

## CHAPTER 23.1-04 HAZARDOUS WASTE MANAGEMENT

### 23.1-04-01. Declaration of purpose.

The department of environmental quality shall administer this chapter to:

1. Protect human health and the environment from the effects of the improper, inadequate, or unsafe past or present management of hazardous waste and underground storage tanks.
2. Establish a program to regulate hazardous waste from the time of generation through transportation, storage, treatment, and disposal.
3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as preferable alternatives to landfill disposal.
4. Assure the safe and adequate management of hazardous waste with a minimum of hazardous waste disposal sites within the state.
5. Establish a program to regulate underground storage tanks.
6. Promote reduction of surface and ground water contamination resulting from leaking underground storage tanks.

### 23.1-04-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Commercial facility" means all contiguous land, structures, appurtenances, and improvements on the land used for treatment and disposal of hazardous waste received from offsite generators.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so the solid waste or hazardous waste or any hazardous constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.
4. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.
5. "Generator" means any person, by site, through act or process produces hazardous waste or first causes a hazardous waste to become subject to regulation.
6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that:
  - a. Because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may:
    - (1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
    - (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or
  - b. Is identified by the mechanisms established in this chapter, including those that exhibit extraction procedure toxicity, corrosivity, ignitability, or reactivity.
7. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
8. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during transportation from the site of generation to the site of storage, treatment, or disposal.
9. "Owner" means, in the case of an underground storage tank:
  - a. In use after November 7, 1984, any person that owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.

- b. In use before November 8, 1984, but no longer in use after that date, any person that owned or operated such a tank immediately before the discontinuation of the tank's use.
10. "Regulated substance" means:
- a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], as amended, but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.], as amended.
  - b. Petroleum, including crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit [16 degrees Celsius] and fourteen and seven-tenths pounds per square inch [101.35 kilopascal] absolute).
11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.
12. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.
13. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
14. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
15. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility at which hazardous waste has been generated.
16. "Underground storage tank" means any one or combination of underground tanks, including underground pipes connected to an underground tank, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to it, is ten percent or more beneath the surface of the ground. Exemptions from this definition and rules adopted under this chapter include:
- a. Farm or residential tanks of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes.
  - b. Tanks used for storing heating oil for consumptive use on the premises where stored.
  - c. Septic tanks.
  - d. A pipeline facility, including gathering lines, regulated under:
    - (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129, 49 U.S.C. 60101 et seq.].
    - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
  - e. Surface impoundments, pits, ponds, or lagoons.
  - f. Storm water or wastewater collection systems.
  - g. Flow-through process tanks.
  - h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
  - i. Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated on or above the surface of the floor.

17. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological, or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges, which are point sources subject to permits under section 402 of the Federal Clean Water Act [Pub. L. 95-217; 22 U.S.C. 1251 et seq.], as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 [Pub. L. 83-703; 42 U.S.C. 2011 et seq.], as amended, or to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 30 U.S.C. 1201 et seq.].

#### **23.1-04-03. Powers and duties of the department.**

The department shall administer and enforce this chapter. The department shall:

1. Administer the state hazardous waste management and underground storage tank programs under this chapter.
2. Survey hazardous waste generation and management practices in the state.
3. Adopt, modify, repeal, and enforce rules governing the management of hazardous waste and underground storage tanks.
4. Enter agreements with other local, state, or federal agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks to promote consistency in enforcement and avoid duplication in regulation.

#### **23.1-04-04. Institutional controls, responsibility exemptions, and regulatory assurances for contaminated properties - Continuing appropriation.**

Repealed by S.L. 2021, ch. 212, § 19.

#### **23.1-04-05. Hazardous waste regulations.**

Under chapter 28-32, the department shall adopt rules:

1. For determining whether any waste is hazardous.
2. Prescribing procedures for generators of hazardous waste.
3. For the issuance of permits for the storage, treatment, and disposal of hazardous waste in an environmentally sound manner, utilizing best scientific and engineering judgment.
4. Prescribing procedures under which the department shall issue, renew, modify, suspend, revoke, or deny permits required by this chapter. The rules must provide that no permit may be revoked until the department has provided the affected party with written notice of the intent of the department to revoke the permit, the reasons for the revocation, and an opportunity for a hearing.
5. For the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.
6. For the transportation, containerization, and labeling of hazardous wastes which must be consistent with those issued by the United States department of transportation and the public service commission and department of transportation.
7. Prescribing procedures and requirements for a manifest system.
8. Prescribing procedures and requirements for the following:
  - a. Recordkeeping.
  - b. Reporting.
  - c. Sampling.
  - d. Performing analysis.
  - e. Monitoring.
9. Requiring the owner or operator of any hazardous waste treatment, storage, or disposal facility to demonstrate evidence of financial responsibility in the form and amount determined by the department to be necessary to ensure that, upon

- abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent damage to human health and the environment.
10. Any other rules necessary to carry out the purposes of this chapter.

#### **23.1-04-06. Underground storage tank regulations.**

Under chapter 28-32, the department shall adopt rules:

1. For maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
2. For maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. For reporting of any releases and corrective action taken in response to a release from an underground tank.
4. For taking corrective action in response to a release from an underground storage tank.
5. For the closure of tanks to prevent releases of regulated substances into the environment.
6. For maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.
7. Establishing standards for installation of underground storage tanks.
8. Establishing standards for construction and performance of new underground storage tanks.
9. For notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. For a permit fee system to own, install, or operate an underground storage tank.

However, regulations adopted by the department may not be more stringent than applicable requirements of the federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.] and the federal Energy Policy Act of 2005 [Pub. L. 109-58; 42 U.S.C. 15801 et seq.] in effect on August 1, 2007.

#### **23.1-04-07. Municipal underground storage tank ordinances.**

A county, city, or township may not enact and enforce an underground storage tank ordinance if the ordinance is more stringent than this chapter and the rules authorized to be adopted under this chapter.

#### **23.1-04-08. Permits.**

1. A person may not construct, substantially alter, or operate any hazardous waste treatment, storage, or disposal facility, nor may any person treat, store, or dispose of any hazardous waste without obtaining a permit from the department for the facility or activity. A hazardous waste treatment, storage, or disposal facility may not be issued a permit unless the applicant demonstrates to the satisfaction of the department that a need for the facility exists and the facility can comply with all applicable requirements under this chapter.
2. Permits must contain the terms and conditions the department deems necessary.
3. Permits must be issued for a period of five years.
4. Any permit issued under this section may be revoked by the department according to the rules adopted under subsection 3 of section 23.1-04-05 at any time if the permittee fails to comply with the terms and conditions of the permit, or with applicable requirements under this chapter.
5. If a permit applicant proposes modifications of an existing facility or the department determines modifications are necessary to conform to the requirements established under this chapter, the permit must specify the time allowed to complete the modifications.

6. a. Before the issuing of a permit the department shall:
  - (1) Publish in the official county newspaper of the county in which the proposed facility will be located and in major local newspapers of general circulation and broadcast over local radio stations notice of the department's intention to issue the permit; and
  - (2) Transmit in writing notice of the department's intention to issue the permit to each unit of local government having jurisdiction over the area in which the facility is proposed to be located and to each state agency having any authority under state law regarding the construction or operation of the facility.
- b. If within forty-five days the department receives written notice of opposition to the department's intention to issue a permit and a request for a hearing, or if the department determines on its own initiative, the department shall hold an informal public hearing, including an opportunity for presentation of written and oral views, on whether the department should issue a permit for the proposed facility. Whenever possible the department shall schedule the hearing at a location convenient to the nearest population center to the proposed facility. Notice of the hearing must be published in the manner provided in subdivision a. The notice must contain the date, time, place, and subject matter of the hearing.
7. Any facility required to have a permit under this chapter is exempt from the permit requirements of chapter 23.1-08.
8. Any facility required to have a permit under this section which was in existence on July 1, 1981, or the effective date of any statutory or regulatory change in the hazardous waste management which requires the facility to have a permit, and has made an application for a permit under this section must be treated as having been issued the permit until the final administrative disposition of the application is made.

**23.1-04-09. Fees - Deposit in operating fund.**

The department by rule may provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates for registering, licensing, or permitting hazardous waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**23.1-04-10. Commercial facility permits and ordinances.**

1. Counties and cities may issue permits for commercial facilities pursuant to section 23.1-04-08 and may enact and enforce commercial facility ordinances if the ordinances are equal to or more stringent than this chapter and the rules adopted under this chapter.
2. In addition to the requirements for obtaining a permit under this chapter, a person may not construct, substantially alter, or operate any commercial facility nor may any person dispose of any hazardous waste without first obtaining a permit from the department and from the county, or a city if the commercial facility is located or proposed to be located within the territorial zoning authority of the city. The department, in conjunction with the governing body of the county or city in which the commercial facility is located or proposed to be located, shall hold a public hearing in the manner provided in section 23.1-04-08.

**23.1-04-11. Disclosure of information before issuance, renewal, transfer, or major modification of permit.**

Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

**23.1-04-12. Inspections - Right of entry.**

To develop or enforce any rule authorized by this chapter or enforce a requirement of this chapter, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place, facility, or site at which wastes or substances that the department has reason to believe may be hazardous or regulated are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled.
2. Inspect and obtain samples of any waste or substance that the department has reason to believe may be hazardous or regulated, including samples from any vehicles in which wastes are being transported as well as samples of any containers or labels.
3. Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter.

**23.1-04-13. Monitoring, analysis, and testing - Civil penalty.**

1. If the department determines, upon receipt of any information, that:
  - a. The presence of any hazardous waste, hazardous constituent, or regulated substance at a facility or site at which hazardous waste or regulated substance is, or has been, stored, treated, or disposed of; or
  - b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment, the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.
2. In the case of any facility or site not in operation at the time a determination is made under subsection 1 with respect to the facility or site, if the department finds the owner or operator of the facility or site could not reasonably be expected to have actual

knowledge of the presence of hazardous waste or regulated substance at the facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of the facility or site which could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection 1.

3. A person that violates this section is subject to a civil penalty of five thousand dollars per day of violation.

#### **23.1-04-14. Imminent hazard.**

Upon receipt of information that the past or present handling, storage, transportation, treatment, or disposal of any waste or regulated substance may present an imminent and substantial endangerment to health or the environment, the department may take emergency action necessary to protect health or the environment.

#### **23.1-04-15. Enforcement penalties and citizen participation.**

1. If the department finds a person is in violation of a permit, rule, standard, or requirement of this chapter, the department may issue an order requiring the person to comply with the permit, rule, standard, or requirement, and the department may bring an action for a civil or criminal penalty, including an action for injunctive relief. An action under this chapter must be brought in the district court for the county in which the violation occurred or in which the party in violation has the party's residence or principal office in the state.
2. A person that violates a provision of this chapter or any rule, standard, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
3. A person that knowingly violates a provision of this chapter or a rule, standard, or permit condition adopted under this chapter, or that knowingly makes a false statement or representation in documentation required by this chapter, is subject to a fine not to exceed twenty-five thousand dollars per day of violation, to imprisonment for a period not to exceed one year, or both.
4. A person that knowingly violates a provision of this chapter in a manner that manifests extreme indifference to human life and places an individual in imminent danger of death or serious bodily injury, is subject to a fine not to exceed fifty thousand dollars per day of violation, to imprisonment for a period not to exceed two years, or both.
5.
  - a. A person having an interest that may be adversely affected by a violation of this chapter may commence a civil action to compel compliance with this chapter, or a rule, order, or permit issued under this chapter.
  - b. Notice of the violation must be given to the department and to an alleged violator sixty days before commencement of a citizen suit brought under this subsection.
  - c. A person with an interest that may be adversely affected by a violation of this chapter may intervene as a matter of right in a civil action brought by the department to require compliance with this chapter.
6. An administrative action brought under this chapter must be conducted in accordance with chapter 28-32.

#### **23.1-04-16. Applicability.**

1. The hazardous waste provisions of this chapter do not apply to the following wastes to the degree to which they are exempted from regulation by sections 3001(b)(2) and 3001(b)(3)(A) of the Resource Conservation and Recovery Act, as amended by the Solid Waste Disposal Act Amendments of 1980 [Pub. L. 96-482; 42 U.S.C. 6901 et seq.]:
  - a. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.

- b. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
  - c. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
  - d. Cement kiln dust waste.
2. If a waste disposal site for any of the wastes specified in subsection 1 is to be closed, the owner or operator shall file a plat of the disposal site with the recorder of each county in which the facility is located, together with a description of the wastes placed in the site.

**23.1-04-17. Limited liability for subsequent owners of property.**

1. Notwithstanding any other provision of law and except as expressly provided by federal law, a person that acquires property is not liable for any existing hazardous waste or substance on the property if:
  - a. The person acquired the property after the disposal or placement of the hazardous waste or substance on, in, or at the property, and at the time the person acquired the property that person did not know and had no reason to know any hazardous waste or substance was disposed of on, in, or at the property;
  - b. The person is a governmental entity that acquired the property by escheat, by tax sale, foreclosure, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or
  - c. The person acquired the property by inheritance or bequest and that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property.
2. To establish the person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this requirement, a court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property as uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate inspection.
3. A person that has acquired real property may establish a rebuttable presumption that the person has made all appropriate inquiry if the person establishes that, immediately before or at the time of acquisition, the person performed an investigation of the property, conducted by an environmental professional, to determine or discover the obviousness of the presence or likely presence of a release or threatened release of hazardous waste or substances on the property.
4. The presumption does not arise unless the person has maintained a compilation of the information reviewed in the course of the investigation.
5. This section does not diminish the liability of any previous owner or operator of the property which would otherwise be liable under this chapter, and nothing in this section affects the liability under this chapter of a person that, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste or substance the subject of the action relating to the property.
6. As used in this section, environmental professional means an individual, or entity managed or controlled by an individual, who, through academic training, occupational experience, and reputation, such as engineers, environmental consultants, and attorneys, can objectively conduct one or more aspects of an environmental investigation.