

SENATE BILL No. 1090

April 24, 2012, Introduced by Senators CASPERSON, COLBECK, MOOLENAAR, BOOHER, MARLEAU, GREEN, PAPPAGEORGE, ROBERTSON, MEEKHOF, KOWALL and PAVLOV and referred to the Committee on Natural Resources, Environment and Great Lakes.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20120e (MCL 324.20120e), as added by 2010 PA
228.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20120e. (1) ~~A~~**SUBJECT TO OTHER REQUIREMENTS OF THIS**
2 **SECTION, A** person may demonstrate compliance with requirements
3 under this part for a response activity providing for venting
4 groundwater by meeting any of the following, singly or in
5 combination:

6 (a) Generic ~~groundwater surface water interface~~**GSI** criteria,
7 which are the water quality standards for surface waters developed
8 by the department pursuant to part 31. The use of surface water

1 quality standards **OR VARIANCES** shall be allowable in any of the
2 cleanup categories provided for in section 20120a(1).

3 (B) A VARIANCE FROM THE SURFACE WATER QUALITY STANDARDS AS
4 APPROVED BY THE DEPARTMENT UNDER PART 31. A VARIANCE SHALL BE USED
5 ONLY IF THE VARIANCE IS REQUESTED BY A PERSON PERFORMING RESPONSE
6 ACTIVITIES WITH RESPECT TO VENTING GROUNDWATER.

7 (C) ~~(b) Mixing zone-based groundwater surface water interface~~
8 GSI criteria established under this part, **WHICH ARE CONSISTENT WITH**
9 **PART 31.** The use of mixing zone-based GSI criteria shall be
10 allowable in any of the categories provided for in section
11 20120a(1) and (2) **AND SHALL BE ALLOWABLE FOR CRITERIA BASED ON**
12 **CHRONIC-BASED OR ACUTE-BASED SURFACE WATER QUALITY CRITERIA.**

13 (D) ~~(e) Site-specific criteria established under section~~
14 ~~20120a(2)~~ **20120B OR THIS SUBDIVISION OR A COMBINATION OF BOTH.** The
15 use of mixing zones established under this part may be applied to,
16 or included as, site-specific criteria. **BIOLOGICAL CRITERIA MAY BE**
17 **USED AS SITE-SPECIFIC CRITERIA. IF BIOLOGICAL CRITERIA ARE USED,**
18 **THEN SENTINEL WELLS SHALL BE USED FOR A PERIOD AS NEEDED TO**
19 **DETERMINE IF THE BIOLOGICAL CRITERIA MAY BE EXCEEDED DUE TO FUTURE**
20 **INCREASED MASS LOADING TO THE SURFACE WATER FROM THE VENTING PLUME.**
21 **NUMERICAL EVALUATIONS OF ANALYSES OF THE SAMPLES FROM THE SENTINEL**
22 **WELLS SHALL BE PERFORMED IN CONNECTION WITH THIS DETERMINATION.**

23 (E) AN ECOLOGICAL DEMONSTRATION UNDER SUBSECTION (9).

24 (F) A MODELING DEMONSTRATION UNDER SUBSECTION (10).

25 (2) WHOLE EFFLUENT TOXICITY TESTING SHALL NOT BE REQUIRED OR
26 BE A CRITERION OR BE THE BASIS FOR ANY CRITERIA UNDER SUBSECTION
27 (1) FOR VENTING GROUNDWATER EXCEPT FOR SAMPLES TAKEN AT THE GSI.

1 (3) THE PATHWAY ADDRESSED BY GSI CRITERIA UNDER SUBSECTION (1)
2 SHALL BE CONSIDERED A RELEVANT PATHWAY WHEN A REMEDIAL
3 INVESTIGATION OR APPLICATION OF BEST PROFESSIONAL JUDGMENT LEADS TO
4 THE CONCLUSION THAT A HAZARDOUS SUBSTANCE IN GROUNDWATER IS
5 REASONABLY EXPECTED TO VENT TO SURFACE WATER IN CONCENTRATIONS THAT
6 EXCEED THE GENERIC GSI CRITERIA. THE FACTORS TO BE CONSIDERED IN
7 DETERMINING WHETHER THE PATHWAY IS RELEVANT INCLUDE ALL OF THE
8 FOLLOWING:

9 (A) WHETHER THERE IS A HYDRAULIC CONNECTION BETWEEN
10 GROUNDWATER AND THE SURFACE WATER IN QUESTION.

11 (B) THE PROXIMITY OF SURFACE WATER TO SOURCE AREAS AND AREAS
12 OF THE GROUNDWATER CONTAMINANT PLUME THAT CURRENTLY, OR MAY IN THE
13 FUTURE BE EXPECTED TO, EXCEED THE GENERIC GSI CRITERIA.

14 (C) SUBJECT TO SUBSECTION (22) (G), WHETHER THE RECEIVING
15 SURFACE WATER IS A SURFACE WATER OF THE STATE AS THAT TERM IS
16 DEFINED IN PART 31 AND RULES PROMULGATED UNDER THAT PART.

17 (D) THE DIRECTION OF GROUNDWATER MOVEMENT.

18 (E) THE PRESENCE OF ARTIFICIAL STRUCTURES OR NATURAL FEATURES
19 THAT WOULD ALTER HYDRAULIC PATHWAYS. THIS INCLUDES, BUT IS NOT
20 LIMITED TO, HIGHLY PERMEABLE ZONES, UTILITY CORRIDORS, AND
21 SEAWALLS.

22 (F) THE MASS OF HAZARDOUS SUBSTANCES PRESENT AT THE FACILITY
23 THAT MAY AFFECT GROUNDWATER.

24 (G) DOCUMENTED FACILITY-SPECIFIC EVIDENCE OF NATURAL
25 ATTENUATION, IF ANY.

26 (H) WHETHER OR NOT A SEWER THAT HAS AN OUTFALL TO SURFACE
27 WATER HAS OPENINGS IN THE PORTION OF THE SEWER WHERE THE SEWER AND

1 THE GROUNDWATER CONTAMINANT PLUME INTERSECT THAT ALLOWS THE
2 GROUNDWATER CONTAMINANT PLUME TO MIGRATE INTO THE SEWER. IF IT CAN
3 BE DEMONSTRATED THAT THE SEWER IS SUFFICIENTLY TIGHT TO PREVENT
4 INFLOW TO THE SEWER WHERE THE GROUNDWATER CONTAMINANT PLUME
5 INTERSECTS THE SEWER OR IF THE SEWER IS OTHERWISE IMPERVIOUS, BASED
6 ON ACCEPTED INDUSTRY STANDARDS, TO PREVENT INFLOW FROM GROUNDWATER
7 INTO THE SEWER AT THAT LOCATION, THEN THE GSI PATHWAY WITH RESPECT
8 TO THE SEWER IS NOT RELEVANT AND SHALL NOT APPLY.

9 (4) FOR PURPOSES OF DETERMINING THE RELEVANCE OF A PATHWAY
10 UNDER SUBSECTION (3), BOTH OF THE FOLLOWING APPLY:

11 (A) GSI MONITORING WELLS ARE NOT REQUIRED IN ORDER TO MAKE A
12 DETERMINATION IF OTHER INFORMATION IS SUFFICIENT TO MAKE A JUDGMENT
13 THAT THE PATHWAY IS NOT RELEVANT.

14 (B) FATE AND TRANSPORT MODELING MAY BE USED, IF APPROPRIATE,
15 TO SUPPORT A PROFESSIONAL JUDGMENT.

16 (5) ~~(2)~~ A person may proceed under section 20114a to undertake
17 the following response activities INVOLVING VENTING GROUNDWATER:

18 (a) ~~A person may undertake evaluation~~ EVALUATION activities
19 associated with a response activity providing for venting
20 groundwater using ~~groundwater-surface water interface monitoring~~
21 ~~wells or alternative monitoring points,~~ AN ECOLOGICAL
22 DEMONSTRATION, A MODELING DEMONSTRATION, OR ANY COMBINATION OF
23 THESE. IF A PERSON WHO IS LIABLE UNDER SECTION 20126 DECIDES NOT TO
24 TAKE ADDITIONAL RESPONSE ACTIVITIES TO ADDRESS THE GSI PATHWAY
25 BASED ON ALTERNATIVE MONITORING POINTS, AN ECOLOGICAL
26 DEMONSTRATION, A MODELING DEMONSTRATION, OR A DETERMINATION UNDER
27 SUBSECTION (13), OR ANY COMBINATION OF THESE, THE PERSON SHALL

1 NOTIFY THE DEPARTMENT AND REQUEST DEPARTMENT APPROVAL. A
2 NOTIFICATION AND REQUEST FOR APPROVAL UNDER THIS SUBDIVISION SHALL
3 NOT BE CONSIDERED AN ADMISSION OF LIABILITY UNDER SECTION 20126.

4 (b) ~~A person may undertake response~~ **RESPONSE** activities that
5 rely on ~~monitoring from groundwater surface water interface GSI~~
6 monitoring wells to demonstrate compliance under subsection (1)(a).

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

15 (D) **RESPONSE ACTIVITIES IMPLEMENTED BY A PERSON WHO IS NOT**
16 **LIABLE UNDER SECTION 20126 THAT RELY ON A MODELING DEMONSTRATION,**
17 **OR RELY ON AN ECOLOGICAL DEMONSTRATION, OR A COMBINATION OF THESE,**
18 **TO DEMONSTRATE COMPLIANCE WITH SUBSECTION (1)(A).**

19 (6) ~~(3)~~ A person ~~must~~ **SHALL** proceed under section 20114b to
20 undertake response activities that rely on monitoring from
21 alternative monitoring points **OR RELY ON AN ECOLOGICAL**
22 **DEMONSTRATION, A MODELING DEMONSTRATION, OR A COMBINATION OF THESE,**
23 to demonstrate compliance with subsection (1)(a) if 1 or more of
24 the following conditions apply to the venting groundwater:

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

27 (b) The venting groundwater contains a bioaccumulative

1 chemical of concern as identified in the water quality standards
2 for surface waters developed pursuant to part 31 and for which the
3 person is liable under this part.

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

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

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

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

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

19 **(7) A PERSON SHALL PROCEED UNDER SECTION 20114B TO UNDERTAKE**
20 **RESPONSE ACTIVITIES THAT RELY ON MONITORING FROM ALTERNATIVE**
21 **MONITORING POINTS, OR RELY ON AN ECOLOGICAL DEMONSTRATION, OR RELY**
22 **ON A MODELING DEMONSTRATION OR THAT USE MIXING ZONE-BASED GSI**
23 **CRITERIA, OR ANY COMBINATION OF THESE, AS APPLICABLE, TO**
24 **DEMONSTRATE COMPLIANCE WITH SUBSECTION (1)(B), (C), (D), (E), OR**
25 **(F).**

26 **(8) ~~(4)~~-Alternative monitoring points may BE USED TO**
27 **demonstrate compliance with ~~this section~~ SUBSECTION (1) if the**

1 alternative monitoring points meet the following standards:

2 (a) The locations where venting groundwater enters surface
3 water have been ~~sufficiently~~ **REASONABLY** identified to allow
4 monitoring for the evaluation of compliance with criteria.

5 ~~Sufficient~~ **THIS** identification shall include all of the following:

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

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

13 (iii) Documentation that the venting area identified and
14 alternative monitoring points include points that are **REASONABLY**
15 representative of the ~~highest~~ **HIGHER** concentrations of hazardous
16 substances present in the groundwater at the ~~groundwater surface~~
17 ~~water interface, considering spatial and temporal variability.~~ **GSI.**

18 (b) The alternative monitoring points allow for venting
19 groundwater to be sampled at ~~a point before mixing with surface~~
20 ~~water. This requirement does not preclude location of alternative~~
21 ~~monitoring points in a floodplain.~~ **THE GSI. DEVICES USED FOR**
22 **SAMPLING AT ALTERNATIVE MONITORING POINTS MAY BE BEYOND THE WATER'S**
23 **EDGE AND ON TOP OF OR INTO THE SEDIMENTS, AT THE GSI.**

24 ~~— (c) The alternative monitoring points allow for reliable,~~
25 ~~representative monitoring of groundwater quality at the~~
26 ~~groundwater surface water interface, taking into account all of the~~
27 ~~following.~~

1 ~~—— (i) Temporal and spatial variability of hazardous substance~~
2 ~~concentrations in groundwater in the plume.~~

3 ~~—— (ii) Seasonal or periodic changes in groundwater flow.~~

4 ~~—— (iii) Other natural or human made features that affect~~
5 ~~groundwater flow.~~

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

11 (C) ~~(e)~~ Sentinel monitoring points are used in conjunction
12 with the alternative monitoring points **FOR A PERIOD AS NEEDED** to
13 assure that any potential exceedance of an applicable **SURFACE** water
14 quality standard can be identified with sufficient notice to allow
15 additional response activity, if needed, to be implemented that
16 will ~~prevent~~ **ADDRESS** the exceedance. Sentinel monitoring points
17 shall include, at a minimum, monitoring points upland of the
18 surface water body.

19 (D) **IF ALTERNATIVE MONITORING POINTS OR AN ECOLOGICAL**
20 **DEMONSTRATION OR A MODELING DEMONSTRATION OR A COMBINATION OF THESE**
21 **IS USED FOR THE RESPONSE ACTIVITY AND SENTINEL WELLS ARE INSTALLED,**
22 **A CONTINGENCY PLAN FOR POTENTIAL ADDITIONAL RESPONSE ACTIVITY MAY**
23 **BE REQUIRED.**

24 (9) **AN ECOLOGICAL DEMONSTRATION MAY BE USED TO DEMONSTRATE**
25 **COMPLIANCE WITH SUBSECTION (1) IF THE ECOLOGICAL DEMONSTRATION**
26 **MEETS THE FOLLOWING:**

27 (A) **THE BOUNDARIES OF THE AREA WHERE THE GROUNDWATER PLUME**

VENTS TO SURFACE WATER ARE DOCUMENTED AS PROVIDED IN SUBSECTION
(8) (A) (ii) .

(B) SAMPLING DATA FOR THE AREA DESCRIBED IN SUBDIVISION (A) ,
WHEN COMPARED TO OTHER REASONABLY PROXIMATE AREAS OF THAT SURFACE
WATER BODY, DO NOT SHOW AN IMPAIRMENT OF EXISTING OR DESIGNATED
USES FOR THAT SURFACE WATER BODY CAUSED BY, OR CONTRIBUTED TO BY,
THE VENTING PLUME, OR DO NOT SHOW THAT THE VENTING PLUME WILL CAUSE
OR CONTRIBUTE TO IMPAIRMENT OF EXISTING OR DESIGNATED USES OF THAT
SURFACE WATER BODY IN A SITUATION WHERE THE AREA OF THE SURFACE
WATER IMMEDIATELY OUTSIDE THE VENTING AREA OF THE VENTING PLUME
SHOWS AN IMPAIRMENT OF EXISTING OR DESIGNATED USES.

(C) SAMPLING DATA FOR THE AREA DESCRIBED IN SUBDIVISION (A) DO
NOT SHOW EXCEEDANCES OF APPLICABLE CRITERIA UNDER SUBSECTION (1) IN
THE SURFACE WATER BODY CAUSED BY, OR CONTRIBUTED TO BY, THE VENTING
PLUME.

(D) THE SAMPLING DATA IN SUBDIVISIONS (B) AND (C) MAY BE DATA
ON BENTHIC ORGANISMS, FISH, AND THE WATER COLUMN OF THE SURFACE
WATER, WHICH DATA MAY BE IN THE FORM OF AN IN SITU BIOASSAY OR A
BIOLOGICAL COMMUNITY ASSESSMENT.

(E) SENTINEL MONITORING IN ON-LAND WELLS IS PERFORMED FOR A
PERIOD AS NEEDED TO SHOW THAT THE GROUNDWATER PLUME IS NOT LIKELY
TO MIGRATE TO THE SURFACE WATER BODY AND VENT IN THE FUTURE IN A
MASS AMOUNT AND RATE THAT WOULD IMPAIR THE EXISTING OR DESIGNATED
USES FOR THAT SURFACE WATER BODY, OR CAUSE OR CONTRIBUTE TO
EXCEEDANCES OF SURFACE WATER QUALITY STANDARDS IN THE SURFACE WATER
BODY.

(10) A MODELING DEMONSTRATION MAY BE USED TO DEMONSTRATE

1 COMPLIANCE WITH SUBSECTION (1) IF THE MODELING DEMONSTRATION MEETS
2 ALL OF THE FOLLOWING:

3 (A) THE MODELING METHODOLOGY IS GENERALLY RECOGNIZED AS A
4 MEANS TO MODEL VENTING GROUNDWATER PLUMES OR IS AN INNOVATIVE
5 METHOD THAT IS SCIENTIFICALLY JUSTIFIABLE.

6 (B) THE RESULTS OF THE MODELING SHOW THAT THE VENTING PLUME AT
7 THE GSI COMPLIES WITH THE APPLICABLE CRITERIA UNDER SUBSECTION (1)
8 OR SUPPORTS THE ECOLOGICAL DEMONSTRATION, AS APPLICABLE.

9 (C) THE MODEL IS SUPPORTED BY SITE-SPECIFIC INFORMATION AND
10 APPROPRIATE FIELD MEASUREMENTS.

11 (11) ~~(5)~~ If a person intends to utilize mixing zone-based
12 ~~groundwater surface water interface~~ GSI criteria under subsection
13 ~~(1)(b)~~ (1) (C) or site-specific criteria under subsection ~~(1)(c)~~
14 (1) (D) in conjunction with alternative monitoring points, **AN**
15 **ECOLOGICAL DEMONSTRATION, OR A MODELING DEMONSTRATION, OR A**
16 **COMBINATION OF THESE**, the person shall submit to the department a
17 response activity plan that includes the following:

18 (a) A demonstration of compliance with the standards in
19 subsection ~~(4)~~ (6), (7), OR (8), **AS APPLICABLE**.

20 (b) If compliance with a mixing zone-based groundwater-surface
21 water interface criterion under subsection ~~(1)(b)~~ (1) (C) is to be
22 determined with data from the alternative monitoring points,
23 documentation that it is possible to ~~accurately~~ **REASONABLY** estimate
24 the volume **AND RATE** of venting groundwater.

25 (C) **A SITE-SPECIFIC MONITORING PLAN THAT TAKES INTO ACCOUNT**
26 **THE BASIS FOR THE SITE-SPECIFIC CRITERION OR MIXING ZONE CRITERION.**

27 ~~(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.~~

(12) IF THERE IS AN EXCEEDANCE OF AN APPLICABLE GSI CRITERION BASED ON ACUTE TOXICITY AT A COMPLIANCE MONITORING POINT APPLICABLE AT A PARTICULAR FACILITY, THEN ACTION SHALL BE TAKEN AS FOLLOWS:

(A) A PERSON THAT IS IMPLEMENTING THE RESPONSE ACTIVITY AT THAT FACILITY AND THAT DETERMINES THAT THERE IS AN EXCEEDANCE SHALL NOTIFY THE DEPARTMENT OF THAT CONDITION WITHIN 7 DAYS OF OBTAINING KNOWLEDGE THAT THE EXCEEDANCE IS OCCURRING.

(B) IF THE PERSON DESCRIBED IN SUBDIVISION (A) IS A PERSON LIABLE UNDER SECTION 20126, THEN THAT PERSON SHALL, WITHIN 30 DAYS OF THE DATE ON WHICH NOTICE IS REQUIRED UNDER SUBDIVISION (A), DO 1 OR MORE OF THE FOLLOWING:

(i) COMMENCE RESPONSE ACTIVITY TO ADDRESS THE EXCEEDANCE AT THE APPLICABLE COMPLIANCE MONITORING POINT AND SUBMIT A SCHEDULE TO THE DEPARTMENT FOR THE RESPONSE ACTIVITY.

1 (ii) SUBMIT A NOTICE OF INTENT TO THE DEPARTMENT TO PROPOSE AN
2 ALTERNATIVE MONITORING POINT OR PERFORM AN ECOLOGICAL DEMONSTRATION
3 OR PERFORM A MODELING DEMONSTRATION OR A COMBINATION OF THESE. THE
4 NOTICE SHALL INCLUDE A SCHEDULE FOR SUBMISSION OF THE PROPOSAL.

5 (iii) SUBMIT A NOTICE OF INTENT TO THE DEPARTMENT TO PROPOSE A
6 SITE-SPECIFIC CRITERION OR A MIXING ZONE CRITERION UNDER SECTIONS
7 20120A AND 20120B. THE NOTICE SHALL INCLUDE A SCHEDULE FOR
8 SUBMISSION OF THE PROPOSAL.

9 (C) THE DEPARTMENT MAY APPROVE A SCHEDULE AS SUBMITTED UNDER
10 SUBDIVISION (B) OR DIRECT REASONABLE MODIFICATIONS IN THE SCHEDULE.
11 THE DEPARTMENT MAY GRANT EXTENSIONS OF TIME FOR ACTIONS REQUIRED
12 UNDER SUBDIVISION (B) AND FOR ACTIVITIES IN AN APPROVED OR
13 DEPARTMENT-MODIFIED SCHEDULE IF THE PERSON IS ACTING IN GOOD FAITH
14 AND SITE CONDITIONS INHIBIT PROGRESS OR COMPLETION OF THE ACTIVITY.
15 THE DEPARTMENT'S DECISION TO GRANT AN EXTENSION OR IMPOSE A
16 SCHEDULE MODIFICATION SHALL CONSIDER THE PRACTICAL PROBLEMS
17 ASSOCIATED WITH CARRYING OUT THE RESPONSE ACTIVITY AND THE NATURE
18 AND EXTENT OF THE EXCEEDANCES OF APPLICABLE GSI CRITERIA.

19 (13) RESPONSE ACTIVITY BEYOND EVALUATIONS SHALL NOT BE
20 REQUIRED IF VENTING GROUNDWATER HAS NO EFFECT OR ONLY A DE MINIMIS
21 EFFECT ON A SURFACE WATER BODY. A DETERMINATION UNDER THIS
22 SUBSECTION MAY BE BASED ON MASS FLOW AND RATE OF GROUNDWATER
23 MOVEMENT CALCULATIONS. A PERSON EVALUATING A VENTING PLUME THAT
24 DETERMINES THAT THE PLUME HAS NO EFFECT OR ONLY A DE MINIMIS EFFECT
25 ON A SURFACE WATER BODY SHALL NOTIFY THE DEPARTMENT OF THE
26 DETERMINATION. THE DEPARTMENT MAY, WITHIN 90 DAYS AFTER RECEIPT OF
27 THE DETERMINATION, DISAPPROVE THE DETERMINATION. IF THE DEPARTMENT

1 DOES NOT NOTIFY THE PERSON THAT IT DISAPPROVES THE DETERMINATION
2 WITHIN THE 90-DAY PERIOD, THEN THE PERSON'S DETERMINATION SHALL BE
3 FINAL.

4 (14) IF A PERSON HAS CONTROLLED THE SOURCE OF GROUNDWATER
5 CONTAMINATION AND HAS DEMONSTRATED THAT COMPLIANCE WITH GSI
6 CRITERIA DEVELOPED UNDER THIS PART IS UNACHIEVABLE, THAT PERSON MAY
7 FILE A TECHNICAL IMPRACTICABILITY WAIVER REQUEST WITH THE
8 DEPARTMENT. THE TECHNICAL IMPRACTICABILITY WAIVER SHALL DOCUMENT
9 THE REASONS WHY COMPLIANCE IS UNACHIEVABLE. THE DEPARTMENT SHALL
10 RESPOND TO THE WAIVER WITHIN 180 DAYS WITH AN APPROVAL, REQUEST FOR
11 ADDITIONAL INFORMATION, OR DENIAL THAT PROVIDES A DETAILED
12 DESCRIPTION OF THE REASONS FOR DENIAL.

13 (15) NATURAL ATTENUATION OF HAZARDOUS SUBSTANCES IN VENTING
14 GROUNDWATER UPGRADIENT OF THE GSI IS AN ACCEPTABLE FORM OF
15 REMEDIATION AND MAY BE RELIED UPON IN LIEU OF ANY ACTIVE
16 REMEDIATION OF THE GROUNDWATER. NATURAL ATTENUATION MAY BE
17 OCCURRING BY WAY OF DISPERSION, DIFFUSION, SORPTION, DEGRADATION,
18 TRANSFORMATIVE REACTIONS, AND OTHER METHODS.

19 (16) A PERMIT SHALL NOT BE REQUIRED UNDER PART 31 FOR ANY
20 VENTING GROUNDWATER CONTAMINATION PLUME THAT IS ADDRESSED UNDER
21 THIS SECTION.

22 (17) WETLANDS SHALL BE PROTECTED FOR THE GROUNDWATER SURFACE
23 WATER PATHWAY TO THE EXTENT THAT PARTICULAR DESIGNATED USES, AS
24 DEFINED BY PART 31, WHICH ARE SPECIFIC TO THAT WETLAND WOULD
25 OTHERWISE BE IMPAIRED BY A GROUNDWATER CONTAMINATION PLUME VENTING
26 TO SURFACE WATER IN THE WETLAND.

27 (18) IF A GROUNDWATER CONTAMINATION PLUME IS ENTERING A SEWER

1 THAT DISCHARGES TO SURFACE WATER, AND THE GSI PATHWAY IS RELEVANT,
2 ALL OF THE FOLLOWING APPLY:

3 (A) IF THE GROUNDWATER ENTERS A STORM SEWER THAT IS OWNED OR
4 OPERATED BY AN ENTITY THAT IS SUBJECT TO FEDERAL MUNICIPAL SEPARATE
5 STORM SEWER SYSTEM REGULATIONS AND A PART 31 PERMIT FOR THE
6 DISCHARGES FROM THE SYSTEM, THE CONTAMINATED GROUNDWATER ENTERING
7 THE SEWER IS SUBJECT TO REGULATION BY THE ENTITY'S ORDINANCE
8 REGARDING ILLICIT DISCHARGES, BUT THE REGULATION OF THE
9 CONTAMINATED GROUNDWATER SHALL NOT PREVENT THE USE OF SUBDIVISION
10 (B) OR OTHER PROVISIONS OF THIS SECTION TO DETERMINE THE NEED FOR
11 RESPONSE ACTIVITY UNDER THIS PART.

12 (B) ALL OF THE FOLLOWING APPLY:

13 (i) THE COMPLIANCE MONITORING POINT MAY BE A GROUNDWATER
14 MONITORING WELL, IF PROPOSED BY THE PERSON PERFORMING THE RESPONSE
15 ACTION, OR THAT PERSON MAY CHOOSE ANOTHER POINT FOR MEASURING
16 COMPLIANCE UNDER THIS SUBPARAGRAPH.

17 (ii) A MIXING ZONE MAY BE APPLIED THAT ACCOUNTS FOR THE MIXING
18 WHICH OCCURS IN THE RECEIVING SURFACE WATER INTO WHICH THE SEWER
19 SYSTEM DISCHARGES.

20 (iii) ATTENUATION THAT OCCURS IN THE SEWER SYSTEM PRIOR TO THE
21 SEWER SYSTEM OUTFALL TO SURFACE WATER SHALL BE CONSIDERED.

22 (iv) THE COMPLIANCE POINT IS AT THE SEWER SYSTEM OUTFALL TO
23 SURFACE WATER, WHICH SHALL ACCOUNT FOR ANY APPLICABLE MIXING ZONE
24 FOR THE SEWER SYSTEM OUTFALL.

25 (v) MONITORING TO DETERMINE COMPLIANCE MAY BE PERFORMED AT A
26 LOCATION WHERE THE CONTAMINATED GROUNDWATER ENTERS THE SEWER OR
27 DOWNSTREAM FROM THAT LOCATION BUT UPSTREAM OF THE SEWER OUTFALL AT

1 THE SURFACE WATER, IF PRACTICABLE AND REPRESENTATIVE. APPROPRIATE
2 BACK CALCULATION FROM THE COMPLIANCE POINT TO THE MONITORING POINT
3 MAY BE APPLIED TO ACCOUNT FOR MIXING AND OTHER ATTENUATION THAT
4 OCCURS IN THE SEWER SYSTEM BEFORE THE COMPLIANCE POINT. AS
5 APPROPRIATE, SUCH A MONITORING POINT MAY REQUIRE ANOTHER MONITORING
6 POINT IN THE SEWER SYSTEM UPSTREAM FROM THE AREA WHERE THE
7 CONTAMINATED GROUNDWATER ENTERS THE SEWER. UPSTREAM SAMPLING IN THE
8 SEWER MAY BE PERFORMED TO DETERMINE SOURCE CONTRIBUTION.

9 (vi) THE CONTAMINANT MASS FLOW, AND THE RATE AND AMOUNT OF
10 GROUNDWATER FLOW, INTO THE SEWER MAY BE CONSIDERED AND MAY RESULT
11 IN A DETERMINATION THAT THE MIGRATION INTO THE SEWER IS DE MINIMIS
12 AND DOES NOT REQUIRE ANY RESPONSE ACTIVITY IN ADDITION TO THE
13 EVALUATION THAT LEADS TO SUCH DETERMINATION.

14 (C) FACTORS IN SUBDIVISION (B) MAY BE CONSIDERED AND APPLIED
15 TO DETERMINE IF AN ILLICIT DISCHARGE IS OCCURRING AND HOW TO
16 REGULATE THE DISCHARGE.

17 (19) IF THE DEPARTMENT DENIES A RESPONSE ACTIVITY PLAN
18 CONTAINING A PROPOSAL FOR ALTERNATIVE MONITORING POINTS, AN
19 ECOLOGICAL DEMONSTRATION, OR A MODELING DEMONSTRATION, OR A
20 COMBINATION OF THESE, THE DEPARTMENT SHALL STATE THE REASONS FOR
21 DENIAL, INCLUDING THE SCIENTIFIC AND TECHNICAL BASIS FOR THE
22 DENIAL. A PERSON MAY APPEAL A DECISION OF THE DEPARTMENT IN A
23 RESPONSE ACTIVITY PLAN OR NO FURTHER ACTION REPORT REGARDING
24 VENTING GROUNDWATER AS A SCIENTIFIC OR TECHNICAL DISPUTE UNDER
25 SECTION 20114E.

26 (20) THIS SECTION IS INTENDED TO ALLOW A PERSON TO DEMONSTRATE
27 COMPLIANCE WITH REQUIREMENTS UNDER THIS PART FOR A RESPONSE

1 ACTIVITY INVOLVING VENTING GROUNDWATER, AND, FOR THIS PURPOSE, THIS
2 SECTION SHALL BE GIVEN RETROACTIVE APPLICATION AND SHALL BE
3 AVAILABLE FOR USE BY SUCH PERSON. A PERSON PERFORMING RESPONSE
4 ACTIVITY INVOLVING VENTING GROUNDWATER UNDER ANY JUDGMENT, CONSENT
5 JUDGMENT, ORDER, CONSENT ORDER, OR AGREEMENT THAT WAS ENTERED PRIOR
6 TO THE EFFECTIVE DATE OF THE 2012 AMENDATORY ACT THAT AMENDED THIS
7 SECTION MAY PURSUE, ALTER, OR TERMINATE SUCH RESPONSE ACTIVITY
8 BASED ON ANY PROVISION OF THIS SECTION SUBJECT TO ANY NECESSARY
9 ENTRY OR APPROVAL BY THE COURT IN A CASE OF A JUDGMENT, CONSENT
10 JUDGMENT, OR COURT ORDER. THE DEPARTMENT SHALL NOT OPPOSE USE OF
11 ANY PROVISION OF THIS SECTION AS GROUNDS FOR A COURT TO MODIFY OR
12 TERMINATE RESPONSE ACTIVITY OBLIGATIONS INVOLVING VENTING
13 GROUNDWATER UNDER A JUDGMENT, CONSENT JUDGMENT, OR COURT ORDER. A
14 PERSON PERFORMING RESPONSE ACTIVITY INVOLVING VENTING GROUNDWATER
15 UNDER ANY REMEDIAL ACTION PLAN, INTERIM RESPONSE PLAN DESIGNED TO
16 MEET CRITERIA, INTERIM RESPONSE ACTION PLAN, OR RESPONSE ACTIVITY
17 PLAN THAT WAS APPROVED BY THE DEPARTMENT PRIOR TO THE EFFECTIVE
18 DATE OF THE 2012 AMENDATORY ACT THAT AMENDED THIS SECTION MAY
19 MODIFY THE PLAN AND PURSUE, ALTER, OR TERMINATE RESPONSE ACTIVITY
20 BASED ON ANY PROVISION OF THIS SECTION.

21 (21) A PERSON THAT UNDERTAKES RESPONSE ACTIVITY UNDER
22 SUBSECTION (4) OR THAT TAKES ACTION UNDER SUBSECTION (12) (B) SHALL
23 NOT BE CONSIDERED TO BE MAKING AN ADMISSION OF LIABILITY BY
24 UNDERTAKING SUCH RESPONSE ACTIVITIES OR TAKING SUCH ACTION.

25 (22) ~~(10)~~ As used in this section: ~~—"groundwater surface~~
26 ~~water interface monitoring well"~~

27 (A) "ALTERNATIVE MONITORING POINTS" MEANS ALTERNATIVE

1 MONITORING POINTS AUTHORIZED UNDER SUBSECTION (8).

2 (B) "ECOLOGICAL DEMONSTRATION" MEANS AN ECOLOGICAL
3 DEMONSTRATION AUTHORIZED UNDER SUBSECTION (1) (E).

4 (C) "GSI" MEANS GROUNDWATER-SURFACE WATER INTERFACE, WHICH IS
5 THE LOCATION AT WHICH GROUNDWATER ENTERS SURFACE WATER.

6 (D) "GSI MONITORING WELL" means a vertical well installed in
7 the saturated zone as close as practicable to surface water with a
8 screened interval or intervals that are representative of the
9 groundwater venting to the surface water.

10 (E) "MIXING ZONE-BASED GSI CRITERIA" MEANS MIXING ZONE-BASED
11 GSI CRITERIA AUTHORIZED UNDER SUBSECTION (1) (C).

12 (F) "MODELING DEMONSTRATION" MEANS A MODELING DEMONSTRATION
13 AUTHORIZED UNDER SUBSECTION (1) (F).

14 (G) "SURFACE WATER" DOES NOT INCLUDE ANY OF THE FOLLOWING:

15 (i) GROUNDWATER.

16 (ii) HYPORHEIC ZONE WATER.

17 (iii) WATER IN ENCLOSED SEWERS.

18 (iv) WATER IN DRAINAGE WAYS AND PONDS USED SOLELY FOR
19 WASTEWATER OR STORM WATER CONVEYANCE, TREATMENT, OR CONTROL.

20 (v) WATER IN SUBGRADE UTILITY RUNS AND UTILITY LINES AND
21 PERMEABLE FILL IN AND AROUND THEM.

22 Enacting section 1. R 299.5716 of the Michigan administrative
23 code is rescinded.