



APPROVED BY ALM.L.

DATE 8/29/17

**START ACTION NOTICE**  
#2017-12

**1. TYPE OF ACTION:**

Amend the *Delaware Regulations Governing Hazardous Substance Cleanup* promulgated pursuant to 7 DEL. C., Chapter 91, Hazardous Substance Cleanup Act (HSCA)

**2. PURPOSE OF ACTION:**

The premise of the Brownfields Development Program (BDP) is to provide liability protections to parties who did not cause or contribute to the release of a hazardous substance on a real property. The intent is to investigate the property, ascertain the quantity and quality of contamination, its fate, transport, and pathways from the source material, and ultimately the potential harm to affected receptors. Upon completion of the investigation, an eligible brownfield developer would have to remediate the property before putting the property back into reuse. This would cleanup the property for the intended use and prevent any further migration of contamination off of the certified brownfield property.

Many contaminated properties that have either been abandoned or left vacant, or that have been put to a new use without any investigation or cleanup being conducted have continued to contaminate nearby properties. These continued releases off of the certified brownfield property are not the responsibility of the brownfield developer but rather all otherwise potentially responsible parties. As the regulations are currently written, certified brownfields are "facilities" which mandates the investigation and cleanup of hazardous substance releases wherever they may be located – on or off the certified brownfield property.

Accordingly, the intent of this action is to clarify the distinction between "certified brownfield property" and a "facility". In addition, minor other revisions would be proposed to reflect changes in the remedial process.

**3. STATUTORY BASIS:**

7 Del.C., Chapter 91, specifically, §§9103(3) and 9123(3)

**4. IS THIS PROPOSED REGULATORY ACTION REQUIRED AS A RESULT OF FEDERAL STATUTE OR REGULATION? IF SO, PROVIDE LINK TO FEDERAL MANDATE.**

No

**5. DATE OF MOST RECENT REVIEW/AMENDMENT:**  
(Please indicate if review was pursuant to EO-36 OR HB 147)

July, 2015; not required pursuant to EO 36 or HB 147

**6. LIKELY AFFECTED PUBLIC:**

Brownfield Developers, adjoining property owners to a certified brownfield property, and potentially responsible parties (PRPs).

**7. PROPOSED SCHEDULE OF ACTIVITIES:**

Public Hearing – June, 2018

Effective Date –October, 2018

**8. REVIEW COMMITTEE:**

HSCA Advisory Committee (HAC)

**9. RESPONSIBLE STAFF MEMBER:**

(name, physical address, phone and fax numbers, and e-mail address)

James M. Poling  
DNREC – SIRS - Brownfields Coordinator  
391 Lukens Drive  
New Castle, DE 19720  
Ph: 395.2600  
Fax: 395.2601  
Email: jim.poling@state.de.us

**10. APPROVALS:**

James M. Poling

Marjorie A. Crofts

  
Signature

  
Signature

James M. Poling 08.03.17

Marjorie A. Crofts 8.4.07

Date  
Responsible Staff Member

Date  
Director, Division of Waste and Hazardous Substance