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Due Diligence and Compliance – Responding to a Spill

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Spill Reporting



Spill Reporting

Responsibility to report spills

Minn. Stat. § 115.061 DUTY TO NOTIFY; AVOIDING WATER POLLUTION.

- (a) Except as provided in paragraph (b), it is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby.

Spill Reporting



Spill Reporting

Responsibility to report spills

Minn. Stat. § 115.061 DUTY TO NOTIFY; AVOIDING WATER POLLUTION. (Continued)

- (b) Notification is not required under paragraph (a) for a discharge of five gallons or less of petroleum, as defined in section 115C.02, subdivision 10. This paragraph does not affect the other requirements of paragraph (a).

Spill Reporting

How much of a spill triggers reporting requirement?

- Minn. Stat. § 115.061 – any amount of a spilled material may trigger reporting requirement
- Petroleum Exception – more than 5 gallons
- Indoor Spill – Floor Drains/POTW
- Groundwater or surface water impacts



1-800-422-0798

MINNESOTA DUTY OFFICER

BCA Operations Center

FAX: (651) 296-2300

Satellite Phone: 1-254-543-6490

(651) 649-5451



Spill Reporting

Responsibility to report spills

Reporting Statutes – Upper Midwest

- **North Dakota** – N.D.C.C. § 33-16-02.1-11
- **South Dakota** – S.D.C.L. § 34A-12-9
- **Iowa** – Iowa Code § 455B.386
- **Wisconsin** – Wis. Stat. § 292.11



Spill Reporting

NRC must be notified if there:

- Violate applicable water quality standards;
- Cause a film or "sheen" upon, or discoloration of the surface of the water or adjoining shorelines; or
- Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

 **Report an Oil or Chemical Spill**

Contact the National Response Center at:
800-424-8802.

Spill Reporting

- **Other Environmental Laws That Require Reporting of Spills**
- **RCRA - Generator requirements** - Minn. Rules pt. 7045.0275
- **Prohibition of Discharge to Unsaturated Zone** – Minn. Rules pt. 7060.0600, sub. 2 and 3.
- **CERCLA Reporting Requirements**



Spill Reporting

Where Do Spills Commonly Occur?

- **Transportation Accidents**

Roadside Ditches, Surface Water Impacts

- **Tank Storage Facilities**

Tank filling, Tank system leaks (tanks, lines)

- **Industrial facilities**

Within Secondary Containment, outside in yard or inside operations, flow to sewer, escaping from the building.



Spill Impacts

Size and Impact of Spills:

- **Small (range of amount spilled):** Incidental release from petroleum or chemical handling.



Spill Impacts

Size and Impact of Spills:

- **Medium (range of amount spilled):** Spill from a loading accident, release from a tank (sudden or occurring over a period of time). Corrective measures may be more streamlined.



Spill Impacts

Size and Impact of Spills:

- **Large (range of amount spilled): Pipeline spills - pressurized flows, spill could be underground or spilled material could flow to underground waters. Rail derailments, flow onto land or into waters. Cleanup extensive and may be ongoing.**



Spill Impacts

Sensitive Receptors

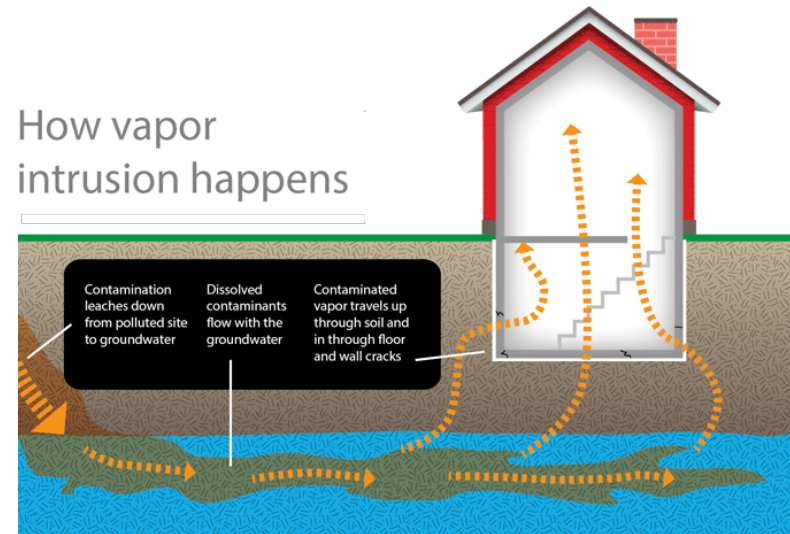
- Roadside ditches
- Surface Waters - Creeks, Streams, Rivers and Lakes
- Wetlands
- Groundwater
- Municipal Water Supplies
- Private drinking water wells



Spill Impacts

Sensitive Receptors

- **Vapor Intrusion – VOCs, particularly PCE or TCE releases, may be discovered through groundwater or sub-slab sampling. Small amounts of released material may cause a groundwater plume and create a soil vapor problem.**
- **TO-15 analytical sampling results in Minnesota that exceed the ISVs require mitigation.**



Real Estate Transactions

Spill Reporting in Real Estate Transactional Practice

- **Phase I may identify one or more “recognized environmental conditions (RECs)”.**
- **Phase II testing may show groundwater impacts.**
- **Receipt of laboratory report or Phase II may trigger reporting requirements.**
- **Reporting triggers “corrective actions” and requirements for investigation and remediation.**

Real Estate Transactions

Corrective Actions:

- Investigation of On-Site and/or Off-Site Conditions
- Free product removal
- Tank removal
- Source area remediation
- Liability Assurances



Real Estate Transactions

Corrective Actions (Continued)

- **Plume Delineation – Horizontal and Vertical Impacts**
- **Off-Site Impacts**
- **Access to Test Off-Site**
- **Soil Vapor Impacts in Surrounding Buildings**
- **Definition of Area of Concern (AOC)**

Abandoned Waste

- Tanks and Drums
- Who's responsible?
 - Landlord
 - Property owner
 - Government entity (abandoned waste)
- Cost recovery



Response Plans

- **Minn. Stat. Chapter 115E**

The “Spill Bill,” as Minnesota Statute 115E is commonly known, requires companies that transport, store or handle hazardous substances or oil to respond to a release in a planned and effective manner to protect health, safety and the environment.

- **Preparedness and compliance requirements**

- **Response Plan**



Response Plans

- Expedited handling is critical
- Third Party Responder v. Company Staff (Bay West services)
- 40 Hour HAZWOPER Requirement



Response Plans

- **Spill Prevention, Control, Countermeasure (SPCC)**
- **Facility Response Plan (FRP)**
- **Tank Operator Certification**



Liability for Spills

- **Cost of spill response, investigation and corrective actions.**
- **Civil penalties for failure to report and recover release.**
- **Media exposure – public relations**
- **Third party liability**



Cleanup Responsibility for Spills

- Free product recovery
- Investigation of extent of impacts
- Risk based clean-ups



Cleanup Responsibility for Spills

- **Proper Disposal**



Cleanup Responsibility for Spills

- Demand Letter
- Insurance Claims
- Complaint
 - Common law claims – trespass, nuisance, negligence
 - Statutory cost recovery – CERCLA/MERLA



Cleanup Responsibility for Spills

Tank Registration Laws

- All underground storage tank (UST) facilities are required to designate a Class A, Class B, and Class C operator to the facility, with some exceptions for unattended facilities. Class A, B, and C operators must be either the owner or operator of the facility or an employee of the owner or operator.

Thank you!



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