

MDEQ Revised Spill Rules Take Effect

The Michigan Department of Environmental Quality (MDEQ) has promulgated revisions to the Waste Management Division rules on spills of oil and polluting materials.

The rules, known as the “Part 5 rules,” formerly required facilities that store large quantities of oil (“oil storage facilities”) and any other facility so situated that loss of polluting materials could reach the surface or ground waters of the state (“on-land facilities”) to comply with certain requirements regarding secondary containment, preparation of pollution incident prevention plans (PIPP) and spill reporting. The revisions to the Part 5 rules became effective on August 31, 2001.

Among other changes, the revisions expand the definition of “polluting material” to include salt, oil, any material included among the several hundred substances listed in Table 1 of the revised rule, and any compound or product that contains 1% or more, by weight, of any polluting material based on the material safety data sheet for that product or compound.

The revisions establish “threshold management quantities” (TMQs) for salt, oil and other polluting materials. On-land facilities with such substances in outdoor storage areas in amounts larger than the applicable TMQ are required to install secondary containment for those outdoor storage areas and develop and maintain a PIPP for such substances.

The revisions repeal the former requirement that secondary containment be adequate to contain “150% of the liquid polluting material stored or used.” Instead, containment is required for only 10% of the total volume of all tanks or containers or 100% of the single largest tank or container within the secondary containment structure, whichever is larger.

The use of TMQs represent a change from the prior rules, which required secondary containment and PIPPs for any volume of polluting materials.

“Threshold reporting quantities” (TRQs) are established for releases of oil and other polluting materials. For oil released to the ground, the TRQ is 50 lbs.; for oil released to water, the TRQ is any quantity that causes unnatural turbidity, color, oil films, foams, solids or deposits in the water; for salt released to the surface of the ground or a water of the state, the TRQ is 50 lbs. in solid form unless the use is authorized by MDEQ for deicing purposes, and 50 gallons in liquid form, unless authorized by MDEQ as

a dust suppressant or deicing agent, or permitted under MDEQ's water discharge rules; and for releases of all other polluting materials, the quantity specified for each material in table 1 of the rules, or any quantity that causes unnatural turbidity, color, oil films, foams, solids or deposits in a receiving water.

The owner, operator or manager of an oil storage facility or an on-land facility that releases or permits to be released any polluting material in excess of its TRQ during any 24-hour period is required to notify MDEQ as soon as practicable after detection of the release. The former rules required reporting of spills regardless of volume.

Among the events not considered "releases" under the rules are:

- Spills, leaks or discharges of less than 1,000 gallons of polluting material into a secondary containment structure that complies with the rules if cleanup of the spill, leak or discharge is initiated within 24 hours of detection, is completed as soon as practicable, but not more than 72 hours after detection, and no polluting materials directly or indirectly enter into any public sewer system or to the surface or ground waters of the state.
- Spills, leaks or discharges of less than 55 gallons of oil onto the ground if the spill, leak or discharge is detected and the oil recovered within 24 hours after the spill, leak or discharge, and if oil is not released directly or indirectly to any public sewer system or to the surface or ground waters of the state.
- Spills, leaks or discharges of less than 55 gallons of oil to surface water if effective recovery measures are implemented in response to the spill, leak or discharge immediately upon detection. The rules do not describe what would be an "effective recovery measure."
- Releases of air contaminants as defined under Part 55 of the Natural Resources and Environmental Protection Act (NREPA), and permitted releases as defined in Part 201 of NREPA.

The revisions provide that a person who is required to prepare a PIPP may integrate it with other plans required by other local, state or federal emergency and contingency planning requirements. The revisions also provide greater specificity regarding the required contents of the PIPP, require re-evaluation of the PIPP every three years, with updates as needed, and require the facility owner or operator to notify MDEQ when the PIPP is completed and certify that the facility is in full compliance with the rules. The

rules also require the facility owner or operator to notify the local emergency planning committee and the local health department that the PIPP has been completed and is available upon request.

Certain facilities are exempt from the rules, including:

- A facility that manages polluting materials in excess of threshold quantities if the polluting materials are managed in containers that do not individually exceed 10 gallons or 100 lbs. in capacity and that are located indoors at a facility that is designed, constructed, maintained and operated to prevent any spilled polluting material from being released directly or indirectly to surface or ground water.
- An on-land or oil storage facility that does not manage any other polluting materials in excess of an applicable TMQ and that is otherwise subject to the federal oil pollution prevention requirements of 40 C.F.R. Part 110 or 112 (1997), subject to certain conditions set forth in the rules.
- On-land or oil storage facilities that are subject to the fire prevention code or Parts 111, 211, 213 or 615 of NREPA and that comply with those provisions. Such facilities, however, still must comply with the Part 5 rules with respect to any polluting materials at the facility that are not already regulated under the fire prevention code or Parts 111, 211, 213 or 615 of NREPA.

Kenneth C. Gold