
Due Care
Section 20107a

Part 201 - 2010 Amendments

West Michigan A&WMA
January 19, 2011

Due Care: Unchanged

- (1)(a) Prevent exacerbation
- (1)(b) Mitigate unacceptable exposures
- (1)(c) Take reasonable precautions
- Notice of Migration – still submit within 45 days
- Notice of Abandoned/Discarded Containers

Due Care: Unchanged

- Responsibilities of person violating (1)(a)
- Compliance with Due Care doesn't satisfy other obligations for response activities under this part
- Exemptions from Due Care
 - Except: New provisions for State and Local Units of Government (LUG)
- Due Care Rules
 - All Rules are still in effect

Due Care: Additions in 2010 Amendments

- (1)(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

Due Care: Additions in 2010 Amendments

- (1)(e) Comply with land use or resource use restrictions
- (1)(f) Not impede the effectiveness or integrity of land use or resource use restrictions
- (2) Owner or Operator obligations are based on the current criteria

Due Care: LUGs and State Exemptions

Exemptions from Due Care – Section 20107a(5):

- Acquire involuntarily, transfer from a non-liable LUG, or through receivership, seizure or forfeiture Section 20126(3)(a)
- Easement or other interest in property for transportation, utility, sewers, pipes, pipelines, public right of way - Section 20126(3)(b)
- Holds utility franchise - Section 20126(3)(c)
- Leases property if LUG is not liable - Sec 20126(3)(e)

Due Care: LUGs and State, cont.

- New Exemptions in Section 20107a(5):**
 - State/LUG that isn't liable under Section 20126(1)(c)**
 - Submittal of BEA**
 - Voluntary acquisition**

Due Care: Express Public Purpose

- **Exemption to the exemption: State/LUG has due care if:**
 - Offer access to the parcel on a regular or continuous basis pursuant to an express public purpose
 - Only applies to that portion of property that is open to public
 - Express public purpose includes but is not limited to, public park, municipal office building, municipal public works
 - Express public purpose does **NOT** include activities surrounding the acquisition or compilation of parcels for the purpose of future development

Due Care: Plans

- ❑ **Section 7a Compliance Analysis under the former BEA process no longer exist**
- ❑ **A Due Care Plan can be submitted as a Response Activity Plan**
 - **If department doesn't respond within 150/180 days the plan is approved by operation of law**
 - **Consider the Due Care Part 10 Rules to develop plan**
- ❑ **Documentation still required to be available to department 8 months after becoming the owner/operator**

Due Care: Questions?

- DNRE Web Page

- www.michigan.gov/bea

- Rhonda Klann

- klannr@michigan.gov

- 989-894-6248

- Jeanne Schlaufman

- schlaufmanj1@michigan.gov

- 586-753-3823