

DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE DIVISION

ENVIRONMENTAL CONTAMINATION RESPONSE ACTIVITY

(By authority conferred on the department of environmental quality by section 20104 of 1994 PA 451, MCL 324.20104 and Executive Order No. 1995-18, MCL 324.99903)

PART 1. GENERAL PROVISIONS

R 299.5101 Definitions; A to L.

Rule 101. As used in these rules:

(a) "Act" means 1994 PA 451, MCL 324.101 et seq., known as the natural resources and environmental protection act.

(b) "Ambient air" means the atmosphere outside of buildings.

(c) "Applicable criterion" means a cleanup criterion for a relevant pathway. A criterion is not an applicable criterion if the exposure pathway is not a relevant pathway at the facility or if the exposure it addresses is reliably restricted by a restrictive covenant or institutional control or other mechanism allowed for under part 201 of the act and these rules.

(d) "Aquifer" means a geological formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(e) "Complete," when used to describe an interim response activity or a remedial action that is intended to attain the cleanup criteria established under section 20120a of the act, means that the person has performed and documented the following response activity:

(i) If the response activity is intended to attain the criteria established under section 20120a(1)(a) to (e) and (17) of the act, then all of the following are satisfied:

(A) The response activity complies with R 299.5526 or R 299.5532, as applicable, including requirements for approval of response activity.

(B) The applicable numerical criteria cleanup criteria under section 20120a(1)(a) to (e) and (17) of the act have been achieved.

(C) The appropriate notice has been recorded in compliance with section 20120b(2) of the act and R 299.5524, if notice is required.

(D) The appropriate notice or land or resource use restrictions has been provided to department and to the local unit of government in accordance with R 299.5524 and to the zoning authority for the local unit of government in compliance with section 20120b(9) of the act, if required.

(ii) If the response activity is intended to attain the criteria established under section 20120a(1)(f) to (j) and (17) or section 20120a(2) of the act, then all of the following are satisfied:

(A) The response activity complies with R 299.5526 or R 299.5532, as applicable, including requirements for approval of response activity.

(B) All physical components of the response activity have been constructed, have been demonstrated to be capable of meeting the performance standards applicable to the response activity, and are functioning effectively.

(C) Any applicable numerical cleanup criteria under section 20120a(1)(f) to (j) and (17) or section 20120a(2) of the act that are not associated with assessing long-term performance of treatment or containment systems have been achieved and performance standards have been established for those components of the response activity that are associated with long-term performance.

(D) The person conducting the response activity has complied with section 20120b(4) of the act, if applicable.

(E) The person conducting the response activity has provided the appropriate notice or land or resource use restrictions to the department and the local unit of government under R 299.5524 and to the zoning authority of the local unit of government in compliance with section 20120b(9) of the act, if required.

(F) The person conducting the response activity has put in place all applicable elements delineated in section 20120b(3)(a) to (e) of the act, is complying with them, and has established a reliable mechanism to assure their ongoing performance.

(f) "C<sub>sat</sub>" means the concentration in soil at which the solubility limits of the soil pore water, the vapor phase limits of the soil pore air, and the absorptive limits of the soil particles have been reached. As used in these rules, C<sub>sat</sub> is a theoretical threshold above which a free phase liquid hazardous substance may exist.

(g) "Direct contact" means exposure to hazardous substances through ingestion or dermal contact.

(h) "Groundwater" means water below the land surface in a zone of saturation.

(i) "Incident" means the subject of a report to the department which will be evaluated to determine whether there is sufficient evidence to conclude that a site of environmental contamination exists.

(j) "Institutional control" means a measure which is approved by the department, which takes a form other than a restrictive covenant, and which limits or prohibits certain activities that may interfere with the integrity or effectiveness of a remedial action or result in exposure to hazardous substances at a facility, or which provides notice about the presence of a hazardous substance at a facility in concentrations that exceed only an aesthetic-based cleanup criterion.

(k) "Land or resource use restrictions" means the provisions of any of the following measures that are used to limit or prohibit activities that may interfere with the integrity or effectiveness of a response activity, or to limit or prohibit activities that may result in exposure to hazardous substances at a facility, or to provide notice about the presence of a hazardous substance at a facility in concentrations that exceed only an aesthetic-based cleanup criterion:

(i) A restrictive covenant.

(ii) A notice of approved environmental remediation.

(iii) An institutional control, which may be a local ordinance or any form of preapproved institutional control, such as a notice of aesthetic impact.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5103 Definitions; M to V.

Rule 103. As used in these rules:

(a) "Method detection limit" means the minimum concentration of a hazardous substance which 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.

(b) "Notice of aesthetic impact" means a document that describes conditions at a facility that result from the presence of hazardous substances at concentrations which exceed only cleanup criteria that are based on aesthetic impacts.

(c) "Notice of approved environmental remediation" means the document called for in section 20120b(2) of the act that describes the category or categories of land use that are allowable at a facility, in light of the degree of cleanup completed and the zoning of the property.

(d) "Operation and maintenance" means the activities necessary to provide for continued effectiveness and integrity of a response activity after construction of the response activity measure or measures. The term includes activities such as groundwater removal and treatment.

(e) "Practical quantitation level" means the lowest level that can be reliably achieved within specified limits of precision and accuracy under routine laboratory conditions and based on quantitation; precision and accuracy; normal operation of the laboratory; and the practical need in a compliance monitoring program to have a sufficient number of laboratories available to conduct the analyses.

(f) "Preapproved institutional control" means a form of institutional control that has been approved by the department for use without facility-specific approval of the implementing document by the department.

(g) "Public funds" means money from the environmental response fund created under section 20108 of the act, or the environmental protection bond fund created under part 195 of the act, or other funds appropriated to the department to carry out its responsibilities under the act.

(h) "Relevant pathway" means an exposure pathway that is reasonable and relevant because there is a reasonable potential for exposure to a hazardous substance to occur to a human or nonhuman receptor from a source or release. The components of an exposure pathway are a source or release of a hazardous substance, an exposure point, an exposure route, and, if the exposure point is not the source or point of release, a transport medium. The existence of a municipal water supply, exposure control measure, exposure barrier or other similar feature does not automatically make an exposure pathway irrelevant.

(i) "Remedial design" means the preparation of construction plans and specifications necessary for implementation of a remedial action or interim response activity.

(j) "Remedial investigation" means an evaluation to determine the nature, extent, and impact of a release or threat of release and the collection of data necessary to conduct a feasibility study of alternate response activities or to conduct a remedial action at a facility.

(k) "Sewer" means an enclosed structure used to convey stormwater or sanitary sewage, or both, and does not include an open drain.

(l) "Target detection limit" means the detection limit for a hazardous substance in a given environmental medium that is specified by the department on a list that it publishes not more than once a year. 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.

(m) "Volatile" means any compound that exhibits a Henry's law constant equal to or greater than 0.00001 atmosphere-cubic meter per mole at standard temperature and pressure.

History: 1990 AACS; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5105 Terms defined in the act; rules referred to in the act.

Rule 105. (1) A term defined in part 3 or part 201 of the act has the same meaning when used in these rules.

(2) Certain rules that were promulgated in 1990 under part 201 of the act, and that were in effect before these amendatory rules, are referred to in part 201 of the act. The rule references are affected by modification and renumbering of rules that resulted from these amendatory rules. Rules referred to in part 201 of the act, and the corresponding revised rule number or numbers, where a new rule or rules are applicable, are as follows:

(a) In section 20118 of the act, the rule references are unaffected.

(b) In section 20120a(5) of the act, the rule reference is unaffected.

(c) In section 20120a(8) of the act, R 299.5709 to R 299.5711(4), R 299.5711(6) to R 299.5715 and R 299.5727 correspond to R 299.5708 to R 299.5738.

(d) In section 20120a(9) of the act, R 299.5711(2) corresponds to R 299.5718 and R 299.5722.

(e) In section 20120a(11) of the act, the rule reference is unaffected.

(f) In section 20120a(13) of the act, the reference to R 299.5709 is unaffected and R 299.5711 corresponds to R 299.5718, R 299.5720, and R 299.5722.

(g) In section 20120a(17) of the act, R 299.5717 corresponds to R 299.5728 and R 299.5730.

(h) In section 20120d(2) of the act, R 299.5515 corresponds to R 299.5532.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5107 Applicability; authority of department to act under other statutes not limited by rules.

Rule 107. (1) These rules shall apply to all facilities without regard to whether the property is publicly or privately owned.

(2) These rules apply to the release or threat of release of a hazardous substance and not to hazardous substances that are being lawfully used or manufactured in operations at a facility or are being properly stored at a facility in compliance with all applicable laws and regulations.

(3) The department may undertake, using public funds, any response activity to address a release or threat of release of a hazardous substance where the department has determined that there is a threat to the public health, safety, or welfare or to the environment.

(4) Nothing in these rules shall be construed to limit the authority of the department to act pursuant to other existing statutes and rules.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5109 Compliance with other environmental statutes and rules required; storage, treatment, and disposal facility utilization.

Rule 109. (1) Any action taken under these rules shall be in compliance with all applicable environmental statutes and rules.

(2) Any response activity that involves the storage, transport, treatment, or disposal of hazardous substances off-site shall utilize only vehicles and facilities licensed, if a license is required, under appropriate federal or state permits or authorization and other legal requirements.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5111 Construction of rules.

Rule 111. (1) These rules shall not be construed to relieve a person from any obligation for the cost of evaluation or response activity related to a facility for which the person is liable or to relieve a person from the obligation to pay a fine, settlement, penalty, or damages.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5113 Identification of persons who are liable.

Rule 113. (1) The department shall, as soon as is practical upon identification of a facility, initiate appropriate actions to identify persons who are liable under section 20126 of the act for the facility.

(2) The department shall, as appropriate, use existing information-gathering authorities and coordinate the investigation with other state, local, and federal agencies.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5115 Notice to persons who are liable.

Rule 115. (1) Except as provided in subrule (3) of this rule, before beginning response activity at a facility with public funds, the department shall provide notice to persons who are liable who have been identified, as described in this rule.

(2) The notice, in the form of a letter mailed to the most recent known addresses of all identified persons who are liable, shall include all of the following information:

(a) A description of the response activity being undertaken or proposed to be undertaken by the state and, unless the activity in question is alternate water service, as that term is defined in part 4 of these rules, a request that the person who is liable carry out those actions in a timely manner. The time allowed for response shall be included in the letter and shall reflect the exigencies of the situation requiring response and the complexity of the requested action.

(b) A description of the nature and extent of contamination believed by the department to exist at the facility.

(c) The reason why the department believes that the person is liable.

(d) The names and addresses of other persons who are liable who have been or are being sent notice letters for the facility in question.

(e) The location of files used by the department in developing the notice.

(f) Notification that if a person who is liable fails to adequately implement the necessary response activity, the department may do either or both of the following if appropriate to protect the public health, safety, or welfare or the environment:

(i) Request that the attorney general take enforcement action.

(ii) Undertake the required response activity utilizing public funds. Any expenditure of public funds for this purpose is subject to cost recovery actions by the state.

(3) The requirements of this rule shall not apply when the department has not determined that a person is liable or when the notice process would unreasonably delay the response.

(4) The notice described in subrule (1) of this rule shall be sent by a means that provides proof of delivery.

(5) A copy of the notice described in subrule (1) of this rule shall be provided to the local unit of government in which the facility is located.

History: 1990 MR 6, Eff. July 12, 1990; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.5117 Reportable quantities applicable to section 20114(1)(b) and (3) of act.

Rule 117. For release reports made after the effective date of this rule, the requirements of section 20114(1)(b) of the act shall be based on reportable quantities of hazardous substances established under 40 C.F.R. §§302.4 and 302.6 (July 1, 2001), which are adopted by reference in these rules and which are available for inspection at the Lansing office of the department, 525 West Allegan Street, Lansing, Michigan. Copies of the provisions may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (Stock Number 869-004-00157-8) at a cost as of the time of adoption of these rules of \$41.00, or from the Department of Environmental Quality, Remediation and Redevelopment Division, 525 West Allegan Street, Lansing, Michigan 48909-7926, at cost.

History: 2002 MR 24, Eff. Dec. 21, 2002.