Legislative Analysis

Mitchell Bean, Director
Phone: (517) 373-8080
http://www.house.mi.gov/hfa

PART 201: REVISE ENVIRONMENTAL CLEANUP LAW

House Bill 6358 without amendment
Sponsor: Rep. Joe Haveman

House Bill 6359 (Substitute H-1 w/ floor amendment)
Sponsor: Rep. Ed Clemente

House Bill 6360 without amendment
Sponsor: Rep. Woodrow Stanley

House Bill 6361 without amendment
Sponsor: Rep. Sharon Tyler

House Bill 6362 without amendment
Sponsor: Rep. Kate Segal

House Bill 6363 without amendment
Sponsor Rep. Marty Knollenberg

Committee: New Economy and Quality of Life
Complete to 11-29-10

A SUMMARY OF HOUSE BILLS 6358-6363 AS PASSED BY THE HOUSE 11-10-10

This package of bills would substantially revise Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (NREPA), the law governing the cleanup of properties contaminated with hazardous substances, referred to as "facilities" under Part 201. Among other things, the bills would do the following things:

- Expand the use of "self-implemented" response activities and remedial actions, allowing property owners or operators to take steps to address the release of hazardous substances without the prior approval of the Department of Natural Resources and the Environment (DNRE).
- Reduce the number of cleanup criteria categories, revise cleanup criteria, and allow the use of site-specific criteria in certain circumstances.
- Allow a property owner or operator to submit a "no further action" report that, if approved by the DNRE or by operation of law, would relieve the owner or operator of any further liability under Part 201 for the contamination addressed in the report, except as specified.
- Allow property owners or operators to appeal certain scientific and technical disputes to a newly-created panel of environmental consultants called the Response Activity Review Panel.
- Revise provisions concerning when, and under what conditions, a response activity plan could allow groundwater from a facility to enter surface water.
- Revise provisions concerning the liability of the state and local units of government and of people who lease property for certain purposes.
- Revise provisions concerning baseline environmental assessments.
- Revise provisions dealing with the repayment of loans to local units of government from the Revitalization Revolving Loan Fund.

- Eliminate the DNRE's authority to require the reporting of releases on facilities and easements of lower quantities of hazardous substances than are reportable under specified federal regulations.
- Require the owner of a facility from which hazardous substances have migrated to notify the DNRE and the owners of the property to which the substances have migrated within 30 days after learning of the migration.
- Require a person conducting certain oil and gas activities on someone else's property to notify the DNRE and the owner of the surface property within 30 days after learning of a release on the property.
- Revise Part 201 fines.
- Repeal certain Part 201 provisions and rules, and specify that certain DNRE guidelines and operations memos have no legally binding effect.

Each of the Part 201 bills has a similar Senate counterpart, as indicated in the table below. Certain House and Senate bills (House Bills 6416-6417/Senate Bills 1442-1443) that would allow money from the State Water Pollution Revolving Fund (SRF) and the Strategic Water Quality Initiatives Fund (SWQIF) to be used to facilitate the cleanup of abandoned brownfields under Part 201, are tie-barred to bills in this Part 201 package, meaning that those bills would not take effect unless the tie-barred Part 201 bills are also enacted into law. (See the separate summaries of those bills.) Each Part 201 bill is tie-barred to other Part 201 bills, but not to the SRF & SWQIF fund bills, meaning that, if enacted, the Part 201 bills could take effect whether or not the SRF and SWQIF bills are enacted into law.

House Bill	General subject	Similar Senate Bill	Tie-bars
HB 6358 (Haveman)	Lead bill revising Part 201	SB 1345* (Birkholz)	SBs 1346, 1348; HBs 6359, 6360, 6363
HB 6359* (Clemente)	Response Activity Review Panel; liability amendments	SB 437 (Allen)	SBs 1345, 1346, 1348; HBs 6360, 6363
HB 6360* (Stanley)	Due care; renegotiate loan terms	SB 1349 (Thomas)	SBs 1345, 1346, 1348; HBs 6363, 6359
HB 6361 (Tyler)	Definitions; effect of guidelines	SB 1346* (Sanborn)	SBs 1345, 1348; HBs 6360, 6363, 6359

HB 6362 (Segal)	Fines	SB 1348* (Gleason)	SBs 1345, 1346; HBs 6360, 6363, 6359
HB 6363* (Knollenberg)	Inventories; reporting obligations	SB 1347 (Basham)	SBs 1345, 1346, 1348; HB 6360

*It is anticipated that, if approved by both chambers, the following Part 201 bills would be enacted into law: HB 6359 (Clemente), HB 6363 (Stanley), HB 6363 (Knollenberg), SB 1345 (Birkholz), SB 1346 (Sanborn), and SB 1348 (Gleason); and the following SRF and SQWIF bills would be enacted into law: HB 6416 (Griffin) and SB 1443 (Gilbert). HB 6416 (Griffin) is tie-barred to Part 201 bills as well as SB 1267 (extend sunset on Refined Petroleum Fund fee).

House Bill 6358 would do the following things:

- Allow the owner or operator of a facility to undertake *response activities* (e.g., evaluation, interim response activity, remedial action, and demolition) with or without the DNRE's prior approval (unless the person was subject to an administrative or judicial order requiring prior approval). A person who wanted DNRE approval of one or more aspects of the plan could submit the plan to the DNRE along with a review request form.
- Allow, but not require, a person to submit a "no further action" report to the DNRE after completing *remedial action* (e.g., cleanup, removal, containment, or monitoring) satisfying Part 201 cleanup criteria. (As defined in HB 6361, a no further action report would detail completion of remedial action and could include a postclosure plan and postclosure agreement, if necessary. Under HB 6359, a person whose no further action report is either approved by the DNRE or considered approved by operation of law would have no Part 201 liability for environmental contamination addressed in the report, except in specified circumstances.)
- Allow the DNRE 150 days (180 days in some cases in which public participation is required) to respond to a response activity plan or no further action report submitted to it or else the plan is considered approved by operation of law; allow the DNRE to respond to a plan by approving it, approving it with conditions, denying it, or notifying the person submitting it that that the plan is incomplete.
- Allow a person to appeal the DNRE's decision on a response activity plan or a no further action report to the Response Activity Review Panel created in HB 6359 on the basis of a scientific or technical dispute.

- Require any necessary land-use or resource-use restrictions or permanent marker requirements to be placed in postclosure plans instead of remedial action plans.

- Require some land-use or resource-use restrictions and permanent marker requirements to be placed in restrictive covenants that are recorded with the county register of deeds; require a person to provide notice of such restrictions to the DNRE and the local zoning authority within 30 days after recording them.

- Specify that permanent markers aren't required if the only applicable restrictions relate to a facility whose remedial actions satisfy nonresidential cleanup standards; to groundwater use; to protection of exposure controls to prevent soil contact composed of certain materials; or to requirements for future-built structures.

- Require permanent markers for exposure controls preventing soil contact, if the hazardous substances have acutely toxic, reactive, corrosive, ignitable, explosive or flammable qualities, or are present in a concentration more than 10 times higher than allowed for direct soil contact.

- Allow a person who completes remedial actions satisfying limited residential cleanup criteria or site-specific residential cleanup criteria to submit a no further action report to the DNRE along with a request that the facility be designated a residential closure.

- Specify when a no further action report must include a postclosure plan and postclosure agreement.

- Allow a postclosure agreements to (1) restrict exposure to a hazardous substance with an "institutional control" (a local ordinance prohibiting the use of groundwater or an aquifer), and (2) to waive permanent markers requirements.

- Prescribe affidavit, insurance, and record retention requirements for people who prepare or submit no further action reports.

- Require the DNRE to review and provide a written response within the specified time frames for at least 90 percent of the no further action reports submitted to it each calendar year.

- Require the DNRE to provide a no further action letter to a person who submits a no further action report if it approves the no further action report and related documents.

- Specify relevant factors for selecting or approving remedial action.

- Reduce the current number of cleanup categories to four (residential, limited residential, nonresidential, and limited nonresidential), and adopt the current industrial categorical cleanup criteria as the nonresidential cleanup criteria, as of the bill's effective date, until new nonresidential cleanup criteria are developed.

- Specify the applicable cleanup criterion for groundwater in an aquifer when the Part 201's cleanup criterion is less stringent than other specified standards.

- Prohibit the DNRE from approving a no further action report in a nonresidential cleanup category that is inconsistent with the property's zoning designation, but allow the DNRE to approve a report allowing greater exposure potential than is permitted under the criteria that apply to the zoning designation.

- Delete existing residential cleanup criteria.

- Allow a higher concentration of a hazardous substance than would otherwise be allowed if either the target detection limit (as specified in a DNRE-published list) for the substance or the background concentration of the substance is higher than the otherwise applicable criterion.

- Allow approval of a different cleanup criterion if a published target detection limit can't be achieved in a facility's samples because of conditions that prevent hazardous substance from being reliably measured at certain levels.

- Delete the current requirement that a Part 201 remedial action that allows venting groundwater (groundwater entering surface water from contaminated property) must comply with Part 31 (Water Resources Protection); specify that no permit is required for venting groundwater discharges that comply with Part 20l; and specify that such discharges do not have to be provided for in an approved remedial action plan.

- Eliminate the current requirement that the DNRE evaluate, and if appropriate, revise, Part 201 cleanup criteria annually; instead, require the DNRE to evaluate and revise cleanup criteria within two years after the bill takes effect and periodically thereafter.

- Require the DNRE to approve site-specific response activity criteria in specified circumstances.

- Prescribe standards to demonstrate compliance with Part 201 for response activities involving venting groundwater; allow certain response activities involving venting groundwater to be self-implemented; specify when departmental approval is required for response activities involving venting groundwater that rely on monitoring from alternative points; and prescribe standards for the use of alternative monitoring points.

- Specify that any response activity plan that includes a mixing zone relating to groundwater venting is subject to a 30-day public comment period.

- Allow the department's decisions on response activity plans or no further action plans regarding venting groundwater to be appealed to the Response Activity Review Panel as a scientific or technical dispute.

- Repeal specified sections of Part 201 (Sections 20105, 20109a, and 20129a) and certain administrative rules promulgated under Part 201.

House Bill 6359 would do the following things:

- Require the DNRE director to establish a 15-member Response Activity Review Panel for advice on technical or scientific disputes regarding response activity plans and no further action reports. (From this group, five members would be appointed to hear a particular appeal.)

- Prescribe the necessary contents and a $3,500 fee for a petition to the panel.

- Limit panel membership only to environmental consultants who meet specified education and experience requirements and exclude people who currently work for the state or who have worked for the state in the past three years from serving on the panel.

- Require the panel to make a written recommendation on a dispute within 45 days after hearing it, and require the DNRE director to make a final decision on the petition within 60 days after receiving the panel's recommendation. The director's final decision would be subject to court review.

- Revise rules governing baseline environmental assessments (BEAs) (e.g., notice to the DNRE or a subsequent purchaser or transferee within six months, rather than 45 days, after the earliest of the date of the purchase, occupancy, or foreclosure.)

- Revise exemptions for local units of government and for people who rent property for a retail, office, or commercial purpose.

- Exempt a person whose no further action report has either been approved by the DNRE or is considered approved by operation of law from liability for environmental contamination addressed in the report, except as specified.

- Revise the burden of proof in Part 201 liability cases to delete a provision describing a person's burden after the department has made a prima facie case for liability.

- Delete a provision allowing a lender to transfer contaminated property to the state under certain circumstances.

- Prohibit the DNRE from enforcing specified administrative rules regarding BEAs, and allow, but not require, the DNRE to enforce other specified BEA rules.

- Revise provisions concerning joint and several liability under Part 201.

House Bill 6360 would do the following things:

- Require the owner or operator of a property that is a facility to provide reasonable cooperation, assistance, and access to people authorized to conduct response

activities at the facility, and to comply with—and not impede—land-use or resource-use restrictions at the facility.

- Specify that only someone who is not otherwise liable under Part 201 for the release at a facility would be responsible for certain costs and damages under Section 20107a.

- Specify that certain requirements (preventing the exacerbation of existing contamination, exercising due care, and taking precautions against third-party acts or omissions) that do not currently apply to the state or local unit of government in many situations would apply if the state or local unit of government opened and invited the public to use the property for an express public purpose.

- Revise provisions dealing with the repayment of loans to local units of government under the Revitalization Revolving Loan Fund.

House Bill 6361 would do the following things:

- Revise existing Part 201 definitions, including "baseline environmental assessment" and "facility," and insert many new definitions including "all appropriate inquiry," "cleanup criteria for unrestricted use," "financial assurance," "no further action letter," "no further action report," "postclosure agreement," "postclosure plan," "residential closure," and "response activity plan."

- Allow, but not require, the DNRE to promulgate rules necessary to implement Part 201, and specify that any reference to "this part" in Part 201 also refers to rules promulgated under Part 201.

- Specify that a DNRE guideline, interpretative statement, or operational memorandum under Part 201 does not have the force and effect of law and is not legally binding on anyone.

House Bill 6362 would do the following things:

- Prescribe a maximum civil fine of $25,000 per day for the owner or operator of a facility from which a hazardous substance is released, if the release was reportable and not permitted, if the owner or operator does not notify the DNRE within 24 hours of learning of the release, or submits information that the person knows is false or misleading. (The amount of the fine imposed would depend on the seriousness of the violation and whether good-faith efforts were made to comply.)

- Specify that a person who misrepresented his or her qualifications in a no further action report or an appeal to the Response Activity Review Panel commits a felony, subject to a fine (minimum $2,500, maximum $25,000) for each violation.

House Bill 6363 would do the following things:

- Require the DNRE to create, maintain, and post on its website two inventories—one of residential closures and another of other known facilities—containing prescribed information.

- Require the DNRE to compile and post on its website on a quarterly basis the number of response activity plans, no further action reports, and baseline environmental assessments it has received and the disposition of each.

- Delete references to a risk assessment process and to a municipal landfill cost share grant program that would be eliminated.

- Change the due date of a report that the DNRE must file each year about projects funded under Part 201 from December 31 to April 1.

- Eliminate the DNRE's authority to set a reportable quantity other than the quantity established in specified federal regulations with respect to certain reporting obligations that apply to the owners or operators who know a property is a facility and who have Part 201 liability and to certain easement holders.

- Require an owner or operator who knows a property is a facility and who has Part 201 liability to report the migration of the hazardous substances beyond the boundary of the property to the DNRE and the owner of the other property within 30 days after obtaining knowledge that the release had migrated.

- Require the owner or operator engaging in activities subject to permitting under Part 615 (Supervisor of Wells) (e.g., oil and gas activities) on someone else's land to notify the DNRE and the surface owner of the property within 30 days of learning of a certain releases on the property.

FISCAL IMPACT:

These bills would alter the methods used to determine the adequacy of environmental cleanups and the administrative process that owners of facilities must work through concerning the environmental cleanup of a facility. Under the bills' provisions, the Department may incur additional costs related to increased administrative workload that might be necessary from these changes under the provisions of the bills. In addition, other fiscal implications are as follows:

House Bill 6358 would repeal Section 20129a which establishes a process for a person to petition the Department for an exemption of liability after the completion of a Baseline Environmental Assessment (BEA). Under current law, each petition must be accompanied by a fee of $750, which is deposited into the Cleanup and Redevelopment Fund. In FY 2009, the DNRE received 142 BEA petitions and gave determinations on 135 of them in that year. The fees accompanying these petitions generated $106,500 in revenue. Under the provisions of HB 6358, this section would be repealed and these exemption fees would no longer be collected.

House Bill 6359 would require the Department to establish a 15-member Response Activity Review Panel that would advise the DNRE on technical and scientific disputes concerning response activity plans and no further action reports. While the panel members would serve without compensation, they may be reimbursed for the actual and necessary expenses they incur in the performance of their duties. The Department could incur additional costs as a result.

The bill also provides that a person who has submitted a response activity plan or a no further action report may petition to appeal a decision made by the Department. The petition must also include a fee of $3,500. If the dispute is resolved without convening the Response Activity Review Panel, then the fee shall be returned to the petitioner. If the panel is convened, then the fee is to be deposited into the Cleanup and Redevelopment Fund.

House Bill 6360 would institute changes to the Revitalization Revolving Loan Program which authorizes the DNRE to make loans to local units of government for activities that promote economic redevelopment. The bill would allow the DNRE to renegotiate the terms of any outstanding loan if requested to do so by a loan recipient that can demonstrate financial hardship related to the project. These provisions would have an indeterminate fiscal impact on local units of government, depending upon any changes that might be made in the terms of their individual loan.

House Bill 6362 would revise the civil fines assessed under Section 20137. The bill would include an additional civil fine of up to $25,000 for each day in which an owner or operator of a facility fails to notify the Department within 24 hours after learning of a release at the facility. This fine would not be imposed if a fine or penalty was assessed under another part of the statute or if the person made a good-faith effort to prevent the release.

The bill imposes a civil fine for this violation without classifying the violation as a civil infraction or directing the fine revenue into a specific fund. In these cases, it is assumed that a provision of the Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). Thus, House Bill 6362 would increase the state General Fund by an indeterminate amount, depending upon how many new civil fines are collected under the bill's provisions.

DETAILED SUMMARY:

House Bill 6358

Delete civil fine provision**.** [Delete §20114a] Under current Section 20114a, a person responsible for a release[1] of a hazardous substance exceeding an allowed concentration is

[1]Generally speaking, the term "release" in Part 201 means a spill, escape, leak or disposal of a hazardous substance into the environment, or the abandonment or discarding of a container containing a hazardous substance into the environment. The term "release" does not include certain workplace exposures, engine exhaust emissions, nuclear materials, and agricultural practices. In Part 201, a "hazardous substance" means one or more of the following (1) a

subject to a civil fine under Part 201, unless (1) the person was already fined under another part of NREPA; (2) the person made a good faith effort to prevent the release; or (3) the release was from an underground storage tank system. The bill would delete this provision. [Note, however, that a similar fine provision pertaining to revised cleanup criteria would be inserted as Section 20137(2) in House Bill 6362.]

Self-implemented response activities; no further action reports. [New §20114a] Subject to Section 20114 (as revised by HB 6363) and other applicable law, a person could undertake *response activities* without prior approval from the DNRE—in other words, the person could "self-implement" *response activities*—unless prior approval was required by an administrative order or agreement or a judicial decree. Except as otherwise provided in Part 201, conducting self-implemented response activities wouldn't relieve a person from an obligation to conduct further response activities, if required to do so by the DNRE under Part 201 or other applicable law.

(Under HB 6361, "response activity" means "evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the Department of Community Health and enforcement actions related to any response activity.")

After completing *remedial action* satisfying Part 201 cleanup criteria, a person could submit a no further action report to the DNRE.

(In Part 201, "'remedial action' includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment."

A no further action report, as defined in HB 6361, is "a report…detailing the completion of remedial actions and including a postclosure plan and a postclosure agreement, if appropriate.")

[The self-implemented response activity provision currently found in Section 20114(2) would be deleted by HB 6363.]

---

substance that the department demonstrates, on a case-by-case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment; (2) a hazardous substance as defined in a federal law (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)); (3) a hazardous waste as defined in Part 111 (Hazardous Waste Management) of NREPA; or (4) petroleum as described in Part 213 (Leaking Underground Storage Tanks) of NREPA. An exception exists for certain fruits, vegetables, and field-crop processing byproducts applied to land or used as animal feed.

Response activity plans submitted for approval. [§20114b(1)-(2)] A person could submit a "response activity plan" seeking DNRE approval for one or more aspects of the response activity, subject to Section 20114(1)(h).[2]

(Under HB 6361, a "response activity plan" means "a plan for undertaking response activities," that may include interim response activities, evaluation activities, feasibility studies, and remedial action plans.)

Unless subject to an administrative or judicial order requiring prior approval of response activity, the person would submit a review request form along with the response activity plan. The DNRE would have to develop a review request form and make it available on its website.

Response activity plan approval. [§20114b(3)-(5)] Upon receipt of a response activity plan submitted for its approval, the DNRE would have to do one of the following things:

- Approve the plan.
- Approve the plan with conditions (stating any conditions with specificity).
- Deny the plan (stating with specificity all of the reasons for denial, to the extent practical).
- Notify the person that the plan lacks sufficient information for the department to make a decision (identifying the additional information required).

The department would have to respond in writing within 150 days after receiving the plan, or within 180 days, if public participation is required under Section 20120d(2). If the department didn't provide a written response within the required time frame, the plan would be considered approved. A denied plan could be revised and resubmitted for approval. A time frame could be extended by written agreement of the department and the person who submitted the plan.

Appeal. [§20114b(6)] A person could appeal the department's decision regarding a response activity plan to the Response Activity Review Panel created by HB 6359, if applicable.

Postclosure plans. [§20114c(1)-(2)] [Note: The bill would delete Section 20120b, the current remedial action plan section, but some of that section's provisions would now be found in Section 20114c, in revised form in some cases. Under the bill, land-use or resource-use restrictions are now generally contained in *postclosure plans*, as described in new Section 20114c, rather than in *remedial action plans*. In various places in the bill,

[2] Section 20114(1)(h), as revised by HB 6363, would require an owner or operator of a property who has knowledge that the property is a facility and who is liable under Part 201 to take one or more of the following actions, at the department's written request: (1) provide a response activity plan that includes interim response activities and then undertake those interim response activities; (2) provide a response activity plan that includes undertaking evaluation activities and then undertake those evaluation activities; (3) pursue remedial actions under Section 20114a (self-implementation), and upon completion, submit a no further action report under that section; (4) take any other response activity that the department determines is technically sound and necessary to protect the public health, safety, welfare, or the environment.

the term "remedial action plan" is therefore changed either to "postclosure plan or postclosure agreement" or to "remedial action."]

If remedial actions at a facility satisfied unrestricted residential criteria, no subsequent land-use or resource-use restrictions or monitoring would be required. If not, a postclosure plan for the facility would have to be prepared and implemented by the person doing the cleanup. The postclosure plan would have to include (1) land-use or resource-use restrictions to be included in restrictive covenants running with the land; and (2) permanent markers to describe any restricted areas and the nature of the restrictions.

Permanent markers. [§20114c(2)(b)] Permanent markers would not be required if the only applicable restrictions relate to: (1) a facility whose remedial actions satisfy nonresidential cleanup standards; (2) groundwater use; (3) the protection of exposure controls to prevent soil contact composed solely of asphalt, concrete, or landscaping materials; or (4) construction requirements or limitations for structures that could be built in the future.

Permanent markers would be required to protect the integrity of exposure controls preventing soil contact if any of the hazardous substances addressed by the barrier (1) exceed a cleanup criterion based on acute toxic effects, or reactive, corrosive, ignitable, explosive, or flammable qualities; or (2) is present in a concentration more than 10 times higher than allowed for direct soil contact under an applicable criterion.

[Permanent marker requirements may be waived by a postclosure agreement under Section 20114d(4).]

Restrictive covenants. [§20114c(3)-(4)] Land-use or resource-use restrictions "that assure the effectiveness and integrity of any containment exposure barrier" or that are "necessary to assure the effectiveness and integrity of the remedy" would have to be described in a restrictive covenant. The DNRE would have to develop a format for covenants that satisfy Part 201, modifiable to reflect facility-specific facts, and make it available on its website.

The property owner (or someone with the owner's express written consent) would have to record the restrictive covenant with the register of deeds in the county where the property was located within 21 days after either (1) remedial actions were completed, or (2) a containment or barrier was constructed, as appropriate. No one else could record the covenant. Unless the DNRE had approved the covenant's recording, the restrictive covenant could not indicate DNRE approval.

A restrictive covenant would run with the land and be binding on the owner's successors, assigns, and lessees. It would have to include a survey and property description defining the areas addressed by the remedial actions and the scope of any restrictions on the use of the land or its resources. In addition, the covenant would have to do at least the following things:

- Describe what general uses of the property were consistent with the cleanup criteria.
- Restrict activities at the facility that could interfere with remedial actions, operations and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial actions.
- Restrict activities that could result in exposures above the levels attained with the remedial actions.
- Grant the DNRE authority to enforce the covenant in court.

Notice to DNRE & local zoning authority. [§20114c(5)] A person who implemented a postclosure plan would have to provide notice of its land-use or resource-use restrictions to the DNRE and to the zoning authority of the local governmental unit in which the facility was located within 30 days after recording the restrictions with the register of deeds.

State-owned property. [§2044c(6)] With the approval of the state administrative board, the DNRE could place a restrictive covenant with land-use or resource-use restrictions on the deed of a state-owned property.

Subsequent liability. [§20114c(7)-(8)] Implementing remedial action would not relieve any person liable under Section 20126 of the responsibility to report and respond to subsequent releases or threatened releases. In addition, implementing a remedial action without departmental approval would not thereby relieve any person of an obligation to undertake response activities or limit the department's ability to require a person liable under Section 20126 to perform response activities necessary for compliance with Part 201.

No further action report; residential closure. [§20114d(1)] Upon completing remedial actions that satisfied cleanup criteria and all other applicable requirements of Part 201, a person could submit a no further action report to the DNRE on a DNRE-developed form available on its website. The report would have to document the person's basis for concluding that the remedial actions were completed, and could include a request that the facility be designated as a residential closure, upon approval.

(A "residential closure" is defined in HB 6361 as "a facility at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria under section 20120a(1)(c) or the site-specific residential cleanup criteria under sections 20120a(2) and 20120b, that contains land use or resource use restrictions and that is approved by the department or is considered approved by the department under section 20120d." Under HB 6359, a person who submits a no further action report that is either approved by the DNRE or considered approved by operation of law would have no Part 201 liability for environmental contamination addressed in the report.)

Submissions required with no further action report. [§20114d(2)] Both a postclosure plan and a proposed postclosure agreement would have to be submitted with every no further action report except in two situations:

- If the remedial action satisfied cleanup criteria for unrestricted residential use, neither a postclosure plan nor a proposed postclosure agreement would be required.
- If the remedial action required only land-use or resource-use restrictions, and either no financial assurance was required or the required assurance was de minimis, a postclosure plan would be required, but a proposed postclosure agreement would not be required.

(Under HB 6361, a "postclosure plan" is "a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions as required under section 20114c." A "postclosure agreement" is "an agreement between the department and a person who has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions as provided for in section 20114d.")

Proposed postclosure agreements. [§20114d(3)] A proposed postclosure agreement submitted as part of a no further action report would need to contain all of the following provisions:

- Monitoring, operation, maintenance, and oversight provisions necessary to assure the effectiveness and integrity of the remedial action.
- Financial assurance, as defined in HB 6361, to pay for these provisions and for other costs the department determined were necessary to assure the effectiveness and integrity of the remedial action.
- A requirement that the owner provide the DNRE with 14 days' advance notice of an intent to convey any interest in the facility.
- A provision granting the DNRE the right to enter the property at reasonable times to determine and monitor compliance with the postclosure plan and postclosure agreement, including the right to take samples, to inspect the operation of the remedial action measures, and to inspect records.

Modification of postclosure plan by a postclosure agreement. [§20114d(4)] A postclosure agreement could modify the terms of a postclosure plan as follows:

- If an institutional control, rather than a restrictive covenant, could reliably restrict exposure to the hazardous substances, and imposition of land-use or resource-use restrictions were impractical, a postclosure agreement could allow a remedial action under Section 20120a(1)(c), (d) or (2) to rely on an institutional control in lieu of a restrictive covenant in a postclosure plan. An ordinance restricting the use of groundwater or an aquifer to protect against unacceptable exposures could serve as an "institutional control." To serve as an exposure control, an ordinance would have to be published and maintained in the same manner as a zoning ordinance, and the local unit of government would have to notify the DNRE at least 30 days before modifying, "lapsing," or revoking the ordinance.
- A postclosure agreement could waive the requirement for permanent markers.

Attestations; insurance. [§20114d(5)-(6)] A no further action report would have to include a signed affidavit from (1) the person who submits it attesting that the information on which the report was based was complete and true to the best of that person's knowledge, and (2) the qualified environmental consultant who prepared the report attesting to the fact that the remedial actions detailed in the report complied with all applicable requirements and that the information upon which the report was based was complete and true to the best of the consultant's knowledge.

The consultant would also have to attach certificate of insurance showing that the consultant had obtained the following insurance policies from carriers authorized to conduct business in Michigan:

- Statutory worker compensation insurance as required in Michigan.
- Professional liability errors and omissions insurance (of at least $1.0 million per claim), with no exclusions for bodily injury, property damage, or claims arising out of pollution or environmental work.
- Contractor pollution liability insurance (of at least $1.0 million per claim), if not included under the professional liability errors and omissions insurance. (This requirement would not apply to environmental consultants with no contracting functions.)
- Commercial general liability (of at least $1.0 million per claim).
- Automobile liability insurance (of at least $1.0 million per claim).

A person submitting a no further action report would have to maintain all documents and data prepared, acquired, or relied on in connection with the no further action report for at least 10 years after the later of the date on which the DNRE approved the no further action report or the date on which no further monitoring, operation, or maintenance was required to be undertaken as part of the remedial action covered by the report. These documents and data would have to be made available to the DNRE upon request.

No further action report approval. [§20114d(7)-(8)] Upon receipt of a no further action report, the DNRE would have to approve it, deny it (stating with specificity all of the reasons for the denial, to the extent practical), or notify the submitter that the report didn’t contain sufficient information for the department to make a decision (identifying the information required by the department). The DNRE could negotiate different terms from those contained in a proposed postclosure agreement. The department would have to provide its determination within 150 days after receiving the report, or within 180 days if public participation is required under Section 20120d(2). If the department doesn't provide a written response within the specified time frames, the no further action report would be considered approved. The department would have to review and provide a written response within the specified time frames for at least 90 percent of the reports submitted to it each calendar year.

If the no further action report, including any required postclosure plan and postclosure agreement, is approved, the DNRE would provide the person submitting the report with a no further action letter. (As defined in HB 6361, a "no further action letter" is "a written

response provided by the department under section 20114d confirming that a no further action report has been approved after review by the department.")

Appeal. [§20114d(9)] A person requesting approval of a no further action report could appeal the department's decision under Section 20114e. [Section 20114e of HB 6359 creates a Response Activity Review Panel.]

Extension of time. [§20114d(10)] Any time frame required under the section governing no further action reports could be extended by written agreement of the DNRE and the person who submitted the report.

Amended reports. [§20114d(11)] Following the approval of a no further action report, the owner or operator of the facility addressed by the report could submit an amended no further action report to the DNRE. The amended report would include the proposed changes to the original no action report and an accompanying rationale for the proposed change. The process for review and approval of an amended no further action report would be the same as the process for an initial report.

Factors for evaluating remedial action. [§20120] The following factors would have to be considered by a person when selecting a remedial action, and by the DNRE when selecting or approving one:

- The effectiveness of alternatives in protecting the public health, safety, and welfare and the environment.
- The long-term uncertainties associated with the proposed remedial action.
- The hazardous substances' persistence, toxicity, mobility, and propensity to bioaccumulate.
- The short- and long-term potential for adverse health effects from human exposure.
- The costs of remedial action, including long-term maintenance costs. However, costs can only be considered when choosing among alternatives that adequately protected the public health, safety, and welfare and the environment, consistent with Section 20120a.
- The reliability of alternatives.
- The potential for future response activity costs if an alternative failed.
- The potential threat to human health, safety, and welfare and the environment associated with excavation, transportation, and redisposal or containment.
- The ability to monitor the remedial performance.
- For remedial actions requiring the opportunity for public participation, the public's perspective about the extent to which the proposed remedial action effectively satisfy Part 201.

An evaluation of these factors must "consider all factors in balance with one another as necessary to achieve the objectives of [Part 201]. No single factor…shall be considered the most important."

Cleanup criteria categories. [§20120a(1)] Part 201 currently authorizes the DNRE to establish cleanup criteria and approve remedial actions in prescribed categories. The person proposing the remedial action can propose the cleanup category, subject to DNRE approval. The current categories are as follows:

- Residential.
- Commercial.
- Recreational.
- Industrial.
- Other land use-based categories established by the DNRE.
- Limited residential.
- Limited commercial.
- Limited recreational.
- Limited industrial.
- Other limited categories established by the DNRE.

The bill would reduce the number of cleanup categories to only four:

- Residential.
- Limited residential.
- Nonresidential.
- Limited nonresidential.

Currently, a proposed cleanup category is subject to departmental approval. Under the bill, the proposed cleanup category would only be subject to departmental approval "if required."

The bill would adopt, as of its effective date, the DNRE's previously-developed industrial categorical cleanup criteria as the nonresidential cleanup criteria, until the DNRE developed and published new nonresidential cleanup criteria.

Site-specific criteria. [§20120a(2)] Currently, the DNRE may approve a remedial action plan based on site-specific criteria that satisfy applicable requirements of Part 201 and rules promulgated under Part 201. The bill would delete this language. Instead, the bill would provide that the DNRE could, as an alternative to the categorical criteria previously described, approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements of Section 20120b and other applicable requirements of Part 201. (Although this provision does not refer to rules promulgated under Part 201, under HB 6361, any reference to "this part" in Part 201 includes rules promulgated under Part 201.)

Basis for cleanup criteria. [§20120a(3)] Currently, the department must develop criteria for the prescribed cleanup categories based on generic human risk assumptions that characterize patterns of human exposure for various land uses, using reasonable and relevant exposure pathways when making exposure assumptions. A subcategory is created if the DNRE prescribes more than one generic set of exposure assumptions within

a prescribed cleanup category. The bill would retain these provisions for the four remaining cleanup categories, but the department would specify relevant *facility* characteristics, rather than *site* characteristics, for determining the applicable category or subcategory.

(Under HB 6361, the definition of the term "facility" would be revised as described below, and the term "site," meaning location of environmental contamination, would be deleted as a defined term.)

Groundwater cleanup criteria. [§20120(4)-(5)] Currently, when a cleanup criterion derived under Part 201 for groundwater in an aquifer differs from either (1) the state drinking water standard established in Section 5 of the Safe Drinking Water Act; or (2) from criteria for adverse aesthetic characteristics derived under the Michigan Administrative Code, the most stringent cleanup criterion must be used.

The bill would delete the reference to existing adverse aesthetic criteria under the Michigan Administrative Code. Under the bill, if the cleanup criterion for groundwater in an aquifer derived under Part 201 differed from any of the following standards, the most stringent would have to be used: (1) the state drinking water standard established in Section 5 of the Safe Drinking Water Act; (2) the national secondary drinking water regulations established under 42 USC 300g-1, or (3) for a contaminant not covered by a national secondary drinking water regulation, a concentration approved by the DNR using EPA-approved methods for determining the level below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected.

Currently, the most stringent standard doesn't have to be used if the DNRE determines that the aquifer is reliability restricted under Section 20120b(4) and (5), provisions found in a remedial action plan section to be deleted by the bill. Under the bill, the most stringent standard wouldn't have to be used if the DNRE determined that the aquifer was reliably restricted under the provisions of a postclosure plan or a postclosure agreement.

Consistency of cleanup category & zoning designation. [§20120(6)] Under current law, the DNRE can't approve a remedial action plan in any cleanup category other than residential unless (1) the property's zoning designation is consistent with the proposed categorical criteria; (2) the local unit of government changes the property's zoning designation to make it consistent, or (3) the property's current use is a legal nonconforming use. The DNRE may, however, approve a remedial action plan that achieves criteria that are based on greater exposure potential than the criteria applicable to current zoning designation. Under the bill, these provisions would be extended to no further action reports. In other words, the DNRE could not, generally speaking, approve either a remedial action plan *or a no further action report* in a nonresidential cleanup category unless the property's zoning designation was consistent with the cleanup category's criteria, but the DNRE could approve either a remedial action plan *or a no further action report* allowing greater exposure potential than is permitted under the criteria applicable to the current zoning designation.

Delete residential cleanup criteria. [Delete §20120(8)] Currently, compliance with the residential cleanup category is based on specified regulations (R 299.5709-5711(4), R 299.5711(6)-5715, and R. 299.5727). Others (R 2995711(5), R. 299.5723, and R 299.5725) do not apply. The bill would delete Section 20120(8). [Note: Some, but not all, of the regulations referenced in this section have already been rescinded.]

Remediation of soil to protect aquifer. [§20120(8)] Currently, a decision as to whether soil containing hazardous substances must be remediated to protect an aquifer is made under a specified regulation (R 299.5711(2)), after considering the vulnerability of potentially-affected aquifers if the contaminated soil were left in place, and, in some situations, the potential for the hazardous substances to migrate. The bill would delete the reference to R 299.5711(2), which was rescinded in 2002, but retain current language requiring consideration of potentially-affected aquifers and, the potential for migration in some situations.

Background concentration or target detection limit higher than cleanup criterion. [§20120(10)] Currently, if a higher concentration of a hazardous substance is allowed under R 299.5707 of the Michigan Administrative Code than under a categorical cleanup criterion, the higher concentration allowed under the rule becomes the cleanup criterion for that hazardous substance. (R 299.5707 allows the target detection limit or the background concentration, whichever is larger, to be used instead of the risk-based cleanup criterion.) The bill would retain this general rule but delete the reference to R. 299.5707. Under the bill, if either the target detection limit or the background concentration (as defined in HB 6361) for a hazardous substance is greater than a categorical cleanup criterion, the criterion for that hazardous substance would be the larger of the target detection limit or the background concentration, without reference to the administrative rule.

(In HB 6361, "background concentration" means "the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility, and "target detection limit" means "the detection limit for a hazardous substance in a given environmental medium that is specified by the department on a list that it publishes not more than once a year," determined as required by the bill.)

Unreliable measurements. [§20120(11)] The bill would allow the department to approve cleanup criteria if necessary to address conditions that prevent a hazardous substance from being reliably measured at levels consistently achievable in samples from the facility in order to allow for comparison with generic cleanup criteria. A person seeking approval of a criterion in this situation would have to document the basis for determining that the relevant published target detection limit could not be achieved in the facility's samples.

Mineral oil. [§20120(13)] Currently, "response activity" to address the release of uncontaminated mineral oil satisfies specified regulations for groundwater (R 299.5709) and soil (R 299.5711) if all visible traces of mineral oil are removed from groundwater and soil. Under the bill, "remedial action" to address the release of uncontaminated mineral oil would satisfy cleanup criteria under Part 201 if all visible traces of mineral

are removed from groundwater and soil. (In other words, "response activity" would be changed to "remedial action," and the references to specific regulations deleted.)

Venting groundwater. [§20120(15) Currently, if a remedial action allows for venting groundwater (defined in this subsection as groundwater that is entering surface water of the state from a facility), the discharge must comply with the requirements of Part 31 (Water Resources Protection) and its rules, or an alternative method established by rule. If the discharge of venting groundwater is provided for in a DNRE-approved remedial action plan, a permit for the discharge is not required.

The bill would delete the requirement that venting groundwater comply with Part 31 and its rules, or an alternative method established by rule. In addition, no permit would be needed for this type of discharge so long as it complied with Part 201. The discharge would no longer have to be provided for in an approved remedial action plan. (The definition of "venting groundwater" currently found in this subsection would be deleted in this provision but added to Part 201's definition section by House Bill 6361).

Remedial actions. [§20120(16)] Currently, a "remedial action plan" must provide response activity to meet the residential categorical criteria or provide for acceptable land-use or resource-use restrictions under Section 20120b. Under the bill, "remedial actions" would have to meet cleanup criteria for unrestricted residential use or provide for acceptable land-use or resource-use restrictions in a postclosure plan or a postclosure agreement.

Other factors. [§20120(17)] Currently, the DNRE is allowed to determine that a remedial action plan using categorical cleanup criteria should also consider other factors necessary to protect the public health, safety, and welfare, and the environment, including the protection of surface water quality and ecological risks, if those factors are relevant based on a specified rule (R 299.5717) rescinded in 2002. The bill would retain this provision, changing "remedial action plan" to "remedial action" and removing the reference to the rule.

Revision of cleanup criteria. [§20120(18)] The DNRE is required to evaluate and, if appropriate, revise Part 201 cleanup criteria annually. Under the bill, the department would be required to evaluate and revise cleanup criteria within two years after the bill's effective date, and periodically thereafter.

Delete current Section 20120b. [Delete §20120b] The bill would delete existing Section 20120b, concerning remedial action plans, in its entirety. As previously described, some of the provisions currently found in Section 20120b would be moved to Section 20114c, and revised.

Site-specific criteria. [§20120b] The DNRE would be required to approve site-specific criteria for a response activity under Section 20120a if site-specific criteria, in comparison to generic criteria, better reflected the "best available information concerning the toxicity or exposure risk posed by the hazardous substance or other factors." Approved site-specific criteria could do the following things, as appropriate:

- Use algorithms for calculating generic criteria established by rule or propose and use different ones.

- Alter any value, parameter, or assumption used to calculate generic criteria.

- Consider the depth of the contamination below the ground surface, which could reduce the potential for exposure and serve as an exposure barrier.

- Be based on information related to the specific facility or information of general applicability, including peer-reviewed scientific literature.

- Use probabilistic methods of calculation.

- Use nonlinear-threshold-based calculations where scientifically justified.

Soil relocation. [§20120c] Section 20120 establishes requirements for removing soil from a facility or from a site of environmental contamination, or for relocating soil within a facility or site of environmental contamination. The bill would change all references to a "site of environmental contamination" in this section to "facility." The bill would also change any references to land-use restrictions in this section to land-use *or resource-use* restrictions.

Groundwater venting. [§20120e] A response activity providing for venting groundwater could satisfy Part 201 by meeting any of the following, singly or in combination:

- Generic groundwater-surface water interface (GSI) criteria—water quality standards for surface waters developed the DNRE under Part 31 (Water Resources Protection). (These criteria could be used in the residential, limited residential, nonresidential, and limited nonresidential cleanup categories.)

- Mixing zone-based groundwater-surface water interface criteria established under Part 201. (These criteria could be used in the residential, limited residential nonresidential, limited nonresidential, or site-specific cleanup categories.)

- Site specific criteria established under Section 20120a(2). The use of mixing zones established under Part 201 could be applied to, or included as, site-specific criteria.

Self-implemented venting groundwater response activities. [§20120(2)(a)-(c)] A person could undertake the following response activities providing for venting groundwater without prior DNRE approval under Section 20114a (self-implementation):

- Evaluation activities associated with a response activity providing for venting groundwater using GSI monitoring wells or alternative monitoring points.

- Response activities that rely on monitoring from GSI monitoring wells to demonstrate compliance with GSI criteria.

- Other types of response activities relying on monitoring from alternative monitoring points to demonstrate compliance with GSI criteria, if a "notice of

alternative monitoring points" is submitted to the DNRE at least 30 days before reliance on the alternative points, and the notice contains "substantiating evidence" that the alternative points comply with Section 20120.

Venting groundwater response activities with prior approval of one or more aspects. [§20120(3)] A person would have to proceed under Section 20114b (that is, with departmental approval of one or more aspects of the response activities) to undertake response activities that rely on monitoring from alternative monitoring points, if one or more of the following conditions apply to the venting groundwater:

- An applicable criterion is based on acute toxicity endpoints.
- The venting groundwater contains a bioaccumulative chemical of concern as identified in the water quality standards for surface waters developed under Part 31 (Water Resources Protection) and for which the person is liable under Part 201.
- The venting groundwater is entering a surface water body protected for coldwater fisheries identified in specified documents.[3]
- The venting groundwater is entering a surface body designated as an outstanding state resource water or outstanding international resource water as identified in the water quality standards for surface waters developed under Part 31.

Alternative monitoring points. [§20120(4)] Alternative monitoring points could satisfy requirements if:

- The locations where the venting groundwater entered surface water were sufficiently identified[4] to allow monitoring.
- The alternative monitoring points allowed the venting groundwater to be sampled before it mixed with surface water. (This requirement would not preclude locating alternative monitoring points in a floodplain.)

[3] The surface water body protected for coldwater fisheries would have to be identified in [one of] the following publications issued by the department then called the Department of Natural Resources (now DNRE): *Coldwater Lakes of Michigan*,1976; *Designated Trout Lakes and Regulations*, September 10, 1988; *Designated Trout Streams for the State of Michigan*, November 8, 2007 order, FO-210.09. The November 8, 2007, designated trout stream order is available online at http://www.michigan.gov/documents/dnr/FO-210-07_182400_7.pdf. Those designations are in effect for five years beginning November 8, 2007.

[4] "Sufficient identification" would include all of the following: (1) identification of the location of alternative monitoring points within venting groundwater areas; (2) documentation of the boundaries of the areas where the groundwater plume vents to surface water, including size, shape, and location, and information about the substrate character and geology; and (3) documentation that the venting area identified and alternative monitoring points include points representing the highest concentrations of hazardous substances present in the groundwater at the groundwater-surface water interface, considering spatial and temporal variability. [§20120e(4)(a)(i)-(iii)]

- The alternative monitoring points allowed for reliable, representative monitoring of groundwater quality at the ground-water surface water interface, taking into account specified factors (temporal and spatial variability; seasonal or periodic changes to groundwater flow; and other natural or human-made features affecting groundwater flow).

- Potential fate and transport mechanisms were identified (including chemical, physical, or biological processes that could reduce concentrations of hazardous substances between the monitoring wells and the alternative monitoring points).

- Sentinel monitoring points—some located upland of the surface water body—were used in conjunction with the alternative monitoring points to identify any potential exceedances of applicable water quality standards before they occurred.

Additional requirements for certain plans. [§20120(5)] A person who intended to use mixing zone-based GSI criteria under subsection (1)(b) or site-specific criteria under subsection (1)(c) in conjunction with alternative monitoring points would have to submit a response activity plan to the DNRE that: (1) demonstrated compliance with the prescribed standards for alternative monitoring points; and (2) documented the accuracy of the estimated volume of venting groundwater (if data from alternative monitoring points would be used to determine compliance with a mixing zone-based GSI criterion).

Definition of surface water. [§20120(6)] In Section 20120, "surface water" would not include groundwater, enclosed sewers, or utility lines.

Denial of response activity plan. [§20120(7)] If it denied a response activity plan that proposed alternative monitoring points, the department would have to state the reasons, including the scientific and technical basis, for the denial.

30-day public comment period. [§20120(8)] Notwithstanding any other provision of Part 201, any response activity plan that included a mixing zone relating to groundwater venting to surface water would be subject to a 30-day public comment period.

Appeal. [§20120(9)] A person could appeal the department's decision on a response activity plan or no further action report regarding venting groundwater as a scientific or technical dispute under Section 20114e.

Definition of GSI monitoring well. [§20120(9)] In Section 20120, "groundwater-surface interface monitoring well" means "a vertical well installed in the saturated zone as close as practicable to surface water with a screened interval or intervals that are representative of the groundwater venting to the surface water."

Repealers. [Enacting §§1-2] The bill would repeal Sections 20105, 20109a, and 20129a of NREPA.

- Section 20105. Among other things, Section 20105(1), requires the DNRE to (1) identify and evaluate a site of environmental contamination, upon discovery, to

assign it a priority score for response activities; (2) to develop one or more numerical risk assessment models; (3) to include these risks assessments in its Part 201 rules; (4) to submit a list of sites to the legislature every four years, showing response activities, ownership, and changes in status; (5) maintain and make available to the public, upon request, records regarding sites where remedial actions have been completed and those where land-use restrictions have been imposed, if not exempt from disclosure; (6) submit the list for public hearings at geographically diverse locations; (7) report to the legislature and governor sites that have been removed from the list, and the source of the funds used for the response activities; (8) publish a notice every four years in the Michigan Register and submit to certain standing legislative committees a report on response activities during the reporting period and the nature of the contamination. Section 20105(2) requires the department to notify property owners, the local health department, and the municipality in which the site is located before including a site on the list. Section 20105(3) prohibits the removal of a site from the list until any necessary response activity meeting specified standards is complete. Section 20105(4) provides a procedure for requesting the removal of a site from the list.

- Section 20109a. Section 20109a establishes a municipal landfill cost-share grant program to make grants to reimburse local units of government for a portion of response activity costs at certain municipal solid waste landfills.

- Section 20129a. Section 20129a allows a person to petition the DNRE within six months after completion of a baseline environmental assessment (BEA) for a determination that the person is exempt from liability under Section 20126(1)(c) and for a determination that the proposed use of the facility satisfies the person's obligations under Section 20107a. Until September 13, 2013, the petition must be accompanied by a fee of $750, which is deposited into the Cleanup and Redevelopment Fund created in Section 20108.

The bill would also rescind the following rules in the Michigan Administrative Code:

- R 299.5209 to 299.5219[5], concerning site identification and tracking.

- R 299.5601 to 299.5607[6], concerning selection of remedial action, evaluation of remedial action alternatives, and the administrative record.

- R 299.5801 to 299.5823[7], concerning definitions, the site assessment model, scoring procedure, environmental contamination categories, mobility rating, sensitive

[5] http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=29905209&Dpt=&RngHigh=29999999

[6] http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=29905201&Dpt=NE&RngHigh=29999999

[7] http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=29905801&Dpt=&RngHigh=29999999

environmental resource category, population category, institutional population, and chemical hazard category.

House Bill 6359 (Substitute H-1, as amended on Floor 11-10-10)

Reponse activity review panel. [§20114e(1)] The DNRE director would have to establish a Response Activity Review Panel to advise him or her on technical or scientific disputes, including risk assessment disputes, relating to response activity plans and no further action reports.

Panel membership. [§29114e(2)] The DNRE director would appoint the panel's 15 members, each of whom would have to meet at least one of the following requirements:

- A current professional engineer's or professional geologist's license or registration from a state, tribe, U.S. territory, or Puerto Rico, and the equivalent of six years of full-time relevant experience.

- A bachelor's degree in engineering or science and the equivalent of ten years of full-time relevant experience.

- A master's degree in engineering or science and the equivalent of eight years of full-time relevant experience.

In addition, each panel member would also have to remain current in his or her field through continuing education or other activities.

("Relevant experience" would mean "active participation in the preparation, design, implementation, and assessment of remedial investigations, feasibility studies, interim response activities, and remedial actions under [Part 201]. The experience would have to demonstrate the exercise of sound professional judgment and knowledge of the requirements of [Part 201]."]

Ineligible people. [§29114e(3)] The following people could not serve on the panel:

- A person currently employed by a state office, department, or agency.

- A person party to one or more contracts with the DNRE, if compensation paid under those contracts represented more than five percent of the person's annual gross revenue in any of the preceding three years.

- A person who works for an entity that is party to one or more contracts with the DNRE, if the compensation paid to the person's employer under those contracts represented more than five percent of the entity's annual gross revenue in any of the preceding three years.

- A person who has worked for the DNRE within the preceding three years.

Appointments; terms; compensation. [§29114e(4)-(5)] Panel members would serve a three-year term and could be reappointed for one additional three-year term. After that, a member could not serve again for at least two years. The panel's initial members would

serve staggered terms so that not more than five vacancies would occur in a single year. Panel members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. Vacancies would be filled in the same manner as the original appointment.

Open meetings. [§29114(6)] Panel business would have to be conducted at a public meeting under the Open Meetings Act.

Appeals. [§29114(7)] A person who submitted a response activity plan or no further action report could appeal a DNRE decision regarding a technical or scientific dispute, including a risk assessment dispute, relating to the plan or report by submitting a petition to the director. The petition would have to include (1) the issues in dispute; (2) the relevant facts on which the dispute was based; and (3) factual data, analysis, opinion, and documentation in support, and a $3,500 fee. (The fee would be forwarded to the state treasurer for deposit into the Cleanup and Redevelopment Fund. [§29114(8)])

Pre-hearing resolution. [§29114(7)] The director could contact the petitioner regarding the issues in dispute and attempt to negotiate a resolution of the dispute for not more than 45 days. The petitioner's fee would be returned, if the dispute was resolved without convening the panel.

Procedures [§29114(8)] If the dispute isn't resolved through negotiations, the director would schedule a meeting for five panel members, selected based on relevant expertise, within 45 days after receipt of the original petition. Members selected for the dispute resolution process would have to agree not to accept employment by the person bringing the dispute before the panel, or to undertake any employment concerning the facility in question, for a period of one year after the decision was rendered, if this would represent more than five percent of the member's gross revenue in any of the preceding three years. The director would provide supporting documentation to members hearing the dispute. An alternative member could be selected to replace one unable to serve.

The members selected to hear the dispute would elect a chairperson, and a decision would require a majority of the votes cast. At a hearing on the dispute, the petitioner's and the department's representatives would each be afforded an opportunity to present their positions to the panel.

Panel recommendation. [§29114(9)] Within 45 days after hearing the dispute, the participating panel members would have to make a written recommendation regarding the petition, and provide it to the petitioner and the department. The written recommendation would have to include a specific scientific or technical rationale, and could adopt, modify, or reverse, in whole or part, the department's decision. If the panel did not make a recommendation within the 45-day time period, the DNRE's decision would be the final decision of the director.

Final decision; review. [§29114(10)] Within 60 days after receiving the panel's recommendation, the director would have to issue a final written decision on the petition. This time period could be extended by written agreement between the petitioner and the director. If the director agreed with the panel's recommendation, the DNRE would have

to incorporate it into its response to the response activity plan or to the no further action report. If the director rejected the panel's recommendation, he or she would have to issue a decision to the petitioner with a specific rationale. If the director failed to issue a final decision within 60 days, the panel's recommendation would stand as the director's final decision.

The director's final decision would be subject to court review under Section 631 of the Revised Judicature Act of 1961, MCL 600.631.

Removal from panel. [§29114(11)] Upon the director's request, the panel would have to recommend to the DNRE whether a member should be removed from the panel. Before making this recommendation, the panel could convene a peer review panel to evaluate the member's conduct.

Conflict of interest. [§29114(12)] A member of the panel could not participate in the dispute resolution process for any appeal in which the member has a conflict of interest, and the director would have to replace a member of the panel who had a conflict of interest. A "conflict of interest" would mean that a petitioner had hired that member or his or her employer on an environmental matter within the preceding three years.

BEAs. [§20126(1)(c)] Under current law, generally speaking, a person who becomes the owner or operator of a facility on or after June 5, 1995, is liable under Part 201 unless the owner or operator (1) has a baseline environmental assessment (BEA) conducted before or within 45 days after the earliest of the date of the purchase, occupancy, or foreclosure; and (2) discloses the results of the assessment of the DNRE and to subsequent purchasers or transferees, if the assessment confirms that the property is a facility. The bill would retain this provision, but require the owner or operator to give the BEA to the DNRE and to a subsequent purchaser or transferee within six months after the earliest of the date of purchase, occupancy, or foreclosure (whether or not the assessment confirmed that the property was a facility).

Under a separate provision of the bill (§29126(9)), a person who was in compliance with the BEA provisions as they existed before the bill took effect would be considered in compliance with these requirements.

Persons exempt from liability. [§29126(3)-(4)] Under Section 29126(3), some people, including the state and local units of government, certain easement holders, certain lessees, and others, are exempt from Part 201 liability unless they are "responsible for activity causing a release at the facility." Under the bill, these people would be exempt from Part 201 liability "*with respect to contamination at a facility resulting from release or threat of release* unless [they were] responsible for an activity causing that release *or threat of release*." The bill specifies that the state's or a local unit of government's exemption as the holder or acquirer of an interest in a facility for a transportation or utility corridor includes sewers, pipes, and pipelines. The bill also specifies that the exemption of a person who leases property for a retail, office, or commercial purpose applies *regardless of the lessee's level of hazardous substance use*.

In addition, Section 29126(4) describes other persons who are not subject to any liability under Part 201. Under the bill, a person has received a no further action report that was either approved by the DNRE (or that is considered approved by operation of law because the department missed a deadline) would have no Part 201 liability for environmental contamination addressed in the report.

Such a person could, however, be liable under Part 201 for:

- A subsequent release not addressed in the no further action report if the person is otherwise liable under Part 201 for that release.

- Environmental contamination not addressed in the no further action report and for which the person is otherwise liable.

- Additional response activities necessary to comply with Part 201 if the owner or operator wants to alter any existing land use or resource restrictions on which the no further action report was based.

- Additional response activities that are necessary because monitoring has shown that potential exposures to contamination now exceed the levels relied in the no further action report, if that report relied on monitoring to assure the effectiveness and integrity of the remedial action, and the owner or operator was otherwise liable for the environmental contamination addressed in the report.

- Additional response activities necessary to satisfy performance objectives or otherwise comply with Part 201 if the remedial actions that were the basis for the no further action report fail to meet performance objectives identified in the report, and the owner or operator is otherwise liable for the environmental contamination addressed in the report.

Burden of proof. [§29126(6)] Under existing law, the DNRE bears the burden of proof to establish a person's liability under Part 201. After the department proves a prima facie case against a person, that person then bears the burden of proving, by a preponderance of the evidence, that that he or she is not liable. The bill would delete the provision describing a person's burden after the department has established a prima facie case.

Lenders. [§29126(7)] Currently, a lender[8] who did not cause a release and who satisfies BEA requirements may transfer a facility to the state if the lender (1) lists it with an agent or advertises it as being for sale or disposition, (2) takes reasonable care in maintaining and preserving the property, (3) provides the DNRE all available environmental information related to the property, (4) complies with specified DNRE orders, and (5) undertakes appropriate response activities to abate any threat of fire, explosion, or

[8] In Part 201, a "lender" means a state- or nationally-chartered bank; a state- or federally-chartered savings and loan association or bank; a state- or federally-chartered credit union; any other state- or federally-chartered lending institution; a regulated affiliate or subsidiary of any of these entities; an insurance company authorized to do business in Michigan; or a motor vehicle finance company subject to the Motor Vehicle Finance Act with net assets of more than $50 million.

imminent direct contact with hazardous substances. The bill would delete these provisions.

BEA guidelines. [§29126(8)] Part 201 currently requires the DNRE to establish minimum technical standards for BEAs in administrative guidelines. The bill would delete this requirement. Instead, as of the bill's effective date, the DNRE would be prohibited from implementing or enforcing R 299.5901 to R 299.5919 (Rules 901 to 919) of the Michigan Administrative Code, except for that it could implement and enforce:

- Subrules (2), (6), (8), & (9) of Rule 902, R 299.5903.[9] Among other things, Subrule (2) prescribes rules for BEAs covering transferred property that is part of a larger facility or covering only a portion of property being transferred and for BEAs relating to contiguous properties; Subrule (6) allows a BEA to include reliable and relevant data and information from studies prepared or conducted by others to define conditions at the property at the time of purchase, occupancy, or foreclosure; Subrule (8) prescribes a time period and notice requirements for BEAs prepared to establish a liability exemption for a person who is a permittee for subsurface, oil, gas, storage or mineral rights; and Subrule (9) provides that an acquiring agency in a condemnation proceeding doesn't become the owner or operator of property that is a facility or a portion of a facility until it takes possession of the property.

- Subrules (2) to (6) of Rule 905, R. 299.5905. Among other things, Subrule (2) provides that a person who operated a facility before the "date provided by law" and later became the facility's owner with no interruption in his or her status as owner or operator is not eligible or required to complete a BEA to establish his or her liability for the existing contamination, and specifies the provisions of Part 201 that govern the person's liability; Subrule (3) provides that a person who leased or held another possessory interest in a facility who became the facility's owner on or after the date provided by law is eligible to conduct a BEA; Subrule (4) provides that, in general, a faciliy's owner who later becomes its operator, or vice-versa, after the date provided by law is not eligible for a BEA, unless there were intervening owners or operators; Subrule (5) requires the former owner or operator of a facility who becomes an owner or operator after intervening owners or operators to conduct a BEA if he or she wishes to establish liability protection for contamination attributable to the intervening owners or operators; Subrule (6) requires a land contract vendor who, on or after the date provided by law, regains possession of a facility as a result of a default and who wishes to establish an exemption from liability for contamination existing when the vendor regained possession, to conduct a BEA within 45 days.

  (The "date provided by law" means March 6, 1996, for underground storage tanks, and June 5, 1995, for all other facilities.)

---

9 http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=29905901&Dpt=NE&RngHigh=

- Rule 919, R. 299. 5919. Rule 919 prescribes the disclosure rules that must be followed if a person who wants to effectuate and maintain Part 201 liability protection using a BEA. Generally speaking, the person must disclose the results of the BEA to the DNRE and to subsequent purchasers or transferees of the property before conveying interest in the property. The result of the BEA must be disclosed to all persons who will become the owner or operator of the property, and any subsequent purchaser before the sale is consummated, unless information exists that demonstrates that the property being transferred is not a facility at the time of transfer. The person seeking liability protection must disclose the contents of the BEA to the DNRE, using a prescribed form, not later than eight months after the earliest of the date of purchase, occupancy, or foreclosure. A person's disclosure obligation to subsequent purchasers or transferees may be satisfied by providing a summary of a BEA, rather than a full report, as described in the rule.

Joint & several liability. [§20126a] A person with Part 201 liability is jointly and severally liable for specified costs, including the costs to the state of selecting and implementing Part 201 response activity, any other necessary costs of response activity incurred by any other person consistent with Part 201 rules, and damages for the full value of the injury to or destruction of natural resources. Under the bill, the provision conferring liability for any other necessary costs of response activity incurred by any other person under Part 201 rules would be changed to "any other costs of response activity reasonably incurred under the circumstances by any other person," certain provisions regarding recoverable costs would be deleted, and a reference relating to the interest on recoverable amounts under the Revised Judicature Act would be updated.

House Bill 6360

Duties of a facility owner/operator**.** [§20107a] Under Part 201, a person who owns or operates a property that he or she knows is a facility has specified obligations with respect to the hazardous substances on the property (preventing exacerbation of existing contamination, exercising due care, and taking reasonable precautions against certain third-party acts or omissions). Under the bill, the owner or operator would also have the duty to provide reasonable cooperation, assistance, and access to persons authorized to conduct response activities at the facility, and to comply with—and not impede the effectiveness or integrity of—any land use or resource-use restrictions used at the facility. (The bill specifies that this provision doesn't provide any right of access not expressly authorized by law, including a warrant or court order, and doesn't preclude access allowed under a voluntary agreement.) The owner's or operator's obligations would be based on current numeric cleanup criteria.

(In this section and others, the bill also changes the phrase "exacerbation of existing contamination" to simply "exacerbation." HB 6361 contains a revised definition of "exacerbation.")

Liability for exacerbation. Currently, an owner or operator who violates the act by failing to do one or more of these things is liable for response activity costs and natural resource damages attributable to exacerbation and may be also subject to fines and penalties under

Part 201, but is not liable for the performance of additional response activities unless some other provision in Part 201 imposed liability for the performance of those activities. Under the bill, *only a person who was not otherwise liable under Part 201 for the release at the facility* would be responsible for response activity costs and natural resources damages under this section.

State and local property. Some of the requirements described above (preventing exacerbation, exercising due care, and taking reasonable precautions against certain third-party acts or omissions) do not apply to the state or to a local unit of government unless it is liable under specified provisions, or to a local unit of government if it acquired the property by purchase, gift, transfer, or condemnation before June 5, 1995, or to a person who is exempt from liability under Section 20126(4)(c)(because the contamination migrated onto the property). Under the bill, these duties would also not apply to the state on property it acquired before June 5, 1995.

If, however, the state or a local unit of government opened and invited the public to use property it knew was a facility on a regular or continuous basis for an express public purpose, the state or local unit of government would be subject to the requirements previously described (preventing exacerbation, exercising due care, and taking reasonable precautions against third-party acts or omissions), but only on the portion of the facility opened to and used by the general public for that express purpose, not on the entire facility. "Express public purpose" would include activities such as a public park, a municipal office building, or a municipal public works operation. The term would not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

Revolving loan program. [§20108b] Under Part 201, the DNRE administers a Revitalization Revolving Loan Fund to make loans to local units of government for eligible activities to promote economic development of certain properties. Currently, repayment of a loan under this program must begin within five years of the loan agreement's execution date and end within 15 years of that date. Under the bill, repayment would begin within five years and end within 15 years *from the date of the first draw of the loan*, not from the loan agreement's execution date. The bill would also allow the DNRE to renegotiate the terms of any outstanding loan (including its length, interest rate, and other repayment terms), at the request of loan recipient, and upon a showing of financial hardship related to the project financed in whole or in part by the loan.

House Bill 6361

The bill's definition section includes the following new or revised definitions:

"All appropriate inquiry"(new) means "an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312."

"Background concentration" (new) means "the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility."

"Baseline environmental assessment" (BEA) (revised) currently means "an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the facility so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination."

Under the bill, a BEA means "a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a facility. However, for purposes of a baseline environmental assessment, the all appropriate inquiry under 40 CFR 312.20(a) may be conducted within 45 days after the date of acquisition of a property and the components of an all appropriate inquiry under 40 CFR 312.20(b) and 40 CFR 312 20(c)(3) may be conducted or updated within 45 days after the date of acquisition of a property."

(40 CFR 312.20 is a federal regulation concerning "all appropriate inquiries" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).)

"Cleanup criteria for unrestricted residential use" (new) means "either of the following: (i) cleanup criteria that satisfy the requirements for the residential category in section 20120a(1)(a) or (16). (ii) cleanup criteria for unrestricted residential use under Part 213."

"Exacerbation" (revised) means "the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to contamination for which the person is not liable: (i) contamination that has migrated beyond the boundaries of the property which is the source of the release at levels above the cleanup criteria for unrestricted residential use unless a criterion is not relevant because exposure is reliably restricted as otherwise provided in this part. (ii) a change in facility conditions that increases response activity costs."

"Facility" (revised) means "any area, place, or property where a hazardous substance in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, property where any of the following conditions are satisfied: (i) response activities have been completed under [Part 201] that satisfy the cleanup criteria for unrestricted residential use. (ii) corrective action has been completed under Part 213 [Leaking Underground Storage Tanks] that satisfies the cleanup criteria for unrestricted residential use. (iii) site-specific criteria that have been approved by the department for application at the area, place, or property are met or satisfied and both of the following conditions are met: (a) the site-specific criteria do not depend on any land use or resource-use restriction to ensure protection of the public health, safety, or welfare or the environment. (b) hazardous substances at the area, place, or property that are not addressed by site-specific criteria satisfy the cleanup criteria for unrestricted residential use."

[The provisions allowing some properties to lose their designation as a "facility" after approved site-specific criteria have been met are new.]

"Financial assurance" (new) means "a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or any combination thereof."

"Method detection limit" (new) means "the minimum concentration of a hazardous substance which can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from an analysis of a sample in a given matrix that contains the analyte."

"No further action letter" (new) means "a written response provided by the department under section 20114d confirming that a no further action report has been approved after review by the department."

"No further action report" (new) means "a report under section 20114d detailing the completion of remedial actions and including a postclosure plan and a postclosure agreement, if appropriate."

"Postclosure agreement" (new) means "an agreement between the department and a person who has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions as provided for in section 20114d."

"Postclosure plan" (new) means "a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions as required under section 20114c."

"Residential closure" (new) means "a facility at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria under section 20120a(1)(c) or the site-specific residential cleanup criteria under sections 20120a(2) and 20120b, that contains land use or resource-use restrictions and that is approved by the department or is considered approved by the department under section 20120d."

"Response activity plan" (new) means "a plan for undertaking response activities. A response activity plan may include 1 or more of the following: (i) a plan to undertake interim response activities. (ii) a plan for evaluation activities. (iii) a feasibility study. (iv) a remedial action plan."

"Target detection limit" (new) means "the detection limit for a hazardous substance in a given environmental medium that is specified by the department on a list that it publishes not more than once a year. The department shall identify 1 or more analytical methods, when a method is available, that are judged to be capable of achieving the target detection limit for that hazardous substance. In establishing a target detection limit, the department shall consider the following factors: (i) the low level capabilities of methods published by government agencies. (ii) reported method detection limits published by state laboratories. (iii) reported method detection limits published by commercial laboratories.

(iv) the need to be able to measure a hazardous substance at concentrations at or below cleanup criteria."

"Venting groundwater" (new) means "groundwater that is entering a surface water from a facility."

Rules. The DNRE is currently required to promulgate rules on specified subjects including the performance of response activities and the assessment of damages for harm to natural resources. Under the bill, the department could, but would not be required to, promulgate rules necessary to implement Part 201. The phrase "this part" would also mean "rules promulgated under this part."

Effect of guidelines & operational memos. The bill specifies that a DNRE guideline, interpretative statement, or operational memorandum under Part 201 does not have the force and effect of law and is not legally binding on any person.

Brownfield Redevelopment Board. [§20104a] The bill would update departmental references in the description of this board or its members. The chief executive officer of the Michigan Economic Development Corporation, not of the jobs commission, would serve as a member.

House Bill 6362

Failure to report; knowing submission of false report. [§20137(2)] The owner or operator of a facility from which a hazardous substance was released (if the release was reportable under §20114(1)(b)(i) and not a permitted release), and who failed to notify the DNRE within 24 hours after learning of the release, or who submitted information that the person knew was false or misleading, would be subject to a maximum civil fine of $25,000 per day, depending on the seriousness of the violation and whether good-faith efforts to comply were made.

Fine for activity causing release. [§20137(3)] A person responsible for a release exceeding applicable criteria for use of the property (under Section 20120a(1)(a) or (b)) would be subject to a civil fine under Part 201 unless a fine or penalty had already been imposed under another part of NREPA, or the release was from an underground storage tank system. A civil fine could not be imposed under this provision if the person had made a good-faith effort to prevent the release and to comply with Part 201.

Misrepresentation of qualifications. A person who misrepresented his or her qualifications in a document prepared for a petition for exemption from liability after completing a BEA is guilty of a felony and must be fined at least $2,500, but not more than $25,000, for each violation. Under the bill, this provision would apply to a person who misrepresented his or her qualifications in connection with a no further action report or an appeal to the Response Activity Review Panel.

House Bill 6363

Delete legislative report. [Delete §20112a] The bill would delete the DNRE's obligation to report to the legislature every two years on the effectiveness of Part 201.

Inventories. [§20112a(1)-(4)] The DNRE would have to create and maintain two inventories: one of residential closures and a separate one of other known facilities. Each inventory would have to contain: (1) the location; (2) whether one or more response activities were submitted for approval and the status of departmental approval; (3) whether a notice of land-use or resource-use restrictions was submitted; and (4) whether a no further action report was submitted, and, if so, whether it included a postclosure plan or proposed postclosure agreement, and the status of departmental approval. The DNRE could categorize the facilities in a manner it considered useful for the general public and would have to post the inventories on its website.

[Note: The bill inadvertently requires the DNRE to create and maintain an inventory of residential closures in two places, on p. 2, lines 6-7 of the bill, and also on p. 2 lines 22-23.]

Quarterly report. [§20112a(5)] The DNRE would have to compile and post on its website the following data on a quarterly basis: (1) the number of response activity plans received and their disposition (approved or disapproved by DNRE; recommended for approval or disapproval by panel; approved by operation of law); (2) the number and disposition of no further action reports received; and (3) the number of baseline environmental assessments received.

Reports approved by operation of law. [§20112a(6)] The DNRE would have to annually determine the percentage of no further action reports approved by operation of law under Section 20114d (reports deemed approved because the DNRE didn't make its decision within the required time frame). The DNRE would have to notify specified legislative standing committees if this percentage exceeded 10 percent in any year.

Cleanup & Redevelopment Fund. [§20113] The bill changes the term "site" to "facility" throughout this section. (HB 6361 would eliminate the definition of "site," and revise the current definition of "facility.")

Risk assessment. [Delete §20113(2)] The bill would eliminate a provision allowing money from the Cleanup and Development Fund to be appropriated only for sites whose response activities underwent the risk assessment process currently described in Section 20105. (HB 6358 would repeal this risk assessment process.)

Municipal landfill cost share grants. [§20113(2)] Part 201 requires the DNRE to submit an annual request for an appropriation from the Cleanup and Development Fund to the governor, and prescribes the purposes for which fund money may be used. Among other things, the DNRE must request a lump sum amount for national priority list municipal landfill cost share grants. The bill would eliminate all references to municipal landfill cost share grants in this section, and would remove those grants from the list of eligible purposes for fund money. It would also update a census reference.

Projects report. [§20113(5)] The DNRE is currently required to submit a report about the projects funded under Part 201 during the previous fiscal year to the governor and to legislative standing committees with jurisdiction over natural resources and

environmental issues by December 31 of each year. The bill would move the deadline for this report to April 1 of each year.

Notice to DNRE. [§20114(1)(b)(i)] Currently, an owner or operator who knows that a property is a facility and who has Part 201 liability must notify the DNRE within 24 hours of a release of a hazardous substance of a reportable quantity under specified federal regulations (40 CFR 302.4 & 302.6), unless the DNRE has, by rule, established different reportable quantities to protect the public health, safety, or welfare, or the environment. (This requirement doesn't apply to a permitted release or a release that is in compliance with federal, state, and local air pollution control laws.) The bill would eliminate the DNRE's authority under this section to establish different reportable quantities by rule to protect the public health, safety, or welfare, or the environment.

(Note: Someone who violated this provision would be subject to a maximum fine of $25,000 under HB 6362.)

Migration; 30-day notice to DNRE & other property owners. [§20114(1)(b)(ii)] Under the bill, if an owner or operator who knows that a property is a facility and who has Part 201 liability has reason to believe that one or more hazardous substances were emanating from, or had emanated from, the property and were present beyond the boundary of his or her property at a concentration exceeding cleanup criteria for unrestricted residential use, the owner or operator would have to notify the DNRE and the owners of the other property within 30 days after obtaining knowledge that the release had migrated. (This requirement doesn't apply to a permitted release or a release that is in compliance with federal, state, and local air pollution control laws.)

Oil & gas activities; 30-day notice to DNRE & surface property owner. [§20114(1)(b)(iii)] Under the bill, if a release results from an activity subject to permitting under Part 615 (Supervisor of Wells), and the owner or operator is not the owner of the surface property, and the release results in hazardous substance concentrations higher than the cleanup criteria for unrestricted residential use, the owner or operator would have to notify the DNRE and the surface owner within 30 days after learning of the release.

Response activities. [§20114(1)(g)] An owner or operator who knows that a property is a facility, and who is liable under Part 201, must diligently pursue response activities necessary to achieve the cleanup criteria specified in Part 201 and its rules. The bill would delete the references to rules (but under HB 6361 all references to Part 201 would include rules promulgated under Part 201).

The bill would also allow the owner or operator who knows that a property is a facility, and who has Part 201 liability to either conduct self-implemented response activities under Section 20114a or to seek departmental approval of one or more aspects of "planning response activities" under Section 20114b, if it wanted or was required to have departmental approval.

Currently, at the DNRE's written request, the owner or operator in this situation must do the following things:

- Plan and undertake interim response activities.
- Plan and undertake evaluation activities.
- Take any other response activity the DNRE determines is technically sound and necessary to protect the public health, safety, welfare, or the environment.
- Submit, for DNRE approval, a remedial action plan that, when implemented, will achieve the cleanup criteria specified in Part 201 and its rules.
- Implement an approved remedial action plan according to an approved schedule.

The bill would describe plans for interim response activities, evaluation activities, and remedial actions as "response activity plans," and also delete the reference to Part 201 rules. In addition, the bill would allow the DNRE to require that the owner or operator pursue remedial actions under Section 20114a (self-implemented cleanup), and, upon completion, submit a no further action report under Section 20114d, or to submit a no further action report if the owner or operator implemented a DNRE-approved remedial action plan.

Self-implemented response activity. [Delete §20114(2)] The bill would delete an existing provision authorizing self-implemented response activities in some circumstances. [Note: A revised version of this provision would now appear as Section 20114a of HB 6358.]

Multiple, simultaneous self-implemented response activities. [§20114(2)] The requirements imposed on an owner or operator by law, or that the DNRE requires the owner or operator to take under Section 20114(1), would not preclude a person from simultaneously undertaking one or more aspects of planning or self-implementing response activities at a facility under Section 20114a, unless one or more response activities were being conducted according to an administrative order or agreement or a judicial decree that required prior approval.

Report of release by easement holder. [§20114(3)] In general, an easement holder who has knowledge that there may be a release within the easement is required to report the release to the DNRE within 24 hours after obtaining knowledge of the release, if the release is of a reportable quantity of a hazardous substances under specified federal regulations (40 CFR 302.4 & 302.6), unless the DNRE has, by rule, established different reportable quantities to protect the public health, safety, or welfare, or the environment. The bill would retain the current reporting requirement for easement holders, but eliminate the reference to the DNRE's establishing different reportable quantities by rule.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Viola Bay Wild

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.