

**SUBCHAPTER G: ESTABLISHING A FACILITY OPERATIONS AREA**  
**§§350.131 - 350.135**  
**Effective March 19, 2007**

**§350.131. Purpose.**

This subchapter specifies the information and procedures necessary to establish a Facility Operations Area (FOA) to address multiple sources of COCs within an operational chemical or petroleum manufacturing plant which is required to perform corrective action on property regulated under Chapter 335 of this title (relating to Industrial solid waste and municipal hazardous waste) pursuant to a hazardous waste permit or commission corrective action order.

Adopted September 2, 1999

Effective September 23, 1999

**§350.132. Effect.**

(a) The person can propose to modify the provisions of this chapter to the extent necessary to establish an interim response action that will be protective of human health and the environment within and at the boundary of the FOA, with the exception of releases which occur after the effective date of the FOA. The person can establish a prioritization of final response actions to be initiated or completed to the extent practical during the period of FOA authorization.

(b) The person must comply with all requirements of this chapter for response to affected property outside the FOA as these modifications do not extend beyond the FOA boundary.

(c) The person must comply with all other applicable requirements of this chapter unless explicitly exempted from doing so under this subchapter.

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**§350.133. Duration and Termination.**

(a) If granted, these modifications may remain in effect for the duration of active industrial operations within the FOA.

(b) The allowance for the use of the FOA is subject to review at time of renewal of the hazardous waste permit or commission corrective action order for any changed conditions in response to §350.35 of this title (relating to Substantial Change in Circumstances) which result in the FOA no longer being protective of human health and the environment, or at any other time for failing to maintain compliance with the qualifying criteria specified in this subchapter. In such situations, the executive director may direct the person to take corrective action within a certain time period to regain compliance or may initiate actions to revoke the FOA.

(c) At the termination of the FOA, the person shall comply fully with this chapter, with the exception that groundwater response objectives for class 1 and 2 groundwaters present within the terminated FOA boundary may be based on response objectives for class 2 groundwater.

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**§350.134. Qualifying Criteria.**

(a) The person seeking to obtain a FOA has the burden of providing sufficient evidence to the executive director that the following criteria have been met.

(1) The facility must be an operational chemical or petroleum manufacturing plant with North American Industrial Classification System code numbers 325 or 324, respectively, which is actively in production of a product stream.

(2) The facility must be subject to a hazardous waste permit or commission corrective action order. Facilities that are in operation but that have not received a hazardous waste permit as of the effective date of this rule shall obtain authorization for a FOA by means of a corrective action order.

(3) The facility must restrict access to the FOA such that only workers and authorized visitors who have been provided appropriate training or are subject to controls on their activities are permitted to enter the FOA.

(4) The facility must conduct a worker health and safety program. The facility must be able to document that the worker health and safety program meets or exceeds requirements of the Occupational Safety and Health Administration (OSHA) as demonstrated by:

(A) its OSHA compliance history, or

(B) results of evaluation by a third party certified industrial hygienist and safety specialist.

(5) the facility must have an average of both lost workday injury case rates and injury incidence rates for the most recent three-year period at or below the most recent specific industry national average published by the Bureau of Labor Statistics.

(6) The facility must have an audit of its health and safety programs by the Occupational Safety and Health Administration or a third party certified professional industrial hygienist and safety specialist anytime there is a significant change to the health and safety program, or at a minimum of every three years, the results of which indicate the program is satisfactory.

(7) The facility must have a program to protect workers within the FOA from environmental media having concentrations of COCs greater than PCLs or action levels based on the health and safety program.

(8) The facility must have a pollution prevention program that has as a goal the prevention of releases of COCs to environmental media within the FOA. The facility can satisfy this criterion with one or more of the following options:

(A) conduct a program to inspect and maintain on an appropriate frequency the physical integrity of structures used for the manufacturing, storage and conveyance of products or feed stocks so as to prevent or, if detected, to abate unauthorized releases of COCs to environmental media. These procedures are to be applied within the FOA to all structures with potential to release COCs not already addressed by commission rules for hazardous waste management facilities (e.g., secondary containment systems for tanks);

(B) some other spill prevention approach for which the facility can demonstrate equivalent performance with the program of subparagraph (A) of this paragraph; or

(C) acceptance of the facility into a commission-sponsored multi-media voluntary pollution prevention program, such as Clean Industries Plus or a program deemed equivalent by the executive director.

(9) The facility must not have any significant outstanding non-compliance issues resulting from inspections for compliance with its Resource Conservation and Recovery Act permit or any commission order.

(10) The facility must be able to meet requirements for financial assurance in accordance with Chapter 37 of this title (relating to Financial Assurance).

(b) Other criteria that may be considered include, but are not limited to, the risk to human health and the environment that would be presented by the granting of a FOA, the compliance history of the facility determined in accordance with Chapter 60 of this title (relating to Compliance History), as amended, and any other pertinent information.

**§350.135. Application Requirements.**

(a) The person shall submit a proposal as an application for a class 3 modification to a hazardous waste permit, or during preparation of a commission corrective action order, in a form and content acceptable to the executive director, that identifies the proposed modifications and provides the following information.

(1) A description of the lateral and vertical boundaries of the proposed FOA. Facility operations area boundaries can coincide with the facility property boundary only where industrial development extends to the property line.

(A) The lateral boundary shall be depicted on a to-scale map, supported by a metes and bounds description and aerial photographs, land use maps or other appropriate documentation. The exact lateral limits of a FOA are determined on a facility-by-facility basis subject to specific approval by the executive director.

(B) The vertical boundary shall be depicted on to-scale cross-sections which indicate the subsurface conditions. The exact vertical limits of a FOA are determined on a facility-by-facility basis subject to specific approval by the executive director in consideration of the extent and concentrations of COCs in the groundwater-bearing units, hydrogeology, surrounding use of groundwater from those units, and availability of superior water supplies.

(2) The results of an investigation that sufficiently characterizes the proposed FOA with regard to surface and subsurface conditions, groundwater quality and horizontal and vertical groundwater flow pathways. Migration of COCs toward and beyond the FOA boundary must be capable of being reliably predicted and controlled.

(3) The locations of any attenuation monitoring points and points of exposure in relation to the FOA boundary. There are no required points of exposure for groundwater ingestion within the FOA boundary unless water wells with potential for use are located within the FOA.

(4) A description of all action levels developed for the worker health and safety program such that personal protection equipment (e.g., gloves, respirators, impervious clothing, etc.) will not be necessary to prevent contact with COCs in environmental media during performance of normal job duties, and all facility access restrictions to control exposure to environmental media containing COCs in excess of protective levels.

(5) Procedures that shall be used for performing response actions for soil that will achieve protection of human health when COCs in excess of levels acceptable under the worker health and safety program are encountered in response to construction activity, excavation, etc.

(6) An identification of areas of ecological impact identified within the proposed FOA and procedures for responding to these identified ecologically impacted areas which are in accordance with §350.77 of this title (relating to Ecological Risk Assessment and Development of Ecological Protective Concentration Levels).

(7) Procedures for tracking and responding to releases which occur within the FOA after the effective date of the FOA in a manner that will identify and abate the source of the release, (e.g., leaking tank or piping), and restore the impacted environmental media to pre-release conditions.

(8) Procedures, contingency plans, and prioritization plan with time frames for phased corrective action that shall be used for addressing COCs in groundwater and monitoring hydrogeologic conditions, to include a monitoring program at the FOA boundary and intermediate points within or beyond the FOA as necessary (e.g., attenuation monitoring points), as well as to comply with monitoring programs in response to permit provisions or hazardous waste regulations and to evaluate changes in hydrogeologic conditions and COC migration over time.

(9) Procedures to reduce known NAPLs and NAPLs identified during the operational life of the FOA that:

(A) are generally mobile or readily recoverable; and/or

(B) would present a significant risk to human health and the environment should exposure occur at the applicable POE.

(10) A cost estimate in current dollars supported with detailed calculations for hiring a third party to perform the actions specified in subparagraphs (A) and (B) of this paragraph. A third party is a party who is neither a parent nor a subsidiary of the person. The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time the FOA is authorized.

(A) Construct physical controls, operate and monitor the response action at the FOA in accordance with this subchapter for a 30 year time period, and

(B) Carry out the final response action that will achieve compliance with this chapter upon termination of the FOA. Until the person receives approval of the detailed final response action plan, the person shall sum the cost estimates to attain Remedy Standard A or B at individual SWMUs identified in the permit or corrective action order for purposes of estimating this financial assurance amount.

(11) A draft document that the person proposes to use to inform others of the deferred or on-going response actions and institutional controls within the FOA. The document shall comply with the requirements of §350.111 of this title (relating to Use of Institutional Controls). The boundaries of the FOA shall be considered the affected property for purposes of complying with §350.111 of this title. The person shall provide proof of compliance with §350.111 of this title to the executive director within 90 days of authorization of the FOA.

(12) A schedule of implementation for items not completed at the time of FOA authorization by hazardous waste permit modification or commission corrective action order.

(13) Sufficient evidence to show compliance with the qualifying criteria identified in this subchapter.

(b) The facility must obtain final authorization for the FOA as part of a hazardous waste permit modification or commission corrective action order. Revisions to existing hazardous waste permits shall be processed as class 3 modifications. As part of the final authorization process, the person shall provide notice to the public under Chapter 39 of this title (relating to Public Notice), as amended, and Chapter 305 of this title (relating to Consolidated Permits), as amended, for permitted facilities. In the case of a facility obtaining a commission corrective action order, the person shall perform public notice in the same manner as for a permitted facility.

(c) Within 60 days after the effective date of the hazardous waste permit or commission corrective action order authorizing the FOA, the person shall provide proof of financial assurance to the executive director in accordance with Chapter 37 of this title (relating to Financial Assurance) for the amount required by the hazardous waste permit or commission corrective action order authorizing the FOA, except that a pay-in trust is not an eligible financial assurance mechanism. The amount of financial assurance shall be recalculated annually to account for inflation. The amount is also subject to review at time of hazardous waste permit or commission corrective action order renewal. The financial assurance amount may be revised by means of hazardous waste permit modification or commission corrective action order amendment, upon a showing by the person of changed conditions at the FOA that either increase or decrease the amount.

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