

Rules of
Department of Natural Resources
Division 25—Hazardous Waste
Management Commission
Chapter 10—Abandoned or Uncontrolled
Hazardous Waste Disposal Sites

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES**

**Division 25—Hazardous Waste
Management Commission**

**Chapter 10—Abandoned or Uncontrolled
Hazardous Waste Disposal Sites**

**10 CSR 25-10.010 Abandoned or Uncon-
trolled Hazardous Waste Disposal Sites**

PURPOSE: This rule establishes procedures for adding sites to, removing sites from and modifying site classifications in the Missouri Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites and establishes procedures to be used by responsible parties to obtain state approval for remedial actions at abandoned or uncontrolled sites.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) Proposing Sites for the Registry.

(A) When the department proposes to list a site on the registry, it will notify each owner of record of the site of the proposal. Notice shall be given by certified mail directed to the last known address of the person being notified.

1. The notice shall contain a general description of the site proposed to be listed on the registry, a general description of the nature of the waste found at the site and a statement that the owner or operator may request a hearing before the commission in accordance with section (2) of this rule regarding the proposal by filing a notice of appeal by certified mail with the director within thirty (30) days of the notice.

2. The department, at its option, may include with the notice of the proposal to list a site on the registry, the classification of the site pursuant to section 260.445.3, RSMo. If the notice contains the site classification, the notice shall also state that the owner or operator may request a hearing before the commission regarding the classification by filing a notice of appeal in the manner and within the time specified in paragraph (1)(A)1. of this rule.

(B) No abandoned or uncontrolled site may be listed on the registry until the notice set

forth in this subsection has been given and any timely appeal to the commission has been finally resolved. If an owner or operator does not file a notice of appeal within the time specified in paragraph (1)(A)1. of this rule, the department will list the site on the registry as proposed.

(2) Appeals to the Commission.

(A) Within the ninety (90) days following the filing of a timely notice of appeal, the commission may convene a hearing, or refer the matter to a hearing officer or handle any pretrial matters that comes before it. After hearing, or upon receipt of the recommendation of the hearing officer, and after any briefing or argument of the parties, the commission shall issue its findings of fact, conclusions of law and order affirming, modifying or reversing, in whole or in part, the action or proposed action of the department or director, and giving the appellant any relief warranted under the circumstances.

1. In any hearing under this rule, the provisions of sections 260.400.2–260.400.4, RSMo shall apply.

2. In any hearing under this rule, any party may move the commission for summary judgment upon the same procedure and terms as in a motion filed pursuant to Rule 74.04, Missouri Rules of Civil Procedure. If the matter has been referred to a hearing officer, the hearing officer shall recommend to the commission a proposed order upon the motion.

(B) No hearing shall be held under this rule upon less than thirty (30) days' written notice to the appellant. In addition, the department, at least thirty (30) days prior to the hearing, shall publish in a newspaper of general circulation in the county in which the site is located, a notice of the date and place of the hearing.

(C) The parties to a hearing shall be the appellant, the department and any person who upon proper motion shall be allowed to intervene in the proceeding. The granting or denial of a motion to intervene shall be governed by the considerations set forth in Rule 52.12, Missouri Rules of Civil Procedure. In any matter before a hearing officer, the hearing officer shall rule on any motion to intervene.

(D) Within ten (10) days after the rendition of any decision by the director or the commission to make any change in the registry, the department will notify by mail the local governments with jurisdiction over the site of any change.

(E) Opportunity to Allow Responsible Party Clean Ups.

1. Within thirty (30) days of notice under section (1) of this rule, a responsible party may commit in writing to investigate the site and implement an approved remedial action. A consent agreement must be signed by the department and the responsible party which establishes a schedule and specific responsibilities for completion of any site investigation and remedial action.

2. Consent agreements developed under this section must contain a commitment for the responsible party to obtain departmental approval before implementation of any remedial action.

3. In the case that either party to the consent agreement refuses or fails to carry out the terms of the agreement, either party may request a hearing before the commission on the matter to be handled as an appeal to the commission under section (2) of this rule.

4. Remedial actions undertaken at a site according to terms of a consent agreement developed under this section must include all necessary actions to achieve a classification pursuant to paragraph (7)(B)5. of this rule in order for the department to withdraw its proposed listing of the site on the registry.

5. When the department determines that a remedial action results in a site receiving a classification of 1, 2, 3, or 4 pursuant to subsection (7)(B) of this rule, the department will notify each owner and the party to the consent agreement developed under this section. This notification will be according to procedures established in section (1) of this rule and will include the classification of the site pursuant to subsection (7)(B) of this rule.

(3) Change of Use or Transfer of Site Property.

(A) No person may substantially change the manner in which a site listed on the registry is used without the prior written approval of the director.

1. Requests for approval for changes in use must be submitted in writing to the director at least sixty (60) days prior to any planned substantial change in use.

2. The request must include a detailed site description, a detailed description of the change in use planned and an analysis concerning whether the change in use might result in any of the conditions described in subparagraph (3)(A)4.A. through D. of this rule. Any plans, specifications or designs prepared for the change in use shall be submitted to the director with the request.

3. The director will evaluate the request to determine whether the change in use is substantial. If the change in use is not substantial, the director will notify the owner that departmental approval is not required.



4. If the director determines that the change in use is a substantial change, the request will be evaluated to determine whether the change in use may result in any of the following:

A. A spread of contamination over additional portions of the site or off-site;

B. An increase in human exposure to the hazardous materials;

C. An increase in adverse environmental impacts; or

D. A situation making potential remedial actions to correct problems at the site more difficult to undertake or complete.

5. Requests for changes in use which may result in conditions described in subparagraphs (3)(A)4.A. through D., of this rule will be denied by the director. Requests which do not result in any of the conditions in subparagraphs (3)(A)4.A. through D., of this rule will be approved.

(B) No person may sell, convey or transfer title to an abandoned or uncontrolled hazardous waste disposal site which is on the registry prepared and maintained by the department pursuant to section 260.440, RSMo without disclosing to the buyer early in the negotiation process that the site is on the registry.

1. Prior to the execution of any contracts for sale, conveyance or transfer of title to a site which is on the registry, the seller shall provide to the buyer a copy of the letter from the department notifying the owner of the department's intent to list the property on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri.

2. Prior to the execution of any contracts for sale, conveyance or transfer of title to a site which is listed on the registry, the seller shall provide to the buyer a copy of the letter from the department notifying the owner that the property has been listed on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites in Missouri along with any applicable use restrictions and other registry information for the site.

3. The seller, within thirty (30) days after the transfer of title, shall notify the department in writing of the transfer. At that time the seller shall also provide to the department a notarized statement signed by the buyer which states that the buyer has received and read the information specified in paragraphs (3)(B)1. and 2. of this rule and that the buyer understands that s/he may be assuming liability for any remedial action at the site; provided, however, the sale, conveyance or transfer of property shall not absolve any person responsible for site con-

tamination, including the seller, of liability for any remedial action at the site.

(C) Decisions of the director concerning requests for a change in use of a site on the registry may be appealed to the commission. Any appeals filed under this part will be handled according to the procedures in section (2) of this rule.

(4) Recording of Sites, Listing Them On or Removing Them From the Registry.

(A) When the director lists a site on the registry as provided in section 260.440, RSMo, s/he shall file with the recorder of deeds of the county where the site, or each portion of the site, is located a notice describing the site so that the notice will appear in the chain of title of the site, and stating the period during which the site was used as a hazardous waste disposal site, the hazardous waste(s) for which the site is being listed, and that the site has been listed on the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites. The notice shall be recorded and indexed in the manner which is provided for deeds of real property.

(B) When the director finds that a site listed on the registry has been properly closed under paragraph (7)(B)5. of this rule, s/he shall file with the county recorder of deeds a notice that the site has been removed from the Registry of Confirmed Abandoned or Uncontrolled Hazardous Waste Disposal Sites. The notice shall describe the site so that the notice will appear in the chain of title of the site and shall be recorded and indexed in the same manner as the notice filed under subsection (4)(A) of this rule.

(5) Petitions for Deletion From the Registry, Change in Site Classification or Modification of Information.

(A) The record owner of any portion of a site listed on the registry, or any operator of any portion of the site, may petition the director of the department in writing by certified mail to delete the site from the registry, to modify the site classification or to modify information included in the registry, annual report, site assessment file or filed with the county recorder of deeds. The petition shall state the interests of the petitioner in the site and shall state what relief the petitioner is requesting, and shall contain a summary of the factual and legal reasons why the petitioner believes the requested relief is warranted.

1. The director shall investigate the matters raised in the petition and shall respond in writing within thirty (30) days to the petitioner, stating his/her decision whether and to what extent the relief requested is or is not

granted or shall request information or site accesses pursuant to paragraph (5)(A)2. of this rule. The response shall be sent by certified mail to the address of the petitioner or his/her attorneys as shown on the petition.

2. The director may request additional information from the petitioner, and access to the site, in order to evaluate the merits of the petition. Failure to provide the requested information or site access within thirty (30) days shall be grounds for denial of the petition.

3. The petitioner may appeal to the commission any decision by the director upon a petition under section (5) of this rule, by filing a written notice of appeal by certified mail with the commission's staff director within thirty (30) days of the director's final response to the petition. If a timely notice of appeal is not filed under this paragraph, no issue determined by the director adverse to the petitioner may be considered as grounds for relief in any subsequent petition by the same person, or by any person in privity with the person, in any subsequent petition under section (5) of this rule.

(6) Survey of Sites to Reduce the Area to be Listed or Already Listed on the Registry.

(A) The owner or a responsible party may submit to the department in writing a commitment to survey the site and reduce the area to be or which has been listed on the registry.

1. For sites which have been proposed for listing on the registry, the written commitment to survey the site must be received within thirty (30) days of notice under section (1) of this rule or within thirty (30) days of the commission's decision pursuant to section (2) of this rule. In no event may a survey for this purpose be accepted beyond one hundred twenty (120) days of the department's receipt of written commitment pursuant to subsection (6)(A) of this rule.

2. If the owner or a responsible party chooses to reduce the area of the site, a written commitment to do so under subsection (6)(A) of this rule must include the instructions or plan to be given the surveyor describing the area to be surveyed.

3. The plan or instructions must be approved by the department prior to implementation.

4. The surveyor must install permanent survey markers at the corners of the surveyed area.

5. The site must include a one hundred foot (100') minimum buffer zone extending laterally in all directions from the known edge of the contamination, either on or below the ground surface. The dimensions of the

buffer zone may be modified upon approval of the department.

6. The owner or a responsible party must submit to the department a survey sealed by a land surveyor, who is registered to practice in Missouri and in compliance with the current Minimum Standards for Property Boundary Surveys in 10 CSR 30-2.010 depicting the legal description of the site.

(B) *(Reserved)*

(7) Site Assessment.

(A) Site Assessment Committee.

1. A five (5)-member voting committee shall be established with one qualified representative each from the Missouri Department of Health; the department's Division of Geology and Land Survey; and one (1) representative each from the Division of Environmental Quality's Hazardous Waste Program, Public Drinking Water Program and one (1) other environmental program. Three (3) yes votes are required to initially classify or reclassify a site.

2. The committee shall meet at least once annually to assess or reassess the classification of each abandoned or uncontrolled hazardous waste registry site as required in section 260.445.3, RSMo. The classification shall be determined in accordance with criteria contained in subsection (7)(B) of this rule.

(B) Classifications and Criteria for Determining Site Classifications.

1. Class 1—sites that are causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment. Sites present a high risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site is highly concentrated and readily accessible by ingestion and/or inhalation and/or dermal contact; and/or

B. Immediate remediation or action is required to prevent irreparable damage to public health and/or the environment.

2. Class 2—sites that are a significant threat to the environment. Sites present a moderate risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site exhibits one (1) or more of the following:

(I) Moderately concentrated and accessible by ingestion and/or inhalation and/or dermal contact;

(II) Highly concentrated, but not openly accessible due to the nature of the site

and the contamination and/or any remedial action taken; and

(III) Likely to adversely impact human health and/or the environment if not treated.

B. Remediation or action is required to reduce adverse impacts to public health and/or the environment.

3. Class 3—sites that do not present a significant threat to the public health or environment. Sites present a low risk to public health and/or the environment, and the following criteria for determining this site classification shall apply:

A. Hazardous waste on the site exhibits one (1) or more of the following:

(I) Low to moderately concentrated and are not readily accessible by ingestion and/or inhalation and/or dermal contact due to the nature of the site and the contamination and/or any remedial action taken; and

(II) Exceeding established regulatory guidelines; however, are not significantly impacting public health and/or the environment at this time.

B. Action may be deferred; however, hazardous waste remains on-site, and remediation is needed.

4. Class 4—sites that have been properly closed. All department required response actions have been implemented on the sites, and the response actions have been approved by the department. The following criteria for determining this site classification shall apply:

A. Hazardous waste remains on-site; and

B. The site requires continued treatment, containment, or other operation and maintenance until it meets established regulatory guidelines.

5. Class 5—sites that have been properly closed with no evidence of present or potential adverse impact. Sites proposed for the registry or on the registry meet all department requirements and regulatory guidelines for a residential or industrial cleanup as defined in subparagraphs (7)(B)5.A. and B. of this rule.

A. Residential cleanup.

(I) A site is remediated to standards determined on a site-specific basis by the department in consultation with the Missouri Department of Health, considering toxicity and typical residential exposure factors which may include years of exposure, body weight, exposure dose and/or other risk factors.

(II) A site is cleaned up for the hazardous wastes identified and remediated, and the site is not placed on the registry, or may be removed from the registry. A letter may be sent to the landowner authorizing residen-

tial use of the site. The county recorder of deeds shall be notified of the removal of a site from the registry.

B. Industrial/commercial cleanup.

(I) A site is—

(a) Remediated to standards determined on a site-specific basis by a method approved by the department in consultation with the Department of Health which considers toxicity and typical industrial exposure factors which may include years of exposure, body weight, exposure dose and/or other risk factors;

(b) Used only for industrial or commercial purposes as long as any remaining hazardous wastes exceed the department's residential or any-use standards; and

(c) Not a source for off-site releases of contaminants in concentrations exceeding residential or any-use standards for any media.

(II) A consent agreement shall be signed by the department and the property owner which establishes a schedule and specific responsibilities for completion of a site investigation and remedial action.

(a) The property owner shall—

I. Comply with the terms of the consent agreement; and

II. Continue to comply with the terms of the consent agreement.

(b) The consent agreement shall contain the requirement that the property owner file a deed restriction with the recorder of deeds in the county in which the site is located. One (1) or more of the following deed restrictions shall be filed so as to appear on the chain of title for the site, along with any other restrictions specific to the site:

I. Prohibiting the construction or placement of potable water wells on the property without the approval of the Missouri Department of Natural Resources;

II. Prohibiting excavation or construction work in areas of known soil contamination without the approval of the Missouri Department of Natural Resources;

III. Prohibiting the disruption or alteration of a cap, containment system or barrier in an area of known contamination without the approval of the Missouri Department of Natural Resources; and/or

IV. Prohibiting the property from being used for anything but an industrial use.

(III) The deed restriction and consent agreement are required before a site is withdrawn from the registry, or before a proposal to list a site is withdrawn.

(IV) The property owner must provide the department with evidence that the



property owner has notified the political subdivision exercising jurisdiction over land use planning of the proposed industrial/commercial cleanup level classification.

(C) When the department proposes to initially classify or reclassify a site on the registry in accordance with criteria contained in subsection (7)(B) of this rule, it will notify each owner of record of the proposed site classification. Notice shall be given by certified mail directed to the last known address of the person being notified.

1. The notice shall contain the classification being proposed by the site assessment committee and a statement that the owner or operator may petition the director of the department in accordance with subsection (5)(A) of this rule and appeal the director's final decision in accordance with section 260.460, RSMo and this rule.

2. No registry classification or reclassification may be made until the notice set forth in subsection (7)(C) of this rule has been mailed, and any appeal to the commission in accordance with section (2) of this rule has been finally resolved. If an owner or operator does not file a notice of appeal within thirty (30) days of the mailing date of the notice specified in paragraph (7)(C)1. of this rule, the department will classify the site on the registry as proposed.

3. Pending petitions or appeals of registered sites pursuant to subsection (5)(A) of this rule will not prevent the site from being listed in the annual report. Appeals to the commission under subsection (5)(A) of this rule will be noted in the annual report.

AUTHORITY: sections 260.370 and 260.437, RSMo Supp. 1997. Original rule filed Aug. 14, 1984, effective March 1, 1985. Amended: Filed March 28, 1986, effective Oct. 1, 1986. Amended: Filed Sept. 1, 1987, effective Dec. 25, 1987. Amended: Filed Sept. 6, 1988, effective Jan. 1, 1989. Amended: Filed Feb. 16, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 15, 1991, effective Aug. 1, 1991. Amended: Filed June 1, 1998, effective Jan. 30, 1999.*

**Original authority: 260.370, RSMo 1977, amended 1980, 1988, 1993, 1995 and 260.437, RSMo 1983, amended 1995.*