DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE DIVISION

ENVIRONMENTAL CONTAMINATION RESPONSE ACTIVITY

Filed with the Secretary of State on December 13, 2002
These rules take effect 7 days after filing with the Secretary of State

(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)

R 299.5101 to R 299.5115, R 299.5209, R 299.5211, R 299.5213, R 299.5217, R 299.5401 to R 299.5415, R 299.5601, R 299.5603, R 299.5607, R 299.5701, R 299.5703, R 299.5705, R 299.5707, R 299.5709, R 299.5801 to R 299.5809, R 299.5813, R 299.5815, R 299.5819, R 299.5823, R 299.5903, R 299.5919, R 299.51001, R 299.51003, R 299.51013, R 299.51015, R 299.51017, and R 299.51021 of the Michigan Administrative Code are amended, R 299.5117, R 299.5210, R 299.5219, R 299.5520, R 299.5522, R 299.5524, R 299.5526, R 299.5528, R 299.5530, R 299.5532, R 299.5534, R 299.5536, R 299.5538, R 299.5540, R 299.5542, R 299.5706, R 299.5706a, R 299.5708, R 299.5710, R 299.5712, R 299.5714, R 299.5716, R 299.5718, R 299.5720, R 299.5722, R 299.5724, R 299.5726, R 299.5728, R 299.5730, R 299.5732, R 299.5734, R 299.5736, R 299.5738, R 299.5740, R 299.5742, R 299.5744, R 299.5746, R 299.5748, R 299.5750 and R 299.5752 are added to the Code, and R 299.5201 to R 299.5207, R 299.5215, R 299.5301 to R 299.5305, R 299.5501, R 299.5503, R 299.5505, R 299.5507, R 299.5509, R 299.5511, R 299.5513, R 299.5515, R 299.5517, R 299.5519, R 299.5605, R 299.5711, R 299.5713, R 299.5715, R 299.5717, R 299.5719, R 299.5721, R 299.5723, R 299.5725, and R 299.5727 of the Code are rescinded as follows:

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) “$C_{sat}$” 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, $C_{sat}$ 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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

## PART 2. SITE IDENTIFICATION AND TRACKING

**R 299.5201 Rescinded.**

**R 299.5203 Rescinded.**

**R 299.5205 Rescinded.**

**R 299.5207 Rescinded.**

**R 299.5209 Notice that site is proposed to be added to site list.**

**Rule 209.** (1) The department shall make a reasonable effort to notify all of the following persons that a site is proposed to be included in the site list data base allowed by section 20105(9) of the act:

(a) The owner of the property that is a site.

(b) The local unit of government in which the site is located.

(c) The local health department having jurisdiction over the site.

(2) The notice described in subrule (1) of this rule shall be provided not less than 45 days before the site is added to the list and shall inform the recipient of the procedure described in R 299.5210(1).

(3) This rule shall apply only at the time a site is first placed on the site list. Sites that appeared on a list of sites of environmental contamination prepared under section 20105(1) of the act before the effective date of these amendatory rules are not subject to the notice requirement in subrules (1) and (2) of this rule.

(4) The inability of the department to provide notice under this rule does not limit the authority of the department to proceed with listing a site.

**R 299.5210 Response to department notice of intent to include site on list.**

**Rule 210.** (1) If a person who receives notice from the department under R 299.5209 wishes to dispute inclusion of a site on the list, then he or she shall respond to the department, in writing, within 30 days of receipt of the notice. A response made under this rule shall include all of the following information that is appropriate to the circumstances:

(a) Information to document that the property in question is not a site.

(b) Information to document that the site in question should not, according to the provisions of the act and these rules, be included on the list.

(c) Other information relevant to the disputed listing.

(2) The department shall review all information submitted under subrule (1) of this rule and shall prepare a written response to the person who submitted the

information. The department's response shall include an explanation of the department's decision about inclusion of the site on the list. The site in question shall not be included in the list until the department completes its review of the submitted information and provides a response to the submitter.

**R 299.5211 Inclusion of sites on site list; criteria.**

**Rule 211.** (1) Locations shall be considered by the department for inclusion on the site list if they meet either of the following conditions:

(a) The incident involves a 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 public health, safety, or welfare, or the environment and there are analytical data which document that the hazardous substance is present at concentrations in excess of the concentrations which satisfy the requirements of section 20120a(1)(a) or (17) of the act, for the environmental media in question.

(b) There is insufficient information to conclude whether hazardous substance concentrations exceed the concentrations which satisfy the relevant requirements of section 20120a(1)(a) or (17) of the act, but 1 or both of the following conditions exist:

(i) An owner or operator reports a 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 public health, safety, or welfare or the environment.

(ii) Department staff have directly observed evidence of a 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 public health, safety, or welfare or the environment.

(2) Sites may be identified on the site list by the name and location of the facility where the release occurred, if it is known, or by the location of the environmental contamination if the point of the release is not known.

**R 299.5213 Status description in site list.**

**Rule 213.** The site list shall include information that briefly describes the status of response activity that has been or is being implemented or has been completed at the site.

**R 299.5215 Rescinded.**

**R 299.5217 Review of site information.**

**Rule 217.** (1) The department shall, on an ongoing basis, review site information received from others or generated by itself and shall determine if the information provides a basis for any of the following:

(a) A change in the status of any site on the site list in accordance with R 299.5213.

(b) A change in the relative risk ranking of the site, consistent with section 20105(1)(a) of the act.

(c) Deletion of a site from the list. A site shall be deleted from the list only if it was included as the result of an error or incorrect information.

(d) A site that is documented to have met the cleanup criteria specified in section 20120a(1)(a) and (17) of the act shall be removed from the list as called for in section 20105(3) of the act. The department shall maintain a record of sites that have been removed from the list under section 20105(3) of the act and this subrule. A site that is documented to have met other cleanup criteria specified in section 20120a(1) or (2) of the act shall be identified on the site list as a site where a remedial action has been completed that requires land use or resource use restrictions.

(2) A person may, at any time, request that the department review and revise information about a site on the site list or remove a site from the list. A request made under this subrule shall be submitted to the department, in writing, and include all of the following information, as appropriate to the site:

(a) The name of the site.

(b) The specific change in the site list information that is requested.

(c) Information to document why the change or removal is appropriate and consistent with section 20105 of the act and these rules.

(3) The department shall prepare a written response to all requests submitted under subrule (2) of this rule within 90 days of receipt of the request indicating whether the proposed change was made. If the proposed change was not made, then the reasons for the department's decision shall be stated in its response.

**R 299.5219 Revised site scores.**

**Rule 219.** (1) The department shall, within 36 months of the effective date of this rule, rescore all sites on the list using the site assessment model contained in part 8 of these rules, as modified by these amendatory rules.

(2) The department shall generally rescore the sites in order of site score, beginning with the site that has the highest score based on the site assessment model applied before the effective date of these amendatory rules. The department may, at its discretion, rescore a site at any time regardless of its priority order.

## PART 3. FUNDING

**R 299.5301 Rescinded.**

**R 299.5303 Rescinded.**

**R 299.5305 Rescinded.**

## PART 4. ALTERNATE WATER SERVICE

**R 299.5401 Definitions.**

**Rule 401.** As used in this part:

(a) "Alternate water service" means a water supply provided as an alternative to, or as a supplement to, the use of a well or water supply system. The term

includes, but is not limited to, providing bottled water, constructing a new private well, and extending or constructing a water supply system.

(b) “Public notification” means a letter to a property owner or notification at a public meeting as defined in 1976 PA 267, MCL 15.261 et seq., and known as the open meetings act.

(c) “Treatment system” means a device, installation, or structure and associated appurtenances that are installed for the purpose of treating drinking water before delivery in a distribution system.

(d) “Type I water supply” means a public water supply which provides year-round service to not less than 15 living units or which regularly provides year-round service to not less than 25 residents.

(e) “Water supply system” means a system of pipes and structures through which water is obtained and distributed for the purpose of furnishing water for drinking or household purposes, including any of the following:

(i) Wells and well structures.

(ii) Intakes and cribs.

(iii) Pumping stations.

(iv) Treatment plants.

(v) Storage tanks.

(vi) Pipelines and appurtenances.

(vii) A combination of the items specified in paragraphs (i) to (vi) of this subdivision.

**R 299.5403 Department approval of permanent alternate water supply as an alternate water service; limitations on use of public funds.**

**Rule 403.** (1) When public funds are used to provide a permanent alternate water supply, any new or modified well or water supply system shall be approved by the department under 1976 PA 399, MCL 325.1001 et seq. and part 217 of 1978 PA 368, MCL 333.12701 et seq.

(2) Public funds shall not be used to pay the cost of operation and maintenance of a permanent replacement well, water supply system, or treatment system, or the cost of water supplied by such a system.

(3) Except as provided in this rule, public funds shall not be used to pay for replacement of a well or water supply system unless the owner of that well or water supply system has agreed, in writing, to abandon and plug the existing well or wells, if any, in compliance with part 127 of 1978 PA 368, MCL 333.12701 et seq. Wells that are replaced shall be abandoned and plugged unless otherwise agreed, in writing, by the department. The cost for well plugging may be paid for as part of alternate water service.

(4) Public funds shall not be used to provide alternate water service to a person who is liable for a release that contaminated the water supply in question.

(5) Public funds shall not be used to provide alternate water service if, in the judgment of the department, illegal construction of a well contributed to its contamination, and the well serves the person who constructed the well.

(6) If either of the following criteria is met, then sufficient basis is established to conclude that an incident is the result of self-contamination and public funding shall not be provided:

(a) Hydrogeological data support the conclusion that the contaminated supply resulted from self-contamination.

(b) The department determines that an off-site source of contamination is not or was not evident, a probable source of the hazardous substance in question is or was located at the facility, and activities or practices are known to have in proximity to the affected well which could have resulted in the contamination documented in the well.

(7) Public funds shall be used to provide a well or water supply system connection to a property only when a drinking water well or connection to a public water supply exists at the time that public notice is given regarding provision of a permanent alternate water service.

(8) Public funds shall not be used to pay the cost of alternate water service at any facility that is included on the site list prepared under section 20105 of the act as a result of nitrate contamination from a non-point source or from a private septic tank and tile field system.

**R 299.5405 Conditions for provision of alternate water service.**

**Rule 405.** (1) Individual water supply system replacements shall be provided with public funds only when the water supply system proposed for replacement meets the criteria specified in both of the following provisions:

(a) The water supply system is contaminated, or threatened by contamination, with a hazardous substance as defined by the act.

(b) The department has issued an advisory which states that the current drinking water supply should not be used, or that an aesthetic drinking water criterion has been exceeded, or the department has concurred with an advisory issued by a local health department.

(2) All alternate water services that are provided with public funds shall be installed in accordance with department specifications.

**R 299.5407 Use of public funds to address contamination of local government-owned type I water supplies.**

**Rule 407.** (1) A project to address contamination of a local government-owned type I water supply system shall be eligible to receive public funds if both of the following criteria are met:

(a) There is a hazardous substance present in the water supply system or component as a result of environmental contamination and the department has issued an advisory against the use of the system or component as a result of that contamination.

(b) The project to be funded under this subrule is designed to reduce or eliminate a threat to the public health caused by environmental contamination.

(2) Projects to address state or federally owned type I water supply systems are not eligible to receive public funds.

(3) Public funds shall be used to pay 1/3 of the cost of a project which is approved by the department and which meets the criteria in subrule (1) of this rule, except as provided for in subrules (5) and (6) of this rule. Two-thirds of the cost of the project shall be paid by the local unit of government that receives the matching payment.

(4) Only locally generated funds shall be used for the local government share of the project costs. Federal or other funds shall not be used for the local government share.

(5) Except as provided in subrule (6) of this rule, the total amount of public funds that is available to any local unit of government for projects approved by the department under subrule (1) of this rule shall not be more than $500,000.00.

(6) If a local unit of government is the owner or operator of 1 or more type I water supply systems which serve another jurisdiction, that local unit of government may receive up to $500,000.00 for each water supply system that it owns or operates that is separate from its system and exclusively serves another jurisdiction.

(7) Public funds shall not be used as part of a project under this rule by a local unit of government to investigate the source of groundwater contamination or to identify persons who are liable for the water supply contamination.

(8) Monies expended by the local unit of government for activities completed before the approval by the department of a project under this rule shall not be eligible as the local government share of costs.

**R 299.5409 Service area boundaries; establishment.**

**Rule 409.** (1) Before the approval of public funds by the department for extending or constructing a public water supply system, the department shall consider all of the following factors, to the extent that information is available, when determining the physical boundaries of the project service area:

(a) The extent of documented contamination.

(b) The nature, concentration, and mobility of the hazardous substances.

(c) The rate and direction of groundwater flow in the contaminated aquifer or aquifers.

(d) Whether the release of a hazardous substance has been controlled.

(e) If the project is an extension of water supply service, the attributes and limitations of the existing public water supply system.

(f) The probable impact of response activity or other actions at the facility, such as the shutdown of currently pumping wells and the effect of groundwater purge and treatment systems.

(2) Service area boundaries shall be established to protect well users from the current and projected impacts of the contaminated groundwater.

**R 299.5411 Responsibilities of local governing entity.**

**Rule 411.** (1) A public water supply construction or extension project shall not be funded unless the water supply owner has agreed, in writing, before public funds are authorized, to accept the responsibility for the ownership, operation, and maintenance of the proposed system.

(2) Public funds shall not be used to support operation and maintenance costs for public water supply systems.

(3) It is the responsibility of the water supply owner to obtain all necessary permits for the construction or extension of the public water supply system.

**R 299.5413 Distribution of public funds for alternate water supply system; lowest cost alternative.**

**Rule 413.** (1) Monies from the public funds shall be used only for a public or individual water supply system that is acceptable to the department. If more than 1 alternative is practical and acceptable to the department, then funding will be limited to the cost of the lowest-cost acceptable alternative.

(2) If more than 1 alternative is practical, then the following alternatives, at a minimum, shall be evaluated in determining the type of alternate water supply system that will be funded:

(a) Well replacement.

(b) Connection to an existing water supply system.

(c) Construction of a public water supply system.

(3) If the local governing entity or affected property owner chooses to implement an acceptable alternative in accordance with subrule (1) of this rule other than the lowest-cost alternative specified in subrule (1) of this rule, then public funds up to the value of the lowest-cost acceptable alternative may be provided.

**R 299.5415 Notice to property owners in area to be served by public water supply system or extension.**

**Rule 415.** (1) All property owners in an area proposed to be served by a public water supply system or an extension of such a system that is to be paid for with public funds shall be given written notice of the state's action. The notice shall include an explanation of the proposed project, including a description of the project area and the services proposed to be provided to each property owner at state expense. The notice shall also explain that state funding of the proposed project is not contingent on any local assessment, unless such an assessment is made to cover the local government cost share required by R 299.5407(3).

(2) For the purposes of this rule, mailing of the required notice to the last known address of the property owner is sufficient notice.