

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

PART 201
ENVIRONMENTAL REMEDIATION

324.20101 Definitions.

Sec. 20101. (1) As used in this part:

(a) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(b) "Agricultural property" means real property used for farming in any of its branches, including cultivating of soil; growing and harvesting of any agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; turf and tree farming; or performing any practices on a farm as an incident to, or in conjunction with, these farming operations. Agricultural property does not include property used for commercial storage, processing, distribution, marketing, or shipping operations.

(c) "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312 (2014).

(d) "Attorney general" means the department of the attorney general.

(e) "Background concentration" means the concentration or level of a hazardous substance that exists in the environment at or regionally proximate to a facility that is not attributable to any release at or regionally proximate to the facility. A person may demonstrate that a hazardous substance is not present at a level that exceeds background concentration by any of the following methods:

(i) The hazardous substance complies with the statewide default background levels under table 2 as referenced in R 299.46 of the Michigan Administrative Code.

(ii) The hazardous substance is listed in table 2, 3, or 4 of the department's 2005 Michigan background soil survey, is present in a soil type identified in 1 or more of those tables, and meets 1 of the following:

(A) If a glacial lobe area in table 2, 3, or 4 lists an arithmetic or geometric mean for the hazardous substance that is represented by 9 or more samples, the concentration of that hazardous substance is the lesser of the following:

(I) Two standard deviations of that mean for the soil type and glacial lobe area in which the hazardous substance is located.

(II) The uppermost value in the typical range of data for the hazardous substance in table 1 of the department's 2005 Michigan background soil survey.

(B) If a glacial lobe area in table 2, 3, or 4 lists a nonparametric median for the hazardous substance that is represented by 10 or more samples, the concentration of that hazardous substance is the lesser of the following:

(I) The 97.5 quantile for the soil type and glacial lobe area in which the hazardous substance is located.

(II) The uppermost value in the typical range of data for the hazardous substance in table 1 of the department's 2005 Michigan background soil survey.

(C) The concentration of the hazardous substance meets a level established using the 2005 Michigan background soil survey in a manner that is approved by the department.

(iii) The hazardous substance is listed in any other study or survey conducted or approved by the department and is within the concentrations or falls within the typical ranges published in that study or survey.

(iv) A site-specific demonstration.

(f) "Baseline environmental assessment" means a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is or contains a facility. For purposes of a baseline environmental assessment, the all appropriate inquiry may be conducted or updated prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure.

(g) "Board" means the brownfield redevelopment board created in section 20104a.

(h) "Certificate of completion" means a written response provided by the department confirming that a response activity has been completed in accordance with the applicable requirements of this part and is approved by the department.

(i) "Cleanup criteria for unrestricted residential use" means any of the following:

(i) Cleanup criteria that satisfy the requirements for the residential category in section 20120a(1)(a).

- (ii) Cleanup criteria for unrestricted residential use under part 213.
- (iii) Site-specific cleanup criteria approved by the department for unrestricted residential use pursuant to sections 20120a and 20120b.
- (j) "Department" means the director or his or her designee to whom the director delegates a power or duty by written instrument.
- (k) "Director" means the director of the department of environmental quality.
- (l) "Directors" means the directors or their designees of the departments of environmental quality, community health, agriculture and rural development, and state police.
- (m) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous substance into or on any land or water so that the hazardous substance or any constituent of the hazardous substance may enter the environment or be emitted into the air or discharged into any groundwater or surface water.
- (n) "Enforcement costs" means court expenses, reasonable attorney fees of the attorney general, and other reasonable expenses of an executive department that are incurred in relation to enforcement under this part.
- (o) "Environment" or "natural resources" means land, surface water, groundwater, subsurface strata, air, fish, wildlife, or biota within this state.
- (p) "Environmental contamination" means the release of a hazardous substance, or the potential release of a discarded hazardous substance, in a quantity which is or may become injurious to the environment or to the public health, safety, or welfare.
- (q) "Evaluation" means those activities including, but not limited to, investigation, studies, sampling, analysis, development of feasibility studies, and administrative efforts that are needed to determine the nature, extent, and impact of a release or threat of release and necessary response activities.
- (r) "Exacerbation" means the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to contamination for which the person is not liable:
- (i) Migration of contamination beyond the boundaries of the property that is the source of the release at levels above cleanup criteria for unrestricted residential use unless a criterion is not relevant because exposure is reliably restricted as otherwise provided in this part.
- (ii) A change in facility conditions that increases response activity costs.
- (s) "Facility" means 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. Facility does not include any area, place, parcel or parcels of property, or portion of a parcel of property where any of the following conditions are satisfied:
- (i) Response activities have been completed under this part or the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, that satisfy the cleanup criteria for unrestricted residential use.
- (ii) Corrective action has been completed under the resource conservation and recovery act, 42 USC 6901 to 6992k, part 111, or part 213 that satisfies the cleanup criteria for unrestricted residential use.
- (iii) Site-specific criteria that have been approved by the department for application at the area, place, parcel of property, or portion of a parcel of property are met or satisfied and hazardous substances at the area, place, or property that are not addressed by site-specific criteria satisfy the cleanup criteria for unrestricted residential use.
- (iv) Hazardous substances in concentrations above unrestricted residential cleanup criteria are present due only to the placement, storage, or use of beneficial use by-products or inert materials at the area, place, or property in compliance with part 115.
- (v) 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.
- (vi) Natural attenuation or other natural processes have reduced concentrations of hazardous substances to levels at or below the cleanup criteria for unrestricted residential use.
- (t) "Feasibility study" means a process for developing, evaluating, and selecting appropriate response activities.
- (u) "Financial assurance" means a performance bond, escrow, cash, certificate of deposit, irrevocable letter of credit, corporate guarantee, or other equivalent security, or any combination thereof.
- (v) "Foreclosure" means possession by a lender of a property on which it has foreclosed on a security interest or the expiration of a lawful redemption period, whichever occurs first.
- (w) "Fund" means the cleanup and redevelopment fund established in section 20108.
- (x) "Hazardous substance" means 1 or more of the following, but does not include fruit, vegetable, or field

crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices at the time of the application or stamp sands:

(i) Any substance that the department demonstrates, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material, dose-response, toxicity, or adverse impact on natural resources.

(ii) Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(iii) Hazardous waste as defined in part 111.

(iv) Petroleum as described as a regulated substance in section 21303.

(y) "Interim response activity" means the cleanup or removal of a released hazardous substance or the taking of other actions, prior to the implementation of a remedial action, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. Interim response activity also includes, but is not limited to, measures to limit access, replacement of water supplies, and temporary relocation of people as determined to be necessary by the department. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release.

(z) "Lender" means any of the following:

(i) A state or nationally chartered bank.

(ii) A state or federally chartered savings and loan association or savings bank.

(iii) A state or federally chartered credit union.

(iv) Any other state or federally chartered lending institution.

(v) Any state or federally regulated affiliate or regulated subsidiary of any entity listed in subparagraphs (i) to (iv).

(vi) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(vii) A motor vehicle sales finance company subject to the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, with net assets in excess of \$50,000,000.00.

(viii) A foreign bank.

(ix) A retirement fund regulated pursuant to state law or a pension fund regulated pursuant to federal law with net assets in excess of \$50,000,000.00.

(x) A state or federal agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(xi) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(xii) Any other person that loans money for the purchase of or improvement of real property.

(xiii) Any person that retains or receives a security interest to service a debt or to secure a performance obligation.

(aa) "Local health department" means that term as defined in section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

(bb) "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include this state or the federal government or a state or federal agency.

(cc) "Method detection limit" means the minimum concentration of a hazardous substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix that contains the analyte.

(dd) "Migrating NAPL" means that term as it is defined in section 21302.

(ee) "Mobile NAPL" means that term as it is defined in section 21302.

(ff) "NAPL" means that term as it is defined in section 21303.

(gg) "No further action letter" means a written response provided by the department under section 20114d confirming that a no further action report has been approved after review by the department.

(hh) "No further action report" means a report under section 20114d detailing the completion of remedial actions and including a postclosure plan and a postclosure agreement, if appropriate.

(ii) "Nonresidential" means that category of land use for parcels of property or portions of parcels of property that is not residential. This category of land use may include, but is not limited to, any of the following:

(i) Industrial, commercial, retail, office, and service uses.

(ii) Recreational properties that are not contiguous to residential property.

- (iii) Hotels, hospitals, and campgrounds.
- (iv) Natural areas such as woodlands, brushlands, grasslands, and wetlands.
- (jj) "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:
 - (i) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that person participates in the management of the facility as described in section 20101a.
 - (ii) A person who is acting as a fiduciary in compliance with section 20101b.
- (kk) "Owner" means a person who owns a facility. Owner does not include either of the following:
 - (i) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, including, but not limited to, a vendor's interest under a recorded land contract, unless that person participates in the management of the facility as described in section 20101a.
 - (ii) A person who is acting as a fiduciary in compliance with section 20101b.
- (ll) "Panel" means the response activity review panel established under section 20114e.
- (mm) "Permitted release" means 1 or more of the following:
 - (i) A release in compliance with an applicable, legally enforceable permit issued under state law.
 - (ii) A lawful and authorized discharge into a permitted waste treatment facility.
 - (iii) A federally permitted release as defined in the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.
- (nn) "Postclosure agreement" means an agreement between the department 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 as provided for in section 20114d.
- (oo) "Postclosure plan" means a plan for land use or resource use restrictions or permanent markers at a facility upon completion of remedial actions as provided for in section 20114c.
- (pp) "Release" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance into the environment, or the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance. Release does not include any of the following:
 - (i) A release that results in exposure to persons solely within a workplace, with respect to a claim that these persons may assert against their employers.
 - (ii) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, or vessel.
 - (iii) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, 42 USC 2011 to 2286i, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under 42 USC 2210, or any release of source by-product or special nuclear material from any processing site designated under 42 USC 7912(a)(1) or 42 USC 7942(a).
 - (iv) If applied according to label directions and according to generally accepted agricultural and management practices at the time of the application, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in part 85, and pesticide has the meaning given to that term in part 83.
 - (v) Application of fruits, vegetables, field crop processing by-products, or aquatic plants to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices at the time of the application.
 - (vi) The relocation of soil under section 20120c.
 - (vii) The placement, storage, or use of beneficial use by-products or inert materials at the site of storage or use if in compliance with part 115.
- (qq) "Remedial action" includes, but is not limited to, 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.
- (rr) "Remedial action plan" means a work plan for performing remedial action under this part.
- (ss) "Residential" means that category of land use for parcels of property or portions of parcels of property 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 department to develop generic residential cleanup criteria as set forth in rules promulgated under this part. This category of land use may include, but is not limited to, homes and surrounding yards, condominiums, and apartments.
- (tt) "Residential closure" means a property at which the contamination has been addressed in a no further

action report that satisfies the limited residential cleanup criteria under section 20120a(1)(c) or the site-specific residential cleanup criteria under sections 20120a(2) and 20120b, that contains land use or resource use restrictions, and that is approved by the department or is considered approved by the department under section 20120d.

(uu) "Residual NAPL saturation" means that term as it is defined in part 213.

(vv) "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, or welfare, or the environment or the natural resources. Response activity 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.

(ww) "Response activity costs" or "costs of response activity" means all costs incurred in taking or conducting a response activity, including enforcement costs.

(xx) "Response activity plan" means a plan for undertaking response activities. A response activity plan may include 1 or more of the following:

(i) A plan to undertake interim response activities.

(ii) A plan for evaluation activities.

(iii) A feasibility study.

(iv) A remedial action plan.

(yy) "Security interest" means any interest, including a reversionary interest, in real property created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, consignments, or any other transaction in which evidence of title is created if the transaction creates or establishes an interest in real property for the purpose of securing a loan or other obligation.

(zz) "Source" means any storage, handling, distribution, or processing equipment from which the release originates and first enters the environment.

(aaa) "Stamp sands" means finely grained crushed rock resulting from mining, milling, or smelting of copper ore and includes native substances contained within the crushed rock and any ancillary material associated with the crushed rock.

(bbb) "Target detection limit" means the detection limit for a hazardous substance in a given environmental medium that is specified in a rule promulgated by the department. The department shall identify 1 or more analytical methods, when a method is available, that are judged to be capable of achieving the target detection limit for a hazardous substance in a given environmental medium. The target detection limit for a given hazardous substance is greater than or equal to the method detection limit for that hazardous substance. In establishing a target detection limit, the department shall consider the following factors:

(i) The low level capabilities of methods published by government agencies.

(ii) Reported method detection limits published by state laboratories.

(iii) Reported method detection limits published by commercial laboratories.

(iv) The need to be able to measure a hazardous substance at concentrations at or below cleanup criteria.

(ccc) "Threatened release" or "threat of release" means any circumstance that may reasonably be anticipated to cause a release.

(ddd) "Venting groundwater" means groundwater that is entering a surface water of this state from a facility.

(2) As used in this part:

(a) The phrase "a person who is liable" includes a person who is described as being subject to liability in section 20126. The phrase "a person who is liable" does not presume that liability has been adjudicated.

(b) The phrase "this part" includes "rules promulgated under this part".

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1995, Act 117, Imd. Eff. June 29, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2013, Act 141, Imd. Eff. Oct. 22, 2013;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2014, Act 258, Eff. Mar. 31, 2015;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101a Participation in management of facility by lender; “workout” defined.

Sec. 20101a. (1) For purposes of this part, a lender holding a security interest in a facility participates in the management of the facility if that lender engages in acts of facility management that constitute actual participation in the management or operational affairs of a facility and that exceed the mere capacity to influence, or ability to influence, or the unexercised right to control facility operations. A lender holding a security interest is participating in the management of a facility, while the borrower is still in possession of the facility encumbered by the security interest, if the lender holding a security interest does any of the following:

(a) Exercises decision making control over the borrower's environmental compliance.

(b) Undertakes responsibility for the borrower's hazardous substance handling or disposal practices.

(c) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to either or both of the following:

(i) Environmental compliance.

(ii) All, or substantially all, of the operational aspects of the enterprise other than environmental compliance. As used in this subparagraph, "operational aspects of the enterprise" includes functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise such as that of credit manager, accounts payable or receivable manager, personnel manager, controller, chief financial officer, or similar functions.

(2) For purposes of this part, the following do not constitute participation in the management of a facility by a lender holding a security interest in the facility:

(a) The mere capacity to influence, or ability to influence, or the unexercised right to control facility operations.

(b) An act or omission prior to the time that indicia of ownership are held primarily to protect a security interest.

(c) Undertaking or requiring an environmental inspection of the facility in which indicia of ownership are to be held, or requiring a prospective borrower to undertake response activities at a facility or to comply or come into compliance, whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest, with any applicable law, rule, or regulation.

(d) Actions that are consistent with holding ownership indicia primarily to protect a security interest. The authority of the lender holding a security interest to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents.

(e) Engaging in policing activities prior to foreclosure if the lender holding a security interest does not by such actions participate in the management of the facility as described in subsection (1)(a) to (c). Permissible actions include, but are not limited to, requiring the borrower to undertake response activities at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; and securing or exercising authority to monitor or inspect the facility in which indicia of ownership are maintained, including on-site inspections, or the borrower's business or financial condition, during the term of the security interest. A lender holding a security interest that engages in workout activities prior to foreclosure and its equivalents will remain within the exemption if the lender holding a security interest does not by such action participate in the management of the facility.

(3) As used in this section, "workout" refers to those actions by which a lender holding a security interest, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower or obligor or to preserve, or prevent the diminution of, the value of the security. Workout activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; and providing specific or general financial or other advice, suggestions, counseling, or guidance.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101b Liability of lender as fiduciary or representative for disabled person; responsibilities.

Sec. 20101b. (1) A lender or other person that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property as a fiduciary, as defined by section 1104 of the estates and protected individuals code, 1998 PA 386, MCL 700.1104, or in a representative capacity for a disabled person under a durable power of attorney as described in section 102 of the uniform power of attorney act and that is acting or has acted in a capacity permitted by the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, or negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender or other person; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(2) A lender that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property in a fiduciary capacity and that, under a fiduciary agreement entered into on or before August 1, 1990, owns or controls the property in a fiduciary capacity authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(3) A lender that has not participated in the management of a property as described in section 20101a before assuming ownership or control of the property in a fiduciary capacity, that, under a fiduciary agreement entered into after August 1, 1990, owns or controls the property in a fiduciary capacity authorized by the banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105, or the national bank act, chapter 106, 13 Stat. 99, that has served only in an administrative, custodial, or financial capacity with respect to the property, and that has not exercised sufficient involvement to control the owner's or operator's handling of a hazardous substance is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent a claim against the assets that are part of or all of the estate or trust that contains the facility; another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or another estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such a claim may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2000, Act 65, Eff. Apr. 1, 2000;—Am. 2000, Act 368, Imd. Eff. Jan. 2, 2001;—Am. 2023, Act 188, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20101c Property with deposit of stamp sands; regulation.

Sec. 20101c. Property onto which stamp sands have been deposited is not subject to regulation under this part unless the property otherwise contains hazardous substances in excess of the concentrations that satisfy cleanup criteria for unrestricted residential use.

History: Add. 2014, Act 258, Eff. Mar. 31, 2015;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20102 Legislative finding and declaration.

Sec. 20102. The legislature hereby finds and declares:

(a) That there exist in this state certain facilities containing hazardous substances that pose a danger to the public health, safety, or welfare, or to the environment of this state.

(b) That there is a need to provide for a method of eliminating the danger of environmental contamination caused by the existence of hazardous substances at facilities within the state.

(c) That it is the purpose of this part to provide for appropriate response activity to eliminate unacceptable risks to public health, safety, or welfare, or to the environment from environmental contamination at facilities within the state.

(d) That there is a need for additional administrative and judicial remedies to supplement existing statutory and common law remedies.

(e) That the responsibility for the cost of response activities pertaining to a release or threat of release and repairing injury, destruction, or loss to natural resources caused by a release or threat of release should not be placed upon the public except when funds cannot be collected from, or a response activity cannot be undertaken by, a person liable under this part.

(f) That liability for response activities to address environmental contamination should be imposed upon those persons who are responsible for the environmental contamination.

(g) That to the extent possible, consistent with requirements under this part and rules promulgated under this part, response activities shall be undertaken by persons liable under this part.

(h) That this part is intended to provide remedies for facilities posing any threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a hazardous substance occurred before or after October 13, 1982, the effective date of the former environmental response act, Act No. 307 of the Public Acts of 1982, and for this purpose this part shall be given retroactive application. However, criminal and civil penalties provided in this part shall apply to violations of this part that occur after July 1, 1991.

(i) That a facility that is owned by the federal government, the state, or a local unit of government, or a facility where a release or threat of release is caused by the federal government, the state, or a local unit of government, should not be treated differently in terms of the expenditure of money for response activities than any facility.

(j) That if a person who is liable under section 20126 is the state or a local unit of government, this part should be enforced by the attorney general and the department in the same manner as it would be for any other person who is liable under section 20126.

(k) That this part is not intended to impose penalties or exemplary damages upon parties conducting response activities pursuant to a decree or order to which the United States is a party.

(l) That this part is intended to foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential, if that redevelopment or reuse assures the protection of the public health, safety, welfare, and the environment.

(m) That it is the intent of the legislature that, in implementing this part, the department shall act reasonably in its exercise of professional judgment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20102a Applicability of provisions in effect on May 1, 1995 to certain actions; incorporation by reference; approval of changes in response activity plan.

Sec. 20102a. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995 under this part.

(b) An administrative order that was issued on or before May 1, 1995 pursuant to section 20119.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(2) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(3) Notwithstanding subsection (1), upon request of a person implementing response activity, the department shall approve changes in a plan for response activity to be consistent with sections 20118 and 20120a.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20103 Federal assistance.

Sec. 20103. The department shall seek federal assistance for response activities required at facilities in this state.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20104 Coordination of activities; rules; guideline, bulletin, interpretive statement, or operational memorandum not binding on person; damages; use of nonuse valuation methods; applicability of provisions to certain bankruptcy actions or claims.

Sec. 20104. (1) The department shall coordinate all activities required under this part and may promulgate rules necessary to implement this part.

(2) A guideline, bulletin, interpretive statement, or operational memorandum under this part shall not be given the force and effect of law. A guideline, bulletin, interpretive statement, or operational memorandum under this part is not legally binding on any person.

(3) Claims for natural resource damages may be pursued only in accordance with principles of scientific and economic validity and reliability. Contingent nonuse valuation methods or similar nonuse valuation methods shall not be utilized and damages shall not be recovered for nonuse values unless and until rules are promulgated that establish an appropriate means of determining such damages.

(4) A contingent nonuse valuation method or similar nonuse valuation method shall not be utilized for natural resource damage calculations unless a determination is made by the department that such a method satisfies principles of scientific and economic validity and reliability and rules for utilizing a contingent nonuse valuation method or a similar nonuse valuation method are subsequently promulgated.

(5) The provisions in this section related to natural resource damages as added by 1995 PA 71 do not apply to any judicial or administrative action or claim in bankruptcy initiated on or before March 1, 1995.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 229, 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

Administrative rules: R 299.5101 et seq. and R 299.51001 et seq. of the Michigan Administrative Code.

324.20104a Brownfield redevelopment board; creation; membership; quorum; business conducted at public meeting; writings subject to freedom of information act; duties and responsibilities.

Sec. 20104a. (1) The brownfield redevelopment board is created within the department.

(2) The board shall consist of the following members:

(a) The director or his or her designee.

(b) The director of the department of technology, management, and budget or his or her designee.

(c) The chief executive officer of the Michigan economic development corporation or his or her designee.

(3) A majority of the members of the board constitute a quorum for the transaction of business at a meeting

of the board.

(4) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) The board shall implement the duties and responsibilities as provided in this part and as otherwise provided by law.

History: Add. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 229, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

Compiler's note: For transfer of a position on Brownfield redevelopment board designated for the chief executive officer of Michigan jobs commission to the director of department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

324.20105 Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to duties of department upon discovery of contaminated site, inclusion of site on list, notification of inclusion on site, and removal of property from list.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20105a Sites receiving state funds to conduct response activities; compilation, arrangement, and submission of list.

Sec. 20105a. The department shall annually compile a list of sites that are receiving state funds to conduct response activities. This list shall be arranged in alphabetical order. The department shall annually submit this list to the legislature.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20106 Level of funding; recommendation of governor.

Sec. 20106. (1) The governor shall include in his or her annual budget recommendations to the legislature a recommended level of funding to provide for the activities necessary to implement this part.

(2) The governor's recommendations under this section shall be accompanied by a site specific description of the extent of known or suspected environmental contamination, the recommended response activities to be undertaken, and an estimate of cost of those response activities.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20107 Tearing down, removing, or destroying sign or notice as misdemeanor; penalty.

Sec. 20107. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous substances or marking boundaries of a facility subject to response activity under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20107a Duties of owner or operator having knowledge of facility; hazardous substances; obligations based on current numeric cleanup or site-specific criteria; liability for costs and damages; compliance with section; applicability of subsection (1)(a) to (c) to state or local unit of government; "express public purpose" explained.

Sec. 20107a. (1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resource use restrictions established or relied on in connection with the response activities at the facility.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the facility in connection with response activities.

(2) The owner's or operator's obligations under this section shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

(3) A person who violates subsection (1) who is not otherwise liable under this part for the release at the facility is liable for response activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 20126(1)(c) or (3)(a), (b), (c), or (e) or to the state or a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to June 5, 1995 or to a person who is exempt from liability under section 20126(4)(c). However, if the state or local unit of government, acting as the operator of a parcel of property that the state or local unit of government has knowledge is a facility, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the facility that is opened to and used by the general public for that express purpose, and not the entire facility. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person who is exempt from liability under section 20126(3)(c) or (d) except with regard to that person's activities at the facility.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108 Cleanup and redevelopment fund; creation; deposit of assets into fund; subaccounts; unexpended balance to be carried forward.

Sec. 20108. (1) The cleanup and redevelopment fund is created in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) In addition to the money received under subsection (2), the fund shall receive as revenue money collected by the attorney general in actions filed under this part, collected by the state under this part, or collected by a person under section 20135(2). Money collected and placed into the fund under this subsection may be earmarked by the department for use at specific sites.

(4) The state treasurer may establish subaccounts within the fund, and shall establish a subaccount for all money in the former environmental response fund on the effective date of the 1996 amendments to this section. Proceeds of all cost recovery actions taken and settlements entered into pursuant to this part, excluding natural resource damages, by the department or the attorney general, or both, shall be credited to this subaccount.

(5) An unexpended balance within the fund at the close of the fiscal year shall be carried forward to the following fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108a Revitalization revolving loan fund; creation; deposit of assets into fund; investment; interest and earnings; carrying forward unexpended balance; lump-sum appropriation; expenditure.

Sec. 20108a. (1) The revitalization revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the revitalization revolving loan fund. The state treasurer shall direct the investment of the revitalization revolving loan fund. The state treasurer shall credit to the revitalization revolving loan fund interest and earnings from revitalization revolving loan fund investments.

(3) An unexpended balance within the revitalization revolving loan fund at the close of the fiscal year shall be carried forward to the following fiscal year.

(4) The department shall annually submit to the governor a request for a lump-sum appropriation from the revitalization revolving loan fund for loans pursuant to the revitalization revolving loan program under section 20108b.

(5) The department shall expend money from the revitalization revolving loan fund, upon appropriation, only for the revitalization loan program created in section 20108b.

History: Add. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108b Revitalization revolving loan program.

Sec. 20108b. (1) The department shall create a revitalization revolving loan program for the purpose of making loans to certain local units of government to provide for eligible activities at certain properties in order to promote economic redevelopment.

(2) Loan funds from the revitalization revolving loan program created in subsection (1) shall be issued for the purposes provided in and utilizing the criteria provided in sections 19608a through 19613.

(3) Loan payments and interest shall be deposited back into the revitalization revolving loan fund created in section 20108a.

History: Add. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 233, Imd. Eff. Dec. 14, 2010;—Am. 2016, Act 476, Eff. Apr. 5, 2017.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20108c State site cleanup fund; creation; deposit of assets into fund; investment;

interest and earnings; money remaining in fund; lapse; use of money; state sites cleanup program; establishment; purpose; expenditure; list of facilities with state liability; prioritized list; payment for necessary response activities; carrying forward unexpended funds; compliance with MCL 18.1451; report.

Sec. 20108c. (1) The state site cleanup fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the state site cleanup fund. The state treasurer shall direct the investment of the state site cleanup fund. The state treasurer shall credit to the state site cleanup fund interest and earnings from fund investments.

(3) Money in the state site cleanup fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the state site cleanup fund shall be used for the state sites cleanup program established under this section.

(5) The department shall establish a state sites cleanup program for the purpose of expending money in the state sites cleanup fund, including the \$20,000,000.00 appropriated by the legislature for state site cleanup pursuant to Act No. 265 of the Public Acts of 1994.

(6) The department shall expend money appropriated for state site cleanup only for response activities at facilities where the state is liable as an owner or operator under section 20126 or where the state has licensure or decommissioning obligations as an owner or possessor of radioactive materials that are regulated by the nuclear regulatory commission. Money expended for the state sites cleanup program shall not be used to pay fines, penalties, or damages.

(7) Six months after the effective date of this section, and annually thereafter by October 1 of each year, each state executive department and agency shall provide to the department a detailed list of all facilities where the state executive department or agency is liable as an owner or operator under section 20126. Subsequent lists do not need to include facilities identified in a previous list. This list shall include the following information for each facility:

(a) The facility name.

(b) Location.

(c) Use history of the facility.

(d) A detailed summary of available information regarding the source, nature, and extent of the contamination at the facility.

(e) A detailed summary of available information on any public health or environmental impacts at the facility.

(f) A detailed summary of available information on the resale and redevelopment potential of the facility.

(g) A description of and estimated cost of the response activities needed at the facility, if known.

(8) Within 12 months after the effective date of this section and by February 1 of each year thereafter, the board shall develop a prioritized list of the facilities identified pursuant to subsection (3). Sites posing the greatest risk to the public health, safety, welfare, or the environment and those having high resale and redevelopment potential shall be given the highest priority. The list shall include the following information for each facility:

(a) The facility's priority order.

(b) Response activities to be completed at the facility.

(c) Estimated cost of the response activities.

(d) The state executive department or agency that is liable as an owner or operator under section 20126.

(9) All state executive departments and agencies that are liable as an owner or operator under section 20126 are responsible for undertaking and paying for all necessary response activities that cannot be addressed with money appropriated to the department for state site cleanup as described in subsection (1) or any money appropriated to the department specifically for the purpose of response activities at facilities for which the state is liable as an owner or operator. The existence of these funds does not affect the liability of any person under this part or any state or federal law.

(10) The \$20,000,000.00 appropriated pursuant to Act No. 265 of the Public Acts of 1994 and to be expended pursuant to this section shall carry over to succeeding fiscal years. The unexpended portion of the appropriation is considered a work project appropriation, and any unencumbered or unallotted funds are carried forward to the succeeding fiscal year. The following is in compliance with section 451(3) of the management and budget act, Act No. 431 of the Public Acts of 1984, being section 18.1451 of the Michigan Compiled Laws:

(a) The purpose of the project to be carried forward is to provide for contaminated site cleanups.

(b) The project will be accomplished by contracts.

(c) The total estimated cost of the project will be \$20,000,000.00.

(d) The tentative completion date is September 30, 1999.

(11) The department shall submit an annual report to the governor and the legislature on the status of the response activities being conducted with money appropriated to the department to implement this section and the need for additional funds to conduct future response activities.

History: Add. 1996, Act 380, Imd. Eff. July 24, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20109 Repealed. 1996, Act 380, Imd. Eff. July 24, 1996.

Compiler's note: The repealed section pertained to Michigan unclaimed bottle fund.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20109a Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to municipal landfill cost share grant program.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20110, 324.20111 Repealed. 1996, Act 380, Imd. Eff. July 24, 1996.

Compiler's note: The repealed sections pertained to long-term maintenance trust fund board and long-term maintenance trust fund.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to study of cleanup costs.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112a Inventory of residential closures; creation and update; compilation of data; no further action reports.

Sec. 20112a. (1) Subject to subsection (3), the department shall create, and update on an ongoing basis, an inventory of residential closures and a separate inventory of other known facilities. Each inventory shall contain, if applicable, at least the following information for each facility:

(a) Location.

(b) Whether 1 or more response activity plans were submitted under section 20114b and the status of department approval.

(c) Whether a notice of land use or resource use restrictions under section 20114c was submitted to the department.

(d) Whether a no further action report under section 20114d was submitted to the department and whether the report included a postclosure plan or proposed postclosure agreement and the status of department approval.

(2) The department may categorize facilities on the inventory created under subsection (1) in a manner that the department believes is useful for the general public.

(3) The department shall create and update on an ongoing basis a separate inventory of residential closures.

(4) The department shall post the inventories created under subsections (1) and (2) on the department's website.

- (5) The department shall compile the following data on a quarterly basis and post the data on its website:
- (a) The number of response activity plans received by the department and itemized as follows:
 - (i) Approved by the department.
 - (ii) Disapproved by the department.
 - (iii) Recommended for approval by the panel.
 - (iv) Recommended for disapproval by the panel.
 - (v) Approved by operation of law under section 20114b.
 - (b) The number of no further action reports received by the department and itemized as follows:
 - (i) Approved by the department.
 - (ii) Disapproved by the department.
 - (iii) Recommended for approval by the panel.
 - (iv) Recommended for disapproval by the panel.
 - (v) Approved by operation of law.
 - (c) The number of baseline environmental assessments received by the department.
- (6) The department shall annually determine the percentage of no further action reports approved by operation of law under section 20114d. If the percentage in any year is in excess of 10%, the department shall notify the standing committees of the senate and the house of representatives with jurisdiction over issues related to natural resources and the environment of this occurrence.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20112b Repealed. 2018, Act 237, Eff. Sept. 25, 2018.

Compiler's note: The repealed section pertained to a biennial report on contamination caused by releases associated with clandestine drug laboratories.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20113 Appropriation; purposes; request to governor; list of facilities; use of fund; expenditures; limitation; providing list of projects to governor and legislative committees; "urbanized area" defined.

Sec. 20113. (1) Money required to implement the programs described under this part and to pay for response activities recommended under this part shall be appropriated from the fund and any other source the legislature considers necessary to implement the requirements of this part.

(2) The department shall annually submit to the governor a request for appropriation from the fund. The request will include a lump sum amount for the purposes of subsection (3)(e). For the purposes set forth in subsection (3)(a), (b), (c), and (d), the request shall include a list of facilities where the department is proposing to expend funds. The list shall include the following information for each facility: the common name of the facility, the response activities that are planned to be conducted, and the estimated amount of money that is needed to conduct the response activities. The legislature shall approve by law the list of facilities to be addressed and shall provide a lump sum appropriation for these sites based on the total estimated amount needed for the approved facilities.

(3) Money from the fund may be used, upon appropriation, for the following as determined by the department:

(a) Superfund match, which includes funding for any response activity that is required to match federal dollars at a superfund site as required under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675.

(b) Response activities to address actual or potential public health or environmental problems.

(c) Completion of response activities initiated by the state using environmental protection bond funds or completion of response activities at facilities initiated by a person who was liable under this part prior to 1995 PA 71 but is not liable under section 20126 of this part, where such response activities have ceased.

(d) Response activities at facilities that will facilitate redevelopment.

(e) Emergency response actions for facilities to be determined by the department.

(4) Money in the fund shall be expended first for the purposes described in subsection (3)(a) and (e) and health or environmental problems under subsection (3)(b) that are related to acute health or environmental problems. Following these expenditures, not less than 50% of the remaining money expended under this section shall be expended for response activities that facilitate redevelopment of urbanized areas. All additional expenditures under this section shall be expended following the expenditures described in this subsection. As used in this subsection, "urbanized area" means an urbanized area as determined by the economics and statistics administration, United States bureau of census, according to the 2000 census.

(5) Not later than April 1 of each year, the department shall provide to the governor, the senate and house of representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment, and the senate and house of representatives appropriations committees a list of all projects financed under this part through the preceding fiscal year. The list shall include the project site and location, the nature of the project, the total amount of money authorized, the total amount of money expended, and project status.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114 Owner or operator of facility; duties; response activity without prior approval; easement; applicability of subsections (1) and (3); effect of section on authority of department to conduct response activities or on liability of certain persons; determination of nature and extent of hazardous substance; "available analytical method" defined.

Sec. 20114. (1) Except as provided in subsection (4), an owner or operator of property who has knowledge that the property is a facility shall do all of the following with respect to a release for which the owner or operator is liable under section 20126:

(a) Subject to subsection (6), determine the nature and extent of the release at the facility.

(b) Make the following notifications:

(i) If the release is of a reportable quantity of a hazardous substance under 40 CFR 302.4 and 302.6 (July 1, 2012 edition), report the release to the department within 24 hours after obtaining knowledge of the release.

(ii) If the owner or operator has reason to believe that 1 or more hazardous substances are emanating from or have emanated from and are present beyond the boundary of his or her property at a concentration in excess of cleanup criteria for unrestricted residential use, notify the department and the owners of property where the hazardous substances are present within 30 days after obtaining knowledge that the release has migrated.

(iii) If the release is a result of an activity that is subject to permitting under part 615 and the owner or operator is not the owner of the surface property and the release results in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use, notify the department and the surface owner within 30 days after obtaining knowledge of the release.

(c) Immediately stop or prevent an ongoing release at the source.

(d) Immediately implement measures to address, remove, or contain hazardous substances that are released after June 5, 1995 if those measures are technically practical, are cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment. At a facility where hazardous substances are released after June 5, 1995, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and abate an unacceptable risk to the public health, safety, or welfare or the environment.

(e) Immediately identify and eliminate any threat of fire or explosion or any direct contact hazards.

(f) Initiate a remedial action that is necessary and feasible to address unacceptable risks associated with residual NAPL saturation, migrating NAPL, and mobile NAPL using best practices for managing NAPL, including, but not limited to, best practices developed by the American society for testing and materials or the interstate technology and regulatory council.

(g) Diligently pursue response activities necessary to achieve the cleanup criteria established under this part. Except as otherwise provided in this part, in pursuing response activities under this subdivision, the owner or operator may do either of the following:

(i) Proceed under section 20114a to conduct self-implemented response activities.

(ii) Proceed under section 20114b if the owner or operator wishes to, or is required to, obtain departmental approval of 1 or more aspects of planning response activities.

(h) Upon written request by the department, take 1 or more of the following actions:

(i) Provide a response activity plan containing a plan for undertaking interim response activities and undertake interim response activities consistent with that plan.

(ii) Provide a response activity plan containing a plan for undertaking evaluation activities and undertake evaluation activities consistent with that plan.

(iii) Pursue remedial actions under section 20114a and, upon completion, submit a no further action report under section 20114d.

(iv) Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

(v) Submit to the department for approval a response activity plan containing a remedial action plan that, when implemented, will achieve the cleanup criteria established under this part.

(vi) Implement an approved response activity plan in accordance with a schedule approved by the department pursuant to this part.

(vii) Submit a no further action report under section 20114d after completion of remedial action.

(2) Subsection (1) does not preclude a person from simultaneously undertaking 1 or more aspects of planning or implementing response activities at a facility under section 20114a without the prior approval of the department, unless 1 or more response activities are being conducted pursuant to an administrative order or agreement or judicial decree that requires prior department approval, and submitting a response activity plan to the department under section 20114b.

(3) Except as provided in subsection (4), a person who holds an easement interest in a portion of a property who has knowledge that there may be a release within that easement shall report the release to the department within 24 hours after obtaining knowledge of the release. This subsection applies to reportable quantities of hazardous substances established pursuant to 40 CFR 302.4 and 302.6 (July 1, 2012 edition).

(4) The requirements of subsections (1) and (3) do not apply to a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws.

(5) This section does not do either of the following:

(a) Limit the authority of the department to take or conduct response activities pursuant to this part.

(b) Limit the liability of a person who is liable under section 20126.

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

(a) If another hazardous substance with an available analytical method was released at the same location and has similar fate and mobility characteristics, determine the nature and extent of that hazardous substance as a surrogate.

(b) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to determine whether the hazardous substance has reached surface water.

(c) Develop and propose to the department an analytical method for approval by the department.

(d) In lieu of determining the nature and extent of the hazardous substance release, eliminate the potential for exposure in areas where the hazardous substance is expected to be located through removal, containment, exposure barriers, or land use or resource use restrictions.

(7) As used in this section, "available analytical method" means 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.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 234, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114a Undertaking response activities without prior approval of department; exception; completion; submission of no further action report.

Sec. 20114a. (1) Subject to section 20114 and other applicable law, a person may undertake response activities without prior approval by the department unless 1 or more response activities are being conducted

pursuant to an administrative order or agreement or judicial decree that requires prior department approval. Except as otherwise provided in this part, conducting response activities under this section does not relieve any person who is liable under this part from the obligation to conduct further response activities as may be required by the department under this part or other applicable law.

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

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114b Response activity plan; submission; form; availability; response by department; failure of department to respond within certain time frames; extension; appeal of department's decision.

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

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

(3) Upon receipt of a response activity plan submitted for approval under this subsection, the department shall approve, approve with conditions, or deny the response activity plan, or shall notify the submitter that the plan does not contain sufficient information for the department to make a decision. The department shall provide its determination within 150 days after the plan was received by the department unless the plan requires public participation under section 20120d(2). If the plan requires public participation under section 20120d(2), the department shall respond within 180 days. If the department's response is that the plan does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If a plan is approved with conditions, the department's approval shall state with specificity the conditions of the approval. If the plan is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial.

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

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

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

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114c Remedial actions satisfying or not satisfying cleanup criteria for unrestricted residential use; preparation and implementation of postclosure plan; contents; notice of land use or resource use restrictions to department and zoning authority; liability; obligation to undertake response activities.

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

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

(a) Land use or resource use restrictions as provided in section 20121.

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

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

(ii) Use of groundwater.

(iii) Protection of the integrity of exposure controls that prevent contact with soil, and those controls are composed solely of asphalt, concrete, or landscaping materials. This subparagraph does not apply if the hazardous substances that are addressed by the barrier exceed a cleanup criterion based on acute toxic effects, reactivity, corrosivity, ignitability, explosivity, or flammability.

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

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

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

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

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114d No further action report.

Sec. 20114d. (1) A person may submit a no further action report under this subsection for remedial actions addressing contamination for which the person is or is not liable. Remedial actions included in a no further action report may address all or a portion of contamination at a facility as follows:

(a) The remedial actions may address 1 or more releases at a facility.

(b) The remedial actions may address 1 or more hazardous substances at a facility.

(c) The remedial actions may address contamination in 1 or more environmental media at a facility.

(d) The remedial actions may address contamination within the entire facility or only a portion of a facility.

(e) The remedial actions may address contamination at a facility through any combination of subdivisions (a) through (d).

(2) A no further action report submitted under subsection (1) must document the basis for concluding that the remedial actions included in the no further action report are protective of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial actions. A no further action report may include a request that, upon approval, the release or conditions addressed by the no further action report be designated as a residential closure. A no further action report shall be submitted with a form developed by the department. The department shall make this form available on its website.

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

(a) If the remedial action at the facility satisfies the cleanup criteria for unrestricted residential use for the hazardous substances and portion of the facility addressed in the no further action report, neither a postclosure plan or a proposed postclosure agreement is required to be submitted.

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

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

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

(a) Provisions for monitoring, operation and maintenance, and oversight necessary to assure the

effectiveness and integrity of the remedial action.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) A person requesting approval of a no further action report under subsection (8) may appeal the department's decision in accordance with section 20114e.

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

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

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114e Response activity review panel.

Sec. 20114e. (1) The director shall establish a response activity review panel to advise him or her on disputes.

(2) The panel must consist of 15 individuals, appointed by the director. Each member of the panel must meet all of the following minimum requirements:

(a) Meet 1 or more of the following:

(i) Hold a current professional engineer's or professional geologist's license or registration from a state, tribe, or United States territory, or the Commonwealth of Puerto Rico, and have the equivalent of 6 years of full-time relevant experience.

(ii) Have a baccalaureate degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 10 years of full-time relevant experience.

(iii) Have a master's degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of 8 years of full-time relevant experience.

(b) Remain current in his or her field through participation in continuing education or other activities.

(3) An individual is not eligible to be a member of the panel if any of the following is true:

(a) The individual is a current employee of any office, department, or agency of this state.

(b) The individual is a party to 1 or more contracts with the department and the compensation paid under those contracts represented more than 5% of the individual's annual gross revenue in any of the preceding 3 years.

(c) The individual is employed by an entity that is a party to 1 or more contracts with the department and the compensation paid to the individual's employer under these contracts represented more than 5% of the employer's annual gross revenue in any of the preceding 3 years.

(d) The individual was employed by the department within the preceding 3 years.

(4) An individual appointed to the panel serves for a term of 3 years and may be reappointed for 1 additional 3-year term. After serving 2 consecutive terms, the individual shall not be a member of the panel for a period of at least 2 years before being eligible to be appointed to the panel again. The terms for members first appointed must be staggered so that not more than 5 vacancies are scheduled to occur in a single year. Individuals appointed to the panel serve without compensation. However, members of the panel may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the panel.

(5) A vacancy on the panel shall be filled in the same manner as the original appointment.

(6) The business that the panel may perform shall be conducted at a public meeting of the panel held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(7) A person who submitted a response activity plan; remedial action plan; postclosure plan; a no further action report; a request for certificate of completion or documentation of due care compliance under this part; or an initial assessment report, final assessment report, closure report, or documentation of due care compliance under part 213 may appeal a decision made by the department regarding a dispute by submitting a petition to the director. However, an issue that was addressed as part of the final decision of the director under section 21332 or that is the subject of a contested case hearing under section 21332 is not eligible for review by the panel. The petition must include the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, opinion, and supporting documentation for the petitioner's position. The petitioner shall also submit a fee of \$3,500.00. If the director believes that the dispute may be able to be resolved without convening the panel, the director may contact the petitioner regarding the issues in dispute and may negotiate a resolution of the dispute. This negotiation period must not exceed 45 days. If the dispute is resolved without convening the panel, any fee that is submitted with the petition shall be returned.

(8) If a dispute is not resolved pursuant to subsection (7), the director shall schedule a meeting of 5 members of the panel, selected on the basis of their relevant expertise, within 45 days after receiving the original petition. If the dispute involves an underground storage tank system, at least 3 of the members selected must have relevant experience in the American Society for Testing and Materials risk-based corrective action processes described in part 213. A member selected for the dispute resolution process shall agree not to accept employment by the person bringing the dispute before the panel, or to undertake any employment concerning the facility in question for a period of 1 year after the decision has been rendered on the matter if that employment would represent more than 5% of the member's gross revenue in any of the preceding 3 years. The director shall provide a copy of all supporting documentation to members of the panel who will hear the dispute. An alternative member may be selected by the director to replace a member who is unable to participate in the dispute resolution process. Any action by the members selected to hear the dispute requires a majority of the votes cast. The members selected for the dispute resolution process shall elect a chairperson of the dispute resolution process. At a meeting scheduled to hear the dispute, representatives of the petitioner and the department must each be afforded an opportunity to present their positions to the panel. The fee that is received by the director along with the petition shall be forwarded to the state treasurer for deposit into the fund.

(9) Within 45 days after hearing the dispute, the members of the panel who were selected for and participated in the dispute resolution process shall make a recommendation regarding the petition and provide written notice of the recommendation to the director of the department and the petitioner. The written recommendation must include the specific scientific or technical rationale for the recommendation. The panel's recommendation regarding the petition may be to adopt, modify, or reverse, in whole or in part, the department's decision that is the subject of the petition. If the panel does not make its recommendation within this 45-day time period, the decision of the department is the final decision of the director.

(10) Within 60 days after receiving written notice of the panel's recommendation, the director shall issue a final decision, in writing, regarding the petition. However, this time period may be extended by written agreement between the director and the petitioner. If the director agrees with the recommendation of the panel, the department shall incorporate the recommendation into its response to the response activity plan, no further action report, request for certificate of completion, initial assessment report, final assessment report, closure report, or documentation of due care compliance. If the director rejects the recommendation of the panel, the director shall issue a written decision to the petitioner with a specific rationale for rejecting the recommendation of the panel. If the director fails to issue a final decision within the time period provided for in this subsection, the recommendation of the panel shall be considered the final decision of the director. The final decision of the director under this subsection is subject to review pursuant to section 631 of the revised judiciary act of 1961, 1961 PA 236, MCL 600.631.

(11) Upon request of the director, the panel shall make a recommendation to the department on whether a member should be removed from the panel for noncompliance with this part. Prior to making this recommendation, the panel may convene a peer review panel to evaluate the conduct of the member.

(12) A member of the panel shall not participate in the dispute resolution process for any appeal in which that member has a conflict of interest. The director shall select a member of the panel to replace a member who has a conflict of interest under this subsection. For purposes of this subsection, a member has a conflict of interest if a petitioner has hired that member or the member's employer on any environmental matter within the preceding 3 years.

(13) As used in this section:

(a) "Dispute" means any disagreement over a technical, scientific, or administrative issue, including, but not limited to, disagreements over assessment of risk, response activity plans, remedial action plans, no further action reports, certificates of completion, documentation of due care compliance under this part, determinations of whether a person has submitted sufficient information for the department to make a decision regarding a submittal under this part or part 213, and initial assessment reports, final assessment reports, closure reports, postclosure plans, and documentations of due care compliance under part 213.

(b) "Relevant experience" means active participation in the preparation, design, implementation, and assessment of remedial investigations, feasibility studies, interim response activities, and remedial actions under this part or experience in the American society for testing and materials risk-based corrective action processes described in part 213. This experience must demonstrate the exercise of sound professional judgment and knowledge of the requirements of this part or part 213, or both.

History: Add. 2010, Act 227, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 109, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA

324.20114f Certificate of completion.

Sec. 20114f. (1) Upon completion of a response activity a person may request a certificate of completion from the department.

(2) To obtain a certificate of completion from the department under this section, a person shall submit each of the following to the department:

(a) A certificate of completion request form. The department shall specify the required content of the request form and make the form available on the department's website.

(b) Documentation of the completed response activity.

(3) Upon receipt of a request for a certificate of completion submitted under this subsection, the department shall issue a certificate or deny the request, or shall notify the submitter that there is not sufficient information for the department to make a decision. If the department's response is that the request does not include sufficient information, the department shall identify the information that is required for the department to make a decision. If the request is denied, the department's denial shall, to the extent practical, state with specificity all of the reasons for denial. The department shall make a decision under this subsection and shall provide the person submitting the request with a certificate of completion, as appropriate, within 1 of the following time frames, as applicable:

(a) 150 days after the request was received by the department if the response activity was undertaken without prior approval of the department and the department determines that the response activity complies with the applicable requirements of this part.

(b) 90 days after the request was received by the department if the response activity was undertaken pursuant to a response activity plan that was approved under section 20114b and the department determines that the response activity was completed in accordance with the approved plan.

(4) If the department fails to provide a written response within the time frame required by subsection (3), the response activity is considered approved.

(5) Any time frame required by this section may be extended by mutual agreement of the department and a person submitting a request for a certificate of completion or a person who has received a certificate of completion. An agreement extending a time frame shall be in writing.

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

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20114g Documentation of due care compliance.

Sec. 20114g. (1) A person may submit to the department documentation of due care compliance regarding a facility. The documentation of due care compliance shall be submitted on a form provided by the department and shall contain documentation of compliance with section 20107a, and other information required by the department.

(2) Within 45 business days after receipt of the documentation of due care compliance under subsection (1) containing sufficient information for the department to make a decision, the department shall approve, approve with conditions, or deny the documentation of due care compliance. If the department does not approve the documentation of due care compliance, the department shall provide the person that submitted the documentation the reasons why the documentation of due care compliance was not approved.

(3) A person that disagrees with a decision of the department under this section may submit a petition for review of scientific or technical disputes to the response activity review panel pursuant to section 20114e.

History: Add. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115 Notice to department of agriculture and rural development; information; “substance regulated by the department of agriculture and rural development” defined;

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response activities to be consistent with MCL 324.8714(2).

Sec. 20115. (1) The department, upon confirmation of a release or threat of release of a substance that is regulated by the department of agriculture and rural development, shall notify the department of agriculture and rural development. The department of agriculture and rural development shall undertake or ensure the initiation of the necessary response activity to immediately stop or prevent further releases at the site. The department of agriculture and rural development shall consult with the department in the development of response activities if a release or threat of a release of a substance regulated by the department of agriculture and rural development occurs. The department of agriculture and rural development shall provide to the department information necessary to identify substances regulated by the department of agriculture and rural development. This information shall include but is not limited to the list of state registered pesticides.

(2) As used in this section, "substance regulated by the department of agriculture and rural development" means any of the following:

- (a) A pesticide as defined in section 8305.
- (b) A fertilizer as defined in section 8501.
- (c) A soil conditioner as defined in section 8501a.
- (d) A liming material as defined in section 1 of 1955 PA 162, MCL 290.531.

(3) Response activities conducted under this section shall be consistent with the requirements of section 8714(2).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1995, Act 117, Imd. Eff. June 29, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115a Release or threat of release from underground storage tank system; corrective actions.

Sec. 20115a. (1) Notwithstanding any other provision of this part, if a release or threat of release at a facility is solely the result of a release or threat of release from an underground storage tank system regulated under part 213, the response activities implemented at the facility shall be the corrective actions required under part 213, and the requirements of section 20114 shall not apply to that release.

(2) Notwithstanding any other provision of this part, if a release or threat of release at a facility is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator of the underground storage tank system as defined in part 213 may choose to conduct corrective actions of the release from the underground storage tank system pursuant to part 213, and the requirements of section 20114 shall not apply to that release.

History: Add. 1996, Act 115, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20115b Release from disposal area; corrective actions; exception.

Sec. 20115b. Notwithstanding any other provision of this part, if a release at a disposal area licensed under part 115 is solely a release from that disposal area and the release is discovered through the disposal area's hydrogeological monitoring plan, the response activities implemented at the disposal area shall be the corrective actions required under part 115. This section does not apply to releases from a disposal area after completion of the postclosure monitoring period of the disposal area.

History: Add. 1996, Act 358, Eff. Oct. 1, 1996.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20116 Transfer of interest in real property; notice; certification of completed response activity.

Sec. 20116. (1) A person who has knowledge or information or is on notice through a recorded instrument

that a portion or the entirety of a parcel of that person's property is a facility shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or other person to which the property is transferred disclosing the known general nature and extent of the hazardous substance release and any land or resource use restrictions that are known by the person to apply. A restrictive covenant or notice that contains the required information that is recorded in the deed records for the property satisfies this requirement.

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of a response activity under this part for the facility, record with the register of deeds for the appropriate county a certification that the response activity has been completed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20117 Information required to be furnished; requirements; right to enter public or private property; purposes; duties of person entering public or private property; copies of sample analyses, photographs, or videotapes; completion of inspections and investigations; refusing entry or information; powers of attorney general; injunction; civil fine; availability of information to public; protection of information; administrative subpoena; witness fees and mileage; court order; contempt; “information” defined.

Sec. 20117. (1) To determine the need for response activity or selecting or taking a response activity or otherwise enforcing this part or a rule promulgated under this part, the directors or their authorized representatives may upon reasonable notice require a person to furnish any information that the person may have relating to any of the following:

(a) The identification, nature, and quantity of materials that have been or are generated, treated, stored, handled, or disposed of at a facility or transported to a facility.

(b) The nature or extent of a release or threatened release at or from a facility.

(2) Upon reasonable notice, a person required to furnish information pursuant to subsection (1) shall either:

(a) Grant the directors or their authorized representatives access at all reasonable times to any place, property, or location to inspect and copy the related information.

(b) Copy and furnish to the directors or their authorized representatives the related information.

(3) If there is a reasonable basis to believe that there may be a release or threat of release, the directors or their authorized representatives have the right to enter at all reasonable times any public or private property for any of the following purposes:

(a) Identifying a facility.

(b) Investigating the existence, origin, nature, or extent of a release or threatened release.

(c) Inspecting, testing, taking photographs or videotapes, or sampling of any of the following: soils, air, surface water, groundwater, suspected hazardous substances, or any containers or labels of suspected hazardous substances.

(d) Determining the need for or selecting any response activity.

(e) Taking or monitoring implementation of any response activity.

(4) A person that enters public or private property pursuant to subsection (3) shall present credentials; make a reasonable effort to contact the person in charge of the facility or that person's designee; describe the nature of the activities authorized under subsection (3) to be undertaken; and inform the person that is in charge of the facility that he or she is entitled to participate in the collection of split samples, and is entitled to a copy of the results of any analysis of samples and a copy of any photograph or videotape taken. The person in charge or his or her agent may accompany the directors or their authorized representatives during the activities authorized under subsection (3) that take place and may participate in the collection of any split samples on the property. The absence or unavailability of the person in charge or that person's agent shall not delay or limit the authority of the directors or their authorized representatives to enter the property or proceed with the activities authorized under subsection (3).

(5) If the directors or their authorized representatives obtain any samples, before leaving the property they shall give to the person in charge of the property from which the samples were obtained a receipt describing the sample. A copy of the results of any analysis of the samples shall upon request be furnished promptly to the person in charge. A copy of any photograph or videotape taken pursuant to subsection (3)(c) shall upon

request be furnished promptly to the person in charge.

(6) All inspections and investigations undertaken by the directors or their authorized representatives under this section shall be completed with reasonable promptness.

(7) If refused entry or information under subsections (1) to (4), for the purposes of enforcing the information gathering and entry authority provided in this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing access to property or information pursuant to this section.

(b) Commence a civil action to compel compliance with a request for information or entry pursuant to this section, to authorize information gathering and entry provided for in this section, and to enjoin interference with the exercise of the authority provided in this section.

(8) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court shall in the case of interference or noncompliance with information requests pursuant to subsection (1), or with entry or inspection requests pursuant to subsection (3), enjoin interference with and direct compliance with the requests unless the defendant establishes that, under the circumstances of the case, the request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(9) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court may assess a civil fine not to exceed \$25,000.00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1), (2), or (3).

(10) Information obtained by the directors or their authorized representatives as authorized under subsection (1) or (2) shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. A person who provides information pursuant to subsection (1) or (2), or the person in charge of a facility at which photographs or videotapes are taken pursuant to subsection (3), may designate the information that the person believes to be entitled to protection as if the information was exempt from disclosure as being either trade secrets or information of a personal nature under section 13(1)(a) or (g) of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws, and submit that specifically designated information separately from other information required to be provided under this section.

(11) Notwithstanding subsection (10), the following information obtained by the directors or their authorized representatives as required by this section shall be available to the public:

(a) The trade name, common name, or generic class or category of the hazardous substance.

(b) The physical properties of a hazardous substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.

(c) The hazards to the public health, safety, or welfare, or the environment posed by a hazardous substance, including physical hazards, such as explosion, and potential acute and chronic health hazards.

(d) The potential routes of human exposure to the hazardous substance at the facility being investigated, entered, or inspected under this section.

(e) The location of disposal of any waste stream released or threatened to be released from the facility.

(f) Monitoring data or analysis of monitoring data pertaining to disposal activities related to the facility.

(g) Hydrogeologic data.

(h) Groundwater monitoring data.

(12) To collect information for the purpose of identifying persons who are liable under section 20126 or to otherwise enforce this part or a rule promulgated under this part, the attorney general may by administrative subpoena require the attendance and testimony of witnesses and production of papers, reports, documents, answers to questions, and other information the attorney general considers necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. If a person fails or refuses to obey the administrative subpoena, the circuit court for the county of Ingham or for the county in which that person resides has jurisdiction to order that person to comply with the subpoena. A failure to obey the order of the court is punishable by the court as contempt.

(13) As used in this section, "information" includes, but is not limited to, documents, materials, records, photographs, and videotapes.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20118 Response activity; remedial action; purposes; selection or approval; conditions.

Sec. 20118. (1) The department may take response activity or approve of response activity proposed by a person that is consistent with this part and the rules promulgated under this part 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.

(2) Remedial action undertaken under subsection (1) may address all or a portion of contamination at a facility as follows:

(a) Remedial action may address 1 or more releases at a facility.

(b) Remedial action may address 1 or more hazardous substances at a facility.

(c) Remedial action may address contamination in 1 or more environmental media at a facility.

(d) Remedial action may address contamination within the entire facility or only a portion of a facility.

(e) Remedial action may address contamination at a facility through any combination of subdivisions (a) through (d).

(3) Remedial action undertaken under subsection (1) shall accomplish all of the following:

(a) Assure the protection of the public health, safety, and welfare, and the environment with respect to the environmental contamination addressed by the remedial action.

(b) Except as otherwise provided in subsections (4) and (5), 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.

(c) Except as otherwise provided in subsections (4) and (5), be consistent with any cleanup criteria incorporated in rules promulgated under this part for the environmental contamination addressed by the remedial action.

(4) The department may select or approve of a remedial action meeting the criteria provided for in section 20120a that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) or R 299.3(6) of the Michigan administrative code, or both, if the department makes a finding that the remedial action is protective of the public health, safety, and welfare, and the environment. Notwithstanding any other provision of this subsection, the department shall not approve of a remedial action that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.3(5) or R 299.3(6) of the Michigan administrative code if the remedial action is being implemented by a person who is liable under section 20126 and the release was grossly negligent or intentional, unless attaining that degree of control is technically infeasible, or the adverse environmental impact of implementing a remedial action to satisfy the rule would exceed the environmental benefit of that remedial action.

(5) A remedial action may be selected or approved pursuant to subsection (4) with regard to R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code, if the department determines, based on the administrative record, that 1 or more of the following conditions are satisfied:

(a) Compliance with R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code is technically impractical.

(b) The remedial action selected or approved will, within a reasonable period of time, attain a standard of performance that is equivalent to that required under R 299.3(5) or R 299.3(6) of the Michigan administrative code.

(c) The adverse environmental impact of implementing a remedial action to satisfy R 299.3(5) or R 299.3(6), or both, of the Michigan administrative code would exceed the environmental benefit of the remedial action.

(d) 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 both of the following conditions are met:

(i) It has been demonstrated that there will be no adverse impact on the environment as the result of migration of the hazardous substances during the remedial action, except for that part of the aquifer approved by the department in connection with the remedial action.

(ii) The remedial action includes enforceable land use restrictions or other institutional controls necessary to prevent unacceptable risk from exposure to the hazardous substances, as defined by the cleanup criteria approved as part of the remedial action.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20119 Action to abate danger or threat; administrative order; noncompliance; liability; petition for reimbursement; action in court of claims; evidence.

Sec. 20119. (1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to which the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than \$25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person, to which an administrative order was issued under this section and that complied with the terms of the order, who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section 20126a(3) and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition, which denial is reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable under section 20126 or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120 Selection of remedial action; factors.

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

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

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

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

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

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

(f) Reliability of the alternatives.

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

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

(i) The ability to monitor remedial performance.

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

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

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: Former MCL 324.20120, which pertained to schedule of remedial action plans, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

***** 324.20120a THIS SECTION IS AMENDED EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE: See 324.20120a.amended *****

324.20120a Cleanup criteria; response activity plan; departmental duties; rules.

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

- (a) Residential.
- (b) Nonresidential.
- (c) Limited residential.
- (d) Limited nonresidential.

(2) As an alternative to the categorical criteria under subsection (1), the department may approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements of section 20120b and other applicable requirements of this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site-specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

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

(a) Except as set forth in subdivision (c), for each hazardous substance, use final toxicity values from the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, if available. If the United States Environmental Protection Agency has determined that there is insufficient scientific data to derive a value for inclusion in the integrated risk information system, the department shall not derive or adopt such a value for that hazardous substance. If a value is not available in the integrated risk information system, the department shall apply the following order of precedence when selecting toxicity values:

(i) The best value from the agency for toxic substances and disease registry final minimal risk levels for hazardous substances or the United States Environmental Protection Agency provisional peer-reviewed toxicity values.

(ii) If a value is not available under subparagraph (i), the best final value from the United States Environmental Protection Agency health effects assessment summary table, or final values adopted by other states, the World Health Organization, Canada, or the European Union.

(iii) If a value is not available under subparagraph (i) or (ii), a value developed by the department if there is

sufficient supporting toxicity data and information available in the peer-reviewed published scientific literature.

(b) Apply the following order of precedence when selecting chemical or physical data for the development of cleanup criteria:

(i) The best relevant experimentally measured data.

(ii) If data is not available under subparagraph (i), the best relevant modeled or estimated data.

(c) If the department desires to use a toxicity value or input that is different than a value that is available on the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, or desires to establish a value when the Environmental Protection Agency determined that there was insufficient scientific data to do so when last evaluated by the Environmental Protection Agency, the department shall provide public notice and a written explanation of its intent to do so and conduct a stakeholder process to obtain input. After obtaining stakeholder input, the department may promulgate a rule to use an alternative value in accordance with the order of precedence set forth in subdivision (a)(i) through (iii), if the department demonstrates all of the following:

(i) The integrated risk information system value is based on a determination that is at least 10 years old.

(ii) There is more current data in the peer-reviewed scientific literature that is used on a general basis by the United States Environmental Protection Agency or multiple other regulatory agencies nationally for the purpose of calculating cleanup criteria or standards.

(iii) After assessing the body of evidence for the hazardous substance using a rigorous systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority, the weight of scientific evidence clearly supports the use of the proposed value as best available science for the purpose of calculating generic cleanup criteria.

(d) Use a daily exposure time for inhalation in the exposure intake for a nonresidential worker in an algorithm or equation used to calculate generic cleanup criteria under this part that is equal to the average number of hours, not to exceed 10 hours, that a nonresidential worker spends working in a 5-day work week according to the most appropriate governmental data or information.

(e) When the department considers the pregnant woman as a potential sensitive receptor to address prenatal developmental effects, the department may apply a single-event exposure scenario for a hazardous substance, pursuant to the process set forth in subdivision (f), only when either of the following occurs:

(i) The United States Environmental Protection Agency applies a single-event exposure scenario to establish regional screening levels for that hazardous substance.

(ii) The department demonstrates, after conducting a comprehensive assessment of the specific hazardous substance, that, for that specific hazardous substance, a single exposure may result in an adverse effect and the weight of scientific evidence supports the application of a single-event exposure scenario. The department's comprehensive assessment must evaluate the body of scientific evidence using a systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority. The comprehensive assessment must, if appropriate, take into account all of the following:

(A) Whether there is data available involving single-day exposures to the hazardous substance during pregnancy.

(B) The differences in sensitivity, periods of development, and progression of different types of developmental effects in humans and animals.

(C) Differences in toxicokinetics between species.

(f) Before conducting the comprehensive assessment in subdivision (e)(ii), the department shall provide public notice and a written explanation of its intent to do so. Upon completion of the assessment, the department shall conduct a stakeholder process to obtain input. If, upon obtaining stakeholder input, the department elects to apply a single-event exposure scenario for a particular hazardous substance, the department shall do so in a rule.

(4) If a hazardous substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk under this section shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. If the hazardous substance poses a risk of an adverse health effect other than cancer, cleanup criteria shall be derived using appropriate human health risk assessment methods for that adverse health effect and the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. A hazard quotient of 1.0 shall be used to derive noncancer cleanup criteria. For the noncarcinogenic effects of a hazardous substance present in soils,

the intake shall be assumed to be 100% of the protective level, unless compound and site-specific data are available to demonstrate that a different source contribution is appropriate. If a hazardous substance poses a risk of both cancer and 1 or more adverse health effects other than cancer, cleanup criteria shall be derived under this section for the most sensitive effect.

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standards established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established pursuant to 42 USC 300g-1, or (c), if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States Environmental Protection Agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion is the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted or controlled under provisions of a postclosure plan or a postclosure agreement or by site-specific criteria approved by the department under section 20120b.

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

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

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

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

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

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

(c) The United States Environmental Protection Agency has determined that application of the model is appropriate for the hazardous substance in question.

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

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

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

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

(14) Approval by the department of remedial action based on the categorical standard in subsection (1)(a) or (b) shall be granted only if the pertinent criteria are satisfied in the affected media. The department shall approve the use of probabilistic or statistical methods or other scientific methods of evaluating environmental data when determining compliance with a pertinent cleanup criterion if the methods are determined by the

department to be reliable, scientifically valid, and best represent actual site conditions and exposure potential.

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

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

(17) The department shall promulgate all generic cleanup criteria and target detection limits as rules. Except for generic cleanup criteria and target detection limits developed before January 11, 2018, and those generic cleanup criteria determined as set forth in subsections (5) and (23) and section 20120e(1)(a), generic cleanup criteria and target detection limits, and any modifications or revisions to generic cleanup criteria and target detection limits, are not legally enforceable until promulgated as rules. The generic cleanup criteria and target detection limits are subject to all of the following:

(a) The department may periodically repromulgate rules for any portion of the generic cleanup criteria to adopt and use new toxicity values or chemical or physical data selected pursuant to subsection (3)(a) and (b) or to otherwise update the generic cleanup criteria in accordance with this part to incorporate, as appropriate, knowledge gained through research and studies in the areas of fate and transport and risk assessment taking into account best practices from other states, reasonable and realistic conditions, and sound science. The department may also repromulgate rules that establish target detection limits to update those limits in accordance with this part.

(b) If generic cleanup criteria are included in or relied upon as a basis for decision in a work plan, response activity plan, remedial action plan, postclosure plan, request for certificate of completion, or similar document, that is submitted to the department or approved by the department prior to the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal or prior approval continue to apply to the review, revision, or implementation of the plan, request, or document, as well as to any future review, approval, or disapproval of a no further action report or any part thereof that is based on the plan, request, or document, unless either of the following occur:

(i) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(ii) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure. This subparagraph does not apply if, no later than 6 months after the promulgation of the rule revision changing the cleanup criteria, both of the following conditions are met:

(A) The person has substantially completed all active remediation as set forth in the approved plan, request, or similar document, and only monitoring, maintenance, or postclosure activities remain.

(B) The person submits a request for a no further action approval to the department.

(c) No further action reports that have been approved by the department and that rely on cleanup criteria that have been subsequently revised remain valid, subject to the liability provisions of section 20126(4)(e).

(d) If generic cleanup criteria are included in or relied upon as a basis for decision in a no further action report, other than a no further action report described in subdivision (b)(ii), that is submitted to the department but not yet approved by the department prior to the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal continue to apply to the review, revision, and approval of the report unless either of the following occur:

(i) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(ii) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior generic cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure.

(e) A demonstration by the department director under subdivision (b) or (d) that prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, is appealable in accordance with section 20114e.

(f) Notwithstanding subdivisions (b) through (d), an owner's or operator's obligations under section 20107a shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.

(18) A person demonstrates compliance with indoor air inhalation criteria for a hazardous substance at a

facility under this part if all of the following conditions are met:

(a) The facility is an establishment covered by the classifications provided by sector 31-33 – manufacturing, of the North American Industry Classification System, United States, 2012, published by the Office of Management and Budget.

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, the occupational health standards for air contaminants, R 325.51101 to R 325.51108 of the Michigan Administrative Code.

(c) The hazardous substance is included in the facility's hazard communication program under section 14a of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014a, and the hazard communication rules, R 325.77001 to R 325.77004 of the Michigan Administrative Code, except that, unless the hazardous substance is in use in the facility, the requirement to have a material safety data sheet in the workplace requires only a generic material safety data sheet for the hazardous substance and the labeling requirements do not apply.

(19) The department shall promulgate as rules the algorithms used to calculate, modify, or revise all residential and nonresidential generic cleanup criteria, as well as the tables listing, by hazardous substance, all toxicity, exposure, and other algorithm factors or variables used in the department's calculations, modifications, or revisions.

(20) Calculation and application of toxic equivalency quotients are subject to the following:

(a) The toxic equivalency factors used must only be those adopted by the World Health Organization.

(b) When compounds contributed by 2 or more persons acting independently are combined in a toxic equivalency quotient to assess human health risks, harm is divisible and subject to apportionment of liability under subsections 20129(1) and (2).

(c) To assess human health risks, the toxic equivalency quotient must be compared to generic or site-specific criteria for the reference hazardous substance.

(21) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to leach from soil to groundwater. The groundwater surface water interface protection and the residential drinking water protection exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners unless the department demonstrates that those congeners are leaching at material concentrations through co-solvation.

(22) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to volatilize from soil or groundwater into the air. Vapor inhalation exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners.

(23) For a substance that does not have generic cleanup criteria, if, based on the best available information, the department determines that the substance is a hazardous substance, the department may calculate generic cleanup criteria for that hazardous substance using toxicity values and chemical and physical data selected pursuant to subsection (3)(a) and (b) and in accordance with all other requirements of this part and publish the generic cleanup criteria on the department's website. Within 30 days after publishing the new generic cleanup criteria, the department shall initiate rule-making to promulgate rules for the new criteria by filing a rule-making request under section 39 of the administrative procedures act, 1969 PA 306, MCL 24.239. The rule-making request shall only include the revisions necessary to promulgate the new generic cleanup criteria. The new generic cleanup criteria published pursuant to this subsection take effect and are legally enforceable when published by the department if the department also initiates rule-making to promulgate rules for the new criteria within 30 days. The new generic cleanup criteria published pursuant to this subsection remain effective and legally enforceable until replaced by a final rule or, until the director directs the department to withdraw the rule request under section 66(11) of the administrative procedures act, 1969 PA 306, MCL 24.266, or the time limitation in either section 45(1) or section 66(12) of the administrative procedures act, 1969 PA 306, MCL 24.245 and 24.266, is not met.

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;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

***** 324.20120a.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2024 REGULAR SESSION SINE DIE *****

324.20120a.amended Cleanup criteria; response activity plan; departmental duties; rules.

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

- (a) Residential.
- (b) Nonresidential.
- (c) Limited residential.
- (d) Limited nonresidential.

(2) As an alternative to the categorical criteria under subsection (1), the department may approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements of section 20120b and other applicable requirements of this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site-specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

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

(a) Except as set forth in subdivision (c), for each hazardous substance, use final toxicity values from the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, if available. If the United States Environmental Protection Agency has determined that there is insufficient scientific data to derive a value for inclusion in the integrated risk information system, the department shall not derive or adopt a value for that hazardous substance. If a value is not available in the integrated risk information system, the department shall apply the following order of precedence when selecting toxicity values:

(i) The best value from the agency for toxic substances and disease registry final minimal risk levels for hazardous substances or the United States Environmental Protection Agency provisional peer-reviewed toxicity values.

(ii) If a value is not available under subparagraph (i), the best final value from the United States Environmental Protection Agency health effects assessment summary table, or final values adopted by other states, the World Health Organization, Canada, or the European Union.

(iii) If a value is not available under subparagraph (i) or (ii), a value developed by the department if there is sufficient supporting toxicity data and information available in the peer-reviewed published scientific literature.

(b) Apply the following order of precedence when selecting chemical or physical data for the development of cleanup criteria:

(i) The best relevant experimentally measured data.

(ii) If data is not available under subparagraph (i), the best relevant modeled or estimated data.

(c) If the department desires to use a toxicity value or input that is different than a value that is available on the United States Environmental Protection Agency integrated risk information system, or more recent United States Environmental Protection Agency Office of Pesticide Programs toxicity values for pesticides that are incorporated by the integrated risk information system in place of values that have been archived by the integrated risk information system, or desires to establish a value when the United States Environmental Protection Agency determined that there was insufficient scientific data to do so when last evaluated by the United States Environmental Protection Agency, the department shall provide public notice and a written explanation of its intent to do so and conduct a stakeholder process to obtain input. After obtaining stakeholder input, the department may promulgate a rule to use an alternative value in accordance with the order of precedence set forth in subdivision (a)(i) to (iii), if the department demonstrates all of the following:

(i) The integrated risk information system value is based on a determination that is at least 10 years old.

(ii) There is more current data in the peer-reviewed scientific literature that is used on a general basis by the United States Environmental Protection Agency or multiple other regulatory agencies nationally for the purpose of calculating cleanup criteria or standards.

(iii) After assessing the body of evidence for the hazardous substance using a rigorous systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority, the weight of scientific evidence clearly supports the use of the proposed value as best available science for the purpose of calculating generic cleanup criteria.

(d) Use a daily exposure time for inhalation in the exposure intake for a nonresidential worker in an algorithm or equation used to calculate generic cleanup criteria under this part that is equal to the average number of hours, not to exceed 10 hours, that a nonresidential worker spends working in a 5-day work week according to the most appropriate governmental data or information.

(e) When the department considers the pregnant woman as a potential sensitive receptor to address prenatal developmental effects, the department may apply a single-event exposure scenario for a hazardous substance, under the process set forth in subdivision (f), only when either of the following occurs:

(i) The United States Environmental Protection Agency applies a single-event exposure scenario to establish regional screening levels for that hazardous substance.

(ii) The department demonstrates, after conducting a comprehensive assessment of the specific hazardous substance, that, for that specific hazardous substance, a single exposure may result in an adverse effect and the weight of scientific evidence supports the application of a single-event exposure scenario. The department's comprehensive assessment must evaluate the body of scientific evidence using a systematic review methodology, such as that used by the National Toxicology Program's Office of Health Assessment and Translation and the European Food Safety Authority. The comprehensive assessment must, if appropriate, take into account all of the following:

(A) Whether there is data available involving single-day exposures to the hazardous substance during pregnancy.

(B) The differences in sensitivity, periods of development, and progression of different types of developmental effects in humans and animals.

(C) Differences in toxicokinetics between species.

(f) Before conducting the comprehensive assessment in subdivision (e)(ii), the department shall provide public notice and a written explanation of its intent to do so. On completion of the assessment, the department shall conduct a stakeholder process to obtain input. If, after obtaining stakeholder input, the department elects to apply a single-event exposure scenario for a particular hazardous substance, the department shall do so in a rule.

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

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standards established under section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established under 42 USC 300g-1, or (c), if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States Environmental Protection Agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected, the cleanup criterion is the more stringent of (a), (b), or (c) unless the department determines that compliance with this subsection is not necessary because the use of the aquifer is reliably restricted or controlled under provisions of a postclosure plan or a postclosure agreement or by site-specific criteria approved by the department under section 20120b.

(6) The department shall not approve a remedial action plan or no further action report in categories set forth in subsection (1)(b) to (d), unless the person documents that the current zoning of the property is

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

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

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

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

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

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

(c) The United States Environmental Protection Agency has determined that application of the model is appropriate for the hazardous substance in question.

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

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

(12) In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, 15 USC 2601 to 2697.

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

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

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

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

(17) The department shall promulgate all generic cleanup criteria and target detection limits as rules. Except for generic cleanup criteria and target detection limits developed before January 11, 2018, and those generic cleanup criteria determined as set forth in subsections (5) and (23) and section 20120e(1)(a), generic cleanup criteria and target detection limits, and any modifications or revisions to generic cleanup criteria and target detection limits, are not legally enforceable until promulgated as rules. The generic cleanup criteria and target detection limits are subject to all of the following:

(a) The department may periodically repromulgate rules for any portion of the generic cleanup criteria to

adopt and use new toxicity values or chemical or physical data selected under subsection (3)(a) and (b) or to otherwise update the generic cleanup criteria in accordance with this part to incorporate, as appropriate, knowledge gained through research and studies in the areas of fate and transport and risk assessment taking into account best practices from other states, reasonable and realistic conditions, and sound science. The department may also repromulgate rules that establish target detection limits to update those limits in accordance with this part.

(b) If generic cleanup criteria are included in or relied on as a basis for decision in a work plan, response activity plan, remedial action plan, postclosure plan, request for certificate of completion, or similar document, that is submitted to the department or approved by the department before the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal or prior approval continue to apply to the review, revision, or implementation of the plan, request, or document, as well as to any future review, approval, or disapproval of a no further action report or any part of the no further action report that is based on the plan, request, or document, unless either of the following occurs:

(i) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(ii) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure. This subparagraph does not apply if, no later than 6 months after the promulgation of the rule revision changing the cleanup criteria, both of the following conditions are met:

(A) The person has substantially completed all active remediation as set forth in the approved plan, request, or similar document, and only monitoring, maintenance, or postclosure activities remain.

(B) The person submits a request for a no further action approval to the department.

(c) No further action reports that have been approved by the department and that rely on cleanup criteria that have been subsequently revised remain valid, subject to the liability provisions of section 20126(4)(e).

(d) If generic cleanup criteria are included in or relied on as a basis for decision in a no further action report, other than a no further action report described in subdivision (b)(ii), that is submitted to the department but not yet approved by the department before the effective date of a rule revising those cleanup criteria, then the generic cleanup criteria effective at the time of submittal continue to apply to the review, revision, and approval of the report unless either of the following occurs:

(i) The person making the submittal voluntarily elects to apply the revised cleanup criteria.

(ii) The department director makes a site-specific demonstration, based on clear and convincing evidence, that the prior generic cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, given the totality of circumstances at the site, including any site-specific factors that reduce exposure or risk, such as the existence of land or resource use restrictions that reduce or restrict exposure.

(e) A demonstration by the department director under subdivision (b) or (d) that prior cleanup criteria are no longer protective of the public health, safety, or welfare, or the environment, is appealable in accordance with section 20114e.

(f) Notwithstanding subdivisions (b) to (d), an owner's or operator's obligations under section 20107a are based on the current numeric cleanup criteria under subsection (1) or site-specific criteria approved under section 20120b.

(18) A person demonstrates compliance with indoor air inhalation criteria for a hazardous substance at a facility under this part if all of the following conditions are met:

(a) The facility is an establishment covered by the classifications provided by sector 31-33 – manufacturing, of the North American Industry Classification System, United States, 2012, published by the Office of Management and Budget.

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, the occupational health standards for air contaminants, R 325.51101 to R 325.51108 of the Michigan Administrative Code.

(c) The hazardous substance is included in the facility's hazard communication program under section 14a of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014a, and the hazard communication rules, R 325.77001 to R 325.77004 of the Michigan Administrative Code, except that, unless the hazardous substance is in use in the facility, the requirement to have a material safety data sheet in the workplace requires only a generic material safety data sheet for the hazardous substance and the labeling requirements do not apply.

(19) The department shall promulgate as rules the algorithms used to calculate, modify, or revise all residential and nonresidential generic cleanup criteria, as well as the tables listing, by hazardous substance, all

toxicity, exposure, and other algorithm factors or variables used in the department's calculations, modifications, or revisions.

(20) Calculation and application of toxic equivalency quotients are subject to the following:

(a) The toxic equivalency factors used must only be those adopted by the World Health Organization.

(b) When compounds contributed by 2 or more persons acting independently are combined in a toxic equivalency quotient to assess human health risks, harm is divisible and subject to apportionment of liability under subsections 20129(1) and (2).

(c) To assess human health risks, the toxic equivalency quotient must be compared to generic or site-specific criteria for the reference hazardous substance.

(21) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to leach from soil to groundwater. The groundwater surface water interface protection and the residential drinking water protection exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners unless the department demonstrates that those congeners are leaching at material concentrations through co-solvation.

(22) Polychlorinated dibenzodioxin and dibenzofuran congeners are not likely to volatilize from soil or groundwater into the air. Vapor inhalation exposure pathways are not applicable or relevant when assessing polychlorinated dibenzodioxin and dibenzofuran congeners.

(23) For a substance that does not have generic cleanup criteria, if, based on the best available information, the department determines that the substance is a hazardous substance, the department may calculate generic cleanup criteria for that hazardous substance using toxicity values and chemical and physical data selected under subsection (3)(a) and (b) and in accordance with all other requirements of this part and publish the generic cleanup criteria on the department's website. Within 30 days after publishing the new generic cleanup criteria, the department shall initiate rule-making to promulgate rules for the new criteria by filing a rule-making request under section 39 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.239. The rule-making request must only include the revisions necessary to promulgate the new generic cleanup criteria. The new generic cleanup criteria published under this subsection take effect and are legally enforceable when published by the department if the department also initiates rule-making to promulgate rules for the new criteria within 30 days. The new generic cleanup criteria published under this subsection remain effective and legally enforceable until replaced by a final rule, or the time limitation in section 45(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.245, is not met.

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;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018;—Am. 2024, Act 7, Eff. (sine die).

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120b Numeric or nonnumeric site-specific criteria.

Sec. 20120b. (1) Subject to subsection (4), the department shall 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.

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

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

(b) Alter any value, parameter, or assumption used to calculate generic criteria, with the exception of the risk targets specified in section 20120a(4).

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

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

(e) Use probabilistic methods of calculation.

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

(g) Take into account a land use or resource use restriction.

(3) If there is not a generic cleanup criterion for a hazardous substance in regard to a relevant exposure pathway, releases of the hazardous substance may be addressed through any of the following means, singly or in combination:

(a) Eliminate exposure to the hazardous substance through removal, containment, exposure barriers, or land use or resource use restrictions.

(b) If another hazardous substance is expected to have similar fate, mobility, bioaccumulation, and toxicity characteristics, apply the cleanup criteria for that hazardous substance as a surrogate. Before using a surrogate, the person shall notify the department, provide a written explanation why the surrogate is suitable, and request approval. If the department does not notify the person that it disapproves the use of the chosen surrogate within 90 days after receipt of the notice, the surrogate is considered approved. A hazardous substance may be used as a surrogate for a single hazardous substance or for a class or category of hazardous substances.

(c) For venting groundwater, use a modeling demonstration, an ecological demonstration, or a combination of both, consistent with section 20120e(9) and (10), to demonstrate that the hazardous 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.

(d) If toxicity information is available for the hazardous substance, develop site-specific cleanup criteria for the hazardous substance pursuant to subsections (1) and (2), or develop simplified site-specific screening criteria based upon toxicity and concentrations found on site, and request department approval. If the department does not notify the person that it disapproves the site-specific criteria or screening criteria within 90 days after receipt of the request, the criteria are considered approved.

(e) Any other method approved by the department.

(4) Site-specific criteria approved by the department are not invalidated by subsequent changes to the generic criteria for that hazardous substance, including changes to toxicity, exposure, or other values or variables used by the department to calculate the generic criteria.

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;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

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

324.20120d Public meeting; notice; publication; summary document; administrative record; comments or information not included in record.

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

(2) Before approval of a proposed remedial action plan, response activity plan, or no further action report based on categorical criteria provided for in section 20120a(1)(c) or (d) or site-specific criteria provided for in section 20120a(2) and where the department determines that there is significant public interest, the department shall do all of the following:

(a) Publish a notice and brief summary of the proposed remedial action plan, response activity plan, or no further action report.

(b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan, response activity plan, or no further action report.

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

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

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

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

(d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan, response activity plan, or no further action report.

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

(4) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan, response activity plan, or no further action report. In addition, the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan. The administrative record shall contain all of the following:

(a) Remedial investigation data regarding the facility.

(b) If applicable, a feasibility study and remedial actions planned or completed.

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

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

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

(f) Other information appropriate to the facility.

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

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 380, Imd. Eff. July 24, 1996;—Am. 1996, Act 383, Imd. Eff. July 24, 1996;—Am. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120e Response activity providing for venting groundwater; definitions.

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

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

(b) A variance from the surface water quality standards as approved by the department under part 31. A variance shall be used only if the variance is requested by a person performing response activities with respect to venting groundwater.

(c) Mixing zone-based GSI criteria established under this part, which are consistent with part 31. The use of mixing zone-based GSI criteria shall be allowable in any of the categories provided for in section 20120a(1) and (2) and shall be allowable for criteria based on chronic-based or acute-based surface water quality criteria.

(d) Site-specific criteria established under section 20120b or this subdivision or a combination of both. The use of mixing zones established under this part may be applied to, or included as, site-specific criteria. Biological criteria may be used as site-specific criteria. If biological criteria are used, then sentinel wells shall be used for a period as needed to determine if the biological criteria may be exceeded due to future increased mass loading to the surface water from the venting plume. Numerical evaluations of analyses of the samples from the sentinel wells shall be performed in connection with this determination.

(e) An ecological demonstration under subsection (9).

(f) A modeling demonstration under subsection (10).

(2) Whole effluent toxicity testing shall not be required or be a criterion or be the basis for any criteria under subsection (1) for venting groundwater except for samples taken at the GSI.

(3) The pathway addressed by GSI criteria under subsection (1) shall be considered a relevant pathway when a remedial investigation or application of best professional judgment leads to the conclusion that a hazardous substance in groundwater is reasonably expected to vent to surface water in concentrations that exceed the generic GSI criteria. The factors to be considered in determining whether the pathway is relevant include all of the following:

(a) Whether there is a hydraulic connection between groundwater and the surface water in question.

(b) The proximity of surface water to source areas and areas of the groundwater contaminant plume that currently, or may in the future be expected to, exceed the generic GSI criteria.

(c) Subject to subsection (23)(g), whether the receiving surface water is a surface water of the state as that term is defined in part 31 and rules promulgated under that part.

(d) The direction of groundwater movement.

(e) The presence of artificial structures or natural features that would alter hydraulic pathways. This includes, but is not limited to, highly permeable zones, utility corridors, and seawalls.

(f) The mass of hazardous substances present at the facility that may affect groundwater.

(g) Documented facility-specific evidence of natural attenuation, if any.

(h) Whether or not a sewer that has an outfall to surface water has openings in the portion of the sewer where the sewer and the groundwater contaminant plume intersect that allows the groundwater contaminant plume to migrate into the sewer. If it can be demonstrated that the sewer is sufficiently tight to prevent inflow to the sewer where the groundwater contaminant plume intersects the sewer or if the sewer is otherwise impervious, based on accepted industry standards, to prevent inflow from groundwater into the sewer at that location, then the GSI pathway with respect to the sewer is not relevant and shall not apply.

(4) For purposes of determining the relevance of a pathway under subsection (3), both of the following apply:

(a) GSI monitoring wells are not required in order to make a determination if other information is sufficient to make a judgment that the pathway is not relevant.

(b) Fate and transport modeling may be used, if appropriate, to support a professional judgment.

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

venting groundwater:

(a) Evaluation activities associated with a response activity providing for venting groundwater using alternative monitoring points, an ecological demonstration, a modeling demonstration, or any combination of these. If a person who is liable under section 20126 decides not to take additional response activities to address the GSI pathway based on alternative monitoring points, an ecological demonstration, a modeling demonstration, or a determination under subsection (14), or any combination of these, the person shall notify the department and request department approval. A notification and request for approval under this subdivision shall not be considered an admission of liability under section 20126.

(b) Response activities that rely on GSI monitoring wells to demonstrate compliance under subsection (1)(a).

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

(d) Response activities implemented by a person who is not liable under section 20126 that rely on a modeling demonstration, or rely on an ecological demonstration, or a combination of these, to demonstrate compliance with subsection (1)(a).

(6) A person shall proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points or rely on an ecological demonstration, a modeling demonstration, or a combination of these, to demonstrate compliance with subsection (1)(a) if 1 or more of the following conditions apply to the venting groundwater:

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

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

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

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

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

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

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

(7) A person shall proceed under section 20114b to undertake response activities that rely on monitoring from alternative monitoring points, or rely on an ecological demonstration, or rely on a modeling demonstration or that use mixing zone-based GSI criteria, or any combination of these, as applicable, to demonstrate compliance with subsection (1)(b), (c), (d), (e), or (f).

(8) Alternative monitoring points may be used to demonstrate compliance with subsection (1) if the alternative monitoring points meet the following standards:

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

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

(ii) Documentation of the approximate boundaries of the areas where the groundwater plume vents to surface water. This documentation shall include information about the substrate character and geology in the areas where groundwater vents to surface water.

(iii) Documentation that the venting area identified and alternative monitoring points include points that are reasonably representative of the higher concentrations of hazardous substances present in the groundwater at the GSI.

(b) The alternative monitoring points allow for venting groundwater to be sampled at the GSI. Devices used for sampling at alternative monitoring points may be beyond the water's edge and on top of or into the sediments, at the GSI.

(c) Sentinel monitoring points are used in conjunction with the alternative monitoring points for a period as needed to assure that any potential exceedance of an applicable surface water quality standard can be identified with sufficient notice to allow additional response activity, if needed, to be implemented that will

address the exceedance. Sentinel monitoring points shall include, at a minimum, monitoring points upland of the surface water body.

(9) An ecological demonstration may be used to demonstrate compliance with subsection (1) if the ecological demonstration meets the following:

(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 compliance with subsection (1) if the modeling demonstration meets all of the following:

(a) The modeling methodology is generally recognized as a means to model venting groundwater plumes or is an innovative method that is scientifically justifiable.

(b) The results of the modeling show that the venting plume at the GSI complies with the applicable criteria under subsection (1) or supports the ecological demonstration, as applicable.

(c) The model is supported by site-specific information and appropriate field measurements.

(11) If alternative monitoring points or an ecological demonstration or a modeling demonstration or a combination of these is used for the response activity and sentinel wells are installed, a contingency plan for potential additional response activity may be required.

(12) If a person intends to utilize mixing zone-based GSI criteria under subsection (1)(c) or site-specific criteria under subsection (1)(d) in conjunction with alternative monitoring points, an ecological demonstration, or a modeling demonstration, or a combination of these, the person shall submit to the department a response activity plan that includes the following:

(a) A demonstration of compliance with the standards in subsection (6), (7), or (8), as applicable.

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

(c) A site-specific monitoring plan that takes into account the basis for the site-specific criterion or mixing zone criterion.

(13) 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.

(ii) Submit a notice of intent to the department to propose an alternative monitoring point or perform an ecological demonstration or perform a modeling demonstration or a combination of these. The notice shall include a schedule for submission of the proposal.

(iii) Submit a notice of intent to the department to propose a site-specific criterion or a mixing zone criterion under sections 20120a and 20120b. The notice shall include a schedule for submission of the proposal.

(c) The department may approve a schedule as submitted under subdivision (b) or direct reasonable modifications in the schedule. The department may grant extensions of time for actions required under

subdivision (b) and for activities in an approved or department-modified schedule if the person is acting in good faith and site conditions inhibit progress or completion of the activity. The department's decision to grant an extension or impose a schedule modification shall consider the practical problems associated with carrying out the response activity and the nature and extent of the exceedances of applicable GSI criteria.

(14) Response activity beyond evaluations shall not be required if venting groundwater has no effect or only a de minimis effect on a surface water body. A determination under this subsection may be based on mass flow and rate of groundwater movement calculations. A person evaluating a venting plume that determines that the plume has no effect or only a de minimis effect on a surface water body shall notify the department of the determination. The department may, within 90 days after receipt of the determination, disapprove the determination. If the department does not notify the person that it disapproves the determination within the 90-day period, then the person's determination shall be final.

(15) If a person has controlled the source of groundwater contamination and has demonstrated that compliance with GSI criteria developed under this part is unachievable, that person may file a technical impracticability waiver request with the department. The technical impracticability waiver shall document the reasons why compliance is unachievable. The department shall respond to the waiver within 180 days with an approval, request for additional information, or denial that provides a detailed description of the reasons for denial.

(16) Natural attenuation of hazardous substances in venting groundwater upgradient of the GSI is an acceptable form of remediation and may be relied upon in lieu of any active remediation of the groundwater. Natural attenuation may be occurring by way of dispersion, diffusion, sorption, degradation, transformative reactions, and other methods.

(17) A permit shall not be required under part 31 for any venting groundwater contamination plume that is addressed under this section.

(18) Wetlands shall be protected for the groundwater surface water pathway to the extent that particular designated uses, as defined by part 31, which are specific to that wetland would otherwise be impaired by a groundwater contamination plume venting to surface water in the wetland.

(19) If a groundwater contamination plume is entering a sewer that discharges to surface water, and the GSI pathway is relevant, all of the following apply:

(a) If the groundwater enters a storm sewer that is owned or operated by an entity that is subject to federal municipal separate storm sewer system regulations and a part 31 permit for the discharges from the system, the contaminated groundwater entering the sewer is subject to regulation by the entity's ordinance regarding illicit discharges, but the regulation of the contaminated groundwater shall not prevent the use of subdivision (b) or other provisions of this section to determine the need for response activity under this part.

(b) All of the following apply:

(i) The compliance monitoring point may be a groundwater monitoring well, if proposed by the person performing the response action, or that person may choose another point for measuring compliance under this subparagraph.

(ii) A mixing zone may be applied that accounts for the mixing which occurs in the receiving surface water into which the sewer system discharges.

(iii) Attenuation that occurs in the sewer system prior to the sewer system outfall to surface water shall be considered.

(iv) The compliance point is at the sewer system outfall to surface water, which shall account for any applicable mixing zone for the sewer system outfall.

(v) Monitoring to determine compliance may be performed at a location where the contaminated groundwater enters the sewer or downstream from that location but upstream of the sewer outfall at the surface water, if practicable and representative. Appropriate back calculation from the compliance point to the monitoring point may be applied to account for mixing and other attenuation that occurs in the sewer system before the compliance point. As appropriate, such a monitoring point may require another monitoring point in the sewer system upstream from the area where the contaminated groundwater enters the sewer. Upstream sampling in the sewer may be performed to determine source contribution.

(vi) The contaminant mass flow, and the rate and amount of groundwater flow, into the sewer may be considered and may result in a determination that the migration into the sewer is de minimis and does not require any response activity in addition to the evaluation that leads to such determination.

(c) Factors in subdivision (b) may be considered and applied to determine if an illicit discharge is occurring and how to regulate the discharge.

(20) If the department denies a response activity plan containing a proposal for alternative monitoring points, an ecological demonstration, or a modeling demonstration, or a combination of these, the department shall state the reasons for denial, including the scientific and technical basis for the denial. 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.

(21) This section is intended to allow a person to demonstrate compliance with requirements under this part for a response activity involving venting groundwater, and, for this purpose, this section shall be given retroactive application and shall be available for use by such person. A person performing response activity involving venting groundwater under any judgment, consent judgment, order, consent order, or agreement that was entered prior to the effective date of the 2012 amendatory act that amended this section may pursue, alter, or terminate such response activity based on any provision of this section subject to any necessary entry or approval by the court in a case of a judgment, consent judgment, or court order or any necessary amendment procedure to amend an agreement. The department shall not oppose use of any provision of this section as grounds to amend an agreement or for a court to modify or terminate response activity obligations involving venting groundwater under a judgment, consent judgment, or court order. A person performing response activity involving venting groundwater under any remedial action plan, interim response plan designed to meet criteria, interim response action plan, or response activity plan that was approved by the department prior to the effective date of the 2012 amendatory act that amended this section may submit an amended plan to the department for approval that pursues, alters, or terminates response activity based on any provision of this section. The department shall not oppose use of any provision of this section in approving an amended plan.

(22) A person that undertakes response activity under subsection (4) or that takes action under subsection (13)(b) shall not be considered to be making an admission of liability by undertaking such response activities or taking such action.

(23) As used in this section:

(a) "Alternative monitoring points" means alternative monitoring points authorized under subsection (8).

(b) "Ecological demonstration" means an ecological demonstration authorized under subsection (1)(e).

(c) "GSI" means groundwater-surface water interface, which is the location at which groundwater enters surface water.

(d) "GSI monitoring well" means a vertical well installed in the saturated zone as close as practicable to surface water with a screened interval or intervals that are representative of the groundwater venting to the surface water.

(e) "Mixing zone-based GSI criteria" means mixing zone-based GSI criteria authorized under subsection (1)(c).

(f) "Modeling demonstration" means a modeling demonstration authorized under subsection (1)(f).

(g) "Surface water" does not include any of the following:

(i) Groundwater.

(ii) Hyporheic zone water.

(iii) Water in enclosed sewers.

(iv) Water in drainage ways and ponds used solely for wastewater or storm water conveyance, treatment, or control.

(v) Water in subgrade utility runs and utility lines and permeable fill in and around them.

History: Add. 2010, Act 228, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 190, Imd. Eff. June 20, 2012.

Compiler's note: Former MCL 324.20120e, which pertained to recalculation of cleanup criteria, was repealed by Act 603 of 2006, Eff. Jan. 3, 2008.

Enacting section 1 of Act 190 of 2012 provides:

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

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20120f Vapor intrusion; evaluation and management methods.

Sec. 20120f. (1) To satisfy the requirements of this part, a person may evaluate, address, and manage the vapor intrusion to the indoor air inhalation exposure pathway for a hazardous substance using any of the following methods:

(a) Meeting all of the conditions in section 20120a(18).

(b) For purposes of evaluating and addressing the vapor intrusion to the indoor air inhalation pathway in connection with any release of petroleum as described as a regulated substance defined in section 21303(h)(ii), the process outlined in the Interstate Technology Regulatory Council petroleum vapor intrusion guidance document (PVI-1, Oct-14).

(c) An approach, using multiple lines of evidence, demonstrating that the vapor intrusion to the indoor air inhalation exposure pathway does not pose an unacceptable risk to the public health, safety, or welfare, or the environment consistent with all or a combination of 1 or more of the following:

(i) The United States Environmental Protection Agency "OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air" (OSWER Publication 9200.2-154, June 2015).

(ii) The Interstate Technology Regulatory Council petroleum vapor intrusion guidance document (PVI-1, Oct-14).

(iii) The United States Environmental Protection Agency's "Documentation for EPA's Implementation of the Johnson and Ettinger Model to Evaluate Site Specific Vapor Intrusion into Buildings Version 6.0" (USEPA, September 2017).

(d) Indoor air sampling that accounts for actual site conditions and demonstrates acceptable indoor air concentrations resulting from vapor intrusion compared to any of the following:

(i) When criteria in subparagraph (ii) are not available, regional screening levels published by the United States Environmental Protection Agency that are applicable to residential or nonresidential land use, as appropriate, at cancer and noncancer risk levels specified in section 20120a(4).

(ii) Applicable indoor air inhalation generic cleanup criteria promulgated by the department.

(iii) Site-specific criteria approved by the department.

(e) An alternative method or model for assessing vapor intrusion risk that utilizes only site-specific variables or a combination of site-specific or building-specific variables if the method or model is scientifically sound and supported by adequate site information. An alternative method or model under this subdivision to address contamination that has migrated beyond the boundaries of the property that is the source of the release must be approved by the department.

(f) A method or model allowed in a promulgated rule.

(2) The indoor air inhalation pathway is not a reasonable and relevant pathway for purposes of response activities undertaken under this part if there is no occupied building or planned occupied building that is within the following distances from subsurface volatile hazardous substance contamination:

(a) For petroleum contamination, within both a 30-foot lateral separation distance and the permissible vertical separation distance under the Interstate Technology Regulatory Council petroleum vapor intrusion guidance document (PVI-1, Oct-14).

(b) For any volatile hazardous substance contamination other than petroleum, within both a 100-foot lateral separation distance and a 100-foot vertical separation distance.

(3) If there is an occupied building or planned occupied building within the distances from subsurface volatile hazardous substance contamination in subsection (2), the indoor air inhalation pathway is not necessarily a reasonable and relevant pathway; rather, further evaluation is needed to determine whether the indoor air inhalation pathway is reasonable and relevant considering site-specific factors such as site-specific geology or hydrogeology, measured contaminant concentrations, the existence of institutional controls, including land use or resource use restrictions, or the existence of exposure controls, exposure barriers, or other mitigating factors, including building ventilation or use.

History: Add. 2018, Act 581, Imd. Eff. Dec. 28, 2018.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20121 Land or resource use restrictions; restrictive covenants or other instruments.

Sec. 20121. (1) A person may impose land or resource use restrictions to reduce or restrict exposure to hazardous substances, to eliminate a potential exposure pathway, to assure the effectiveness and integrity of containment or exposure barriers, to provide for access, or to otherwise assure the effectiveness and integrity of response activities undertaken at a property.

(2) A restrictive covenant used to impose land or resource use restrictions under subsection (1) shall, at a minimum, include all of the following:

(a) A legal description of the property that is subject to the restrictions that is sufficient to identify the property and is sufficient to record the document with the register of deeds for the county where the property is located. If the property being restricted constitutes a portion of a parcel, the restrictive covenant shall also include 1 of the following:

(i) A legal description and a scaled drawing of the portion that is restricted.

- (ii) A survey of the portion that is restricted.
 - (iii) Another type of description or drawing approved by the department.
 - (b) A brief narrative description of response activities and environmental contamination at the property or identify a publicly accessible information repository where that information may be obtained, such as a public library.
 - (c) A description of the activity and use limitations imposed on the property. The description should be drafted, to the extent practicable, using plain, everyday language in an effort to make the activity and use limitations understandable to the reader without having to reference statutory or regulatory text or department guidance.
 - (d) A grant to the department of the ability to enforce the restrictive covenant by legal action in a court of appropriate jurisdiction.
 - (e) A signature of the property owner or someone with the express written consent of the property owner unless the restrictive covenant has been ordered by a court of competent jurisdiction. For condominium common elements and similar commonly owned property, the restrictive covenant may be signed by an authorized person.
- (3) In addition to the requirements of subsection (2), a restrictive covenant may contain other information, restrictions, requirements, and rights agreed to by the persons signing it, including, but not limited to, 1 or more of the following:
- (a) A provision requiring notice to the department or other persons upon transfer or before construction or changes in use that could affect environmental contamination or increase exposure at the property.
 - (b) A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.
 - (c) A provision subordinating a property interest that has priority, if agreed to by the person that owns the superior interest.
 - (d) A provision granting the right to enforce the restrictive covenant to persons in addition to the department, including, but not limited to, the local unit of government in which the property is located or the United States environmental protection agency.
 - (e) A provision obligating the owner of the land subject to the restrictive covenant to inspect or maintain exposure barriers, permanent markers, fences, or other aspects of the response action or remedy.
 - (f) A provision limiting the restrictive covenant to a specific duration, or terminating the restrictive covenant upon the occurrence of a specific event or condition, such as the completion of additional response activities that are approved by the department.
 - (g) A provision providing notice of hazardous substances that exceed aesthetic-based cleanup criteria.
- (4) A restrictive covenant used to impose land or resource use restrictions under this section shall be recorded with the register of deeds for the county where the property is located.
- (5) A restrictive covenant under this section that is recorded under subsection (4) does both of the following:
- (a) Runs with the land.
 - (b) Is perpetual unless, by its terms, it is limited to a specific duration or is terminated by the occurrence of a specific event.
- (6) Upon recording, a copy of the restrictive covenant shall be provided to the department together with a notice that includes the street address or parcel number for the property or properties subject to the covenant. A restrictive covenant that meets the requirements of this section need not be approved by the department except as expressly required elsewhere in this part.
- (7) The following instruments may impose the land or resource use restrictions described in subsection (1) if they meet the requirements of a restrictive covenant under this section:
- (a) A conservation easement.
 - (b) A court order or judicially approved settlement involving the property.
- (8) An institutional control may be used to impose the land or resource use restrictions described in subsection (1) instead of or in addition to a restrictive covenant. Institutional controls that may be considered include, but are not limited to, 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 under this section shall be published and maintained in the same manner as a zoning ordinance and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance or prior to the lapsing or revocation of the ordinance.
- (9) Alternative instruments and means may be used, with department approval, to impose the land or

resource use restrictions described in subsection (1), including, but not limited to, licenses and license agreements, contracts with local, state, or federal units of government, health codes or regulations, or government permitting requirements.

(10) The department, with the approval of the state administrative board, may place restrictive covenants described in this section on deeds of state-owned property.

(11) A restrictive covenant recorded pursuant to this part, whether recorded before or after the effective date of the amendatory act that added this section, is valid and enforceable even if 1 or more of the following situations exist:

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

(12) Restrictive covenants or other instruments that impose land or resource use restrictions that were recorded before the effective date of the amendatory act that added this section are not invalidated or made unenforceable by this section. Except as provided in subsection (11), this section only applies to a restrictive covenant or other instrument recorded after the effective date of the amendatory act that added this section. This section does not invalidate or render unenforceable any instrument or interest that is otherwise enforceable under the law of this state.

History: Add. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Compiler's note: Former MCL 324.20121, which pertained to creation of office of environmental cleanup facilitation, was repealed by Act 71 of 1995, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20122-324.20125 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed sections pertained to creation and duties of science advisory council, report to legislature, and approval of remedial action plans.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20126 Liability under part.

Sec. 20126. (1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

(c) An owner or operator of a facility who becomes an owner or operator on or after June 5, 1995, unless the owner or operator complies with either of the following:

(i) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure, and the owner or operator provides the baseline environmental assessment to the department and subsequent purchaser or transferee within 6 months after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(ii) The owner or operator requests and receives from the department a determination that its failure to comply with the time frames in subparagraph (i) when conducting and submitting a baseline environmental assessment was inconsequential.

(d) A person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the

person, by any other person, at a facility owned or operated by another person and containing the hazardous substance. This subdivision does not include any of the following:

(i) A person who, on or after June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

(ii) A person who, prior to June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product unless the state has incurred response activity costs associated with these secondary materials prior to December 17, 1999. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, that has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products that may otherwise be produced from a raw or virgin material.

(iii) A person who arranges the lawful transport or disposal of any product or container that is commonly used in a residential household, is in a quantity commonly used in a residential household, and was used in the person's residential household.

(iv) A person who stores or uses or arranges for the storage or use of a beneficial use by-product or inert material in compliance with part 115.

(e) A person who accepts or accepted any hazardous substance for transport to a facility selected by that person.

(f) The estate or trust of a person described in subdivisions (a) to (e).

(2) Subject to section 20107a, an owner or operator who complies with subsection (1)(c)(i) and (ii) is not liable for contamination existing at the facility at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination existing at the facility. Subsection (1)(c) does not alter a person's liability with regard to a subsequent release or threat of release at a facility if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part with respect to contamination at a facility resulting from a release or threat of release unless the person is responsible for an activity causing that release or threat of release:

(a) The state or a local unit of government that acquired ownership or control of a facility involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part; a local unit of government to which ownership or control of a facility is transferred by the state or by another local unit of government that is not liable under subsection (1); or the state or a local unit of government that acquired ownership or control of a facility by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) A state or local unit of government that holds or acquires an easement interest in a facility, holds or acquires an interest in a facility by dedication in a plat, or by dedication pursuant to 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an interest in a facility for a transportation or utility corridor, including sewers, pipes, and pipelines, or public right of way.

(c) A person who holds an easement interest in a facility or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person who owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) The state or a local unit of government that leases property to a person if the state or the local unit of government is not liable under this part for environmental contamination at the property.

(f) A person who owns or occupies residential real property if hazardous substance use at the property is consistent with residential use.

(g) A person who acquires a facility as a result of the death of the prior owner or operator of the facility, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(h) A person who did not know and had no reason to know that the property was a facility. To establish that the person did not know and did not have a reason to know that the property was a facility, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this subdivision shall take into account any specialized knowledge or experience on the part of the person, the

relationship of the purchase price to the value of the property if uncontaminated by a hazardous substance, commonly known or reasonable ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(i) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subdivision does not apply to property owned by the utility.

(j) A lessee who uses the leased property for a retail, office, or commercial purpose regardless of the level of the lessee's hazardous substance use.

(k) A person who holds a license, easement, or lease, or who otherwise occupies or operates property, for the purpose of siting, constructing, operating, or removing a wind energy conversion system or any component of a wind energy conversion system. As used in this subdivision, "wind energy conversion system" means that term as defined in section 13 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1013.

(l) A person who owns or occupies a residential condominium unit for both of the following:

(i) Contamination of the unit if hazardous substance use within the unit is consistent with residential use.

(ii) Contamination of any general common element, limited common element, or common area in which the person has an ownership interest or right of occupation by reason of owning or occupying the residential condominium unit.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) The owner or operator of property at or from which there is a release or threat of release and the release or threat of release is subject to corrective action under part 111 or is being addressed as part of a corrective action under part 111. A corrective action under part 111 may be implemented using processes and cleanup criteria, as appropriate, under this part. However, a release or threat of release that is subject to or that has been or is being addressed through part 111 corrective action shall not also be subject to remediation and department oversight under this part.

(b) A lender that engages in or conducts a lawful marshalling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the facility.

(c) The owner or operator of property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(d) A person who owns or operates a facility in which the release or threat of release was caused solely by 1 or more of the following:

(i) An act of God.

(ii) An act of war.

(iii) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person who is liable under this section.

(e) Any person for environmental contamination addressed in a no further action report that is approved by the department or is considered approved under section 20114d. However, a person may be liable under this part for the following:

(i) A subsequent release not addressed in the no further action report if the person is otherwise liable under this part for that release.

(ii) Environmental contamination that is not addressed in the no further action report and for which the person is otherwise liable under this part.

(iii) If the no further action report relies on land use or resource use restrictions, an owner or operator who desires to change those restrictions is responsible for any response activities necessary to comply with this part for any land use or resource use other than the land use or resource use that was the basis for the no further action report.

(iv) If the no further action report relies on monitoring necessary to ensure the effectiveness and integrity of the remedial action, an owner or operator who is otherwise liable for environmental contamination addressed in a no further action report is liable under this part for additional response activities necessary to address any potential exposure to the environmental contamination demonstrated by the monitoring in excess of the levels relied on in the no further action report.

(v) If the remedial actions that were the basis for the no further action report fail to meet performance objectives that are identified in the no further action report, an owner or operator who is otherwise liable for environmental contamination addressed in the no further action report is liable under this part for response activities necessary to satisfy the performance objectives or otherwise comply with this part.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the facility is not liable under this part for costs or damages as a

result of response activity taken in response to a release or threat of release. For a lender, this subsection applies only to response activity undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof.

(7) Notwithstanding subsection (1)(c), if the owner or operator of the facility became the owner or operator of the facility on or after June 5, 1995 and prior to March 6, 1996, and the facility contains an underground storage tank system as defined in part 213, that owner or operator is liable under this part only if the owner or operator is responsible for an activity causing a release or threat of release.

(8) An owner or operator who was in compliance with subsection (1)(c)(i) and (ii) prior to December 14, 2010 is considered to be in compliance with subsection (1)(c)(i) and (ii).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 1996, Act 115, Imd. Eff. Mar. 6, 1996;—Am. 1999, Act 196, Imd. Eff. Dec. 17, 1999;—Am. 2010, Act 227, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012;—Am. 2014, Act 179, Imd. Eff. June 17, 2014;—Am. 2014, Act 542, Imd. Eff. Jan. 15, 2015.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20126a Joint several liability; costs of amounts recoverable; interest; recovery; permitted release; action by attorney general; action brought by state or other person.

Sec. 20126a. (1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(b) Any other costs of response activity reasonably incurred under the circumstances by any other person.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of response activity recoverable under subsection (1) shall also include all costs of response activity reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of response activity under this part, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department, for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake response activity for a permitted release. Recovery by any person for response activity costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a hazardous substance or for response activity or the costs of response activity.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment because of an actual or threatened release from a facility, the attorney general may bring an action against any person who is liable under section 20126 or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 227, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20127 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to liability.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20128 Liability of response activity contractor; effect of warranty; liability of employer to employee; governmental employee exempt from liability; definitions; liability of person in rendering care, assistance, or advice on release of petroleum; effect of exception under subsection (6); burden of establishing liability.

Sec. 20128. (1) Except as otherwise provided in this section, a person who is a response activity contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the response activity contractor that is negligent, grossly negligent, or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a response activity contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a response activity while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the response activity contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Response activity contract" means a written contract or agreement entered into by a response activity contractor with 1 or more of the following:

(i) The department.

(ii) The department of public health.

(iii) A person who is arranging for response activity under this part.

(b) "Response activity contractor" means 1 or both of the following:

(i) A person who enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract.

(ii) A person who is retained or hired by a person described in subparagraph (i) to provide any service relating to a response activity.

(6) Notwithstanding any other provision of law, a person is not liable for response activity costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person who is liable under section 20126 who is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person who is liable under section 20126 who is a responsible party is liable for any response activity costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan, or the official designated by the lead agency to coordinate and direct response activity under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, chapter 758, 86 Stat. 862, 33 U.S.C. 1321.

(d) "Petroleum" means that term as it is defined in part 213.

(e) "Responsible party" means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990, Public Law 101-380, 33 U.S.C. 2701.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20129 Divisibility of harm and apportionment of liability; liability for indivisible harm; contribution; factors in allocating response activity costs and damages; reallocation of uncollectible amount; effect of consent order; resolution of liability in approved settlement; contribution protection; effect of state obtaining less than complete relief; contribution from person not party to consent order; subordinate rights in action for contribution.

Sec. 20129. (1) If 2 or more persons acting independently are liable under section 20126 and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit his or her liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 20126 for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person who is liable under section 20126 during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating response activity costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the hazardous substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person who has resolved his or her liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 20126 unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person who is not liable under this part, including a person who was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and who is otherwise in compliance with section 20107a, shall be considered to have resolved his or her liability to the state in an administratively approved settlement under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, and shall by operation of law be granted contribution

protection under 42 USC 9613(f)(2) and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person who has resolved his or her liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 20126 who has not resolved his or her liability.

(8) A person who has resolved his or her liability to the state for some or all of a response activity in an administrative or judicially approved consent order may seek contribution from any person who is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person who has resolved his or her liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20129a Repealed. 2010, Act 228, Imd. Eff. Dec. 14, 2010.

Compiler's note: The repealed section pertained to petition for exemption from liability of owner or operator of facility after June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20130 Indemnification, hold harmless, or similar agreement or conveyance; subrogation.

Sec. 20130. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person who is liable under section 20126 to the state for evaluation or response activity costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20131 Limitations on liability; circumstances requiring total costs and damages.

Sec. 20131. (1) Except as provided in subsection (2), the liability under this part for each release or threat of release shall not exceed the total of all the costs of response activities, fines, and exemplary damages, plus \$50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(2) Notwithstanding the limitations in subsection (1), the liability of a person under this part shall be the full and total costs and damages listed in subsection (1), in either of the following circumstances:

(a) The release or threatened release of a hazardous substance was the result of willful misconduct or gross negligence of the party.

(b) The primary cause of the release or threat of release was a knowing violation of applicable safety, construction, or operating standards or regulations.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20132 Covenant not to sue generally; future enforcement action.

Sec. 20132. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by response activities, whether that action is on a facility or off a facility, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite response activity consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The response activity has been approved by the department.

(2) The state shall provide a person, to which the department is authorized under subsection (1) to issue a covenant not to sue for the portion of response activity described in subdivision (a) or (b), with a covenant not to sue with respect to future liability to the state under this part for a future release or threatened release, and a person provided the covenant not to sue is not liable to the state under section 20126 with respect to that release or threatened release at a future time. The portion of response activity to which the covenant not to sue pertains is either of the following:

(a) The transport and secure disposition off site of hazardous substances in a facility meeting the requirements of sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the department has required off-site disposition and has rejected proposed remedial action that is consistent with the rules promulgated under this part and that does not include off-site disposition.

(b) The treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of the substances, so that, in the judgment of the department, the substances no longer present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment; no by-product of the treatment or destruction process presents any significant hazard to the public health, safety, or welfare, or the environment; and all by-products are themselves treated, destroyed, or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment.

(3) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that remedial action has been completed in accordance with the requirements of this part at the facility that is the subject of the covenant.

(4) In assessing the appropriateness of a covenant not to sue granted under subsection (1) and any condition to be included in a covenant not to sue under subsection (1) or (2), the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(b) The nature of the risks remaining at the facility.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the response activity provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(e) The extent to which the technology used in the response activity is demonstrated to be effective.

(f) Whether the fund or other sources of funding would be available for any additional response activities that might eventually be necessary at the facility.

(g) Whether response activity will be carried out, in whole or in significant part, by persons who are liable under section 20126.

(5) A covenant not to sue under this section is subject to the satisfactory performance by a person of his or her obligations under the agreement concerned.

(6) Except for the portion of the remedial action that is subject to a covenant not to sue under subsection (2), a covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (3) that remedial action has been completed at the facility concerned.

(7) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (6) if other terms, conditions, or requirements of the agreement

containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the facility.

(8) The state may include any provisions providing for future enforcement action under section 20119 or 20137 that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, welfare, and the environment.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20133 Redevelopment or reuse of facility; covenant not to sue; conditions; demonstration; limitation; reservation of right to assert claims; irrevocable right of entry; monitoring compliance.

Sec. 20133. (1) The state may provide a person who proposes to redevelop or reuse a facility, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 20126 and 20107a, if all of the following conditions are met:

- (a) The covenant not to sue is in the public interest.
- (b) The covenant not to sue will yield new resources to facilitate implementation of response activity.
- (c) The covenant not to sue would, when appropriate, expedite response activity consistent with the rules promulgated under this part.
- (d) Based upon available information, the department determines that the redevelopment or reuse of the facility is not likely to do any of the following:
 - (i) Exacerbate or contribute to the existing release or threat of release.
 - (ii) Interfere with the implementation of response activities.
 - (iii) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the facility.
- (e) The proposal to redevelop or reuse the facility has economic development potential.

(2) A person who requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

- (a) That the person is financially capable of redeveloping and reusing the facility in accordance with the covenant not to sue.
- (b) That the person is not affiliated in any way with any person who is liable under section 20126 for a release or threat of release at the facility.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a facility and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the facility, including, but not limited to, those claims arising from any of the following:

- (a) The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the facility to the extent such claims otherwise arise under this part.
- (b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting response activities approved by the department.
- (c) Failure to comply with section 20107a.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing response activity related to the release or threat of release addressed by the covenant not to sue for the purposes listed in section 20117(3)(a) through (e) and for monitoring compliance with the covenant not to sue.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20134 Consent order; settlement.

Sec. 20134. (1) The department and the attorney general may enter into a consent order with a person who is liable under section 20126 or any group of persons who are liable under section 20126 to perform a response activity if the department and the attorney general determine that the persons who are liable under

section 20126 will properly implement the response activity and that the consent order is in the public interest, will expedite effective response activity, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons who are liable under section 20126 of any portion of response activity at the facility. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other hazardous substances at the facility:

(i) The amount of the hazardous substances contributed by that person to the facility.

(ii) The toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(i) The person is the owner of the real property on or in which the facility is located.

(ii) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility.

(iii) The person did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a hazardous substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20134a Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to transfer of exempt status by state or local unit of government.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20135 Civil action; jurisdiction; conditions; notice; awarding costs and fees; rights not impaired; venue.

Sec. 20135. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility or threat of release from a facility, other than a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 20126 for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare, or the environment from a release or threatened release in relation to that facility.

(b) A person who is liable under section 20126 for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that facility.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare, or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the

violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

- (i) The department.
- (ii) The attorney general.
- (iii) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that an award is appropriate.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20135a Access to property; action by court.

Sec. 20135a. (1) A person who is liable under section 20126 or a lender that has a security interest in all or a portion of a facility may file a petition in the circuit court of the county in which the facility is located seeking access to the facility in order to conduct response activities approved by the department. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the property owner or operator for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the response activities.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the owner or operator of the property to which access is granted is not liable for either of the following:

(a) A release caused by the response activities for which access is granted unless the owner or operator is otherwise liable under section 20126.

(b) For conditions associated with the response activity that may present a threat to public health or safety.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20136 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to grant programs.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20137 Additional relief; failure of facility owner or operator to report hazardous substance release; civil fine; providing copy of complaint to attorney general; jurisdiction;

judicial review; intervenor.

Sec. 20137. (1) Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to section 20126a.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response activity costs and damages.

(e) A civil fine of not more than \$1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than \$10,000.00 for each day of violation of this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part.

(g) A civil fine of not more than \$25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.

(h) Enforcement of an administrative order issued pursuant to section 20119.

(i) Enforcement of information gathering and entry authority pursuant to section 20117.

(j) Enforcement of the reporting requirements under section 20114.

(k) Any other relief necessary for the enforcement of this part.

(2) An owner or operator of a facility from which a hazardous substance is released that is determined to be reportable under section 20114(1)(b)(i), other than a permitted release, who fails to notify the department within 24 hours after obtaining knowledge of the release or who submits in such notification any information that the person knows to be false or misleading, is subject to a civil fine of not more than \$25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good-faith efforts by the violator to comply with this subsection.

(3) A person who is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to section 20120a(1)(a) or (b), as appropriate for the use of the property, is subject to a civil fine as provided in this part unless a fine or penalty has already been imposed for the release under another part of this act. However, a civil fine shall not be imposed under this subsection against a person who made a good-faith effort to prevent the release and to comply with the provisions of this part. This subsection does not apply to a release from an underground storage tank system as defined in part 213.

(4) If an action is brought under this part by a plaintiff other than the attorney general, the plaintiff shall, at the time of filing, provide a copy of the complaint to the attorney general.

(5) Except as otherwise provided in this part, an action brought under this part may be brought in the circuit court for the county of Ingham, in the county in which the defendant resides, has a place of business, or in which the registered office of a defendant corporation is located, or in the county where the release occurred.

(6) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following:

(a) An action to recover response costs, damages, or for contribution.

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order.

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement.

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department, if the action is filed after the completion of the response activity.

(e) An action by the state pursuant to section 20126a(6) to compel response activity.

(7) In any judicial action under this part, judicial review of any issues concerning the selection or adequacy of a response activity taken, ordered, or agreed to by the state are limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the

action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

(8) In an action commenced under this part, any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the court finds the person's interest is adequately represented by an existing party.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20138 Unpaid costs and damages as lien on facility; priority; commencement and sufficiency of lien; petition; notice of hearing; increased value as lien; perfection, duration, and release of lien; document stating completion of response activities.

Sec. 20138. (1) All unpaid costs and damages for which a person is liable under section 20126 constitute a lien in favor of the state upon a facility that has been the subject of response activity by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for response activity at the facility for which the person is responsible.

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of the state in recovering response costs at a facility, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the facility subject to response activity that takes priority over all other liens and encumbrances that are or have been recorded on the facility.

(b) A lien upon real or personal property or rights to real or personal property, other than the facility, owned by the person described in subsection (1), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subdivision:

(i) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(ii) Assets held expressly for the purpose of financing a dependent's college education.

(iii) Up to \$500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than \$25,000.00 of this amount may be cash or securities.

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (2), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the real property subject to response activity. A lien shall not be granted under subsection (2) against the owner of the facility if the owner is not liable under section 20126.

(4) In addition to the lien provided in subsections (1) and (2), if the state incurs costs for response activity that increases the market value of real property that is the location of a release or threatened release, the increase in value caused by the state funded response activity, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(5) A lien provided in subsection (1), (2), or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (2) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(6) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in section 20140.

(7) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (5).

(8) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (7), has made a determination that the person liable under section 20126 has completed all of the response activity at the real property pursuant to the approved remedial action plan, the department shall execute and file with the notice of release of lien a document stating that all response activities required in the approved remedial action plan have been completed.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20139 Applicability of penalties; conduct constituting felony; penalties; jurisdiction; criminal liability for substantial endangerment to public health, safety, or welfare; determination; knowledge attributable to defendant; award; rules; "serious bodily injury" defined.

Sec. 20139. (1) The penalties provided in this section only apply to a release that occurs after July 1, 1991.

(2) A person who does any of the following is guilty of a felony and shall be fined not less than \$2,500.00 or more than \$25,000.00 for each violation:

(a) Knowingly releases or causes a release contrary to applicable federal, state, or local requirements or contrary to any permit or license held by that person, if that person knew or should have known that the release could cause personal injury or property damage.

(b) Intentionally makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part.

(c) Intentionally renders inaccurate any monitoring device or record required to be maintained under this part.

(d) Misrepresents his or her qualifications under section 20114d or 20114e.

(3) In addition to a fine imposed under subsection (2), the court may impose an additional fine of not more than \$25,000.00 for each day during which the release occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than \$25,000.00 and not more than \$50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction.

(4) Upon a finding by the court that the action of a criminal defendant prosecuted under this section poses or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsections (2) and (3), a fine of not less than \$1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant criminally liable for substantial endangerment under subsection (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following has occurred:

(a) The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care that any reasonable person would observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) The department may pay an award of up to \$10,000.00 to an individual that provides information leading to the arrest and conviction of a person for a violation of this section. The department shall promulgate rules that prescribe criteria for granting awards under this section. An award shall not be made under this section until rules are promulgated prescribing the criteria for making awards. Awards under this subsection may be paid from the Michigan environmental assurance fund, if enabling legislation creating the

fund is enacted into law.

(8) As used in this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20140 Limitation periods; effect of subsection (3).

Sec. 20140. (1) Except as provided in subsections (2) and (3), the limitation period for filing actions under this part is as follows:

(a) For the recovery of response activity costs and natural resources damages pursuant to section 20126a(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of response activity costs pursuant to section 20126, at any time during the response activity, if commenced not later than 3 years after the date of completion of all response activity at the facility.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

(2) For recovery of natural resources damages that accrued prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

(3) For recovery of response activity costs that were incurred prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

(4) Subsection (3) is curative and intended to clarify the original intent of the legislature and applies retroactively.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2000, Act 254, Imd. Eff. June 29, 2000.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20141 Repealed. 1995, Act 71, Imd. Eff. June 5, 1995.

Compiler's note: The repealed section pertained to citizens review board.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA

324.20142 Compliance as bar to certain claims; exceptions.

Sec. 20142. (1) Except as provided in section 20126a(5), a person who has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of response activities under part 17, part 31, or common law.

(2) This section does not bar any of the following:

(a) Tort claims unrelated to performance of response activities.

(b) Tort claims for damages which result from response activities.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 20107a.

History: Add. 1995, Act 71, Imd. Eff. June 5, 1995.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA