

The Advent Of Vented Groundwater Requirements In Michigan

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In Public Act 190 of 2012 (Act 190), Michigan recently amended the requirements in Part 201 of the Natural Resources and Environmental Protection Act (Part 201) for response activities addressing impacted groundwater that vents into surface water. Vented groundwater is subject to groundwater/surface water interface (GSI) criteria. The focus of Act 190 was to address the great difficulty being experienced in complying with GSI criteria.

Act 190 expands the remedial options for sites with venting groundwater. Specifically, the amendments add the four following manners for achieving compliance with GSI criteria:

- The approval of a variance by the Michigan Department of Environmental Quality (MDEQ).
- The use of a site-specific approach to determine if biological criteria may be exceeded due to future increased mass loading to the surface water from the venting plume.
- An ecological demonstration.
- A modeling demonstration.

The first step in evaluating the potential applicability of GSI criteria to impacted groundwater is to determine whether there is a relevant pathway for groundwater to vent to surface water. An enclosed sewer is excluded from the definition of surface water, which means GSI criteria do not apply at the point groundwater is infiltrating a sewer. However, sewers are still part of the determination of a relevant pathway by which impacted groundwater may ultimately reach surface water. The existence of sewers and other subsurface conduits have long complicated the determination of such pathways and compliance points for GSI criteria.

In that connection, Act 190 liberalizes the number of ways to determine if a pathway between impacted groundwater and surface water is relevant. Part 201 now provides that a person evaluating the relevance of a pathway no longer needs to use GSI monitoring wells, if other information is sufficient. The amendments also permit the use of fate and transport modeling.

If a relevant pathway exists, Act 190 allows a responding party to demonstrate to the MDEQ that additional response activities are not necessary based on an alternative monitoring point. For example, such monitoring may occur in the surface water where the groundwater vents, beyond the water's edge and on top of or into the sediments. Other new monitoring-based limits on the application of GSI criteria include demonstrations that:

- The venting groundwater has no effect or only a de minimis effect on the surface water.
- Compliance is technically impracticable and the source of contamination has been eliminated or contained to prevent further migration of groundwater.
- The impacted groundwater is naturally attenuating prior to venting.

A helpful feature of Act 190 is that it streamlines the application of other statutory requirements, with the aim of making site remediation more efficient and cost-effective. One such provision eliminates the need for a permit under Part 31 – Michigan’s Clean Water Act - if the substantive requirements are otherwise addressed as part of response actions approved by the MDEQ under Part 201. Another clarifies that wetlands discharge requirements only apply to the extent that particular designated uses specific to a wetland in the GSI pathway would otherwise be impaired by the venting groundwater.

Michigan’s new law is aimed at easing the burden of complying with environmental regulations and at facilitating the pace of site closures involving GSI criteria. Born from the Governor’s Regulatory Reform Initiative and the MDEQ’s Collaborative Stakeholder Initiative, and enacted over a short period of time, Act 190 is viewed as a promising vehicle for stimulating the remediation and redevelopment of property. Such potential progress would be a particularly welcomed development for manufacturers looking to convert Michigan’s large inventory of industrial sites into functional infrastructure for new business.

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