



# Petroleum Related Reporting for Due Diligence Site Assessments

## What You Need to Know

The new Oil Pollution Control and Storage Tank Management regulations (COMAR 26.10), issued on June 13, 2022, include additional reporting circumstances to ensure that evidence of a spill, release, or discharge found during a due diligence property site assessment, conducted in support of a property transaction or a loan refinancing, is properly reported to MDE. This reporting is critical to identifying unknown and ongoing human health and environmental impacts.

### What Needs to be Reported?

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COMAR 26.10.08.01B requires reporting of evidence of a spill, release, or discharge, which includes:

- **Visual evidence of free product;** and
- **Analytical data** showing a **petroleum constituent** that exceeds a relevant cleanup standard or action level.

Note that in order to trigger the reporting requirement under this regulation, the relevant evidence must be found during a due diligence property site assessment that is conducted in support of a property transaction or a loan refinancing.

Also note, that the requirement to report evidence of a spill, release, or discharge under this regulation is regardless of whether the property is currently or was in the past an oil storage facility or oil handling facility. However, the requirement does not apply to evidence collected prior to the effective date of the regulation that otherwise meets the reporting requirements.

#### **Visual Evidence of Free Product**

Free product is defined as a regulated substance that is present as a nonaqueous phase liquid, where a regulated substance means a hazardous substance and/or oil (see [COMAR 26.10.01.02B](#)(34) and (47), respectively). So free product is not exclusively oil, although that is generally the case. Oil, as defined in Maryland, does not include liquified propane or natural gas, or edible oils not intended to be used as a motor fuel or a fuel source.

Visual evidence of free product would include oil globules, sheen, film, or thickness on water, oil saturated / heavily stained soils, and/or oil-stained site investigation equipment. Obvious and gross visual oil contamination is what must be reported to MDE.

A release is generally defined as a discharge of oil from any source but is more specific with regard to the source of a hazardous substance. Specifically, a release of a hazardous substance must come from a UST system. Currently, Maryland has 7 USTs storing hazardous substances, all of which store antifreeze. If a hazardous substance free product is observed that may originate from a UST system, it should be reported under this requirement. Regardless of this new requirement, the timely reporting of a hazardous substance free product to MDE is highly advised.



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### Analytical Data Evidence

Analytical data that needs to be reported is any detection of a petroleum constituent in a soil, groundwater, drinking water, or soil vapor sample at a concentration equal to or exceeding a cleanup standard or action level published by MDE for the constituent and media type (e.g., *Cleanup Standards for Soil and Groundwater (Update No. 3, October 2018) and Amendment #1 (April 2022)*): [https://mde.maryland.gov/programs/land/MarylandBrownfieldVCP/Pages/errp\\_factsheets.aspx](https://mde.maryland.gov/programs/land/MarylandBrownfieldVCP/Pages/errp_factsheets.aspx).

For example, if benzene was detected at 5 parts per billion (or greater) in a groundwater sample, that detection would need to be reported to MDE. Again, this would be from a sample collected as part of a due diligence site assessment in support of a property transaction or loan refinancing.

### When Does Evidence Need to be Reported?

Visual Evidence – Immediately, but no later than 2 hours after discovery.

Analytical Data Evidence – Within 48 hours of receiving a laboratory report that contains a reportable concentration.

### Who Must Report?

The person conducting the environmental assessment and the owner of the property being assessed shall report the suspected spill, release, or discharge to MDE. Either one of these entities can report the evidence to MDE.

While the intention of the regulation is to have the person physically conducting / performing the environmental assessment (e.g., the consultant or contractor) be responsible to report the evidence, there may be circumstances where another entity reports the evidence on their behalf. This is an acceptable practice provided the reporting to MDE is done within the required timeframes.

### How Do You Report to MDE?

During normal business hours, call the Oil Control Program at **410-537-3442**.

Outside of normal business hours, call MDE at **1-866-633-4686**.

During the call, MDE will take information from the caller including at least the following:

- The name and contact information of the caller,
- The type of evidence found,
- The amounts or concentrations of contamination,
- The property information including the address of the location, and
- Other relevant details including any documents that may be sent to MDE.



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The information provided will be logged into an MDE database and the matter will be reviewed by a spill duty officer. Depending on the site specifics, MDE could take no further action beyond recording the information provided during the call, to opening a remediation case, or some other action in between. The next steps would depend on the site-specific variables and the severity of the evidence that was discovered.

It should be noted that the regulation clarifies that a person performing an environmental assessment on a property and/or the owner of the property may not be considered a person responsible for a discharge solely as a result of discovering evidence of a spill, release, or discharge or reporting the suspected spill, release, or discharge to MDE.

### Questions

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If you have additional questions, please contact the Oil Control Program at 410-537-3442.