

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.20107a Duties of owner or operator having knowledge of facility; hazardous substances; obligations based on current numeric cleanup or site-specific criteria; liability for costs and damages; compliance with section; applicability of subsection (1)(a) to (c) to state or local unit of government; "express public purpose" explained.

Sec. 20107a.

(1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resource use restrictions established or relied on in connection with the response activities at the facility.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the facility in connection with response activities.

(2) The owner's or operator's obligations under this section shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

(3) A person who violates subsection (1) who is not otherwise liable under this part for the release at the facility is liable for response activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to June 5, 1995 or to a person who is exempt from liability under section 20126(4)(c). However, if the state or local unit of government, acting as the operator of a parcel of property that the state or local unit of government has knowledge is a facility, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the facility that is opened to and used by the general public for that express purpose, and not the entire facility. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person who is exempt from liability under section 20126(3)(c) or (d) except with regard to that person's activities at the facility.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995 ;-- Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996 ;-- Am. 1996, Act 380, Imd. Eff. July 24, 1996 ;-- Am. 1996, Act 383, Imd. Eff. July 24, 1996 ;-- Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010 ;-- Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015

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Popular Name: Environmental Remediation

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