

Act No. 61
Public Acts of 1992
Approved by the Governor
May 20, 1992
Filed with the Secretary of State
May 20, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Middaugh, Alley, Sikkema, Dolan, Brown, Hickner, DeBeaussiaert and Kosteva

ENROLLED HOUSE BILL No. 5500

AN ACT to amend section 11c of Act No. 307 of the Public Acts of 1982, entitled as amended "An act to provide for the identification, risk assessment, and priority evaluation of environmental contamination at certain sites in this state; to provide for response activity at certain facilities and sites; to prescribe the powers and duties of the governor, certain state agencies and officials, and other persons; to provide for the promulgation of rules; to require record notice regarding the status of certain facilities; to create certain funds and provide for their expenditure; to provide for public participation; to provide for methods of dispute resolution; to authorize grants, loans, and awards; to create certain boards, councils, and offices and to prescribe their powers and duties; to provide for judicial review; and to provide certain remedies and penalties," as added by Act No. 234 of the Public Acts of 1990, being section 299.611c of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 11c of Act No. 307 of the Public Acts of 1982, as added by Act No. 234 of the Public Acts of 1990, being section 299.611c of the Michigan Compiled Laws, is amended to read as follows:

Sec. 11c. (1) Upon receipt of the items of difference pursuant to section 11a or 11b, the chairperson of the science advisory council shall give notice of the dispute and of the parties to the dispute to each member of the science advisory council. Upon receipt of this notice, the members of the science advisory council shall make full disclosure of any present or past personal, contractual, financial, business, or employment interest in matters related to the persons involved in the dispute. After reviewing these disclosures, the chairperson shall appoint 3 members of the science advisory council to serve on a panel to provide recommendations for resolving the items of difference and shall give notice of these appointments to the department and the persons that may be liable under section 12 for that facility. The chairperson shall not appoint a person to serve on a panel who has any present personal, contractual, financial, business, or employment interest in a matter related to the persons involved in the dispute before the panel.

(2) Within 60 days after appointment of the science advisory council panel under subsection (1), the department and the persons that may be liable under section 12 may each submit a written statement not exceeding 20 pages in support of its position. An interested member of the general public may also submit a written statement, not exceeding 20 pages, in support of a position on any item of difference. The science advisory council panel shall schedule a meeting to deliberate and prepare recommendations on resolving the items of difference. A meeting of the science advisory council panel shall be held pursuant to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. The science advisory council panel shall, within 90 days of receiving the written statements allowed to be submitted in this subsection, forward its recommendations on the items of difference to the department, the persons that may be liable under section 12, and the office of environmental cleanup facilitation. The recommendations of the science advisory council panel shall become part of the administrative record.

(3) Within 30 days after receipt of the recommendations of the science advisory council panel pursuant to subsection (2), a facilitator assigned by the office of environmental cleanup facilitation shall conduct additional discussions with the department and the persons that may be liable under section 12 and shall schedule a facilitation conference. Through these discussions, the facilitator shall attempt to facilitate an agreement between the department and the persons that may be liable under section 12 regarding the contents of a remedial action plan. If the department and the persons that may be liable under section 12 are unable to agree to a remedial action plan at the facilitation conference, the department shall approve a remedial action plan that includes the recommendations of the science advisory council panel, unless the department prepares and approves an alternative remedial action plan. The department shall approve a remedial action plan pursuant to this subsection within 90 days after the department receives the recommendations from the science advisory council panel. If the department does not approve a remedial action plan during this time period, the persons that may be liable under section 12 may implement a remedial action plan that includes all of the recommendations of the science advisory council panel and is otherwise in compliance with this act and the rules promulgated under this act. This remedial action plan shall be considered an approved remedial action plan.

(4) A person that participates in the allocation process under section 11g shall not have standing in a civil action to challenge the recommendations of the science advisory council panel, pursuant to subsection (2), which are included in an approved remedial action plan. Additionally, if a court later upholds the contents of the approved remedial action plan, the court shall assess against the persons that may be liable under section 12 for the facility the full costs of facilitation under this section and section 11b and enforcement costs. If the department approves a remedial action plan that does not contain the recommendations endorsed by a majority of the science advisory council panel and if a court later does not uphold the contents of that remedial action plan, the court shall assess against the department the full costs of facilitation under this section and section 11b, court costs, and the reasonable attorney fees for the persons that may be liable under section 12. Additionally, if the action is for cost recovery of response activities at a facility in which remedial action has been completed, the court shall only assess against the persons that may be liable under section 12 the cost of remedial action that the court determines should have been undertaken.

(5) In any court proceeding pursuant to this section, there is a rebuttable presumption that the recommendations of the science advisory council panel on the items of difference are supported by a preponderance of scientific evidence.

(6) This section does not preclude the department from taking action as provided in sections 10e and 10f.

Section 2. This amendatory act shall not take effect unless House Bill No. 5341 of the 86th Legislature is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved.....

Governor.