

# APPENDIX C

## CHAPTER 34A-12.<sup>1</sup>

### REGULATED SUBSTANCE DISCHARGES

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#### § 34A-12-1.

(1) "Corrective action," any action taken to minimize, contain, eliminate, remediate, mitigate, and clean up a discharge, including any necessary emergency remedial action;

(2) "Corrective action cost," any cost incurred by the department in the investigation of a discharge; removal, attempted removal, emergency remedial efforts, and corrective actions performed on a discharge; or the performance of reasonable measures undertaken to prevent or mitigate damage to the public health, safety, welfare, or environment of the state;

(3) "Department," the Department of Environment and Natural Resources;

(4) "Discharge," an intentional or unintentional act or omission which results in the release, spill, leak, emission, escape, or disposal of a regulated substance into the environment and which harms or threatens harm to

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<sup>1</sup> Only statute numbers and text are included. Catchlines are copyrighted.

public health or safety or the environment. The term excludes any discharge made in compliance with the conditions of a federal or state permit;

(5) "Emergency remedial effort," any action taken to protect the public health, safety, or the environment from imminent danger resulting from a discharge, and any action taken to contain a discharge which, if not contained, will in time pose a greater threat to the public health, safety, or the environment than if such action is not immediately taken;

(6) "Environment," land, including public and private property, surface and underground waters, fish, wildlife, biota, air and other such resources within the state;

(7) "Person," public or private corporations, companies, associations, societies, firms, limited liability companies, partnerships, cooperatives, joint stock companies, individuals, the United States, this state and any of its political subdivisions and agencies, and any other state;

(8) "Regulated substance," the compounds designated by the department under §§ 23A-27-25, 34A-1-39, 34A-6-1.3(17), 34A-11-9, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68, including pesticides and fertilizers regulated by the Department of Agriculture, the hazardous substances designated by the Federal Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act Amendments of 1972, Pub.L. 92-500 as amended by the Clean Water Act of 1977, Pub.L. 95-217, the toxic pollutants designated by Congress or the Federal Environmental Protection Agency pursuant to section 307 of the Toxic Substances Control Act, Pub.L. 99-519, the hazardous substances designated by the Federal Environmental Protection Agency pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub.L. 96-510, and petroleum, petroleum substances, oil, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock, and any other oil or petroleum substance. This term does not include sewage and sewage sludge;

(9) "Response fund," the regulated substance response fund established by § 34A-12-3;

(10) "Responsible person," a person who has caused a discharge of a regulated substance, or a person who is an owner or operator of a tank at any time during or after a discharge;

(11) "Secretary," the secretary of the Department of Environment and Natural Resources;

(12) "Tank," any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is, or has been, used to contain or dispense a regulated substance which is either stationary or attached to a motor vehicle. This includes pipeline facilities which transport and store regulated substances. Facilities used exclusively for natural gas and liquified natural gas storage and transport are not included as part of §§ 23A-27-25, 34A-1-39, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68.

**§ 34A-12-2.**

The petroleum release compensation fund established pursuant to § 34A-13-18, shall make a one time contribution of three hundred fifty thousand dollars, to the response fund within one year after March 1, 1988, and shall contribute one hundred thousand dollars annually for five years to the groundwater protection fund to fund the groundwater research and education program established pursuant to § 46A-1-85.

**§ 34A-12-3.**

There is hereby established in the state treasury an operating fund to be known as the regulated substance response fund for the purpose of providing funds for the clean up of regulated substance discharges. In addition to the money from the petroleum release cleanup fund as provided in § 34A-12-2 and the temporary pesticide registration fee increase provided by § 38-20A-9, funds from the following sources shall be deposited into the response fund:

- (1) Direct appropriations to the response fund from the general fund;
- (2) Money, other than criminal fines assessed in criminal actions, recovered by the state in any action or administrative proceeding based upon violation of the state's environmental statutes or upon damage to the environment, including actions for administrative expense recoveries, civil penalties, compensatory damages, and money paid pursuant to any agreement, stipulation, or settlement in such actions or proceedings;
- (3) Interest attributable to investment of the money in the response fund;
- (4) Money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the response fund.

All money in the response fund is continuously appropriated for the purposes specified in § 34A-12-4. All money received by the department for the response fund shall be set forth in an informational budget pursuant to § 4-7-7.2 and be annually reviewed by the Legislature.

**§ 34A-12-3.1.**

A subfund of the regulated substances response fund is hereby created for recovered leaking underground storage tank trust fund moneys. The subfund shall be separately maintained and administered in the manner required by the Superfund Amendments and Reauthorization Act of 1986 as amended as of January 1, 1990. Moneys deposited in the subfund shall be disbursed and used only for the purposes authorized under subtitle I of the Resources Conservation Recovery Act as amended, October 1986.

**§ 34A-12-3.2.**

On July first of each year, the state treasurer shall transfer all amounts in excess of one million seven hundred fifty thousand dollars from the regulated substance response fund established pursuant to § 34A-12-3, to the environment and natural resources fee fund established pursuant to § 1-40-30 to be expended in the manner and for the purposes of that fund.

**§ 34A-12-4.**

When necessary in the performance of his duties under §§ 23A-27-25, 34A-1-39, 34A-2-75, 34A-6-1.4, 34A-6-1.31, 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-14, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68 and Title 34A relative to discharges, the secretary may expend funds from the response fund to provide for the costs of investigations, emergency remedial efforts, corrective actions and managerial or administrative activities associated with such activities. The secretary's use of the response fund shall be based upon the following:

(1) In the case of an investigation, when the secretary determines that a discharge has probably occurred and that the general operating budget of the department for such purposes is not adequate to cover the costs of the necessary investigatory activities;

(2) In the case of an emergency remedial effort, when the secretary determines that a discharge has occurred and that corrective actions shall be immediately undertaken to protect an imminent threat to the public health or safety or to contain a discharge which, if not immediately contained, shall in time pose a significantly greater threat to public health or safety or to the environment of this state than if such action is not immediately taken;

(3) In the case of a discharge not of an emergency nature when the secretary determines that a discharge has occurred, that a responsible party or liability fund capable of performing the corrective actions either cannot be identified or refuses to undertake corrective actions, and that corrective actions shall be undertaken to protect the public health, safety, welfare, or environment of the state.

**§ 34A-12-5.**

The department shall perform all administrative functions relative to the response fund and corrective actions funded by it. Disbursements from the response fund shall be on warrants drawn by the state auditor pursuant to vouchers approved by the secretary.

**§ 34A-12-6.**

The department may bring an action in circuit court against the responsible person to obtain reimbursement for corrective action costs expended from the response fund pursuant to §§ 23A-27-25, 34A-1-39, 34A-2-75, 34A-6-1.4, 34A-6-1.31, 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-14, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68. The secretary may seek recovery of other funds expended by the department as a result of a discharge through actions brought under the provisions of Title 34A.

**§ 34A-12-7.**

The secretary shall promulgate rules pursuant to chapter 1-26 to provide for a list of regulated substances whose discharge harms, or threatens harm to, the public health, safety, welfare, or natural resources of the state.

**§ 34A-12-8.**

The discharge of a regulated substance is prohibited. This section does not apply to discharges of regulated substances pursuant to and in compliance with the conditions of a federal or state permit.

**§ 34A-12-9.**

Any person who has caused a discharge of a regulated substance shall immediately report the discharge to the department. The department may promulgate rules pursuant to chapter 1-26 to provide for the procedures to be followed in reporting a discharge.

**§ 34A-12-10.**

If a discharge in violation of § 34A-12-8 has occurred, or the department has reason to believe that a discharge in violation of § 34A-12-8 has occurred, the department shall order the responsible person to take corrective action concerning the discharge within a specified time. If the responsible person fails to comply with the department's order, the department may file an injunctive action in the circuit court of the county wherein the discharge has occurred seeking such corrective action. If the discharge occurs at any operation permitted under Title 34A or 45 and constitutes a violation of such permit, the department may order the operation to cease and desist further activity for the duration of the corrective action.

**§ 34A-12-11.**

The department may file an action in circuit court for preliminary and permanent injunctive relief whenever the secretary determines emergency remedial efforts are necessary to prevent, contain, control, or mitigate a discharge.

**§ 34A-12-12.**

Any person who has caused a discharge of a regulated substance in violation of § 34A-12-8 is strictly liable for the corrective action costs expended by the department pursuant to §§ 23A-27-25, 34A-1-39, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68.

**§ 34A-12-13.**

All corrective action costs expended pursuant to §§ 23A-27-25, 34A-1-39, 34A-2-75, 34A-6-1.4, 34A-6-1.31, 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-14, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68 shall constitute a lien on all property owned by the responsible person when a notice of lien is filed with the register of deeds in the county in which such property is located. The notice of lien shall contain a description of the property of the responsible person upon which the lien is made, a description of the property upon which corrective action or emergency remedial efforts were made, and a statement of the corrective action costs expended from the response fund. Upon entry, the lien shall attach to all real property of the responsible person. The lien has priority over all other claims or liens on the property, except those which had been perfected prior to the department's filing of the notice of lien.

**§ 34A-12-13.1.**

Nothing in this chapter limits the authority of the department to establish environmental standards for remediation of air, soil, or water pollution pursuant to Title 34A, or to enforce site specific environmental remediation requirements in particular cases. This section does not limit the fund's authority to determine what constitutes reasonable and necessary expense in a corrective action.

**§ 34A-12-14.** Nothing in §§ 23A-27-25, 34A-1-39, 34A-2-75, 34A-6-1.4, 34A-6-1.31, 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-14, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68 precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under §§ 23A-27-25, 34A-1-39, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68. The remedies provided by §§ 23A-27-25, 34A-1-39, 34A-12-1 to 34A-12-15, inclusive, 38-20A-9, 45-6B-70, 45-6C-45, 45-6D-60, and 45-9-68 are in addition to those provided by existing statutory or common law.

**§ 34A-12-15.**

All money collected by the department in the enforcement of the provisions of Titles 34A and 45, or in any other action, proceeding or settlement based upon damage to the environment or a violation of the state's environmental laws, excluding criminal proceedings for criminal fines, shall be deposited into the response fund.

**§ 34A-12-16.**

If the department has determined that a discharge has occurred, the department shall conduct an investigation to determine the responsible person. The investigation may include a title search of the affected property and shall attempt to designate as the responsible person the person deemed to be the most responsible for the occurrence of the discharge. If the identity of the person who caused the discharge can be determined, that person shall be designated as the responsible person. If the identity of the person who caused the discharge cannot be determined, the owner of the property or operator of the tank at the time of the discharge shall be designated as the responsible person. If the person deemed responsible for the discharge contests the department's decision, a title search of the affected property shall be done.

**§ 34A-12-17. Moved to § 34A-2-71.1.**

**§ 34A-12-18 to 34A-12-24. Moved to §§ 1-50-5 to 1-50-11.**