

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.20120c Relocation of contaminated soil.

Sec. 20120c. (1) An owner or operator may relocate contaminated soil off-site or allow contaminated soil to be relocated off-site if all of the following requirements are met:

(a) The person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare or the environment. In making the determination, the owner or operator shall consider whether the soil is subject to regulation under part 111. For the purposes of this subdivision, soil poses a threat to the public health, safety, or welfare or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the facility to which the soil will be relocated. Any land use or resource use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the facility before the soil is relocated. Contaminated soil shall not be relocated to a location that is not a facility.

(b) Prior department approval is obtained if the contaminated soil is being relocated off-site from or to either of the following:

(i) A facility where a remedial action plan that includes soil as an affected media has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(b), (c), or (d) or site-specific criteria under section 20120a(2).

(ii) A facility where a no further action report that includes soil as an affected medium has been approved by the department.

(c) If contaminated soil is being relocated off-site in a manner not addressed by subdivision (b), the owner or operator of the facility from which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(i) The facility from which soil was relocated.

(ii) The facility to which the soil was relocated.

(iii) The volume of soil relocated.

(iv) A summary of information or data on which the owner or operator based the determination required in subdivision (a) that the soil did not present a threat to the public health, safety, or welfare or the environment.

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

(2) An owner or operator may relocate contaminated soil, or allow contaminated soil to be relocated, on-site if all of the following requirements are met:

(a) If either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved for a facility, the person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) under the remedial action plan or no further action report is provided for the contaminated soil. This subdivision does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(b) If 500 cubic yards or more of contaminated soil are being relocated on-site at a facility where either a remedial action plan that includes soil as an affected medium or a no further action report that includes soil as an affected medium has been approved by the department, the owner or operator of the facility at which soil is being relocated provides notice to the department within 14 days after the soil is relocated. The notice shall include all of the following:

(i) The facility from which soil was relocated.

(ii) The facility to which the soil was taken.

(iii) The volume of soil relocated.

(iv) A summary of information or data assuring that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil under subdivision (a).

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

(c) If subdivision (b) does not apply and an owner or operator relocates contaminated soil on-site without department approval or notice to the department, the owner of the facility within which contaminated soil is relocated includes the following information regarding the relocation as part of disclosing the general nature and extent of the release under section 20116 to a purchaser or other person to which the facility is transferred:

(i) The facility from which soil was relocated.

- (ii) The facility to which the soil was taken.
- (iii) The volume of soil relocated.
- (iv) A summary of the basis for the owner's or operator's determination that the relocation did not cause any exacerbation under section 20107a(1).
- (d) Section 20107a(1) and (3) applies to the relocation of soil under this subsection even if an owner or operator is not otherwise subject to section 20107a.
- (3) The determination required by subsections (1)(a) and (2)(a) shall be based on knowledge of the person undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.
- (4) This section does not apply to the following:
 - (a) Soil that is designated as an inert material pursuant to section 11507(3).
 - (b) Uncontaminated soil that is mixed with a beneficial use by-product under part 115.
 - (c) Soil that is relocated for treatment or disposal in conformance with applicable laws and regulations.
 - (d) The relocation of uncontaminated soil.
- (5) As used in this section:
 - (a) "Contaminated soil" means soil that meets all of the following criteria:
 - (i) The soil is contaminated with 1 or more hazardous substances at levels that exceed the background concentration for that hazardous substance or those hazardous substances.
 - (ii) The soil is contaminated with 1 or more hazardous substances at levels that exceed any applicable cleanup criteria under section 20120a(1) or any applicable site-specific criteria under section 20120b.
 - (b) "Off-site" means property that is not on-site.
 - (c) "On-site" means within any contiguous or adjacent parcels owned by or under the control of an owner or operator.
 - (d) "Uncontaminated soil" means soil that is either of the following:
 - (i) Not contaminated with any hazardous substances due to human activity.
 - (ii) Contaminated with 1 or more hazardous substances as a result of human activity but the levels of those hazardous substances at the facility do not exceed any categorical cleanup criteria under section 20120a(1) or site-specific criteria under section 20120b.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA