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Senate Bill 891 (as introduced 3-27-14)
Sponsor: Senator Tom Casperson
Committee: Natural Resources, Environment and Great Lakes

Date Completed: 4-23-14

CONTENT

The bill would amend Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act to revise provisions related to the cleanup of contamination caused by the release of a hazardous substance. Specifically, the bill would do the following:

- Revise the definition of "facility".
- Define the terms "residential" and "nonresidential" with regard to cleanup criteria categories.
- Require a facility owner or operator who was liable for the release of a hazardous substance for which there was no available analytical method or generic cleanup criteria to notify the Department of Environmental Quality (DEQ), but provide that the person would not have to determine the nature and extent of the release until the DEQ demonstrated that the substance could pose an unacceptable risk to the public or the environment.
- Delete a requirement that a liable owner or operator initiate immediate removal of certain hazardous substances in liquid phase, and require a liable owner to initiate a remedial action to address unacceptable risks associated with migrating and mobile nonaqueous-phase liquids.
- Revise provisions related to the implementation of land or resource use restrictions.
- Delete certain provisions related to the modification of a postclosure agreement.
- Prohibit the imposition of State or local permit procedure requirements for response activities unless they were mandated by Federal law.
- Provide that approved site-specific criteria would be sufficient to meet certain drinking water standards under particular circumstances.
- Prohibit site-specific criteria from altering any value, parameter, or assumption used to calculate generic cleanup criteria in the case of hazardous substances that pose a risk of carcinogenic exposure or other adverse health effects.
- Allow a person to submit to the DEQ for approval site-specific criteria for the management of child day care centers, nursing homes, recreational property located contiguous to residential property, and similar land uses.
- Prescribe measures to address the release of hazardous substances for which there was no generic cleanup criterion.
- Allow a corrective action under Part 111 (Hazardous Waste Management) to apply certain provisions of Part 201.
- Provide that a release that was addressed through Part 111 could not also be subject to remediation and DEQ oversight under Part 201.

Definition of "Facility"

Part 201 defines "facility" as 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. The bill would refer to any area, place, parcel or parcels of property, or portion of a parcel of property.

The term "facility" excludes an area, place, or property where either of the following conditions is satisfied:

- Response activities that satisfy the cleanup criteria for unrestricted residential use have been completed under Part 201.
- Corrective action that satisfies the cleanup criteria for unrestricted residential use has been completed under Part 213 (Leaking Underground Storage Tanks).

The bill also would refer to response activity completed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and corrective action completed under Part 111 that satisfy the cleanup criteria for unrestricted residential use.

("Response activity" means evaluation, interim response activity, remedial action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, welfare, or the environment or natural resources. The term 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.)

The definition of "facility" also excludes an area, place, or property where site-specific criteria that have been approved by the DEQ for application at that location are met or satisfied and both of the following conditions are met:

- 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.
- Hazardous substances at the location that are not addressed by the site-specific criteria satisfy the cleanup criteria for unrestricted residential use.

The bill would revise the first condition. Under the bill, if the site-specific criteria depended on a land use or resource use restriction to ensure protection of the public health, safety, or welfare or the environment, the restriction would have to be recorded in the deed records for the property or be publicly published and maintained as a municipal corporation code, regulation, or ordinance.

The bill also would exclude from the definition of "facility" a site where either of the following was satisfied:

- The property, which did not contain hazardous substances in excess of concentrations that satisfy the cleanup criteria for unrestricted residential use, was lawfully split, subdivided, or divided from property or portion of property that did exceed those criteria.
- Natural attenuation or other natural processes had reduced concentrations of hazardous substances to levels below the cleanup criteria for unrestricted residential use.

(Part 201 defines "cleanup criteria for unrestricted residential use" as either of the following:

- Cleanup criteria that satisfy the requirements for the residential category as prescribed in Part 201.
- Cleanup criteria for unrestricted residential use under Part 213.)

The bill also would include site-specific cleanup criteria approved by the DEQ for unrestricted residential use.

The bill would define "residential" as the category of land use for parcels of property or portions of parcels where people live and sleep for significant periods of time such that the frequency of exposure is reasonably expected or foreseeable to be approximately 350 days per year and the duration of exposure approximately 10 years or more. Residential uses would include homes and surrounding yards, condominiums, and apartments. Homes and adjacent yards and gardens at farms and other large properties also would be residential uses.)

Facility Owner Obligations

Under Part 201, a person who owns or operates property that he or she knows is a facility must take certain actions with respect to hazardous substances at the facility, such as undertaking necessary measures to prevent exacerbation and exercising due care by undertaking response activity to mitigate unacceptable exposure to hazardous substances. The owner's or operator's obligations must be based upon the current numeric cleanup criteria. Under the bill, these obligations would be based on those criteria or approved site-specific criteria.

Liability for Release

Except as otherwise provided, an owner or operator who has knowledge that a property is a facility and who is liable for a release must determine the nature and extent of the release at the facility. Under the bill, if a hazardous substance were released at a property and there was no available analytical method or generic cleanup criteria for that substance, the owner or operator would have to notify the DEQ and describe what was known about the substance and its release. The owner or operator would not have to determine the nature and extent of the release unless and until the DEQ demonstrated that the substance could pose an unacceptable risk to the public health, safety, or welfare, or the environment, at the site. If the DEQ demonstrated that the substance could pose an unacceptable risk, the substance's nature and extent could be determined by any of the following means, singly or in combination:

- If another hazardous substance with an available analytical method were released at the same location and had similar fate and mobility characteristics, determining the nature and extent of that substance as a surrogate.
- Using modeling and/or an ecological demonstration to determine whether the substance had reached surface water.
- Developing and proposing to the DEQ an analytical method approved by the Department.
- In lieu of determining the nature and extent of the release, eliminating the potential for exposure in areas where the substance was expected to be located through removal, containment, exposure barriers, or land or resource use restrictions.

("Available analytical method" would mean a method that was approved and published by a governmental agency, was conducted routinely by commercial laboratories in the United States, and identified and quantitatively measured the specific hazardous substance.)

A liable owner or operator is required to take steps immediately to stop or prevent the release at the source. The bill would refer to an "ongoing" release, and define "source" as the place, device, or equipment from which the release originates and first enters the environment, such as a leaking storage tank, drum, pipeline, containment area, landfill, or impoundment.

Additionally, a liable owner or operator immediately must implement measures to remove or contain hazardous substances if those measures are technically practical and cost-effective and provide protection to the environment. A similar requirement exists regarding the prevention of groundwater contamination. The bill would refer to measures that abated an unacceptable risk to the public health, safety, or welfare or the environment, rather than measures that provide protection to the environment.

The bill would delete a requirement that a liable owner or operator initiate immediate removal of a hazardous substance that is in a liquid phase, that is not dissolved in water, and that has been released.

The bill would require a liable owner, using best practices for managing nonaqueous-phase liquids (NAPL), including those developed by the American Society for Testing and Materials or the Interstate Technology and Regulatory Council, to initiate a remedial action that was necessary and feasible to address unacceptable risks associated with migrating and mobile NAPL.

("Remedial action" includes 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.)

Land & Resource Use Restrictions

If remedial actions at a facility satisfy cleanup criteria for unrestricted residential use, land use or resource use restrictions or monitoring is not required. Upon completion of remedial actions at a facility for a category of cleanup that does not satisfy those cleanup criteria, however, the person conducting the remedial actions must prepare and implement a postclosure plan for the facility. The plan must include both of the following:

- Land use or resource use restrictions.
- Subject to certain exceptions, permanent markers to describe restricted areas of the facility and the nature of any restrictions.

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

- Describe the general uses of the property that are consistent with the cleanup criteria.
- 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.
- Restrict activities that may result in exposures above levels attained in the remedial actions.
- Grant the DEQ the ability to enforce the covenant by legal action.

The bill would delete all of these provisions and prescribe land and resource use restrictions in a new Section 20121. Under that section, a person could impose land or resource use restrictions to reduce or restrict exposure to hazardous substances, eliminate a potential exposure pathway, assure the effectiveness and integrity of containment or exposure barriers, provide for access, or otherwise assure the effectiveness and integrity of response activities undertaken at a property.

A restrictive covenant to impose land or resource use restrictions would have to include all of the following:

- A description of the property that was subject to the restrictions that was sufficient to identify it and record the document with the county register of deeds.
- A brief narrative description of response activities and contamination at the property or identification of a publicly accessible information repository, such as a public library, where that information could be obtained.
- A description of the activity and use limitations imposed on the property.
- A grant to the DEQ of the ability to enforce the covenant by legal action.
- A signature of the property owner or someone with the owner's express written consent, unless the covenant was ordered by a court.

For condominium common elements and similar commonly owned property, the covenant could be signed by an authorized person.

(Under the bill, "contamination" would mean the presence of hazardous substances at levels above those established in cleanup criteria for unrestricted residential use.)

Additionally, a restrictive covenant could contain other information, restrictions, requirements, and rights agreed to by the people signing it, including any of the following:

- A provision requiring notice to the DEQ or other people upon transfer or before construction or changes in use that could affect contamination or increase exposure at the property.
- A provision granting rights of access to the DEQ or other people, including the right to enter the property for the purpose of monitoring compliance with the covenant, to take samples, and to implement response activities.
- A provision subordinating a property interest that had priority, if agreed to by the owner of the superior interest.
- A provision granting the right to enforce the covenant to people in addition to the DEQ, including the local unit of government in which the property was located or the U.S. Environmental Protection Agency.
- A provision obligating the owner of the land subject to the covenant to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy.
- A provision limiting the covenant to a specific duration, or terminating it upon the occurrence of a specific event or condition, such as the completion of additional response activities approved by the DEQ.
- A provision providing notice of hazardous substances that exceeded aesthetic-based cleanup criteria.

A restrictive covenant would have to be recorded with the register of deeds for the county where the property was located. A recorded covenant would run with the land and be perpetual unless, by its terms, it was limited to a specific duration or was terminated by the occurrence of a specific event.

A restrictive covenant that met the bill's requirements would not have to be approved by the DEQ except as expressly required elsewhere in Part 201.

A conservation easement, or a court order or judicially approved settlement involving the property, could impose the land or resource use restrictions if it met the requirements of a restrictive covenant.

Instead of or in addition to a restrictive covenant, an institutional control could be used to impose the restrictions. Institutional controls that could be considered would include local ordinances or State laws and regulations that limited or prohibited the use of contaminated groundwater, prohibited the raising of livestock, prohibited development in certain locations, or restricted property to certain uses, such as a zoning ordinance. A local ordinance that served as an institutional control would have to be published and maintained in the same manner as a zoning ordinance, and would have to include a requirement that the local unit of government notify the DEQ at least 30 days before adopting a modification to the ordinance or before the ordinance lapsed or was revoked.

A recorded restrictive covenant under Part 201, whether recorded before or after the bill's effective date, would be valid and enforceable even if one or more of the following situations existed:

- It was not appurtenant to an interest in real property.
- The right to enforce it could be or had been assigned.
- It was not of a character that had been recognized traditionally at common law.
- It imposed a negative burden.
- It imposed an affirmative obligation on a person having an interest in the real property.
- The benefit or burden did not touch or concern real property.
- There was no privity of estate or contract.
- The owner of the land subject to the covenant and the person benefited or burdened were the same person.

With the approval of the State Administrative Board, the DEQ could place restrictive covenants described in proposed Section 20121 on deeds of State-owned property.

Restrictive covenants or other instruments that imposed land or resource use restrictions that were recorded before the bill took effect would not be invalidated or made unenforceable by Section 20121. Except as otherwise provided, the section would apply only to a restrictive covenant or other instrument recorded after the bill's effective date. Section 20121 would not invalidate or render unenforceable any instrument or interest that was otherwise enforceable under Michigan law.

Postclosure Agreement

Upon completion of remedial actions that satisfy the requirements of Part 201, a person may submit a no further action report to the DEQ. (A no further action report details the completion of remedial actions and includes a postclosure plan and postclosure agreement, if appropriate. "Postclosure plan" means a plan for land or resource use restrictions or permanent markers at a facility upon completion of remedial actions. "Postclosure agreement" means an agreement between the DEQ 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.)

A person may submit a report for remedial actions addressing contamination for which the person is or is not liable. A no further action report must document the basis for concluding that the remedial actions have been completed, and may include a request that, upon approval, the release or conditions addressed by the report be designated as a residential closure.

Part 201 provides that a postclosure agreement may modify the terms of the postclosure plan. If the exposure to hazardous substances addressed in the no further action report 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 agreement may allow for a remedial action that meets generic limited residential or nonresidential cleanup criteria or site-specific criteria to rely on an institutional control in lieu of a restrictive covenant in a postclosure plan. Mechanisms that may be considered include 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 must be published and maintained in the same manner as zoning ordinances and include a requirement that the local unit of government notify the DEQ at least 30 days before adopting a modification to the ordinance, or to the lapsing or revocation of the ordinance. The bill would delete all of these provisions related to modification of the postclosure agreement.

Transfer of Interest in a Facility

Under Part 201, if a person has knowledge or information or is on notice through a recorded instrument that a parcel of his or her property is a facility, the person may not transfer an interest in the property unless he or she provides written notice to the purchaser or other person to which the property is transferred, disclosing the general nature and extent of the release. The bill would require the person to disclose the *known* general nature and extent of the release.

Currently, a person may not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to the property as part of a remedial action that has been or is being implemented in compliance with Part 201. The bill would delete this provision. Instead, the person would have to include in the required disclosure any known land or resource use restrictions that applied. A restrictive covenant or notice that contained the required information that was recorded in the deed records for the property would satisfy this requirement.

The owner of real property for which a required notice has been recorded may, upon completion of all response activity for the facility, record with the county register of deeds a certification that the response activity has been completed. The bill would refer to response activity or corrective action.

Permit for Response Activity

Under the bill, a State or local permit or permit procedural requirement could not be required for response activities approved by the DEQ except for permits or procedural requirements that were mandated by Federal law or that could not be waived due to restrictions imposed by a Federal program authorization or delegation.

Generic Cleanup Criteria

Under Section 20120a, the DEQ may establish cleanup criteria and approve of remedial actions in specified categories. The cleanup category proposed is the option of the person proposing the remedial action, subject to DEQ approval if required, considering the appropriateness of the categorical criteria to the facility. The categories are residential, nonresidential, limited residential, and limited nonresidential. The DEQ must develop the criteria based on generic human health risk assessment assumptions determined by the Department to appropriately characterize patterns of human exposure associated with certain land uses.

Alternatively, the DEQ 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 Part 201.

Part 201 prescribes specific parameters for deriving the cleanup criteria involving a hazardous substance that poses a carcinogenic risk or risk of other adverse health effects to humans. If a cleanup criterion derived under these provisions for groundwater in an aquifer differs from specified standards (described below), the cleanup criterion must be the more stringent of the standards, unless the DEQ determines that compliance is not necessary because the use of the aquifer is reliably restricted under provisions of a postclosure plan or agreement. Under the bill, the prescribed standards also would not apply if the DEQ had approved site-specific criteria.

The standards are as follows:

- The State drinking water standard established under the Safe Drinking Water Act.
- The national secondary drinking water regulations established pursuant to Federal law.
- In the absence of national regulation for a contaminant, the concentration determined by the DEQ according to methods approved by the EPA below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected.

Part 201 requires remedial actions to meet the cleanup criteria for unrestricted residential use or provide for acceptable land or resource use restrictions in a postclosure plan or agreement. The bill would delete this requirement.

The bill would require the DEQ to publish on its website the algorithms used to calculate all residential and nonresidential generic cleanup criteria, as well as tables listing by hazardous substance all toxicity, exposure, and other algorithm factors or variables used in the Department's calculations.

The bill would define "nonresidential" as the category of land use for parcels of property or portions of parcels that is not residential. The term would include any of the following:

- Industrial, commercial, retail, office, and service uses.
- Recreational property that is not contiguous to residential property.
- Hotels, hospitals, and campgrounds.
- Farm fields, pastures, and natural areas such as woodlands, brushlands, grasslands, and wetlands at farms and other large properties.

Site-Specific Cleanup Criteria

The DEQ must approve numeric or nonnumeric site-specific criteria in a response activity 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.

As appropriate, site-specific criteria may alter any value, parameter, or assumption used to calculate generic criteria. The bill would create an exception to this provision with regard to the risk targets specified for hazardous substances that pose a risk for carcinogenic exposure or other adverse health effects.

The bill would require child day care centers, nursing homes, recreational property located contiguous to residential property, and similar land uses to be managed as described as follows. A person could develop and submit for approval site-specific criteria as currently prescribed. The DEQ would have to make publicly available exposure factors that a person could use to calculate site-specific criteria for these uses. The factors would have to include adjustments to age-adjusted exposure factors, exposure frequency and duration, ingestion

and inhalation rates, and any other factors the Department considered appropriate, to reflect reasonably expected and foreseeable exposure conditions for these uses. Site-specific calculations made using the Department's exposure factors would have to be considered approved by the Department. The person also would have the option to apply generic residential cleanup.

If there were no generic cleanup criterion for a hazardous substance in regard to a relevant exposure pathway, releases of the substance could be addressed through any of the following means, singly or in combination:

- Eliminating exposure to the substance through removal, containment, exposure barriers, or land or resource use restrictions.
- If a hazardous substance were expected to have similar fate, mobility, bioaccumulation, and toxicity characteristics, applying the cleanup criteria for that substance as a surrogate.
- Using modeling or an ecological demonstration, or both, to demonstrate that the substance was not likely to migrate to a surface water body or had not or would not impair the existing or designated uses for a surface water body.
- If toxicity information were available for the substance, developing site-specific cleanup criteria as prescribed in Part 201 or developing simplified site-specific screening criteria based upon toxicity and concentrations found on site, and requesting DEQ approval.
- Any other method approved by the Department.

Before using a surrogate, a person would have to notify the DEQ and request approval. If the Department did not notify the person that it disapproved the use of the chosen surrogate within 90 days after receiving the notice, the surrogate would be considered approved. A hazardous substance could be used as a surrogate for a single substance or for a class or category of substances.

With regard to site-specific cleanup or screening criteria, if the DEQ did not notify the person that it disapproved within 90 days after receiving the request, the criteria would be considered approved.

State-Funded Remediation

Part 201 provides for the use of State funds to develop or implement a remedial action plan or where the DEQ determines there is a significant public interest. Within 30 days after the completion of a remedial investigation for a facility, the DEQ must give the county and the applicable township, city, or village a notice of completion, a summary of the investigation, and notice of an opportunity for residents of the local unit of government to meet with the DEQ regarding the investigation and any proposed feasibility study for the facility. Within 30 days of a request for a public meeting by the governing body or 25 citizens of the local unit, the Department must meet with people in the local unit.

Before approval of a proposed remedial action plan that is to be implemented with money from the Cleanup and Redevelopment Fund, based on categorical limited residential, limited residential, or site-specific criteria, or if Section 20118(5) or (6) (described below) applies, or where the DEQ determines that there is significant public interest, the Department must do all of the following:

- Publish a notice and brief summary of the proposed remedial action plan.
- Provide for public review and comment pertinent to documents relating to the proposed plan, including, if applicable, the feasibility study that outlines alternative remedial action measures considered.
- Provide an opportunity for a public meeting at or near the facility when the DEQ determines that a public meeting is appropriate; when a city, township, or village in

which the facility is located, by a majority vote of its governing body, requests a public meeting: or when a local health department with jurisdiction in the facility's area requests a public meeting.

- 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.

In these provisions, in addition to a remedial action plan, the bill would refer to a response activity plan or a no further action report. The bill would delete the reference to money from the Cleanup and Redevelopment Fund and the application of Section 20118(5) and (6). The bill also would delete the reference to a feasibility study outlining alternative remedial action measures.

(Under Section 20118(5), the DEQ may select or approve of a remedial action plan meeting the generic categorical cleanup criteria that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) and/or R 299.3(6) of the Michigan Administrative Code if the Department finds that the action is protective of the public health, safety, and welfare, and the environment. (Those rules pertain to remedial actions to address the remediation of an aquifer.) With some expectations, the DEQ may not approve of a remedial action plan that does not attain that degree of control if the plan is being implemented by a liable person and the release was grossly negligent or intentional.

Under Section 20118(6), a remedial action plan may be selected or approved with regard to either or both of those administrative rules if the DEQ determines, based on the administrative record, that one or more of specified conditions are satisfied.)

Part 201 requires the DEQ to prepare a summary document that explains the reasons for the selection or approval of a remedial action plan and to compile an administrative record of the decision process that results in the selection of the plan. The record must contain remedial investigation data regarding the facility; if applicable, a feasibility study and potential remedial actions; applicable comments and information received from the public, if any; and other specified information.

Under the bill, these provisions also would apply to the selection or approval of a response activity plan or no further action report. The bill would refer to remedial actions planned or completed, rather than potential remedial actions, in conjunction with the feasibility study.

Corrective Action at Hazardous Waste Facility

Part 201 provides that certain people are not liable for a release. These include the owner or operator of a hazardous waste treatment, storage, or disposal facility regulated under Part 111 from which there is a release or threat of release solely from the facility, or a waste management unit at the facility, and the release or threat of release is subject to corrective action under Part 111. The bill would refer to the owner or operator of property at or from which there is a release or threat of release that is subject to corrective action under Part 111 or is being addressed as part of a corrective action under that part. A corrective action under Part 111, however, could apply generic or site-specific cleanup criteria calculated under Part 201, and involve the application of other provisions of Part 201 described below.

The corrective action could use the response activity review panel as set forth in Section 20114e. (Under that section, the DEQ Director must establish a review panel to advise him or her on technical or scientific disputes. A person may appeal a DEQ decision regarding such a dispute by submitting a petition to the Director. If the dispute is not resolved by negotiation within 45 days, the Director must schedule a meeting of the panel. Within 45 days after hearing the dispute, the panel must make a recommendation to the Director; otherwise, the Department's decision is the final decision of the Director. Within 60 days after receiving a recommendation from the panel, the Director must issue a final decision. If

the Director does not issue a recommendation within that time period, the panel's recommendation is considered the Director's final decision.)

The corrective action also could show compliance with indoor air criteria pursuant to Section 20120a(19) (which, under the bill, would require the DEQ to publish on its website the algorithms used to calculate all generic cleanup criteria and tables listing all algorithm factors used in the calculations). Additionally, the corrective action could address venting groundwater or impose land use and resource use restrictions pursuant to Part 201.

A corrective action under Part 111 could obtain access to property in accordance with Section 20135a. (Under that section, a person who is liable for a release or a lender that has a security interest in a facility may petition a court for access to the facility in order to conduct response activities approved by the DEQ. If the court grants access, the court may provide compensation to the property owner or operator for damages related to the access, enjoin interference with the response activities, and grant any other appropriate relief.)

The corrective action also could apply Section 20114(6) in appropriate circumstances. (The bill would add that subsection to prescribe an owner or operator's obligations in the case of a release of a hazardous substance with no available analytical method or generic cleanup criteria.)

In addition, a corrective action under Part 111 could streamline permit requirements pursuant to Section 20118(13). (Under the bill, that section would prohibit the imposition of State or local permit or permit procedural requirements except those required by Federal law.)

The bill provides, however, that a release or threat of release that was subject to or that had been or was being addressed through Part 111 could not also be subject to remediation and DEQ oversight under Part 201.

MCL 324.20101 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would introduce some new, relatively minor, administrative costs to the Department of Environmental Quality, and have no fiscal impact on local units of government. The bill would require the Department to publish and presumably update algorithms used to calculate cleanup criteria, as well as tables listing toxicity by substance type. The bill also would require the Department to list exposure factors that could be used to calculate site-specific criteria.

Additionally, the bill would generally change procedures for owners, operators, responsible parties, and the Department with regard to releases of hazardous materials. While it is likely that the changes would have some fiscal impact on the Department, it is difficult to determine with certainty at this time what the impact of those changes could be.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.