

Fact Sheet Update – January 2008



DEPARTMENT OF
TOXIC SUBSTANCES
CONTROL

*The mission of the
Department of Toxic
Substances Control is
to provide the
highest level of safety,
and to protect public
health and the
environment from
toxic harm.*



State of California



Cal/EPA

REPORTING NONEMERGENCY HAZARDOUS SUBSTANCES RELEASES

(Pursuant to Health and Safety Code Section 25359.4)

FACT SHEET PURPOSE:

The purpose of this Fact Sheet is to reiterate the current procedure for reporting releases pursuant to Health and Safety Code section 25359.4, which includes all of the current legislative requirements, and to provide updated contact information. *The statutory basis for reporting requirements has not changed recently* (refer to Page 4 for information on the Legislative Background). The Department has attempted to minimize the number of reports individuals or companies must submit to different State agencies concerning a release. However, the Department does need to be informed of those properties where a release may pose a significant threat to public health and safety or to the environment. This Fact Sheet is intended to clarify what should be reported to the Department.

The current text of Health and Safety Code section 25359.4 reads as follows:

“(a) A person shall not release, or allow or cause a release of, a reportable quantity of a hazardous substance into the environment that is not authorized or permitted pursuant to state law.

(b) Any release of a reportable quantity of hazardous substance shall be reported to the department in writing within 30 days of discovery, unless any of the following apply:

- (1) The release is permitted or in the permit process.
- (2) The release is authorized by state law.

(3) The release requires immediate reporting to the Office of Emergency Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code, or pursuant to Section 25507.

(4) The release has previously been reported to the department or the Office of Emergency Services.

(5) The release occurred prior to January 1, 1994.

(c) For the purposes of this section, "reportable quantity" means either of the following:

(1) The quantity of a hazardous substance established in Part 302 (commencing with Section 302.1) of Title 40 of the Code of Federal Regulations, the release of which requires notification pursuant to that part.

(2) Any quantity of a hazardous substance that is not reportable pursuant to paragraph (1), but that may pose a significant threat to public health and safety or to the environment. The department may establish guidelines for determining which releases are reportable under this paragraph.

(d) The owner of property on which a reportable release has occurred and any person who releases, or causes a reportable release and who fails to make the written report required by subdivision (b), shall be liable for a penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate violation and for each day that a violation continues. Each day on which the released hazardous substance remains is a separate violation unless the person has either filed the report or is in compliance with an order issued by a local, state, or federal agency with regard to the release.

(e) Liability under this section may be imposed in a civil action or may be administratively imposed by the department pursuant to Section 25359.3.

(f) If the violation of subdivision (b) results in, or significantly contributes to, an emergency, including, but not limited to, a fire, to which a county, city, or district is required to respond, the responsible party may be assessed the full cost of the emergency response by the city, county, or district.”



COMMONLY ASKED QUESTIONS:

Question: What is a hazardous substance?

Answer: The definition of hazardous substance in Health and Safety Code section 25316 is broad and far reaching. It encompasses several federal environmental statutes that contain lists of hazardous substances.

Health and Safety Code section 25316 defines "hazardous substance" as:

"... (a) Any substance designated pursuant to Section 1321 (b) (2) (A) of Title 33 of the United States Code. [CLEAN WATER ACT.]

(b) Any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the federal act (42 United States Code 9602). [COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA).]

(c) Any hazardous waste having the characteristics identified under or listed pursuant to Section 6921 of Title 42 of the United States Code, but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.) has been suspended by act of Congress. [RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).]

(d) Any toxic pollutant listed under Section 1317 (a) of Title 33 of the United States Code. [CLEAN WATER ACT, TOXIC POLLUTANT LIST.]

(e) Any hazardous air pollution listed under Section 7412 of Title 42 of the United States Code [CLEAN AIR ACT.]

(f) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to Section 2606 of Title 15 of the United States Code. [TOXIC SUBSTANCES CONTROL ACT (TSCA).]

(g) Any hazardous waste or extremely hazardous waste as defined by Sections 25117 and 25115, respectively, unless expressly excluded." [HAZARDOUS WASTE CONTROL ACT.]

Question: What is a release?

Answer: According to the definition in Health and Safety Code section 25320, a release is "...any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment."

Question: When does "discovery" occur?

Answer: "Discovery" occurs when a person finds, learns, or otherwise acquires knowledge that a hazardous substance has been released.

Question: Who is required to report nonemergency releases?

Answer: "The owner of property on which a reportable release has occurred and any person who releases, or causes a reportable release ..."
[HEALTH AND SAFETY CODE SECTION 25359.4 (d).]

Question: Are consulting firms required to report releases?

Answer: Yes, consulting firms are required to report nonemergency releases if they meet the conditions specified in Health and Safety Code section 25359.4 (d).

Question: What releases must be reported?

Answer: Both new and past releases of a reportable quantity of a hazardous substance must be reported unless: (1) an exemption from Health and Safety Code section 25359.4(b) applies to the release, (2) the release has already been remedied with the Department's oversight, or (3) responsible parties are already working with the Department to address the uncontrolled release under an existing agreement, order, or notice of violation. (See "Examples of Reportable Releases" and "Examples of Releases That Are Not Reportable Pursuant To Health and Safety Code section 25359.4.")

PROCEDURES FOR REPORTING NONEMERGENCY RELEASES:

The procedures for reporting nonemergency hazardous substance releases are:

- A property owner or a person who releases or causes a reportable hazardous substance release shall make a written report to the Department **within 30 days of discovery of the release.**
- A copy of the "**Nonemergency Hazardous Substances Release Report**" format is attached to this Fact Sheet. Instructions for completing the format are included (see attachment).
- The addresses and phone numbers of the Department's four Regional Offices are shown in the instructions to the attached report form. The report is to be mailed to the Department's Regional Office in the region where the release occurred.

EXAMPLES OF REPORTABLE RELEASES:

The criteria for determining whether a person must report a release under Health and Safety Code section 25359.4 are:

- 1) There has been a release of a "reportable quantity" of a hazardous substance, or
- 2) There has been a release of any quantity of a hazardous substance, but even if the quantity is not a reportable quantity pursuant to Health and Safety Code section 25359.4(c)(1), because of the release's concentration, quantity, or characteristics, the release may pose a significant threat to public health and safety or to the environment.

The following examples present some typical situations and illustrate the Department's guidelines which require reporting under Health and Safety Code section 25359.4:

A) A property owner begins developing commercial property and a bulldozer uncovers soil contaminated with "lamp black." The contaminated soil does not require immediate action (there is no threat of fire or explosion or an immediate threat to public health or to the environment). The property owner analyzes the contaminated soil for hazardous substances. Lab analysis results determine that benzo[a]pyrene, a constituent of "lamp black," is present at 10 parts per million.

Based on an estimated volume of contaminated soil, the total amount of benzo[a]pyrene exceeds the reportable quantity of one pound.

A written report is required within 30 days of discovery, because a reportable quantity of a hazardous substance has been released.

B) A Trucker is transporting flammable liquid and spills the contents of the truck onto the highway and adjoining private property. The trucker immediately contacts the Office of Emergency Services (OES) and the local emergency response agencies. The emergency cleanup is completed by removing the majority of the flammable liquid, so that there is no threat of fire and explosion.

Residual contamination exists in the soil and there is a shallow water table.

The emergency release cleanup does not require a written report because the release was reported to OES. However, the residual soil contamination may pose a significant threat to groundwater, and therefore, a written nonemergency release report is required within 30 days of the incident.

C) A manufacturer of computer chips has discovered that groundwater is contaminated with trichloroethylene which may have been released from

the company's facility. A consultant has provided advice that the release does not pose an emergency to either the public health or the environment, so no report to OES is required.

A written report is required within 30 days of discovery, because groundwater has been impacted.

D) A dry cleaner sells his business and the new owner discovers a problem with approximately 10,000 pounds of cleaning fluid containing perchloroethylene that either was spilled and/or dumped at the back of the lot. The new owner hires a consultant and some contaminated soil is excavated and disposed of at a landfill. This work occurred without departmental or local agency oversight. After a few years, the business fails and the dry cleaning operation reverts to the former owner's children. They are aware of the past release and know there was no agency oversight of the original removal. The reportable quantity for perchloroethylene is 100 pounds.

A written report by the owners (both the first new owner and the former owner's children) is required within 30 days of discovery, because there was a release of a reportable quantity of perchloroethylene and the owners knew there was no agency oversight of the original removal.

E) A two-acre commercial parcel was used as a truck wash for large tanker trucks that hauled pesticides and other chemicals. Contaminated wash water was dumped onto unpaved surface areas. After 10 years of operation, the city revoked the company's land use permit, and the property was abandoned by the owners. No cleanup activity occurred.

When the existing or a new owner learns of the past dumping and that the contaminated wash water contained reportable quantities of hazardous substances, a written report is required within 30 days of discovery.

EXAMPLES OF RELEASES THAT ARE NOT REPORTABLE PURSUANT TO HEALTH AND SAFETY CODE SECTION 25359.4:

- The release is permitted or in the permit process.
- The release is authorized by State law.
- The release requires immediate reporting to OES pursuant to section 11002 or 11004 of Title 42 of the United States Code (U.S.C.), or pursuant to Health and Safety Code section 25507.
- The release has previously been reported to the Department or OES.
- The release occurred prior to January 1, 1994.
- Releases of substances that are not designated

as hazardous substances in Health and Safety Code section 25316.

- Releases of petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Health and Safety Code section 25316, as designated in Health and Safety Code section 25317(a).
- Natural gas releases or releases of natural gas liquids, liquefied natural gas or mixtures of natural gas and synthetic gas as designated in Health and Safety Code section 25317(a).
- Nontoxic, nonflammable, noncorrosive stormwater run-off drained from underground vaults, chambers, or manholes into gutters or stormsewers as designated in Health and Safety Code section 25317(b).
- Past releases already remedied, with the Department's oversight and written approval.
- Releases "authorized" or "permitted" under interim status documents, hazardous waste treatment, storage or disposal permits, including corrective action and those that are allowed by, or are being remediated under, orders or agreements issued by the Department.
- Any release which results in exposure to persons solely within a workplace, with respect to a claim such exposed persons may assert against their employer as designated in Health and Safety Code section 25321(a).
- Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine as designated in Health and Safety Code section 25321(b).
- Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.) if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 2210 of Title 42 U.S.C. or, for the purposes of Section 104 of the Federal Act (42 U.S.C. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under Section 7912(a)(1) or 7942(a) of Title 42 U.S.C., which sections are a part of the Uranium Mill Tailings Radiation Control Act of 1978, as designated in Health and Safety Code section 25321(c).
- The normal application of fertilizer, plant growth regulants, and pesticides, as designated in Health and Safety Code section 25321(d).

RELEASES CONTINUING AFTER JANUARY 1, 1994:

- A hazardous substance release that initially occurred PRIOR to January 1, 1994, but that

continues to release a reportable quantity of a hazardous substance into the environment, is to be reported within 30 days of discovery.

LEGISLATIVE BACKGROUND

In 1992, Senate Bill (SB) 2057 (stats. 1992, ch. 1334) created Health and Safety Code section 25359.4. SB 2057 established that unauthorized releases of hazardous substances are prohibited and required that releases be reported directly to the Department of Toxic Substances Control (Department).

In 1993, Assembly Bill (AB) 2061 (stats. 1993, ch. 1184) amended this law to clarify that nonemergency release reports must be made in writing to the Department within 30 days of discovery. AB 2061 also specified that hazardous substance releases of a "reportable quantity" be reported pursuant to Health and Safety Code section 25359.4. The purpose of Health and Safety Code section 25359.4 (as amended by AB 2061) is to provide the Department with information concerning properties that may require remediation because there is a current or potential significant threat to public health and safety or to the environment because of hazardous substance releases.

On May 25, 1994, the Department issued a Fact Sheet and Reporting Form to provide guidance for reporting nonemergency releases. The Department issued an Addendum to the Fact Sheet on January 4, 1995, based on the provisions of AB 2061.

In 1995, AB 204 (stats. 1995, ch. 155) made further amendments to Health and Safety Code section 25359.4 to specify that a release that occurred prior to January 1, 1994 does not have to be reported under this section and to clarify the definition of "reportable quantity."

Attachment:

Nonemergency Hazardous Substance Release Report Format with Instructions

**DEPARTMENT OF TOXIC SUBSTANCES CONTROL
NONEMERGENCY HAZARDOUS SUBSTANCE RELEASE REPORT**

(Health and Safety Code section 25359.4)

Revised January 2008

State Use Only:
Regional Log #

I. RELEASE

A. Release discovered on (date): _____

Are any hazardous substances, as defined by Health and Safety Code section 25316, currently spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment? Yes No

B. Have any hazardous substances, as defined by Health and Safety Code section 25316, spilled, leaked, pumped, poured, emitted, emptied, discharged, injected, escaped, leached, dumped, or been disposed into the environment? Yes No

C. If you respond yes to "A." or "B." above, is/are the release(s) of a Reportable Quantity as established by Part 302 of Title 40 of the Code of Federal Regulations: Yes No

Is/are the release(s) of a Reportable Quantity as defined by Health and Safety Code section 25359.4(c)(2)? Yes No

Indicate below date of each occurrence if known (indicate Reportable Quantity amount if applicable):

D. Person Reporting:

Phone No.:

Association with site (e.g., owner, operator, business representative, other):

E. Site Name:

Site Address:

Site Phone No.:

Mailing Address (if different than above):

City:

County:

Site Contact Person:

Phone No.:

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II. RELEASE SITE

A. Release Site (check one or more): Pipeline Shipyard Road Oilfield
 Refinery Railroad Service Station Residential Vacant Lot
 Industrial Plant (type) _____ Above-ground Tank Underground Storage Tank

Other (describe):

B. What media do the contaminants affect: Air Groundwater Surface Water Soil

Proximity to surface water, groundwater, wetlands, or storm drains, *if known*:

Surrounding area: Industrial Commercial Residential Rural

Did the release occur near a school, residential area, hospital, or other sensitive environment?

Yes No If yes, describe:

C. Describe (briefly) the major types of contaminants released or found at the site (add additional pages if necessary):

Quantity/Volume Released:

Extent of Contamination (approximate physical diameter of the contamination, e.g. 3 meters wide by 9 meters long):

Describe (briefly) the location(s) of the contaminants:

D. Describe (briefly) how the contamination came to exist at the site (for example, were there past spills, landfill operations, industrial wastewater operations, industrial wastewater systems, underground storage tanks, deposition of fill material, etc.):

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III. SITE REMEDIATION

A. Has an environmental assessment been conducted? Yes No If yes, briefly describe the results below:

Assessment conducted by: _____

Contact Person: _____

Phone No.: _____

B. Was the release contained or remediated? Yes No

Briefly describe any cleanup actions (i.e., capping, removal actions, groundwater pump and treat systems, etc.)

C. If applicable, which phase(s) of the remediation process have been completed or are currently being performed:

Preliminary Assessment/Site Investigation (PA/SI) or Preliminary Endangerment Assessment (PEA)

Removal or Remedial Action

Remedial Investigation Workplan

Feasibility Report

Remedial Action Plan

Remedial Design

Operation and Maintenance

Other: _____

D. Have you entered into any administrative/judicial orders and/or agreements? Yes No

Date of order/agreement: _____

Name of Agency: _____

Agency Contact: _____

Agency Phone No.: _____

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IV. EMERGENCY ACTIONS

A. Was an emergency action taken? Yes No

Did you report the release to any local agencies? Yes No

If yes, what local agency(ies) was notified?

B. Did you report the release to any State agencies?

If yes, which agencies?

C. Were Proposition 65 notification(s) made? Yes No

To what agency (include agency phone number)?

Date Proposition 65 notification(s) were made:

V. SIGNATURE

To the best of my knowledge and understanding, the information stated in this report is accurate and complete.

(Signature of Preparer)

(Date Signed)

(Printed/Typed Name of Preparer)

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NONEMERGENCY HAZARDOUS SUBSTANCE RELEASE REPORT**

(Health and Safety Code section 25359.4)

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INSTRUCTIONS FOR COMPLETING REPORT

General Instructions:

- The form should be typewritten or printed legibly in ink. Add additional pages as necessary.
- The Department of Toxic Substances Control (Department) may require additional information as follow-up to this written report.
- If a series of separate releases has occurred at the site at different times, each release should be described on a separate form.
- This reporting requirement does not require persons who are already working with the Department to address an uncontrolled release under an existing agreement, order, or notice of violation to submit a new report.
- The form should be sent to the Department within 30 days of discovery of the release.

Instructions for Section I through V:

Review each of the questions/statements presented in each subsection on pages 1 through 4. This document has been provided in "Word" so that the document can be saved and information entered onto the form, saved, and printed. To check applicable box(es), double left click on the applicable box and a menu will appear; under default value, click "Checked" to enter an "X" in the box. If you make an error and check an incorrect box, simply repeat the above process but click on "Unchecked" to remove the "X."

Carefully respond to each question/statement. If it is not applicable, please enter "N/A" in the space provided.

If additional space and/or an attachment such as a map is appropriate, attach an addendum page and refer to the Section roman numeral (I. – V.) and the applicable subsection letter (A. – E.) On this form, indicate "refer to addendum" in the space provided.

For Section IV. EMERGENCY ACTIONS, local agencies include, but are not limited to: Fire Department, Sheriff's Department, Police, County Health Offices, County Emergency Services, Air Quality Districts, and 911. State agencies involved with emergency agencies include, but are not limited to: Office of Emergency Services (OES); Department of Fish and Game; California Highway Patrol; CALTRANS; Public Utilities Commission, Oil and Gas Division; a Regional Water Quality Control Board, State Lands Commission, etc. If a Proposition 65 notification was made, indicate which agency was notified, and the date the notification was made.

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REPORTING REQUIREMENT EXCLUSIONS:

The exceptions to the report requirement in Health and Safety Code section 25359.4 include¹:

1. The release is permitted or in the permit process.
2. The release is authorized by State law.
3. The release requires immediate reporting to the Office of Emergency Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code (U.S.C.), or pursuant to Health and Safety Code section 25507.
4. The release has previously been reported to the Department or OES.
5. The release occurred prior to January 1, 1994.
6. Releases of substances that are not designated as hazardous substances in Health and Safety Code section 25316 or are not reportable quantities as established in Part 302 of Title 40 of the Code of Federal Regulations.
7. Releases of petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in Health and Safety Code section 25316, as designated in Health and Safety Code section 25317(a).
8. Natural gas releases or releases of natural gas liquids, liquefied natural gas or mixtures of natural gas and synthetic gas as designated in Health and Safety Code section 25317(a).
9. Nontoxic, nonflammable, noncorrosive stormwater run-off drained from underground vaults, chambers, or manholes into gutters or stormsewers as designated in Health and Safety Code section 25317(b).
10. Past releases already remediated with the Department's oversight and written approval.
11. Releases "authorized" or "permitted" under interim status documents, hazardous waste treatment, storage, or disposal permits including corrective action, and those that are allowed by, or are being remediated under, orders or agreements issued by the Department.
12. Any release which results in exposure to persons solely within a workplace, with respect to a claim such exposed persons may assert against their employer as designated in Health and Safety Code section 25321(a).
13. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, as designated in Health and Safety Code section 25321(b).
14. Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms as defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 2210 of Title 42 U.S.C., or for the purposes of Section 104 of the Federal Act (42 U.S.C. 9604) or any other response action, any release or source byproduct, or special nuclear material from any processing site designated under Section 7912(a)(1) or 7942(a) of Title 42 U.S.C., which sections are a part of the Uranium Mill Tailings Radiation Control Act of 1978, as designated in Health and Safety Code section 25321(c).
15. The normal application of fertilizer, plant growth regulants, and pesticides and the other exclusions designated in Health and Safety Code section 25321(d).

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^{1/}Case law indicates that the petroleum exclusion in Health and Safety Code section 25317 includes refined petroleum. Releases of reportable quantities of uncontaminated refined petroleum would not be reportable under these case holdings.

MAIL THE COMPLETED REPORT TO THE REGIONAL OFFICE BASED ON THE COUNTY WHERE THE RELEASE OCCURRED:

Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
8800 Cal Center Drive
Sacramento, California 95826-3545
(916) 255-3545
(For Northern California and Central Valley Counties)

Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
700 Heinz Avenue, Building F, 2nd Floor
Berkeley, California 94710
(510) 540-3739
(For North Coast and Bay Area Counties)

Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
9211 Oakdale Ave.
Chatsworth, CA 91311
(818) 717-6500
(Santa Barbara and Ventura Counties and Los Angeles County North of Highway 91)

Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
5796 Corporate Avenue
Cypress, California 90630-4732
(714) 484-5300
(For Riverside, San Bernardino, Orange, San Diego, and Imperial Counties and Los Angeles County South of Highway 91)