



## Michigan's New Pollution Incident Prevention Rules

Revisions to the Michigan Department of Environmental Quality's (the Department) **Part 5 Administrative Rules (Spillage of Oil and Polluting Materials)** became effective on August 31<sup>st</sup>, 2001. For facilities that are subject to these rules **the required secondary containment and pollution incident prevention plan (PIPP) shall be in place on or before August 31st, 2003.** These rules were promulgated pursuant to Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). The previous Part 5 Rules were originally promulgated in 1973 and had never been revised. These revisions are the culmination of several years' efforts by the Department and a diverse array of external stakeholders.

**The new Part 5 Rules require facilities to provide for preventative measures for management of an lengthy list (Rule 324.2009) of "polluting materials" if used/stored above "threshold management quantities" (TMQs).** These requirements are intended to prevent releases of polluting materials to surface waters or ground waters of the state.

The previous Part 5 Rules required facilities that managed any amount of any polluting material to prepare and submit PIPPs to the Department. The previous rules also required reporting of any spill of any amount of polluting material. Although the new rules continue to require preparation and submission of PIPPs and the submission of reports in the event of a release of polluting materials, the new rules include some specific exemptions for many types of facilities that are subject to other analogous state or federal regulations or are otherwise not felt to represent significant environmental threats.

Rule 324.2002(f) establishes TMQs that trigger secondary containment and PIPP obligations. The TMQs are significantly larger than the threshold for regulation under the previous rule. Further, the proposed TMQs distinguish between indoor and outdoor management of polluting materials, creating an incentive to encourage indoor storage and handling of polluting materials. Rule 324.2005 amends the existing secondary containment requirements to allow smaller containment volumes while preserving meaningful performance standards. These new rules provide for some flexibility from previous requirements by providing a general performance standard for containment in indoor areas. The rules allow greater flexibility in configuring secondary containment systems.



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Rule 324.2002(g) specifies certain threshold reporting quantities that must be exceeded before release reporting is required.

Administrative rule 324.2006(1) details the required contents of PIPPs. Rule 324.2006(3) amends the existing PIPP requirements to specifically provide for the integration of PIPP elements into other local, state, or federal emergency or contingency plans, allowing facilities to avoid the preparation of duplicative documents, and Rule 324.2006(4) specifies that PIPPs or integrated plans are subject to review every three years, or after any release that requires implementation of the plan, whichever is more frequent.

Not later than August 31, 2003, the owner or operator of any on-land facility that receives, uses, processes, manufactures, stores, or ships polluting materials in excess of the applicable threshold management quantity shall develop, maintain, and operate in accordance with, a pollution incident prevention plan.

Expanded information and several important definitions that are included in the Part 5 Rules are outlined in the following paragraphs.

**Polluting material** is defined as:

- Oil
- Salt
- Any material specified in table 1 in R 324.2009
- Any compound or product that contains 1%, or more, by weight, of oil, salt or any material listed table 1 in R 324.2009 based upon available information such as material safety data sheet formulation data for the compounds or products.

Polluting material does not include manufactured items.

**Release** is defined in section 20101(1)(bb) of the Act 451 as:

*“Release” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. Release does not include any of the following:*

*(i) A release that results in exposure to persons solely within a workplace . . .*

*(ii) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.*



*(iii) A release of source, by-product, or special nuclear material from a nuclear incident . . .*

*(iv) If applied according to label directions and according to generally accepted agricultural and management practices, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. . .*

*(v) A release does not include fruits, vegetables, field crop processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices developed pursuant to the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws.*

For the purposes of the Part 5 Rules, "release" does not include any of the following:

- Spilling, leaking, or discharging less than 1000 gallons of a polluting material into a secondary containment structure that complies with these rules, if recovery of the material spilled, leaked, or discharged is initiated within 24 hours of detection, is completed as soon as practicable, but not more than 72 hours after detection, and if no polluting materials are released directly or indirectly to any public sewer system or to the surface waters or ground waters of this state.
- Spilling, leaking, or discharging less than 55 gallons of oil to the ground surface, if the spill, leak, or discharge is detected and the oil recovered within 24 hours of the spill, leak, or discharge, and if oil is not released directly or indirectly to any public sewer system or to the surface waters or ground waters of this state.
- Spilling, leaking, or discharging less than 55 gallons of oil to the surface waters of this state, if effective recovery measures are implemented in response to the spill, leak, or discharge immediately upon detection.

**Threshold management quantity** means any of the following:

- For **salt in solid form** used, stored, or otherwise managed at any location at or within an on-land or oil storage facility, **5 tons**.
- For **salt in liquid form** used, stored, or otherwise managed at any location at or within an on-land or oil storage facility, **1000 gallons**.
- For **oil, 1320 gallons in aboveground tanks or containers if no single tank or container has a capacity of more than of 660 gallons**.



- For all other polluting materials at any discrete outdoor use or storage location, 200 kilograms (440 pounds).
- For all other polluting materials at any discrete indoor use or storage location storage facility, 1000 kilograms (2200 pounds).

**Threshold reporting quantity** means any of the following:

- For releases of oil to the surface of the ground, 50 pounds.
- For releases of oil to the waters of the state, any quantity that causes unnatural turbidity, color, visible sheens, oil films, foams, solids, or deposits in the receiving waterbody.
- For release of salt to the surface of the ground, or waters of the state, 50 pounds in solid form, unless the use is authorized by the department for deicing purposes, or 50 gallons in liquid form, unless authorized by the department as a dust suppressant or deicing agent or permitted under part 31 of the act.
- For releases of all other polluting materials, the quantity specified in table 1 in R 324.2009, or any quantity that causes unnatural turbidity, color, visible sheens, oil films, foams, solids, or deposits in the receiving waterbody.

Any facility that manages polluting materials in excess of threshold quantities is exempt from these rules if the polluting materials are managed in containers that do not individually exceed 10 gallons or 100 pounds 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 the surface or ground waters of the state. An on-land or oil storage facility which does not manage any other polluting materials in excess of an applicable threshold management quantity and which is otherwise subject to the federal oil pollution prevention requirements of 40 C.F.R. part 110 or 112, (1997), may comply with these rules by fully complying with the federal requirements.

#### **Secondary Containment**

**Not later than August 31, 2003**, any on-land facility that has any outdoor storage areas used to store liquid polluting materials in excess of a threshold management quantity shall provide secondary containment structures for those outdoor storage areas.

- Be constructed of materials that are compatible with, and impervious to, or otherwise capable of containing, any spilled, leaked, or discharged polluting materials so that the materials can be recovered and so that polluting materials cannot escape directly or indirectly to any public sewer system or to the surface waters or groundwaters of this state.



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- Provide a capacity that is not less than 10% of the total volume of the tanks or containers within the secondary containment structure or provide a capacity of 100% of the largest single tank or container within the secondary containment structure, whichever is larger.
- Allow surveillance of the tanks or containers, the timely detection of any leaks and recovery of any spillage, and the removal and proper disposal of any captured precipitation so that the minimum required capacity is maintained at all times. Captured precipitation may be removed by drainage through normally closed valves if all of the following conditions are met:
  - The drainage is conducted under the direct supervision of qualified facility personnel.
  - The valves are secured closed at all times, except during precipitation removal.
  - The drainage is performed in full compliance with all applicable local, state, and federal requirements.
- All use areas and indoor storage areas shall be designed, constructed, maintained, and operated to prevent the release of polluting materials through sewers, drains, or otherwise directly or indirectly into any public sewer system or to the surface or groundwaters of this state.
- Polluting materials in solid form shall be enclosed, covered, contained, or otherwise protected to prevent run-on and any runoff, seepage, or leakage to any public sewer system or to the surface or groundwaters of the state. Solid polluting materials shall not be stored within 50 feet of a designated wetland or the shore or bank of any lake or stream. Solid polluting material containment structures located within a 100-year floodplain as defined by the federal flood disaster protection act of 1973, 42 U.S.C. 4001 et seq., shall be designed and constructed to remain effective during a 100-year flood.

### **Pollution incident prevention plan**

Not later than August 31, 2003, the owner or operator of any on-land facility that receives, uses, processes, manufactures, stores, or ships polluting materials in excess of the applicable threshold management quantity shall develop, maintain, and operate in accordance with, a pollution incident prevention plan.

The facility owner or operator shall maintain the plan at the facility available for inspection upon request of the department. Within 30 days after its completion, the facility owner or operator shall notify the department and certify that the facility is in full compliance with these rules.



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A facility that is subject to other local, state, or federal emergency or contingency planning requirements may integrate the pollution incident prevention plan with other plans if the required elements of the pollution incident prevention plan are contained in the integrated plan. Upon preparation of an integrated plan, the facility owner or operator shall submit the updated plan and shall renotify the department and recertify compliance with these rules in accordance with subrule (2) of this rule.

The facility owner or operator shall evaluate the pollution incident prevention plan or integrated plan every 3 years or after any release that requires implementation of the plan, whichever is more frequent. The facility owner or operator shall update the plan when facility personnel, processes, or procedures identified in the plan change or as otherwise necessary to maintain compliance with this rule.