



**MICHIGAN
CHAMBER
OF
COMMERCE**

MEMORANDUM

To: Members of the House Committee on New Economy and Quality of Life

From: Doug Roberts, Jr., Director of Environmental and Energy Policy

Subject: House Bills 6358-6363 and Senate Bills 437 and 1345-49 (Brownfield Redevelopment)

Date: September 21, 2010

The purpose of this memo is to inform you that Michigan Chamber of Commerce **supports House Bills 6358-6363 (Haveman, Clemente, Stanley, Tyler, Segal, Knollenberg) and Senate Bills 437 and 1345-49 (Allen, Birkholz, Sanborn, Basham, Gleason, and Thomas)**. The package of legislation proposes a number of key reforms to the state's environmental cleanup program which, if implemented, would encourage cleanup and redevelopment of Brownfield properties throughout Michigan.

Background

In the mid-1990s, policymakers in Michigan recognized the need to develop a comprehensive strategy to clean up and put into productive use contaminated properties. This strategy made Michigan a leader in the Brownfield Redevelopment movement. Unfortunately, today, Michigan's program is falling behind other states. Michigan's program has become over-burdensome and few closures of sites are now being granted. The inability to obtain a risk-based closure approval, as is available in the other Great Lakes states, places Michigan at a disadvantage for jobs and investment.

Chamber Legislative Priorities

The Michigan Chamber Board of Directors, in the adoption of the Chamber's 2009-10 legislative priorities, has called for the Legislature to take aggressive action to help improve the cleanup program. Specifically, Michigan Chamber members called for the following:

- Support reprioritizing the efforts of the agency to focus on achieving closure of sites. Metrics should be established that record annual closures being achieved.
- Support the creation of an administrative review board made up of qualified technical experts that would act as an appeals board on decisions being made by the state agency.
- Support efforts to streamline the decision-making process. There should be hard deadlines on all reviews and consequences if the agency does not hit the deadlines. Shorter time frames should be established for reviews of low-risk sites. Automatic approvals should be established if the agency fails to meet the time lines.
- Continue support of the current causation-based liability scheme and risk-based cleanup standards contained in Part 201. These standards are essential components for a successful Brownfield Redevelopment cleanup program.

House Bills 6358-6363 and Senate Bills 437 and 1345-49 contain many of these key elements recommended by members of the Michigan Chamber.

KEY ELEMENTS IN ENVIRONMENTAL CLEANUP REFORM PACKAGE
House Bills 6358-6363 and
Senate Bills 437 and 1345-49

1. Closure/Finality: HB 6358 and SB 1345 – Sec. 20114D

Achieving closure of a site, or finality, is a critical component of compliance with Part 201. Unfortunately, Part 201's cleanup process, as described by the 2007 Public Sector Consultant report, is "overly complex and the endpoint is ambiguous." This has stunted Michigan's growth because national lenders demand site closures that offer a level of certainty similar to that available in other states. House Bill 6358 and Senate Bill 1345 make a number of changes to facilitate getting to the end of the process so that closure can occur. The legislation streamlines the MDNRE approval process for 'No Further Action' reports, bringing it in line with most other states.

2. Self Implemented Closure: HB 6358 and SB 1345- Sec 20114D

House Bill 6358 and Senate Bill 1345 streamline the self-implementation cleanup process by utilizing private sector consultants. States like New Jersey and Massachusetts have recently moved to a process that allows private sector consultants to be utilized to assist in the closure process. Private sector consultants have immense expertise and can be used to help speed up the closure process and reduce the cost for state government. Under the language in HB 6358 and SB 1345, a person can submit a 'No Further Action' report with a signed affidavit from a private sector consultant attesting that the work is complete and in compliance with the law. The legislation establishes response times of 150 days, or 180 days if a public hearing is required. If the agency fails to meet the time frames, the 'No Further Action' report is deemed approved.

3. Appointed Review Board: HB 6359 and SB 437 - Sec. 20114E

There are a number of very scientific and technical issues within the cleanup program. Often times during the cleanup process, disputes between the applicant and the agency arise over the science or the technical standards. Today, the only remedy is to go to court. The courts are not always the best venue for detailed scientific disputes. House Bill 6359 and Senate Bill 437 establish a review board to which applicants can appeal scientific and technical matters. The board is comprised of independent qualified technical experts. Applicants can appeal decisions of the staff to the review board. The director of the MDNRE would have the final decision over any issue appealed to the review board subject to a standard of review.

4. Groundwater-Surface Water Interface: HB 6358 and SB 1345 - Sec 20120E

Over the last 10 years, the DEQ issued rules and guidance related to monitoring of the groundwater-surface water interface (GSI) as one of many requirements for cleanup. Properly evaluating water quality at the GSI is an important part of the decision-making process, because the data is used to determine if formerly contaminated properties are ready for productive re-use and redevelopment. Unfortunately, after more than a decade of experience, the rules related to GSI are proving to be a major impediment to closure. The rules fail to take into account scientifically valid monitoring techniques accepted by other states and the federal government. The rules are putting Michigan at a disadvantage relative to other Great Lake states. House Bill 6358 and Senate Bill 1345 would modify the law to allow applicants to demonstrate compliance by utilizing modern technologies related to the groundwater-surface water interface. By allowing these new technologies, it will help to reduce costs without sacrificing environmental protection.

5. Performance Measurement – Establish Metrics: HB 6363 and SB 1347 - Sec. 20112a

Today, data on the performance of the cleanup program is hard to evaluate and not readily available. Recommendation numbers 14 and 15 from the Public Sector Consultant report recommend the development of metrics to track and report to the public on the MDEQ (MDNRE) performance and risk-reduction achievement. House Bill 6363 and Senate Bill 1347 require the agency to report on its website a number key performance measures.

6. Site-Specific Criteria: HB 6358 and SB 1345 - Section 21020b

Currently, many Part 201 cleanup criteria are out of date or of questionable scientific validity. Further, the criteria are, by definition, "generic." They are based on very broad and conservative assumptions about property use that may not apply to a particular property. While Part 201 currently allows for the use of site-specific criteria in place of generic criteria, such use has become very difficult and does not, for instance, allow a party to take into account the most up-to-date science or actual data about the property. House Bill 6358 and Senate Bill 1345 would allow land owners more flexibility in using site-specific criteria, including the ability to take into account recent scientific advances and develop presumptive and/or non-numeric site-specific criteria or remedies. This change will help properly focus resources where risk from contamination actually exists.

7. Liability Protection: HB 6359 and SB 437 - Section 20126

A centerpiece of the 1995 legislation was to provide liability protection based upon an evaluation of the realistic risks posed by the contamination. Without liability protection, companies would be discouraged from moving forward with cleanups. House Bill 6359 and Senate Bill 437 build on the 1995 legislation by allowing applicants to achieve closure and liability protection by using land use and resource use controls or deed restrictions. The legislation directs property owners seeking closure to recognize that they may be assuming risks if their mechanisms fail. In short, these mechanisms allow the balancing of risks contemplated by the 1995 legislation. These provisions provide greater certainty for applicants which will, in turn, help encourage greater investment in cleanups throughout Michigan.

8. Limit Operational Memorandum and Rules: HB 6361 and SB 1346 - Sec 20104

Over the past 15 years, the agency has issued a number of rules and operational memorandum (op-memos) related to the Part 201 program. The rules and op-memos were conceived with good intentions to address the multiple questions inevitable in a program as complex as the Part 201 program. However, the net result has been to harden this guidance into barriers and impediments, discouraging cleanup and redevelopments from occurring. House Bill 6361 and Senate Bill 1346 restore the balance and proper legal effect of operational memoranda as binding on the MDNRE and not outside parties.

Conclusion

House Bills 6358-6363 and Senate Bills 437 and 1345-49 make a number of important changes to the state's cleanup law (Part 201). These changes, if implemented, will encourage the cleanup, sale, financing and redevelopment of contaminated properties in Michigan. We urge your support of the Environmental Cleanup Reform Package. If you have any questions, please feel free to contact me via email: droberts@michamber.com, or by phone at (517) 371-2100.

