department.

(3) CLOSURE ASSESSMENT REPORTS. The owner or operator of an UST system shall submit to the department any tank closure assessment report that is generated to document compliance with the requirements of ch. ATPC 93, regardless of whether a discharge of a hazardous substance was detected during the site assessment.

(3m) SOURCE AND CAUSE OF DISCHARGES. At the time the owner or operator of an UST system reports a discharge from an UST system, they shall also provide information to the department on the source and cause of the discharge.

Note: Sources may include tanks, piping, dispensers, submersible turbine pump areas, delivery problems, etc. Causes may include spills, overfills, physical or mechanical damage, corrosion, installation problems, etc., and those situations where the cause is unknown.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; CR 12-023: am. (title), r. (1), cr. (3m), r. (4) Register October 2013 No. 694, eff. 11-1-13; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register October 2013 No. 694.