Act No. 228
Public Acts of 2010
Approved by the Governor
December 14, 2010
Filed with the Secretary of State
December 14, 2010
EFFECTIVE DATE: December 14, 2010

STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010

Introduced by Senator Birkholz

ENROLLED SENATE BILL No. 1345

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 20114a, 20120a, 20120b, 20120c, and 20120d (MCL 324.20114a, 324.20120a, 324.20120b, 324.20120c, and 324.20120d), section 20114a as amended by 1996 PA 115, sections 20120a, 20120b, and 20120c as added by 1995 PA 71, and section 20120d as amended by 1996 PA 383, and by adding sections 20114b, 20114c, 20114d, 20120, and 20120e; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 20114a. (1) Subject to section 20114 and other applicable law, a person may undertake response activities without prior approval by the department unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval. Except as otherwise provided in this part, conducting response activities under this section does not relieve any person who is liable under this part from the obligation to conduct further response activities as may be required by the department under this part or other applicable law.

(2) Upon completion of remedial actions that satisfy the cleanup criteria established under this part, a person undertaking remedial actions may submit to the department a no further action report.

Sec. 20114b. (1) Subject to section 20114(1)(h), a person undertaking response activity under this part may submit to the department a response activity plan that includes a request for department approval of 1 or more aspects of response activity.

(2) A person who submits a response activity plan under this section and who is not subject to an administrative order or agreement or judicial decree that requires prior department approval of response activity shall submit a response activity plan review request form with the response activity plan. The department shall specify the required content of the response activity request form and make the form available on the department's website.

(3) Upon receipt of a response activity plan submitted for approval under this subsection, the department shall approve, approve with conditions, or deny the response activity plan, or shall notify the submitter that the plan does not contain sufficient information for the department to make a decision. The department shall provide its determination within 150 days after the plan was received by the department unless the plan requires public participation under section 20120d(2). If the plan requires public participation under section 20120d(2), the department shall respond within

180 days. If the department's response is that the plan does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a plan is approved with conditions, the department's approval shall state with specificity the conditions of the approval. If the plan is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial.

(4) If the department fails to provide a written response within the time frames required by subsection (3), the response activity plan is considered approved. If the department denies a response activity plan under subsection (3), a person may subsequently revise and resubmit the response activity plan for approval.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a response activity plan. An agreement extending a time frame shall be in writing.

(6) A person requesting approval of a response activity plan may appeal the department's decision in accordance with section 20114e, if applicable.

Sec. 20114c. (1) If remedial actions at a facility satisfy cleanup criteria for unrestricted residential use, land use or resource use restrictions or monitoring is not required.

(2) Upon completion of remedial actions at a facility for a category of cleanup that does not satisfy cleanup criteria for unrestricted residential use, the person conducting the remedial actions shall prepare and implement a postclosure plan for that facility. A postclosure plan shall include both of the following:

(a) Land use or resource use restrictions as provided in subsection (3).

(b) Permanent markers to describe restricted areas of the facility and the nature of any restrictions. A permanent marker is not required under this subdivision if the only applicable land use or resource use restrictions relate to 1 or more of the following:

(*i*) A facility at which remedial action satisfies the cleanup criteria for the nonresidential category under section 20120a(1)(b).

(*ii*) Use of groundwater.

(*iii*) Protection of the integrity of exposure controls that prevent contact with soil, and those controls are composed solely of asphalt, concrete, or landscaping materials. This subparagraph does not apply if the hazardous substances that are addressed by the barrier exceed a cleanup criterion based on acute toxic effects, reactivity, corrosivity, ignitability, explosivity, or flammability, or if any hazardous substance addressed by the exposure control is present at a concentration of more than 10 times an applicable soil direct contact cleanup criterion.

(*iv*) Construction requirements or limitations for structures that may be built in the future.

(3) Land use or resource use restrictions that assure the effectiveness and integrity of any containment, exposure barrier, or other land use or resource use restrictions necessary to assure the effectiveness and integrity of the remedy shall be described in a restrictive covenant. A restrictive covenant developed to comply with this part shall be in a format made available on the department's website, with modifications to reflect the facts applicable to the facility. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 21 days after the completion of the remedial actions or within 21 days after the completion of construction of the containment or barrier, as appropriate. The restrictive covenant shall only be recorded by the property owner or with the express written permission of the property owner. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. The restrictive covenant shall include a survey and property description that define the areas addressed by the remedial actions and the scope of any land use or resource use restrictions. At a minimum, the restrictive covenant shall do all of the following:

(a) Describe the general uses of the property that are consistent with the cleanup criteria.

(b) Restrict activities at the facility that may interfere with remedial actions, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial actions.

(c) Restrict activities that may result in exposures above levels attained in the remedial actions.

(d) Grant to the department the ability to enforce the restrictive covenant by legal action in a court of appropriate jurisdiction.

(4) A person shall not record a restrictive covenant indicating approval by the department unless the department has approved the recording of the restrictive covenant.

(5) A person who implements a postclosure plan shall provide notice of the land use or resource use restrictions to the department and to the zoning authority for the local unit of government in which the facility is located within 30 days after recording the land use or resource use restrictions with the register of deeds.

(6) The department, with the approval of the state administrative board, may place restrictive covenants related to land use or resource use restrictions on deeds of state-owned property.

(7) Implementation of remedial actions does not relieve a person who is liable under section 20126 of that person's responsibility to report and provide for response activity to address a subsequent release or threat of release.

(8) Implementation by any person of remedial actions without department approval does not relieve that person of an obligation to undertake response activities or limit the ability of the department to take action to require response activities necessary to comply with this part by a person who is liable under section 20126.

Sec. 20114d. (1) Upon completion of remedial actions that satisfy applicable cleanup criteria established under this part, and all other requirements of this part that are applicable to remedial action, a person may submit a no further action report to the department. The no further action report shall document the basis for concluding that the remedial actions have been completed. A no further action report may include a request that, upon approval, the facility be designated as a residential closure. A no further action report shall be submitted with a form developed by the department. The department shall make this form available on its website.

(2) A no further action report submitted under subsection (1) shall be submitted with the following, as applicable:

(a) If the remedial action at the facility satisfies the cleanup criteria for unrestricted residential use, neither a postclosure plan or a proposed postclosure agreement is required to be submitted.

(b) If the remedial action requires only land use or resource use restrictions and financial assurance is not required or the financial assurance is de minimis, a postclosure plan is required but a proposed postclosure agreement is not required to be submitted.

(c) For facilities other than those described in subdivision (a) or (b), a postclosure plan and a proposed postclosure agreement are required to be submitted.

(3) A proposed postclosure agreement that is submitted as part of a no further action report shall include all of the following:

(a) Provisions for monitoring, operation and maintenance, and oversight necessary to assure the effectiveness and integrity of the remedial action.

(b) Financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs determined by the department to be necessary to assure the effectiveness and integrity of the remedial action.

(c) A provision requiring notice to the department of the owner's intent to convey any interest in the facility 14 days prior to consummating the conveyance. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for compliance with the terms and conditions of the postclosure plan and the postclosure agreement.

(d) A provision granting the department the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the postclosure plan and postclosure agreement, including the right to take samples, inspect the operation of the remedial action measures, and inspect records.

(4) A postclosure agreement may modify the terms of a postclosure plan as follows:

(a) If the exposure to hazardous substances may be reliably restricted by an institutional control in lieu of a restrictive covenant, and imposition of land use or resource use restrictions through restrictive covenants is impractical, the postclosure agreement may allow for a remedial action under section 20120a(1)(c) or (d) or (2) to rely on an institutional control in lieu of a restrictive covenant in a postclosure plan. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that restricts the use of groundwater or an aquifer in a manner and to a degree that protects against unacceptable exposures. An ordinance that serves as an exposure control pursuant to this subsection shall be published and maintained in the same manner as zoning ordinances and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance, or to the lapsing or revocation of the ordinance.

(b) A postclosure agreement may waive the requirement for permanent markers.

(5) The person submitting a no further action report shall include a signed affidavit attesting to the fact that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. The no further action report shall also include a signed affidavit from an environmental consultant who meets the professional qualifications described in section 20114e(2) and who prepared the no further action report, attesting to the fact that the remedial actions detailed in the no further action report comply with all applicable requirements and that the information upon which the no further action report is based is complete and true to the best of that person's knowledge. In addition, the environmental consultant shall attach a certificate of insurance demonstrating that the environmental consultant has obtained at least all of the following from a carrier that is authorized to conduct business in this state:

(a) Statutory worker compensation insurance as required in this state.

(b) Professional liability errors and omissions insurance. This policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work and shall be issued with a limit of not less than $1,000,000.00 per claim.

(c) Contractor pollution liability insurance with limits of not less than $1,000,000.00 per claim, if not included under the professional liability errors and omissions insurance required under subdivision (b). The insurance requirement under this subdivision is not required for environmental consultants who do not perform contracting functions.

(d) Commercial general liability insurance with limits of not less than $1,000,000.00 per claim and $2,000,000.00 aggregate.

(e) Automobile liability insurance with limits of not less than $1,000,000.00 per claim.

(6) A person submitting a no further action report shall maintain all documents and data prepared, acquired, or relied upon in connection with the no further action report for not less than 10 years after the later of the date on which the department approves the no further action report under this section, or the date on which no further monitoring, operation, or maintenance is required to be undertaken as part of the remedial action covered by the report. All documents and data required to be maintained under this section shall be made available to the department upon request.

(7) Upon receipt of a no further action report submitted under this subsection, the department shall approve or deny the no further action report or shall notify the submitter that the report does not contain sufficient information for the department to make a decision. If the no further action report requires a postclosure agreement, the department may negotiate alternative terms than those included within the proposed postclosure agreement. The department shall provide its determination within 150 days after the report was received by the department under this subsection unless the report requires public participation under section 20120d(2). If the report requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the report does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the report is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. If the no further action report, including any required postclosure plan and postclosure agreement, is approved, the department shall provide the person submitting the no further action report with a no further action letter. The department shall review and provide a written response within the time frames required by this subsection for at least 90% of the no further action reports submitted to the department under this section in each calendar year.

(8) If the department fails to provide a written response within the time frames required by subsection (7), the no further action report is considered approved.

(9) A person requesting approval of a no further action report under subsection (7) may appeal the department's decision in accordance with section 20114e.

(10) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a no further action report. An agreement extending a time frame shall be in writing.

(11) Following approval of a no further action report under this section, the owner or operator of the facility addressed by the no further action report may submit to the department an amended no further action report. The amended no further action report shall include the proposed changes to the original no further action report and an accompanying rationale for the proposed change. The process for review and approval of an amended no further action report is the same as the process for no further action reports.

Sec. 20120. (1) All of the following shall be considered when a person is selecting a remedial action or the department is selecting or approving a remedial action:

(a) The effectiveness of alternatives in protecting the public health, safety, and welfare and the environment.

(b) The long-term uncertainties associated with the proposed remedial action.

(c) The persistence, toxicity, mobility, and propensity to bioaccumulate of the hazardous substances.

(d) The short- and long-term potential for adverse health effects from human exposure.

(e) Costs of remedial action, including long-term maintenance costs. However, the cost of a remedial action shall be a factor only in choosing among alternatives that adequately protect the public health, safety, and welfare and the environment, consistent with the requirements of section 20120a.

(f) Reliability of the alternatives.

(g) The potential for future response activity costs if an alternative fails.

(h) The potential threat to human health, safety, and welfare and the environment associated with excavation, transportation, and redisposal or containment.

(i) The ability to monitor remedial performance.

(j) For remedial actions that require the opportunity for public participation under section 20120d, the public's perspective about the extent to which the proposed remedial action effectively addresses requirements of this part.

(2) Evaluation of the factors in subsection (1) shall consider all factors in balance with one another as necessary to achieve the objectives of this part. No single factor in subsection (1) shall be considered the most important.

Sec. 20120a. (1) The department may establish cleanup criteria and approve of remedial actions in the categories listed in this subsection. The cleanup category proposed shall be the option of the person proposing the remedial action, subject to department approval if required, considering the appropriateness of the categorical criteria to the facility. The categories are as follows:

(a) Residential.

(b) Nonresidential. Beginning on the effective date of the 2010 amendatory act that amended this section, the nonresidential cleanup criteria shall be the former industrial categorical cleanup criteria developed by the department pursuant to this section until new nonresidential cleanup criteria are developed and published by the department pursuant to subsection (17).

(c) Limited residential.

(d) Limited nonresidential.

(2) As an alternative to the categorical criteria under subsection (1), the department may 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 this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site-specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

(3) The department shall develop cleanup criteria pursuant to subsection (1) based on generic human health risk assessment assumptions determined by the department to appropriately characterize patterns of human exposure associated with certain land uses. The department shall utilize only reasonable and relevant exposure pathways in determining these assumptions. The department may prescribe more than 1 generic set of exposure assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify facility characteristics that determine the applicability of criteria derived for these categories or subcategories.

(4) If a hazardous substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk under this section shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. If the hazardous substance poses a risk of an adverse health effect other than cancer, cleanup criteria shall be derived using appropriate human health risk assessment methods for that adverse health effect and the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. A hazard quotient of 1.0 shall be used to derive noncancer cleanup criteria. For the noncarcinogenic effects of a hazardous substance present in soils, the intake shall be assumed to be 100% of the protective level, unless compound and site-specific data are available to demonstrate that a different source contribution is appropriate. If a hazardous substance poses a risk of both cancer and 1 or more adverse health effects other than cancer, cleanup criteria shall be derived under this section for the most sensitive effect.

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established pursuant to 42 USC 300g-1, or (c) if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States environmental protection agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion shall be the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted under provisions of a postclosure plan or a postclosure agreement.

(6) The department shall not approve a remedial action plan or no further action report in categories set forth in subsection (1)(b) to (d), unless the person documents that the current zoning of the property is consistent with the categorical criteria being proposed, or that the governing zoning authority intends to change the zoning designation so that the proposed criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The department shall not grant final approval for a remedial action plan or no further action report that relies on a change in zoning designation until a final determination of that zoning change has been made by the local unit of government. The department may approve of a remedial action plan or no further action report that achieves categorical criteria that are based on greater exposure potential than the criteria applicable to current zoning. In addition, the remedial action plan or no further action report shall include documentation that the current property use is consistent with the current zoning or is a legal nonconforming use. Abandoned or inactive property shall be considered on the basis of zoning classifications as described above.

(7) Cleanup criteria from 1 or more categories in subsection (1) may be applied at a facility, if all relevant requirements are satisfied for application of a pertinent criterion.

(8) The need for soil remediation to protect an aquifer from hazardous substances in soil shall consider the vulnerability of the aquifer or aquifers potentially affected if the soil remains at the facility. Migration of hazardous substances in soil to an aquifer is a pertinent pathway if appropriate based on consideration of site specific factors.

(9) The department may establish cleanup criteria for a hazardous substance using a biologically based model developed or identified as appropriate by the United States environmental protection agency if the department determines all of the following:

(a) That application of the model results in a criterion that more accurately reflects the risk posed.

(b) That data of sufficient quantity and quality are available for a specified hazardous substance to allow the scientifically valid application of the model.

(c) The United States environmental protection agency has determined that application of the model is appropriate for the hazardous substance in question.

(10) If the target detection limit or the background concentration for a hazardous substance is greater than a cleanup criterion developed for a category pursuant to subsection (1), the criterion shall be the target detection limit or background concentration, whichever is larger, for that hazardous substance in that category.

(11) The department may also approve cleanup criteria if necessary to address conditions that prevent a hazardous substance from being reliably measured at levels that are consistently achievable in samples from the facility in order to allow for comparison with generic cleanup criteria. A person seeking approval of a criterion under this subsection shall document the basis for determining that the relevant published target detection limit cannot be achieved in samples from the facility.

(12) In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, 15 USC 2601 to 2692.

(13) Remedial action to address the release of uncontaminated mineral oil satisfies cleanup criteria under this part for groundwater or for soil if all visible traces of mineral oil are removed from groundwater and soil.

(14) Approval by the department of remedial action based on the categorical standard in subsection (1)(a) or (b) shall be granted only if the pertinent criteria are satisfied in the affected media. The department shall approve the use of probabilistic or statistical methods or other scientific methods of evaluating environmental data when determining compliance with a pertinent cleanup criterion if the methods are determined by the department to be reliable, scientifically valid, and best represent actual site conditions and exposure potential.

(15) If a discharge of venting groundwater complies with this part, a permit for the discharge is not required.

(16) Remedial actions shall meet the cleanup criteria for unrestricted residential use or shall provide for acceptable land use or resource use restrictions in a postclosure plan or a postclosure agreement.

(17) Remedial actions that rely on categorical cleanup criteria developed pursuant to subsection (1) shall also consider other factors necessary to protect the public health, safety, and welfare, and the environment as specified by the department, if the department determines based on data and existing information that such considerations are relevant to a specific facility. These factors include, but are not limited to, the protection of surface water quality and consideration of ecological risks if pertinent to the facility based on the requirements of this part.

(18) Not later than 2 years after the effective date of the 2010 amendatory act that amended this section, the department shall evaluate and revise the cleanup criteria derived under this section. The evaluation shall incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment. Following this revision, the department shall periodically evaluate whether new information is available regarding the cleanup criteria and shall make revisions as appropriate. The department shall prepare and submit to the legislature a report detailing any revisions made to cleanup criteria under this section.

Sec. 20120b. (1) The department shall approve site-specific criteria in a response activity under section 20120a if such criteria, in comparison to generic criteria, better reflect best available information concerning the toxicity or exposure risk posed by the hazardous substance or other factors.

(2) Site-specific criteria approved under subsection (1) may, as appropriate:

(a) Use the algorithms for calculating generic criteria established by rule or propose and use different algorithms.

(b) Alter any value, parameter, or assumption used to calculate generic criteria.

(c) Take into consideration the depth below the ground surface of contamination, which may reduce the potential for exposure and serve as an exposure barrier.

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

(e) Use probabilistic methods of calculation.

(f) Use nonlinear-threshold-based calculations where scientifically justified.

Sec. 20120c. (1) An owner or operator shall not remove soil, or allow soil to be removed, from a facility to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation pursuant to part 111.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the location to which the soil will be moved or relocated, except that if the soil is to be removed from the facility for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use or resource use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of hazardous substances present at the location to which contaminated soil will be moved. Contaminated soil shall not be moved to a location that is not a facility unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) An owner or operator shall not relocate soil, or allow soil to be relocated, within a facility where a remedial action plan has been approved unless that person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a facility does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being moved off-site from, moved to, or relocated on-site at a facility where a remedial action plan has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(c) or (d) or (2), the soil shall not be moved without prior department approval.

(6) If soil is being relocated in a manner not addressed by subsection (5), the owner or operator of the facility from which soil is being moved must provide notice to the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be moved.

(d) A summary of information or data on which the owner or operator is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use or resource use restrictions in a postclosure plan or a postclosure agreement would apply to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(7) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(8) This section does not apply to soil that is designated as an inert material pursuant to section 11507(3).

Sec. 20120d. (1) At a facility where state funds will be spent to develop or implement a remedial action plan or where the department determines there is a significant public interest, within 30 days after the completion of a remedial investigation for the facility, the department shall provide the county and the township, city, or village in which the facility is located a notice of the completion of the remedial investigation, a summary of the remedial investigation, and notice of an opportunity for residents of the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility. Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government, the department shall, within 30 days of the request, meet with persons in the local unit of government. The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting. The meeting shall be held in the local unit of government in which the facility is located. The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government, to the known persons who are liable under section 20126, and to the main public library of the local unit of government in which the facility is located. The department shall send representatives to the meeting who are familiar with the facility and who are involved with determining the appropriate remedial actions to be taken at the facility. Persons who are liable under section 20126 for the facility may send representatives to the meeting.

(2) Before approval of a proposed remedial action plan which is to be implemented with money from the fund, or is based on categorical criteria provided for in section 20120a(1)(c) or (d) or (2), or if section 20118(5) or (6) applies, or the department determines that there is significant public interest, the department shall do all of the following:

(a) Publish a notice and brief summary of the proposed remedial action plan.

(b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan, including, if applicable, the feasibility study that outlines alternative remedial action measures considered.

(c) Provide an opportunity for a public meeting at or near the facility when any of the following occur:

(*i*) The department determines that there is a significant public interest or that for any other reason a public meeting is appropriate.

(*ii*) A city, township, or village in which the facility is located, by a majority vote of its governing body, requests a public meeting.

(*iii*) A local health department with jurisdiction in the area in which the facility is located requests a public meeting.

(d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan.

(3) For purposes of this section, publication shall include, at a minimum, publication in a local newspaper or newspaper of general circulation in this state. In addition, the administrative record shall be made available by the department for inspection by members of the public at or near the facility and in Lansing.

(4) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan under subsection (2). In addition, the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan. The administrative record shall contain all of the following:

(a) Remedial investigation data regarding the facility.

(b) If applicable, a feasibility study and potential remedial actions.

(c) If applicable, a summary document that explains the reasons why a remedial investigation or feasibility study was not conducted.

(d) Applicable comments and information received from the public, if any.

(e) If applicable, a document that summarizes the significant concerns raised by the members of the public and how they are to be addressed.

(f) Other information appropriate to the facility.

(5) If comments or information are submitted for inclusion in the administrative record that are not included in the administrative record, a brief explanation of why the information was not considered relevant shall be sent to the party by the department and included in the record.

Sec. 20120e. (1) A person may demonstrate compliance with requirements under this part for a response activity providing for venting groundwater by meeting any of the following, singly or in combination:

(a) Generic groundwater-surface water interface criteria, which are the water quality standards for surface waters developed by the department pursuant to part 31. The use of surface water quality standards shall be allowable in any of the cleanup categories provided for in section 20120a(1).

(b) Mixing zone-based groundwater-surface water interface criteria established under this part. The use of mixing zone-based criteria shall be allowable in any of the categories provided for in section 20120a(1) and (2).

(c) Site-specific criteria established under section 20120a(2). The use of mixing zones established under this part may be applied to, or included as, site-specific criteria.

(2) A person may proceed under section 20114a to undertake the following response activities:

(a) A person may undertake evaluation activities associated with a response activity providing for venting groundwater using groundwater-surface water interface monitoring wells or alternative monitoring points.

(b) A person may undertake response activities that rely on monitoring from groundwater-surface water interface monitoring wells to demonstrate compliance under subsection (1)(a).

(c) Except as provided in subdivision (a) and subsection (3), a person may undertake response activities that rely on monitoring from alternative monitoring points to demonstrate compliance with subsection (1)(a) if the person submits to the department a notice of alternative monitoring points at least 30 days prior to relying on those alternative monitoring points that contains substantiating evidence that the alternative monitoring points comply with this section.

(3) A person must proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points to demonstrate compliance with subsection (1)(a) if 1 or more of the following conditions apply to the venting groundwater:

(a) An applicable criterion is based on acute toxicity endpoints.

(b) The venting groundwater contains a bioaccumulative chemical of concern as identified in the water quality standards for surface waters developed pursuant to part 31 and for which the person is liable under this part.

(c) The venting groundwater is entering a surface water body protected for coldwater fisheries identified in the following publications:

(*i*) "Coldwater Lakes of Michigan," as published in 1976 by the department of natural resources.

(*ii*) "Designated Trout Lakes and Regulations," issued September 10, 1998, by the director of the department of natural resources under this authority of part 411.

(*iii*) "Designated Trout Streams for the State of Michigan," as issued under order of the director of the department of natural resources, FO-210.08, on November 8, 2007.

(d) The venting groundwater is entering a surface water body designated as an outstanding state resource water or outstanding international resource water as identified in the water quality standards for surface waters developed pursuant to part 31.

(4) Alternative monitoring points may demonstrate compliance with this section if the alternative monitoring points meet the following standards:

(a) The locations where venting groundwater enters surface water have been sufficiently identified to allow monitoring for the evaluation of compliance with criteria. Sufficient identification shall include all of the following:

(*i*) Identification of the location of alternative monitoring points within areas of venting groundwater.

(*ii*) Documentation of the boundaries of the areas where the groundwater plume vents to surface water, including the size, shape, and location. This documentation shall include information about the substrate character and geology in the areas where groundwater vents to surface water.

(*iii*) Documentation that the venting area identified and alternative monitoring points include points that are representative of the highest concentrations of hazardous substances present in the groundwater at the groundwater-surface water interface, considering spatial and temporal variability.

(b) The alternative monitoring points allow for venting groundwater to be sampled at a point before mixing with surface water. This requirement does not preclude location of alternative monitoring points in a floodplain.

(c) The alternative monitoring points allow for reliable, representative monitoring of groundwater quality at the groundwater-surface water interface, taking into account all of the following:

(*i*) Temporal and spatial variability of hazardous substance concentrations in groundwater in the plume.

(*ii*) Seasonal or periodic changes in groundwater flow.

(*iii*) Other natural or human-made features that affect groundwater flow.

(d) The potential fate and transport mechanisms for groundwater contaminants, including any chemical, physical, or biological processes that result in the reduction of hazardous substance concentrations between the monitoring wells and the alternative monitoring points are identified.

(e) Sentinel monitoring points are used in conjunction with the alternative monitoring points to assure that any potential exceedance of an applicable water quality standard can be identified with sufficient notice to allow additional response activity, if needed, to be implemented that will prevent the exceedance. Sentinel monitoring points shall include, at a minimum, monitoring points upland of the surface water body.

(5) If a person intends to utilize mixing zone-based groundwater-surface water interface criteria under subsection (1)(b) or site-specific criteria under subsection (1)(c) in conjunction with alternative monitoring points, the person shall submit to the department a response activity plan that includes the following:

(a) A demonstration of compliance with the standards in subsection (4).

(b) If compliance with a mixing zone-based groundwater-surface water interface criterion under subsection (1)(b) is to be determined with data from the alternative monitoring points, documentation that it is possible to accurately estimate the volume of venting groundwater.

(6) For the purpose of this section, surface water does not include groundwater or enclosed sewers or utility lines.

(7) If the department denies a response activity plan containing a proposal for alternative monitoring points, the department shall state the reasons for denial, including the scientific and technical basis for the denial.

(8) Notwithstanding any other provision of this part, a response activity plan that includes a mixing zone relating to groundwater venting to surface water is subject to a 30-day public comment period.

(9) A person may appeal a decision of the department in a response activity plan or no further action report regarding venting groundwater as a scientific or technical dispute under section 20114e.

(10) As used in this section, "groundwater-surface water 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.

Enacting section 1. Sections 20105, 20109a, and 20129a of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20105, 324.20109a, and 324.20129a, are repealed.

Enacting section 2. The following rules are rescinded:

(a) R 299.5209 to R 299.5219 of the Michigan administrative code.

(b) R 299.5601 to R 299.5607 of the Michigan administrative code.

(c) R 299.5801 to R 299.5823 of the Michigan administrative code.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

(a) Senate Bill No. 1346.

(b) Senate Bill No. 1348.

(c) House Bill No. 6359.

(d) House Bill No. 6360.

(e) House Bill No. 6363.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved .....

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Governor

Compiler's note: The bills referred to in enacting section 3 were enacted into law as follows:

Senate Bill No. 1346 was filed with the Secretary of State December 14, 2010, and became 2010 PA 229, Imd. Eff. Dec. 14, 2010.

Senate Bill No. 1348 was filed with the Secretary of State December 14, 2010, and became 2010 PA 230, Imd. Eff. Dec. 14, 2010.

House Bill No. 6359 was filed with the Secretary of State December 14, 2010, and became 2010 PA 227, Imd. Eff. Dec. 14, 2010.

House Bill No. 6360 was filed with the Secretary of State December 14, 2010, and became 2010 PA 233, Imd. Eff. Dec. 14, 2010.

House Bill No. 6363 was filed with the Secretary of State December 14, 2010, and became 2010 PA 234, Imd. Eff. Dec. 14, 2010.