



# Amendments to Part 201 of Public Act 451

Presented to the West Michigan Air &  
Waste Management Association

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# Affirmative Duties

- Liable owner/operator of a facility must:
  1. Determine nature and extent of release
  2. Make notifications:
    - Report release of a reportable quantity (1989 federal definition) to DEQ within 24 hours of knowledge
    - Notify DEQ and affected property owners of hazardous substances migrating beyond property boundary above unrestricted residential criteria within 30 days of knowledge
    - Notify the DEQ and surface property owner of release from oil/gas activities resulting in hazardous substance levels above unrestricted residential criteria within 30 days of release knowledge



# Affirmative Duties

3. Immediately stop or prevent the release
4. Immediately implement source control or removal measures
5. Immediately eliminate any threat of fire, explosion or direct contact hazards
6. Immediately remove hazardous substance in liquid phase
7. Diligently pursue response activities to achieve cleanup criteria
  - Conduct self-implemented response activities; OR
  - Submit a Response Activity Plan for DEQ approval



# Affirmative Duties

8. Upon written request by DEQ, do one or more of the following:
  - Provide & implement a **Response Activity Plan** for interim response activities
  - Provide & implement a **Response Activity Plan** for evaluation activities
  - Submit a **Response Activity Plan** to DEQ for approval of a remedial action plan that achieves cleanup
  - Implement a DEQ-approved **Response Activity Plan**
  - **Complete remedial actions and submit a No Further Action report**
  - Take any other response activity determined by DEQ to be sound and necessary



# Response Activities

- Broadly defined under the statute to include:
  - Evaluations
    - Investigations, studies, sampling, analysis, feasibility studies
  - Interim responses
    - Cleanup of hazardous substances prior to a remedial action, limiting access, replacing water supplies, temporary relocation of people
  - Remedial actions
    - Cleanup, removal, containment, isolation, destruction, treatment, monitoring, maintenance of hazardous substances
  - Demolition
  
- Voluntary response activity allowed and encouraged EXCEPT:
  - When site is subject to legal order/agreement/decre
  - When response activity relies on local ordinance, mixing zone, groundwater cleanup waiver, or site-specific cleanup criteria



# Response Activity Plans

- May be required by DEQ or may be voluntarily submitted to DEQ for approval prior to work
- DEQ review in 150 days (180 days if public participation required)
- DEQ to provide determination w/ specificity: approve, approve w/ conditions, deny, or cite insufficient information to make decision
- Default approval if DEQ does not act within review time
- Can revise/re-submit RAP or appeal technical issues to Response Activity Review Panel



# No Further Action Reports

- Following completion of remedial actions, a NFA report may be required by DEQ or may be voluntarily submitted to DEQ for a determination
- Include a Post-Closure Plan for remedial actions requiring land and/or resource use restrictions
- Include proposed Post-Closure Agreement for remedial actions requiring financial assurance (more than *de minimis*)



# No Further Action Reports

- Requires affidavits from submitter and environmental professional (EP)
  - EP must attach certificate of insurance w/ \$1M-\$2M limits
- 10-year record retention requirement
- DEQ review in 150 days (180 if public participation required)
- DEQ determination w/ specificity: approve, deny, or cite insufficient information. If approved, DEQ will issue NFA letter.
- Default approval if DEQ does not act within review time
- DEQ must review and provide written response for 90% of NFA reports submitted each year
- Can revise/re-submit NFA report or appeal technical issues to Response Activity Review Panel
- Re-openers for conditions not addressed, failure to comply with land/resource use restrictions, remedy failure



# Post-Closure Plan

- Required for remedial actions that do not achieve unrestricted residential cleanup
- Contents:
  1. Land/resource use restrictions that assure containment, barrier, or other restrictions that assure effectiveness of remedy
  2. Permanent markers to describe nature of restricted areas
    - However, permanent markers not required for:
      - Unlimited non-residential closures
      - Groundwater use restrictions
      - Future construction requirements/limitations
      - Soil barriers of asphalt, concrete, landscaping unless soil conditions are:
        - Acutely toxic, reactive, corrosive, ignitable, explosive, flammable
        - Concentrations > 10x applicable soil direct contact criteria



# Post-Closure Agreement

- Required for remedial actions needing financial assurance (more than *de minimis*)
- Contents of proposed Agreement submitted w/ NFA report:
  - Provisions for monitoring, O&M, and oversight of remedial action
  - Financial assurance to pay for monitoring, O&M, oversight, etc.
  - Provision to provide 14-day notice of intent to convey property
  - Provision granting DEQ reasonable access
- Agreement may modify terms of Post-Closure Plan by:
  - Allowing use of institutional control in place of restrictive covenant
  - Waiving requirement for permanent markers



# Review Panel

- Panel to advise Director on technical disputes concerning RAPs and NFA reports. Director makes final decision.
- 15 members appointed by Director for 3-yr terms
- 5 members selected by Director to review each petition matching members' expertise with technical dispute
- Members must have relevant scientific/technical credentials, relevant experience, and be current in their field
- State employees (current and in preceding 3 years) and those with contractual relationships with the state (representing >5% annual gross revenue) can not be on Panel
- Member selected for dispute resolution can not work for the petitioner or take work concerning the disputed facility for 3 years before or 1 year after decision



# Dispute Appeal Process

- Person may appeal DEQ decision re: technical issue in RAP or NFA report by submitting petition to Director
- Petition to include disputed issue, relevant facts, data, analysis, opinion, documentation, and \$3,500 fee.
- Director may negotiate dispute resolution within 45 days w/o convening Panel (fee returned)
- Director may schedule meeting of Panel within 45 days of petition
- Petitioner and DEQ may present positions to Panel at meeting
- Panel issues written recommendation with rationale to Director and petitioner within 45 days of meeting
- Director makes and issues final decision within 60 days of Panel recommendation
- Final decisions subject to circuit court appeal



# Cleanup Criteria

## OLD

- Residential
- Commercial
- Recreational
- Industrial
- Limited residential
- Limited commercial
- Limited recreational
- Limited industrial
- Site-specific

## NEW

- Residential
- Non-residential\*
- Limited residential
- Limited non-residential
- Site-specific

\*Non-residential criteria are former industrial criteria



# Site-specific Cleanup Criteria

- Site-specific cleanup criteria may:
  - Use same or different algorithms as those used to calculate generic criteria
  - Alter any value or assumption used to calculate generic criteria
  - Take depth of contamination and subsequent potential for exposure into consideration
  - Be based on information related to the specific facility or general applicability (peer-reviewed literature)
  - Use probabilistic calculation methods
  - Use nonlinear-threshold-based calculations where scientifically justified



# GSI Pathway

- Demonstrate compliance by meeting:
  - Generic GSI criteria (which are specified as Part 31 Water Quality Standards)
  - Mixing-zone based criteria (allowable in “unlimited” categories)
  - Site-specific criteria
- Exceedance of FAV requires DEQ approval of Response Activity Plan (20114b) if using alternative monitoring points



# GSI Pathway

- No Part 31 compliance requirements for venting groundwater that complies with Part 201
  - Mixing zone application process description removed (changes?)
- “Surface water” does not include enclosed sewers or utility lines for GSI assessment
  - GSI monitoring wells accordingly may not be required adjacent to sewers



# Modifications Related to Alternative GSI Monitoring Points

- Provisions removed/modified:
  - Preapproval for installation not required; 30 day notice required prior to reliance for response activities
  - Requirement that alternative points be more representative than GSI wells removed
  - Documentation of dispersion or diffusion factors removed
  - Chemical, physical, or biological processes that reduce hazardous substance concentrations between GSI wells and alternative points be identified (“and documented” removed)
- Locations where groundwater enters surface water now must be “sufficiently” not “comprehensively” identified