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BILL ANALYSIS



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Senate Bill 891 (as enacted)
Sponsor: Senator Tom Casperson
Senate Committee: Natural Resources, Environment and Great Lakes
House Committee: Natural Resources

PUBLIC ACT 542 of 2014

Date Completed: 8-12-15

CONTENT

The bill amended Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act to do the following in regard to the cleanup of contamination caused by the release of a hazardous substance at a facility:

- Revise the definition of "facility".
- Define "residential" and "nonresidential" with regard to cleanup criteria categories.
- Prescribe the means by which a facility owner or operator who is liable for the release of a hazardous substance for which there is no available analytical method or generic cleanup criteria may determine the nature and extent of the substance.
- Delete a requirement that, in the selection and implementation of remedial actions, the DEQ prefer those that permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances.
- Require a liable owner to initiate a remedial action to address unacceptable risks associated with residual nonaqueous-phase liquids (NAPL) and migrating and mobile NAPL.
- Revise provisions related to the implementation of land or resource use restrictions.
- Delete a provision under which a postclosure agreement could rely on an institutional control to restrict exposure to hazardous substances in lieu of a restrictive covenant in a postclosure plan.
- Provide that approved site-specific criteria are 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.
- Provide that site-specific criteria may take into account a land or resource use restriction, as appropriate.
- Prescribe measures to address the release of hazardous substances for which there is no generic cleanup criterion.
- Revise provisions that impose liability on an owner or operator unless requirements for a baseline environmental assessment are met.
- Allow a corrective action under Part 111 (Hazardous Waste Management) to be implemented using the processes and cleanup criteria of Part 201.
- Provide that a release that is addressed through Part 111 may not also be subject to remediation and DEQ oversight under Part 201.

The bill took effect on January 10, 2015.

Definition of "Facility"

As amended by the bill, Part 201 defines "facility" as any area, place, parcel or parcels of property, or portion of a parcel of 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 added the references to a 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).

In the first condition, the bill also refers to response activities completed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In the second condition, the bill also refers to corrective action completed under the Resource Conservation and Recovery Act or Part 111 that satisfies 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 hazardous substances at the location that are not addressed by the site-specific criteria satisfy the cleanup criteria for unrestricted residential use. Previously, Part 201 stated that the site-specific criteria did not depend on any land use or resource use restriction to ensure protection of the public health, safety, or welfare or the environment. The bill deleted that provision.

The bill also excludes from the definition of "facility" a site where either of the following is satisfied:

- The property has been lawfully split, subdivided, or divided from a facility and does not contain hazardous substances in excess of concentrations that satisfy the cleanup criteria for unrestricted residential use.
- Natural attenuation or other natural processes have reduced concentrations of hazardous substances to levels at or 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 includes site-specific cleanup criteria approved by the DEQ for unrestricted residential use.

The bill defines "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 meet the exposure assumptions used by the DEQ to develop generic residential cleanup criteria as set forth in rules promulgated under Part 201. Residential uses include homes and surrounding yards, condominiums, and apartments.

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. Under the bill, the owner's or operator's obligations must be based upon the current numeric cleanup criteria *or* approved site-specific criteria. The previous law referred only to the current numeric cleanup criteria.

Liable Owner Responsibilities

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 is released at a property and there is no available analytical method or generic cleanup criteria for that substance, its nature and extent may be determined by any of the following means, singly or in combination:

- If another hazardous substance with an available analytical method was released at the same location and has similar fate and mobility characteristics, determining the nature and extent of that substance as a surrogate.
- For venting groundwater, using a modeling and/or an ecological demonstration to determine whether the substance has 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 is expected to be located through removal, containment, exposure barriers, or land or resource use restrictions.

(The bill defines "available analytical method" as a method that is approved and published by a governmental agency, is conducted routinely by commercial laboratories in the United States, and identifies and quantitatively measures the specific hazardous substance or class of substances.)

A liable owner or operator also is required to take steps immediately to stop or prevent the release at the source. The bill refers to an "ongoing" release, and defines "source" as any storage, handling, distribution, or processing equipment from which the release originates and first enters the environment.

In addition, the bill requires a liable owner or operator immediately to implement measures to address, remove, or contain hazardous substances if those measures are technically practical and cost-effective and abate an unacceptable risk to the public health, safety, or welfare or the environment. A similar requirement exists regarding the prevention of groundwater contamination. Previously, these provisions referred to measures that provided protection to the environment rather than those that abate an unacceptable risk to the public or the environment.

The bill deleted 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, instead, requires a liable owner or operator, 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 is necessary and feasible to address unacceptable risks associated with residual NAPL saturation and 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.)

Remedial Action

Under Part 201, the DEQ may take response activity or approve of response activity proposed by a person that is consistent with the part and rules relating to the selection and implementation of response activity that the Department concludes is necessary and appropriate to protect the public health, safety, or welfare, or the environment.

Under the bill, remedial action undertaken under these provisions may address all or a portion of contamination at a facility by addressing in any combination one or more releases or hazardous substances, contamination in one or more environmental media, or contamination within the entire facility or only a portion of the facility.

As amended by the bill, Part 201 requires that remedial action accomplish all of the following:

- Assure the protection of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial action.
- Except as otherwise provided, attain a degree of cleanup and control of the environmental contamination addressed by the remedial action that complies with all applicable or relevant and appropriate requirements, rules, criteria, limitations, and standards of State and Federal environmental law.
- Except as otherwise provided, be consistent with any cleanup criteria incorporated in rules promulgated under Part 201 for the environmental contamination addressed by the remedial action.

The bill added the references to the environmental contamination addressed by the remedial action.

The bill deleted a provision authorizing the DEQ to consider the cost effectiveness of alternative means of complying with response activity provisions only in selecting among alternatives that met all of the criteria listed above. The bill also deleted a statutory preference for remedial actions that permanently and significantly reduce the volume, toxicity, or mobility of hazardous substances.

Part 201 allows the DEQ to select or approve of a remedial action meeting the prescribed cleanup criteria that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) and/or (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 subsections of R 299.3 pertain to remediation of an aquifer.) A remedial action may be selected or approved with regard to those subsections if the Department determines, based on the administrative record, that at least one of the following conditions is satisfied:

- Compliance is technically impractical.
- Within a reasonable period of time, the selected or approved remedial action will attain a standard of performance that is equivalent to that required under the specified subsections of the rule.
- The adverse environmental impact of implementing a remedial action to satisfy those subsections would exceed the environmental benefit.
- The remedial action provides for the reduction of hazardous substance concentrations in the aquifer through a naturally occurring process that is documented to occur at the facility and other conditions are met.

Previously, if the DEQ approved of a remedial action plan under those provisions, the administrative record for the facility had to include a complete explanation of the basis of the Department's decision. Additionally, the intent of and basis for the Department's exercise of authority had to be part of an analysis of the recommended alternatives if one was required under administrative rules. The bill deleted these requirements. In addition, the bill deleted a requirement that a remedial action plan approved by the DEQ include an analysis of source control measures already implemented and/or proposed. Previously, the law provided that any liability a person had under Part 201, including liability for natural resources damage, was unaffected by a DEQ decision pursuant to these provisions. The bill deleted this provision.

Also, the bill deleted provisions requiring an aquifer monitoring plan including specific information to be part of all remedial action plans that addressed aquifer contamination, and authorizing the DEQ to determine that such a plan was not required under certain circumstances.

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.

Previously, land or resource use restrictions that assured the effectiveness and integrity of any containment, exposure barrier, or other restrictions necessary to assure the effectiveness and integrity of the remedy had to be described in a restrictive covenant. A restrictive covenant had to be recorded with the register of deeds for the county in which the property was located within 21 days after completion of the remedial actions or construction of the containment or barrier, as appropriate. The covenant could be recorded only by the property owner or with the owner's express written permission. The restrictions ran with the land and were binding on the owner's successors, assigns, and lessees. At a minimum, a restrictive covenant had to do all of the following:

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

The bill deleted all of these provisions and prescribes land and resource use restrictions in a new Section 20121. Under that section, a person may 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.

The bill requires a restrictive covenant to impose land or resource use restrictions to include all of the following:

- A brief narrative description of response activities and environmental contamination at the property or identification of a publicly accessible information repository, such as a public library, where that information may 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 has been ordered by a court.

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

If the property being restricted constitutes a portion of a parcel, the covenant also must include one of the following:

- A legal description of the property that is subject to the restrictions that is sufficient to identify it and record the document with the county register of deeds.
- A legal description, a scaled drawing, and a survey of the portion that is restricted.
- Another type of description or drawing approved by the DEQ.

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

- Requiring notice to the DEQ or other people upon transfer or before construction or changes in use that could affect environmental contamination or increase exposure at the property.
- 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.
- Subordinating a property interest that has priority, if agreed to by the owner of the superior interest.
- Granting the right to enforce the covenant to people in addition to the DEQ, including the local unit of government in which the property is located or the U.S. Environmental Protection Agency.
- 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.
- 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.
- Providing notice of hazardous substances that exceed aesthetic-based cleanup criteria.

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

Upon recording, a copy of the covenant must be given to the DEQ together with a notice that includes the street address or parcel number for the property subject to it. A restrictive covenant that meets the bill's requirements does 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, may impose the land or resource use restrictions if it meets the requirements of a restrictive covenant.

Instead of or in addition to a restrictive covenant, an institutional control may be used to impose the restrictions. Institutional controls that may be considered include local ordinances or State laws and regulations that limit or prohibit the use of contaminated groundwater, prohibit the raising of livestock, prohibit development in certain locations, or restrict property to certain uses, such as a zoning ordinance. A local ordinance that serves as an institutional control must be published and maintained in the same manner as a zoning ordinance, and must 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 lapses or is revoked.

With DEQ approval, alternative instruments and means may be used to impose the land or resource use restrictions, including licenses and license agreements, contracts with local, State, or Federal units of government, health codes or regulations, or government permitting requirements.

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

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

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

Restrictive covenants or other instruments that impose land or resource use restrictions that were recorded before the bill took effect are not invalidated or made unenforceable by Section 20121. Except as otherwise provided, the section applies only to a restrictive covenant or other instrument recorded after the bill's effective date. Section 20121 does not invalidate or render unenforceable any instrument or interest that is 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 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.

(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.)

Previously, Part 201 provided that a postclosure agreement could modify the terms of the postclosure plan as follows: If the exposure to hazardous substances addressed in the no further action report could 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 was impractical, the agreement could allow for a remedial action that met 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 could be considered included an ordinance that restricted the use of groundwater or an aquifer in a manner and to a degree that protected against unacceptable exposures. The bill deleted 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 whom the property is transferred, disclosing the general nature and extent of the release. The bill requires the person to disclose the *known* general nature and extent of the release as well as any known land or resource use restrictions that apply. The bill provides that restrictive covenant or notice that contains the required information that is recorded in the deed records for the property satisfies this requirement.

Previously, a person could not transfer an interest in real property unless the person fully disclosed any land or resource use restrictions that applied to the property as part of a remedial action that had been or was being implemented in compliance with Part 201. The bill deleted this provision.

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.

As an alternative to the categorical criteria, 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, 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 or controlled under provisions of a postclosure plan or agreement. Under the bill, this requirement also does not apply if use of the aquifer is reliably restricted or controlled by site-specific criteria approved by the DEQ.

The bill deleted a requirement that remedial actions 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 requires the DEQ to make available 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 defines "nonresidential" as the category of land use for parcels of property or portions of parcels of property that is not residential. The category may 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.
- Natural areas such as woodlands, brushlands, grasslands, and wetlands.

Site-Specific Cleanup Criteria

Section 20120b requires the DEQ to approve numeric or nonnumeric 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.

As appropriate, site-specific criteria may alter any value, parameter, or assumption used to calculate generic criteria. Under the bill, this applies with the exception of the risk targets specified for hazardous substances that pose a risk for carcinogenic exposure or other adverse health effects. Also, the bill allows site-specific criteria to take into account a land or resource use restriction.

Under the bill, if there is no generic cleanup criterion for a hazardous substance in regard to a relevant exposure pathway, releases of the substance may 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 another hazardous substance is expected to have similar fate, mobility, bioaccumulation, and toxicity characteristics, applying the cleanup criteria for that substance as a surrogate.
- For venting groundwater, using a modeling or an ecological demonstration, or both, to demonstrate that the substance is not likely to migrate to a surface water body or has not or will not impair the existing or designated uses for a surface water body.
- If toxicity information is 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 must notify the DEQ, provide a written explanation of the surrogate's suitability, and request approval. If the Department does not notify the person that it disapproves the use of the chosen surrogate within 90 days after receiving the notice, the surrogate will be considered approved. A hazardous substance may be used as a surrogate for a single substance or for a class or category of substances.

With regard to developing site-specific cleanup or screening criteria when toxicity information is available, if the DEQ does not notify the person that it disapproves the criteria within 90 days after receiving the request, the criteria will 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.

As amended by the bill, Part 201 requires the DEQ to do the following before approval of a proposed remedial action plan, response activity plan, or no further action report based on categorical limited residential, limited nonresidential, or site-specific criteria, and where the DEQ determines that there is significant public interest:

- Publish a notice and brief summary of the proposed remedial action plan, response activity plan, or no further action report.
- Provide for public review and comment pertinent to documents relating to the proposed plan or report.
- Provide an opportunity for a public meeting at or near the facility when the DEQ determines that a public meeting is appropriate; when the governing body of a city, township, or village in which the facility is located 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, response activity plan, or no further action report.

In these provisions, the bill added the references to a response activity plan and a no further action report. Previously, these requirements applied if a plan was to be implemented with money from the Cleanup and Redevelopment Fund and 20118(5) or (6) applied. The bill deleted the references to the Fund and that Section.

(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 protects the public health, safety, and welfare, and the environment.

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 remedial actions; applicable comments and information received from the public, if any; and other specified information.

Under the bill, these provisions also apply to the selection or approval of a response activity plan or no further action report. The bill also refers to remedial actions planned or completed, rather than potential remedial actions.

Owner Liability: BEA Requirements

Part 201 imposes liability on a person who becomes an owner or operator on or after June 5, 1995, unless both of the following are met:

- A baseline environmental assessment (BEA) is conducted before or within 45 days after the earliest of the date of purchase, occupancy, or foreclosure.
- The owner or operator provides a BEA to the Department and subsequent purchaser or transferee within six months after the earliest of the date of purchase, occupancy, or foreclosure.

Under the bill, alternatively, the owner or operator must request and receive from the DEQ a determination that the owner's or operator's failure to comply with those time frames when conducting and submitting a BEA was inconsequential.

Corrective Action at Hazardous Waste Facility

Part 201 provides that certain people are not liable for a release. Previously, these included the owner or operator of a hazardous waste treatment, storage, or disposal facility regulated under Part 111 from which there was 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 was subject to corrective action under Part 111. The bill refers instead 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.

Under the bill, a corrective action under Part 111 may be implemented using processes and cleanup criteria, as appropriate, under Part 201. However, a release or threat of release that is subject to or that has been or is being addressed through Part 111 may 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 introduces some new, relatively minor, administrative costs to the Department of Environmental Quality, and has no fiscal impact on local units of government. The bill requires 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 requires the Department to list exposure factors that may be used to calculate site-specific criteria.

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

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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.