

# SENATE BILL NO. 1154

September 30, 2020, Introduced by Senators IRWIN, MOSS, SANTANA, CHANG and HOLLIER and referred to the Committee on Environmental Quality.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20101, 20114d, 20114e, 20120a, and 20120b (MCL 324.20101, 324.20114d, 324.20114e, 324.20120a, and 324.20120b), as amended by 2018 PA 581; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1**       Sec. 20101. (1) As used in this part:
- 2**       (a) "Act of God" means an unanticipated grave natural disaster

1 or other natural phenomenon of an exceptional, inevitable, and  
2 irresistible character, the effects of which could not have been  
3 prevented or avoided by the exercise of due care or foresight.

4 (b) "Agricultural property" means real property used for  
5 farming in any of its branches, including cultivating of soil;  
6 growing and harvesting of any agricultural, horticultural, or  
7 floricultural commodity; dairying; raising of livestock, bees,  
8 fish, fur-bearing animals, or poultry; turf and tree farming; or  
9 performing any practices on a farm as an incident to, or in  
10 conjunction with, these farming operations. Agricultural property  
11 does not include property used for commercial storage, processing,  
12 distribution, marketing, or shipping operations.

13 (c) "All appropriate inquiry" means an evaluation of  
14 environmental conditions at a property at the time of purchase,  
15 occupancy, or foreclosure that reasonably defines the existing  
16 conditions and circumstances at the property in conformance with 40  
17 CFR **part** 312. ~~(2014)~~.

18 (d) "Attorney general" means the department of the attorney  
19 general.

20 (e) "Background concentration" means the concentration or  
21 level of a hazardous substance that exists in the environment at or  
22 regionally proximate to a facility that is not attributable to any  
23 release at or regionally proximate to the facility. A person may  
24 demonstrate that a hazardous substance is not present at a level  
25 that exceeds background concentration by any of the following  
26 methods:

27 (i) The hazardous substance complies with the statewide default  
28 background levels under table 2 as referenced in R 299.46 of the  
29 Michigan Administrative Code.

1           (ii) The hazardous substance is listed in table 2, 3, or 4 of  
2 the department's ~~2005-"Michigan background soil survey,"~~ **Background**  
3 **Soil Survey 2005"**, is present in a soil type identified in 1 or  
4 more of those tables, and meets 1 of the following:

5           (A) If a glacial lobe area in table 2, 3, or 4 lists an  
6 arithmetic or geometric mean for the hazardous substance that is  
7 represented by 9 or more samples, the concentration of that  
8 hazardous substance is the lesser of the following:

9           (I) Two standard deviations of that mean for the soil type and  
10 glacial lobe area in which the hazardous substance is located.

11           (II) The uppermost value in the typical range of data for the  
12 hazardous substance in table 1 of the department's ~~2005-"Michigan~~  
13 ~~background soil survey."~~ **Background Soil Survey 2005"**.

14           (B) If a glacial lobe area in table 2, 3, or 4 lists a  
15 nonparametric median for the hazardous substance that is  
16 represented by 10 or more samples, the concentration of that  
17 hazardous substance is the lesser of the following:

18           (I) The 97.5 quantile for the soil type and glacial lobe area  
19 in which the hazardous substance is located.

20           (II) The uppermost value in the typical range of data for the  
21 hazardous substance in table 1 of the department's ~~2005-"Michigan~~  
22 ~~background soil survey."~~ **Background Soil Survey 2005"**.

23           (C) The concentration of the hazardous substance meets a level  
24 established using the ~~2005-"Michigan background soil survey~~  
25 **Background Soil Survey 2005"** in a manner that is approved by the  
26 department.

27           (iii) The hazardous substance is listed in any other study or  
28 survey conducted or approved by the department and is within the  
29 concentrations or falls within the typical ranges published in that

1 study or survey.

2 (iv) A site-specific demonstration.

3 (f) "Baseline environmental assessment" means a written  
4 document that describes the results of an all appropriate inquiry  
5 and the sampling and analysis that confirm that the property is or  
6 contains a facility. For purposes of a baseline environmental  
7 assessment, the all appropriate inquiry may be conducted or updated  
8 ~~prior to~~ **before** or within 45 days after the earlier of the date of  
9 purchase, occupancy, or foreclosure.

10 (g) "Board" means the brownfield redevelopment board created  
11 in section 20104a.

12 (h) "Certificate of completion" means a written response  
13 provided by the department confirming that a response activity has  
14 been completed in accordance with the applicable requirements of  
15 this part and is approved by the department.

16 (i) "Cleanup criteria for unrestricted residential use" means  
17 any of the following:

18 (i) Cleanup criteria that satisfy the requirements for the  
19 residential category in section 20120a(1)(a).

20 (ii) Cleanup criteria for unrestricted residential use under  
21 part 213.

22 (iii) Site-specific cleanup criteria approved by the department  
23 for unrestricted residential use ~~pursuant to~~ **under** sections 20120a  
24 and 20120b.

25 (j) "Department" means the director or his or her designee to  
26 whom the director delegates a power or duty by written instrument.

27 (k) "Director" means the director of the department of  
28 ~~environmental quality~~ **environment, Great Lakes, and energy**.

29 (l) "Directors" means the directors or their designees of the

1 departments of ~~environmental quality, community health,~~  
2 **environment, Great Lakes, and energy, health and human services,**  
3 agriculture and rural development, and state police.

4 (m) "Disposal" means the discharge, deposit, injection,  
5 dumping, spilling, leaking, or placing of any hazardous substance  
6 into or on any land or water so that the hazardous substance or any  
7 constituent of the hazardous substance may enter the environment or  
8 be emitted into the air or discharged into any groundwater or  
9 surface water.

10 (n) "Enforcement costs" means court expenses, reasonable  
11 attorney fees of the attorney general, and other reasonable  
12 expenses of an executive department that are incurred in relation  
13 to enforcement under this part.

14 (o) "Environment" or "natural resources" means land, surface  
15 water, groundwater, subsurface strata, air, fish, wildlife, or  
16 biota within this state.

17 (p) "Environmental contamination" means the release of a  
18 hazardous substance, or the potential release of a discarded  
19 hazardous substance, in a quantity which is or may become injurious  
20 to the environment or to the public health, safety, or welfare.

21 (q) "Evaluation" means those activities including, but not  
22 limited to, investigation, studies, sampling, analysis, development  
23 of feasibility studies, and administrative efforts that are needed  
24 to determine the nature, extent, and impact of a release or threat  
25 of release and necessary response activities.

26 (r) "Exacerbation" means the occurrence of either of the  
27 following caused by an activity undertaken by the person ~~who~~**that**  
28 owns or operates the property, with respect to contamination for  
29 which the person is not liable:

1           (i) Migration of contamination beyond the boundaries of the  
2 property that is the source of the release at levels above cleanup  
3 criteria for unrestricted residential use unless a criterion is not  
4 relevant because exposure is reliably restricted as otherwise  
5 provided in this part.

6           (ii) A change in facility conditions that increases response  
7 activity costs.

8           (s) "Facility" means any area, place, parcel or parcels of  
9 property, or portion of a parcel of property where a hazardous  
10 substance in excess of the concentrations that satisfy the cleanup  
11 criteria for unrestricted residential use has been released,  
12 deposited, disposed of, or otherwise comes to be located. Facility  
13 does not include any area, place, parcel or parcels of property, or  
14 portion of a parcel of property where any of the following  
15 conditions are satisfied:

16           (i) Response activities have been completed under this part or  
17 the comprehensive environmental response, compensation, and  
18 liability act, 42 USC 9601 to 9675, that satisfy the cleanup  
19 criteria for unrestricted residential use.

20           (ii) Corrective action has been completed under the resource  
21 conservation and recovery act, 42 USC 6901 to 6992k, part 111, or  
22 part 213 that satisfies the cleanup criteria for unrestricted  
23 residential use.

24           (iii) Site-specific criteria that have been approved by the  
25 department for application at the area, place, parcel of property,  
26 or portion of a parcel of property are met or satisfied and  
27 hazardous substances at the area, place, or property that are not  
28 addressed by site-specific criteria satisfy the cleanup criteria  
29 for unrestricted residential use.

1           (iv) Hazardous substances in concentrations above unrestricted  
2 residential cleanup criteria are present due only to the placement,  
3 storage, or use of beneficial use by-products or inert materials at  
4 the area, place, or property in compliance with part 115.

5           (v) The property has been lawfully split, subdivided, or  
6 divided from a facility and does not contain hazardous substances  
7 in excess of concentrations that satisfy the cleanup criteria for  
8 unrestricted residential use.

9           (vi) Natural attenuation or other natural processes have  
10 reduced concentrations of hazardous substances to levels at or  
11 below the cleanup criteria for unrestricted residential use.

12           (t) "Feasibility study" means a process for developing,  
13 evaluating, and selecting appropriate response activities.

14           (u) "Financial assurance" means a performance bond, escrow,  
15 cash, certificate of deposit, irrevocable letter of credit,  
16 corporate guarantee, or other equivalent security, or any  
17 combination thereof.

18           (v) "Foreclosure" means possession by a lender of a property  
19 on which it has foreclosed on a security interest or the expiration  
20 of a lawful redemption period, whichever occurs first.

21           (w) "Fund" means the cleanup and redevelopment fund  
22 established in section 20108.

23           (x) "Hazardous substance" means 1 or more of the following,  
24 but does not include fruit, vegetable, or field crop residuals or  
25 processing by-products, or aquatic plants, that are applied to the  
26 land for an agricultural use or for use as an animal feed, if the  
27 use is consistent with generally accepted agricultural management  
28 practices at the time of the application or stamp sands:

29           (i) Any substance that the department demonstrates, on a case

1 by case basis, poses an unacceptable risk to the public health,  
2 safety, or welfare, or the environment, considering the fate of the  
3 material, dose-response, toxicity, or adverse impact on natural  
4 resources.

5 (ii) Hazardous substance as defined in the comprehensive  
6 environmental response, compensation, and liability act, 42 USC  
7 9601 to 9675.

8 (iii) Hazardous waste as defined in part 111.

9 (iv) Petroleum as described as a regulated substance in section  
10 21303.

11 (y) "Interim response activity" means the cleanup or removal  
12 of a released hazardous substance or the taking of other actions,  
13 ~~prior to~~ **before** the implementation of a remedial action, as may be  
14 necessary to prevent, minimize, or mitigate injury to the public  
15 health, safety, or welfare, or to the environment. Interim response  
16 activity also includes, but is not limited to, measures to limit  
17 access, replacement of water supplies, and temporary relocation of  
18 people as determined to be necessary by the department. In  
19 addition, interim response activity means the taking of other  
20 actions as may be necessary to prevent, minimize, or mitigate a  
21 threatened release.

22 (z) "Lender" means any of the following:

23 (i) A state or nationally chartered bank.

24 (ii) A state or federally chartered savings and loan  
25 association or savings bank.

26 (iii) A state or federally chartered credit union.

27 (iv) Any other state or federally chartered lending  
28 institution.

29 (v) Any state or federally regulated affiliate or regulated

1 subsidiary of any entity listed in subparagraphs (i) to (iv).

2 (vi) An insurance company authorized to do business in this  
3 state ~~pursuant to~~**under** the insurance code of 1956, 1956 PA 218,  
4 MCL 500.100 to 500.8302.

5 (vii) A motor vehicle sales finance company subject to the  
6 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101  
7 to 492.141, with net assets in excess of \$50,000,000.00.

8 (viii) A foreign bank.

9 (ix) A retirement fund regulated ~~pursuant to~~**under** state law or  
10 a pension fund regulated ~~pursuant to~~**under** federal law with net  
11 assets in excess of \$50,000,000.00.

12 (x) A state or federal agency authorized by law to hold a  
13 security interest in real property or a local unit of government  
14 holding a reversionary interest in real property.

15 (xi) A nonprofit tax exempt organization created to promote  
16 economic development in which a majority of the organization's  
17 assets are held by a local unit of government.

18 (xii) Any other person that loans money for the purchase of or  
19 improvement of real property.

20 (xiii) Any person that retains or receives a security interest  
21 to service a debt or to secure a performance obligation.

22 (aa) "Local health department" means that term as defined in  
23 section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

24 (bb) "Local unit of government" means a county, city,  
25 township, or village, an agency of a local unit of government, an  
26 authority or any other public body or entity created by or ~~pursuant~~  
27 ~~to~~**under** state law. Local unit of government does not include this  
28 state or the federal government or a state or federal agency.

1 (cc) "Method detection limit" means the minimum concentration  
2 of a hazardous substance that can be measured and reported with 99%  
3 confidence that the analyte concentration is greater than zero and  
4 is determined from analysis of a sample in a given matrix that  
5 contains the analyte.

6 (dd) "Migrating NAPL" means that terms as it is defined in  
7 section 21302.

8 (ee) "Mobile NAPL" means that term as it is defined in section  
9 21302.

10 (ff) "NAPL" means that term as it is defined in section 21303.

11 (gg) "No further action letter" means a written response  
12 provided by the department under section 20114d confirming that a  
13 no further action report has been approved after review by the  
14 department.

15 (hh) "No further action report" means a report under section  
16 20114d detailing the completion of remedial actions and including a  
17 postclosure plan and a postclosure agreement, if appropriate.

18 (ii) "Nonresidential" means that category of land use for  
19 parcels of property or portions of parcels of property that is not  
20 residential. This category of land use may include, but is not  
21 limited to, any of the following:

22 (i) Industrial, commercial, retail, office, and service uses.

23 (ii) Recreational properties that are not contiguous to  
24 residential property.

25 (iii) Hotels, hospitals, and campgrounds.

26 (iv) Natural areas such as woodlands, brushlands, grasslands,  
27 and wetlands.

28 (jj) "Operator" means a person ~~who~~**that** is in control of or  
29 responsible for the operation of a facility. Operator does not

1 include either of the following:

2 (i) A person ~~who~~**that** holds indicia of ownership primarily to  
3 protect the person's security interest in the facility, unless that  
4 person participates in the management of the facility as described  
5 in section 20101a.

6 (ii) A person ~~who~~**that** is acting as a fiduciary in compliance  
7 with section 20101b.

8 (kk) "Owner" means a person ~~who~~**that** owns a facility. Owner  
9 does not include either of the following:

10 (i) A person ~~who~~**that** holds indicia of ownership primarily to  
11 protect the person's security interest in the facility, including,  
12 but not limited to, a vendor's interest under a recorded land  
13 contract, unless that person participates in the management of the  
14 facility as described in section 20101a.

15 (ii) A person ~~who~~**that** is acting as a fiduciary in compliance  
16 with section 20101b.

17 (ll) "Panel" means the response activity review panel  
18 established under section 20114e.

19 (mm) "Permitted release" means 1 or more of the following:

20 (i) A release in compliance with an applicable, legally  
21 enforceable permit issued under state law.

22 (ii) A lawful and authorized discharge into a permitted waste  
23 treatment facility.

24 (iii) A federally permitted release as defined in the  
25 comprehensive environmental response, compensation, and liability  
26 act, 42 USC 9601 to 9675.

27 (nn) "Postclosure agreement" means an agreement between the  
28 department and a person ~~who~~**that** has submitted a no further action  
29 report that prescribes, as appropriate, activities required to be

1 undertaken upon completion of remedial actions as provided for in  
2 section 20114d.

3 (oo) "Postclosure plan" means a plan for land use or resource  
4 use restrictions or permanent markers at a facility upon completion  
5 of remedial actions as provided for in section 20114c.

6 (pp) "Release" includes, but is not limited to, any spilling,  
7 leaking, pumping, pouring, emitting, emptying, discharging,  
8 injecting, escaping, leaching, dumping, or disposing of a hazardous  
9 substance into the environment, or the abandonment or discarding of  
10 barrels, containers, and other closed receptacles containing a  
11 hazardous substance. Release does not include any of the following:

12 (i) A release that results in exposure to persons solely within  
13 a workplace, with respect to a claim that these persons may assert  
14 against their employers.

15 (ii) Emissions from the engine exhaust of a motor vehicle,  
16 rolling stock, aircraft, or vessel.

17 (iii) A release of source, by-product, or special nuclear  
18 material from a nuclear incident, as those terms are defined in the  
19 atomic energy act of 1954, 42 USC 2011 to 2286i, if the release is  
20 subject to requirements with respect to financial protection  
21 established by the nuclear regulatory commission under 42 USC 2210,  
22 or any release of source by-product or special nuclear material  
23 from any processing site designated under 42 USC 7912(a)(1) or 42  
24 USC 7942(a).

25 (iv) If applied according to label directions and according to  
26 generally accepted agricultural and management practices at the  
27 time of the application, the application of a fertilizer, soil  
28 conditioner, agronomically applied manure, or pesticide, or fruit,  
29 vegetable, or field crop residuals or processing by-products,

1 aquatic plants, or a combination of these substances. As used in  
2 this subparagraph, fertilizer and soil conditioner have the meaning  
3 given to these terms in part 85, and pesticide has the meaning  
4 given to that term in part 83.

5 (v) Application of fruits, vegetables, field crop processing  
6 by-products, or aquatic plants to the land for an agricultural use  
7 or for use as an animal feed, if the use is consistent with  
8 generally accepted agricultural and management practices at the  
9 time of the application.

10 (vi) The relocation of soil under section 20120c.

11 (vii) The placement, storage, or use of beneficial use by-  
12 products or inert materials at the site of storage or use if in  
13 compliance with part 115.

14 (qq) "Remedial action" includes, but is not limited to,  
15 cleanup, removal, containment, isolation, destruction, or treatment  
16 of a hazardous substance released or threatened to be released into  
17 the environment, monitoring, maintenance, or the taking of other  
18 actions that may be necessary to prevent, minimize, or mitigate  
19 injury to the public health, safety, or welfare, or to the  
20 environment.

21 (rr) "Remedial action plan" means a work plan for performing  
22 remedial action under this part.

23 (ss) "Residential" means that category of land use for parcels  
24 of property or portions of parcels of property where people live  
25 and sleep for significant periods of time such that the frequency  
26 of exposure is reasonably expected or foreseeable to meet the  
27 exposure assumptions used by the department to develop generic  
28 residential cleanup criteria as set forth in rules promulgated  
29 under this part. This category of land use may include, but is not

1 limited to, homes and surrounding yards, condominiums, and  
2 apartments.

3 (tt) "Residential closure" means a property at which the  
4 contamination has been addressed in a no further action report that  
5 satisfies the limited residential cleanup criteria under section  
6 20120a(1)(c) or the site-specific residential cleanup criteria  
7 under sections 20120a(2) and 20120b, that contains land use or  
8 resource use restrictions, and that is approved by the department  
9 or is considered approved by the department under section 20120d.

10 (uu) "Residual NAPL saturation" means that term as it is  
11 defined in part 213.

12 (vv) "Response activity" means evaluation, interim response  
13 activity, remedial action, demolition, providing an alternative  
14 water supply, or the taking of other actions necessary to protect  
15 the public health, safety, or welfare, or the environment or the  
16 natural resources. Response activity also includes health  
17 assessments or health effect studies carried out under the  
18 supervision, or with the approval of, the department of ~~community~~  
19 health **and human services** and enforcement actions related to any  
20 response activity.

21 (ww) "Response activity costs" or "costs of response activity"  
22 means all costs incurred in taking or conducting a response  
23 activity, including enforcement costs.

24 (xx) "Response activity plan" means a plan for undertaking  
25 response activities. A response activity plan may include 1 or more  
26 of the following:

27 (i) A plan to undertake interim response activities.

28 (ii) A plan for evaluation activities.

29 (iii) A feasibility study.

1 (iv) A remedial action plan.

2 (yy) "Security interest" means any interest, including a  
3 reversionary interest, in real property created or established for  
4 the purpose of securing a loan or other obligation. Security  
5 interests include, but are not limited to, mortgages, deeds of  
6 trusts, liens, and title ~~pursuant to~~**under** lease financing  
7 transactions. Security interests may also arise from transactions  
8 such as sale and leasebacks, conditional sales, installment sales,  
9 trust receipt transactions, certain assignments, factoring  
10 agreements, accounts receivable financing arrangements,  
11 consignments, or any other transaction in which evidence of title  
12 is created if the transaction creates or establishes an interest in  
13 real property for the purpose of securing a loan or other  
14 obligation.

15 (zz) "Source" means any storage, handling, distribution, or  
16 processing equipment from which the release originates and first  
17 enters the environment.

18 (aaa) "Stamp sands" means finely grained crushed rock  
19 resulting from mining, milling, or smelting of copper ore and  
20 includes native substances contained within the crushed rock and  
21 any ancillary material associated with the crushed rock.

22 (bbb) "Target detection limit" means the detection limit for a  
23 hazardous substance in a given environmental medium that is  
24 specified ~~in a rule promulgated by the department~~ **on a list that it**  
25 **publishes not more than once a year.** The department shall identify  
26 1 or more analytical methods, when a method is available, that are  
27 judged to be capable of achieving the target detection limit for a  
28 hazardous substance in a given environmental medium. The target  
29 detection limit for a given hazardous substance is greater than or

1 equal to the method detection limit for that hazardous substance.  
2 In establishing a target detection limit, the department shall  
3 consider the following factors:

4 (i) The low level capabilities of methods published by  
5 government agencies.

6 (ii) Reported method detection limits published by state  
7 laboratories.

8 (iii) Reported method detection limits published by commercial  
9 laboratories.

10 (iv) The need to be able to measure a hazardous substance at  
11 concentrations at or below cleanup criteria.

12 (ccc) "Threatened release" or "threat of release" means any  
13 circumstance that may reasonably be anticipated to cause a release.

14 (ddd) "Venting groundwater" means groundwater that is entering  
15 a surface water of this state from a facility.

16 (2) As used in this part:

17 (a) The phrase "a person who is liable" includes a person who  
18 is described as being subject to liability in section 20126. The  
19 phrase "a person who is liable" does not presume that liability has  
20 been adjudicated.

21 (b) The phrase "this part" includes "rules promulgated under  
22 this part".

23 Sec. 20114d. (1) **Upon completion of a remedial action that**  
24 **satisfies the requirements of this part, a person may submit a no**  
25 **further action report to the department.** A person may submit a no  
26 further action report under this subsection for remedial actions  
27 addressing contamination for which the person is or is not liable.  
28 Remedial actions included in a no further action report may address  
29 all or a portion of contamination at a facility as follows:

1 (a) The remedial actions may address 1 or more releases at a  
2 facility.

3 (b) The remedial actions may address 1 or more hazardous  
4 substances at a facility.

5 (c) The remedial actions may address contamination in 1 or  
6 more environmental media at a facility.

7 (d) The remedial actions may address contamination within the  
8 entire facility or only a portion of a facility.

9 (e) The remedial actions may address contamination at a  
10 facility through any combination of subdivisions (a) through (d).

11 (2) A no further action report submitted under subsection (1)  
12 must document the basis for concluding that the remedial actions  
13 ~~included in the no further action report are protective of the~~  
14 ~~public health, safety, and welfare, and the environment with~~  
15 ~~respect to the environmental contamination addressed by the~~  
16 ~~remedial actions.~~ **have been completed.** A no further action report  
17 may include a request that, upon approval, the release or  
18 conditions addressed by the no further action report be designated  
19 as a residential closure. A no further action report ~~shall~~**must** be  
20 submitted with a form developed by the department. The department  
21 shall make this form available on its website.

22 (3) A no further action report submitted under subsection (1)  
23 ~~shall~~**must** be submitted with the following, as applicable:

24 (a) If the remedial action at the facility satisfies the  
25 cleanup criteria for unrestricted residential use for the hazardous  
26 substances and portion of the facility addressed in the no further  
27 action report, neither a postclosure plan or a proposed postclosure  
28 agreement is required to be submitted.

29 (b) If the remedial action requires only land use or resource

1 use restrictions and financial assurance is not required or the  
2 financial assurance is de minimis, a postclosure plan is required  
3 but a proposed postclosure agreement is not required to be  
4 submitted.

5 (c) For circumstances other than those described in  
6 subdivision (a) or (b), a postclosure plan and a proposed  
7 postclosure agreement are required to be submitted.

8 (4) A proposed postclosure agreement that is submitted as part  
9 of a no further action report must include all of the following:

10 (a) Provisions for monitoring, operation and maintenance, and  
11 oversight necessary to assure the effectiveness and integrity of  
12 the remedial action.

13 (b) Financial assurance to pay for monitoring, operation and  
14 maintenance, oversight, and other costs determined by the  
15 department to be necessary to assure the effectiveness and  
16 integrity of the remedial action.

17 (c) A provision requiring notice to the department of the  
18 owner's intent to convey any interest in the facility 14 days ~~prior~~  
19 ~~to~~ **before** consummating the conveyance. A conveyance of title, an  
20 easement, or other interest in the property ~~shall~~ **must** not be  
21 consummated by the property owner without adequate and complete  
22 provision for compliance with the terms and conditions of the  
23 postclosure plan and the postclosure agreement.

24 (d) A provision granting the department the right to enter the  
25 property at reasonable times for the purpose of determining and  
26 monitoring compliance with the postclosure plan and postclosure  
27 agreement, including the right to take samples, inspect the  
28 operation of the remedial action measures, and inspect records.

29 (5) A postclosure agreement may waive the requirement for

1 permanent markers.

2 (6) The person submitting a no further action report shall  
3 include a signed affidavit attesting to the fact that the  
4 information upon which the no further action report is based is  
5 complete and true to the best of that person's knowledge. The no  
6 further action report must also include a signed affidavit from an  
7 environmental consultant who meets the professional qualifications  
8 described in section 20114e(2) and ~~who~~ prepared the no further  
9 action report, attesting to the fact that the remedial actions  
10 detailed in the no further action report comply with all applicable  
11 requirements and that the information upon which the no further  
12 action report is based is complete and true to the best of that  
13 ~~person's~~ **individual's** knowledge. In addition, the environmental  
14 consultant shall attach a certificate of insurance demonstrating  
15 that the environmental consultant has obtained at least all of the  
16 following from a carrier that is authorized to conduct business in  
17 this state:

18 (a) Statutory worker compensation insurance as required in  
19 this state.

20 (b) Professional liability errors and omissions insurance.  
21 This policy must not exclude bodily injury, property damage, or  
22 claims arising out of pollution for environmental work and must be  
23 issued with a limit of not less than \$1,000,000.00 per claim.

24 (c) Contractor pollution liability insurance with limits of  
25 not less than \$1,000,000.00 per claim, if not included under the  
26 professional liability errors and omissions insurance required  
27 under subdivision (b). The insurance requirement under this  
28 subdivision is not required for environmental consultants who do  
29 not perform contracting functions.

1 (d) Commercial general liability insurance with limits of not  
2 less than \$1,000,000.00 per claim and \$2,000,000.00 aggregate.

3 (e) Automobile liability insurance with limits of not less  
4 than \$1,000,000.00 per claim.

5 (7) A person submitting a no further action report shall  
6 maintain all documents and data prepared, acquired, or relied upon  
7 in connection with the no further action report for not less than  
8 10 years after the later of the date on which the department  
9 approves the no further action report under this section, or the  
10 date on which no further monitoring, operation, or maintenance is  
11 required to be undertaken as part of the remedial action covered by  
12 the report. All documents and data required to be maintained under  
13 this section ~~shall~~**must** be made available to the department ~~upon~~**on**  
14 request.

15 (8) ~~Upon~~**On** receipt of a no further action report submitted  
16 under this subsection, the department shall approve or deny the no  
17 further action report or ~~shall~~ notify the submitter that the report  
18 does not contain sufficient information for the department to make  
19 a decision. If the no further action report requires a postclosure  
20 agreement, the department may negotiate alternative terms than  
21 those included within the proposed postclosure agreement. The  
22 department shall provide its determination within 150 days after  
23 the report was received by the department under this subsection  
24 unless the report requires public participation under section  
25 20120d(2). If the report requires public participation under  
26 section 20120d(2), the department shall respond within 180 days. If  
27 the department's response is that the report does not include  
28 sufficient information, the department shall identify the  
29 information that is required for the department to make a decision.

1 If the report is denied, the department's denial must, to the  
2 extent practical, state with specificity all of the reasons for  
3 denial. If the no further action report, including any required  
4 postclosure plan and postclosure agreement, is approved, the  
5 department shall provide the person submitting the no further  
6 action report with a no further action letter. The department shall  
7 review and provide a written response within the time frames  
8 required by this subsection for at least 90% of the no further  
9 action reports submitted to the department under this section in  
10 each calendar year.

11 (9) If the department fails to provide a written response  
12 within the time frames required by subsection (8), the no further  
13 action report is considered approved.

14 (10) A person requesting approval of a no further action  
15 report under subsection (8) may appeal the department's decision in  
16 accordance with section 20114e.

17 (11) Any time frame required by this section may be extended  
18 by mutual agreement of the department and a person submitting a no  
19 further action report. An agreement extending a time frame must be  
20 in writing.

21 (12) Following approval of a no further action report under  
22 this section, the owner or operator of the facility addressed by  
23 the no further action report may submit to the department an  
24 amended no further action report. The amended no further action  
25 report must include the proposed changes to the original no further  
26 action report and an accompanying rationale for the proposed  
27 change. The process for review and approval of an amended no  
28 further action report is the same as the process for no further  
29 action reports.

1           Sec. 20114e. (1) The director shall establish a response  
2 activity review panel to advise him or her on **technical or**  
3 **scientific** disputes, ~~—including disputes regarding assessment of~~  
4 **risk, response activity plans, no further action reports,**  
5 **certificates of completion, and documentations of due care**  
6 **compliance under this part, and initial assessment reports, final**  
7 **assessment reports, closure reports, and documentation of due care**  
8 **compliance under part 213.**

9           (2) The panel must consist of 15 individuals, appointed by the  
10 director. Each member of the panel must meet all of the following  
11 minimum requirements:

12           (a) Meet 1 or more of the following:

13           (i) Hold a current professional engineer's or professional  
14 geologist's license or registration from a state, tribe, or United  
15 States territory, or the Commonwealth of Puerto Rico, and have the  
16 equivalent of 6 years of full-time relevant experience.

17           (ii) Have a baccalaureate degree from an accredited institution  
18 of higher education in a discipline of engineering or science and  
19 the equivalent of 10 years of full-time relevant experience.

20           (iii) Have a master's degree from an accredited institution of  
21 higher education in a discipline of engineering or science and the  
22 equivalent of 8 years of full-time relevant experience.

23           (b) Remain current in his or her field through participation  
24 in continuing education or other activities.

25           (3) An individual is not eligible to be a member of the panel  
26 if any of the following is true:

27           (a) The individual is a current employee of any office,  
28 department, or agency of this state.

29           (b) The individual is a party to 1 or more contracts with the

1 department and the compensation paid under those contracts  
2 represented more than 5% of the individual's annual gross revenue  
3 in any of the preceding 3 years.

4 (c) The individual is employed by an entity that is a party to  
5 1 or more contracts with the department and the compensation paid  
6 to the individual's employer under these contracts represented more  
7 than 5% of the employer's annual gross revenue in any of the  
8 preceding 3 years.

9 (d) The individual was employed by the department within the  
10 preceding 3 years.

11 (4) An individual appointed to the panel serves for a term of  
12 3 years and may be reappointed for 1 additional 3-year term. After  
13 serving 2 consecutive terms, the individual shall not be a member  
14 of the panel for a period of at least 2 years before being eligible  
15 to be appointed to the panel again. The terms for members first  
16 appointed must be staggered so that not more than 5 vacancies are  
17 scheduled to occur in a single year. Individuals appointed to the  
18 panel serve without compensation. However, members of the panel may  
19 be reimbursed for their actual and necessary expenses incurred in  
20 the performance of their official duties as members of the panel.

21 (5) A vacancy on the panel ~~shall~~**must** be filled in the same  
22 manner as the original appointment.

23 (6) The business that the panel may perform ~~shall~~**must** be  
24 conducted at a public meeting of the panel held in compliance with  
25 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

26 (7) A person ~~who~~**that** submitted a response activity plan, ~~+~~  
27 ~~remedial action plan; postclosure plan; a no further action report,~~  
28 ~~+~~a request for certificate of completion or documentation of due  
29 care compliance under this part, ~~+~~or an initial assessment report,

1 final assessment report, closure report, or documentation of due  
2 care compliance under part 213 may appeal a decision made by the  
3 department regarding a **technical or scientific** dispute, **including a**  
4 **dispute regarding assessment of risk, concerning the response**  
5 **activity plan, no further action report, request for certificate of**  
6 **completion, initial assessment report, final assessment report,**  
7 **closure report, or documentation of due care compliance** by  
8 submitting a petition to the director. However, an issue that was  
9 addressed as part of the final decision of the director under  
10 section 21332 or that is the subject of a contested case hearing  
11 under section 21332 is not eligible for review by the panel. The  
12 petition must include the issues in dispute, the relevant facts  
13 upon which the dispute is based, factual data, analysis, opinion,  
14 and supporting documentation for the petitioner's position. The  
15 petitioner shall also submit a fee of \$3,500.00. If the director  
16 believes that the dispute may be able to be resolved without  
17 convening the panel, the director may contact the petitioner  
18 regarding the issues in dispute and may negotiate a resolution of  
19 the dispute. This negotiation period must not exceed 45 days. If  
20 the dispute is resolved without convening the panel, any fee that  
21 is submitted with the petition ~~shall~~**must** be returned.

22 (8) If a dispute is not resolved ~~pursuant to~~**under** subsection  
23 (7), the director shall schedule a meeting of 5 members of the  
24 panel, selected on the basis of their relevant expertise, within 45  
25 days after receiving the original petition. If the dispute involves  
26 an underground storage tank system, at least 3 of the members  
27 selected must have relevant experience in the American Society for  
28 Testing and Materials risk-based corrective action processes  
29 described in part 213. A member selected for the dispute resolution

1 process shall agree not to accept employment by the person bringing  
2 the dispute before the panel, or to undertake any employment  
3 concerning the facility in question for a period of 1 year after  
4 the decision has been rendered on the matter if that employment  
5 would represent more than 5% of the member's gross revenue in any  
6 of the preceding 3 years. The director shall provide a copy of all  
7 supporting documentation to members of the panel who will hear the  
8 dispute. An alternative member may be selected by the director to  
9 replace a member who is unable to participate in the dispute  
10 resolution process. Any action by the members selected to hear the  
11 dispute requires a majority of the votes cast. The members selected  
12 for the dispute resolution process shall elect a chairperson of the  
13 dispute resolution process. At a meeting scheduled to hear the  
14 dispute, representatives of the petitioner and the department must  
15 each be afforded an opportunity to present their positions to the  
16 panel. The fee that is received by the director along with the  
17 petition ~~shall~~**must** be forwarded to the state treasurer for deposit  
18 into the fund.

19 (9) Within 45 days after hearing the dispute, the members of  
20 the panel who were selected for and participated in the dispute  
21 resolution process shall make a recommendation regarding the  
22 petition and provide written notice of the recommendation to the  
23 director ~~of the department and the petitioner~~. The written  
24 recommendation must include the specific scientific or technical  
25 rationale for the recommendation. The panel's recommendation  
26 regarding the petition may be to adopt, modify, or reverse, in  
27 whole or in part, the department's decision that is the subject of  
28 the petition. If the panel does not make its recommendation within  
29 this 45-day time period, the decision of the department is the

1 final decision of the director.

2 (10) Within 60 days after receiving written notice of the  
3 panel's recommendation, the director shall issue a final decision,  
4 in writing, regarding the petition. However, this time period may  
5 be extended by written agreement between the director and the  
6 petitioner. If the director agrees with the recommendation of the  
7 panel, the department shall incorporate the recommendation into its  
8 response to the response activity plan, no further action report,  
9 request for certificate of completion, initial assessment report,  
10 final assessment report, closure report, or documentation of due  
11 care compliance. If the director rejects the recommendation of the  
12 panel, the director shall issue a written decision to the  
13 petitioner with a specific rationale for rejecting the  
14 recommendation of the panel. If the director fails to issue a final  
15 decision within the time period provided for in this subsection,  
16 the recommendation of the panel shall be considered the final  
17 decision of the director. The final decision of the director under  
18 this subsection is subject to review ~~pursuant to~~ **under** section 631  
19 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

20 (11) ~~Upon~~ **On** request of the director, the panel shall make a  
21 recommendation to the department on whether a member should be  
22 removed from the panel for noncompliance with this part. ~~Prior to~~  
23 **Before** making this recommendation, the panel may convene a peer  
24 review panel to evaluate the conduct of the member.

25 (12) A member of the panel shall not participate in the  
26 dispute resolution process for any appeal in which that member has  
27 a conflict of interest. The director shall select a member of the  
28 panel to replace a member who has a conflict of interest under this  
29 subsection. For purposes of this subsection, a member has a

1 conflict of interest if a petitioner has hired that member or the  
 2 member's employer on any environmental matter within the preceding  
 3 3 years.

4 (13) As used in this section, ÷

5 ~~(a) "Dispute" means any disagreement over a technical,~~  
 6 ~~scientific, or administrative issue, including, but not limited to,~~  
 7 ~~disagreements over assessment of risk, response activity plans,~~  
 8 ~~remedial action plans, no further action reports, certificates of~~  
 9 ~~completion, documentation of due care compliance under this part,~~  
 10 ~~determinations of whether a person has submitted sufficient~~  
 11 ~~information for the department to make a decision regarding a~~  
 12 ~~submittal under this part or part 213, and initial assessment~~  
 13 ~~reports, final assessment reports, closure reports, postclosure~~  
 14 ~~plans, and documentations of due care compliance under part 213.~~

15 (b) ~~"Relevant"~~**relevant** experience" means active participation  
 16 in the preparation, design, implementation, and assessment of  
 17 remedial investigations, feasibility studies, interim response  
 18 activities, and remedial actions under this part or experience in  
 19 the American ~~society~~**Society** for ~~testing~~**Testing** and ~~materials~~  
 20 **Materials** risk-based corrective action processes described in part  
 21 213. This experience must demonstrate the exercise of sound  
 22 professional judgment and knowledge of the requirements of this  
 23 part or part 213, or both.

24 Sec. 20120a. (1) The department may establish cleanup criteria  
 25 and approve of remedial actions in the categories listed in this  
 26 subsection. The cleanup category proposed ~~shall~~**must** be the option  
 27 of the person proposing the remedial action, subject to department  
 28 approval if required, considering the appropriateness of the  
 29 categorical criteria to the facility. The categories are as

1 follows:

2 (a) Residential.

3 (b) Nonresidential.

4 (c) Limited residential.

5 (d) Limited nonresidential.

6 (2) As an alternative to the categorical criteria under  
7 subsection (1), the department may approve a response activity plan  
8 or a no further action report containing site-specific criteria  
9 that satisfy the requirements of section 20120b and other  
10 applicable requirements of this part. The department shall utilize  
11 only reasonable and relevant exposure pathways in determining the  
12 adequacy of a site-specific criterion. Additionally, the department  
13 may approve a remedial action plan for a designated area-wide zone  
14 encompassing more than 1 facility, and may consolidate remedial  
15 actions for more than 1 facility.

16 (3) The department shall develop cleanup criteria ~~pursuant to~~  
17 **under** subsection (1) based on generic human health risk assessment  
18 assumptions that are determined by the department to appropriately  
19 characterize patterns of human exposure associated with certain  
20 land uses. The department shall consider only reasonable and  
21 relevant exposure pathways and factors in determining these  
22 assumptions. The department may prescribe more than 1 generic set  
23 of exposure assumptions within each category described in  
24 subsection (1). If the department prescribes more than 1 generic  
25 set of exposure assumptions within a category, each set of exposure  
26 assumptions creates a subcategory within a category described in  
27 subsection (1). The department shall specify facility  
28 characteristics that determine the applicability of criteria  
29 derived for these categories or subcategories. ~~When developing and~~

1 ~~promulgating cleanup criteria under subsection (1), the department~~  
2 ~~shall do all of the following:~~

3 ~~(a) Except as set forth in subdivision (c), for each hazardous~~  
4 ~~substance, use final toxicity values from the United States~~  
5 ~~Environmental Protection Agency integrated risk information system,~~  
6 ~~or more recent United States Environmental Protection Agency Office~~  
7 ~~of Pesticide Programs toxicity values for pesticides that are~~  
8 ~~incorporated by the integrated risk information system in place of~~  
9 ~~values that have been archived by the integrated risk information~~  
10 ~~system, if available. If the United States Environmental Protection~~  
11 ~~Agency has determined that there is insufficient scientific data to~~  
12 ~~derive a value for inclusion in the integrated risk information~~  
13 ~~system, the department shall not derive or adopt such a value for~~  
14 ~~that hazardous substance. If a value is not available in the~~  
15 ~~integrated risk information system, the department shall apply the~~  
16 ~~following order of precedence when selecting toxicity values:~~

17 ~~(i) The best value from the agency for toxic substances and~~  
18 ~~disease registry final minimal risk levels for hazardous substances~~  
19 ~~or the United States Environmental Protection Agency provisional~~  
20 ~~peer-reviewed toxicity values.~~

21 ~~(ii) If a value is not available under subparagraph (i), the~~  
22 ~~best final value from the United States Environmental Protection~~  
23 ~~Agency health effects assessment summary table, or final values~~  
24 ~~adopted by other states, the World Health Organization, Canada, or~~  
25 ~~the European Union.~~

26 ~~(iii) If a value is not available under subparagraph (i) or (ii),~~  
27 ~~a value developed by the department if there is sufficient~~  
28 ~~supporting toxicity data and information available in the peer-~~  
29 ~~reviewed published scientific literature.~~

1       ~~(b) Apply the following order of precedence when selecting~~  
2 ~~chemical or physical data for the development of cleanup criteria:~~

3       ~~(i) The best relevant experimentally measured data.~~

4       ~~(ii) If data is not available under subparagraph (i), the best~~  
5 ~~relevant modeled or estimated data.~~

6       ~~(c) If the department desires to use a toxicity value or input~~  
7 ~~that is different than a value that is available on the United~~  
8 ~~States Environmental Protection Agency integrated risk information~~  
9 ~~system, or more recent United States Environmental Protection~~  
10 ~~Agency Office of Pesticide Programs toxicity values for pesticides~~  
11 ~~that are incorporated by the integrated risk information system in~~  
12 ~~place of values that have been archived by the integrated risk~~  
13 ~~information system, or desires to establish a value when the~~  
14 ~~Environmental Protection Agency determined that there was~~  
15 ~~insufficient scientific data to do so when last evaluated by the~~  
16 ~~Environmental Protection Agency, the department shall provide~~  
17 ~~public notice and a written explanation of its intent to do so and~~  
18 ~~conduct a stakeholder process to obtain input. After obtaining~~  
19 ~~stakeholder input, the department may promulgate a rule to use an~~  
20 ~~alternative value in accordance with the order of precedence set~~  
21 ~~forth in subdivision (a) (i) through (iii), if the department~~  
22 ~~demonstrates all of the following:~~

23       ~~(i) The integrated risk information system value is based on a~~  
24 ~~determination that is at least 10 years old.~~

25       ~~(ii) There is more current data in the peer-reviewed scientific~~  
26 ~~literature that is used on a general basis by the United States~~  
27 ~~Environmental Protection Agency or multiple other regulatory~~  
28 ~~agencies nationally for the purpose of calculating cleanup criteria~~  
29 ~~or standards.~~

1       ~~(iii) After assessing the body of evidence for the hazardous~~  
2 ~~substance using a rigorous systematic review methodology, such as~~  
3 ~~that used by the National Toxicology Program's Office of Health~~  
4 ~~Assessment and Translation and the European Food Safety Authority,~~  
5 ~~the weight of scientific evidence clearly supports the use of the~~  
6 ~~proposed value as best available science for the purpose of~~  
7 ~~calculating generic cleanup criteria.~~

8       ~~(d) Use a daily exposure time for inhalation in the exposure~~  
9 ~~intake for a nonresidential worker in an algorithm or equation used~~  
10 ~~to calculate generic cleanup criteria under this part that is equal~~  
11 ~~to the average number of hours, not to exceed 10 hours, that a~~  
12 ~~nonresidential worker spends working in a 5-day work week according~~  
13 ~~to the most appropriate governmental data or information.~~

14       ~~(e) When the department considers the pregnant woman as a~~  
15 ~~potential sensitive receptor to address prenatal developmental~~  
16 ~~effects, the department may apply a single-event exposure scenario~~  
17 ~~for a hazardous substance, pursuant to the process set forth in~~  
18 ~~subdivision (f), only when either of the following occurs:~~

19       ~~(i) The United States Environmental Protection Agency applies a~~  
20 ~~single-event exposure scenario to establish regional screening~~  
21 ~~levels for that hazardous substance.~~

22       ~~(ii) The department demonstrates, after conducting a~~  
23 ~~comprehensive assessment of the specific hazardous substance, that,~~  
24 ~~for that specific hazardous substance, a single exposure may result~~  
25 ~~in an adverse effect and the weight of scientific evidence supports~~  
26 ~~the application of a single-event exposure scenario. The~~  
27 ~~department's comprehensive assessment must evaluate the body of~~  
28 ~~scientific evidence using a systematic review methodology, such as~~  
29 ~~that used by the National Toxicology Program's Office of Health~~

1 ~~Assessment and Translation and the European Food Safety Authority.~~

2 ~~The comprehensive assessment must, if appropriate, take into~~  
 3 ~~account all of the following:~~

4 ~~(A) Whether there is data available involving single-day~~  
 5 ~~exposures to the hazardous substance during pregnancy.~~

6 ~~(B) The differences in sensitivity, periods of development,~~  
 7 ~~and progression of different types of developmental effects in~~  
 8 ~~humans and animals.~~

9 ~~(C) Differences in toxicokinetics between species.~~

10 ~~(f) Before conducting the comprehensive assessment in~~  
 11 ~~subdivision (c) (ii), the department shall provide public notice and~~  
 12 ~~a written explanation of its intent to do so. Upon completion of~~  
 13 ~~the assessment, the department shall conduct a stakeholder process~~  
 14 ~~to obtain input. If, upon obtaining stakeholder input, the~~  
 15 ~~department elects to apply a single-event exposure scenario for a~~  
 16 ~~particular hazardous substance, the department shall do so in a~~  
 17 ~~rule.~~

18 (4) If a hazardous substance poses a carcinogenic risk to  
 19 humans, the cleanup criteria derived for cancer risk under this  
 20 section ~~shall~~**must** be the 95% upper bound on the calculated risk of  
 21 1 additional cancer above the background cancer rate per 100,000  
 22 individuals using the generic set of exposure assumptions  
 23 established under subsection (3) for the appropriate category or  
 24 subcategory. If the hazardous substance poses a risk of an adverse  
 25 health effect other than cancer, cleanup criteria ~~shall~~**must** be  
 26 derived using appropriate human health risk assessment methods for  
 27 that adverse health effect and the generic set of exposure  
 28 assumptions established under subsection (3) for the appropriate  
 29 category or subcategory. A hazard quotient of 1.0 ~~shall~~**must** be

1 used to derive noncancer cleanup criteria. For the noncarcinogenic  
2 effects of a hazardous substance present in soils, the intake ~~shall~~  
3 **must** be assumed to be 100% of the protective level, unless compound  
4 and site-specific data are available to demonstrate that a  
5 different source contribution is appropriate. If a hazardous  
6 substance poses a risk of both cancer and 1 or more adverse health  
7 effects other than cancer, cleanup criteria ~~shall~~**must** be derived  
8 under this section for the most sensitive effect.

9 (5) If a cleanup criterion derived under subsection (4) for  
10 groundwater in an aquifer differs from either: (a) the state  
11 drinking water standards established ~~pursuant to~~**under** section 5 of  
12 the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the  
13 national secondary drinking water regulations established ~~pursuant~~  
14 ~~to~~**under** 42 USC 300g-1, or (c), if there is not national secondary  
15 drinking water regulation for a contaminant, the concentration  
16 determined by the department according to methods approved by the  
17 United States Environmental Protection Agency below which taste,  
18 odor, appearance, or other aesthetic characteristics are not  
19 adversely affected, the cleanup criterion is the more stringent of  
20 (a), (b), or (c) unless the department determines that compliance  
21 with this subsection is not necessary because the use of the  
22 aquifer is reliably restricted or controlled under provisions of a  
23 postclosure plan or a postclosure agreement or by site-specific  
24 criteria approved by the department under section 20120b.

25 (6) The department shall not approve a remedial action plan or  
26 no further action report in categories set forth in subsection  
27 (1)(b) to (d), unless the person documents that the current zoning  
28 of the property is consistent with the categorical criteria being  
29 proposed, or that the governing zoning authority intends to change

1 the zoning designation so that the proposed criteria are consistent  
2 with the new zoning designation, or the current property use is a  
3 legal nonconforming use. The department shall not grant final  
4 approval for a remedial action plan or no further action report  
5 that relies on a change in zoning designation until a final  
6 determination of that zoning change has been made by the local unit  
7 of government. The department may approve of a remedial action plan  
8 or no further action report that achieves categorical criteria that  
9 are based on greater exposure potential than the criteria  
10 applicable to current zoning. In addition, the remedial action plan  
11 or no further action report must include documentation that the  
12 current property use is consistent with the current zoning or is a  
13 legal nonconforming use. Abandoned or inactive property must be  
14 considered on the basis of zoning classifications as described  
15 above.

16 (7) Cleanup criteria from 1 or more categories in subsection  
17 (1) may be applied at a facility, if all relevant requirements are  
18 satisfied for application of a pertinent criterion.

19 (8) The need for soil remediation to protect an aquifer from  
20 hazardous substances in soil ~~shall~~**must** consider the vulnerability  
21 of the aquifer or aquifers potentially affected if the soil remains  
22 at the facility. Migration of hazardous substances in soil to an  
23 aquifer is a pertinent pathway if appropriate based on  
24 consideration of site specific factors.

25 (9) The department may establish cleanup criteria for a  
26 hazardous substance using a biologically based model developed or  
27 identified as appropriate by the United States Environmental  
28 Protection Agency if the department determines all of the  
29 following:

1 (a) That application of the model results in a criterion that  
2 more accurately reflects the risk posed.

3 (b) That data of sufficient quantity and quality are available  
4 for a specified hazardous substance to allow the scientifically  
5 valid application of the model.

6 (c) The United States Environmental Protection Agency has  
7 determined that application of the model is appropriate for the  
8 hazardous substance in question.

9 (10) If the target detection limit or the background  
10 concentration for a hazardous substance is greater than a cleanup  
11 criterion developed for a category ~~pursuant to~~**under** subsection  
12 (1), the criterion is the target detection limit or background  
13 concentration, whichever is larger, for that hazardous substance in  
14 that category.

15 (11) The department may also approve cleanup criteria if  
16 necessary to address conditions that prevent a hazardous substance  
17 from being reliably measured at levels that are consistently  
18 achievable in samples from the facility in order to allow for  
19 comparison with generic cleanup criteria. A person seeking approval  
20 of a criterion under this subsection shall document the basis for  
21 determining that the relevant published target detection limit  
22 cannot be achieved in samples from the facility.

23 (12) In determining the adequacy of a land-use based response  
24 activity to address sites contaminated by polychlorinated  
25 biphenyls, the department shall not require response activity in  
26 addition to that which is subject to and complies with applicable  
27 federal regulations and policies that implement the toxic  
28 substances control act, 15 USC 2601 to ~~2692~~**2697**.

29 (13) Remedial action to address the release of uncontaminated

1 mineral oil satisfies cleanup criteria under this part for  
2 groundwater or for soil if all visible traces of mineral oil are  
3 removed from groundwater and soil.

4 (14) Approval by the department of remedial action based on  
5 the categorical standard in subsection (1) (a) or (b) ~~shall~~**must** be  
6 granted only if the pertinent criteria are satisfied in the  
7 affected media. The department shall approve the use of  
8 probabilistic or statistical methods or other scientific methods of  
9 evaluating environmental data when determining compliance with a  
10 pertinent cleanup criterion if the methods are determined by the  
11 department to be reliable, scientifically valid, and best represent  
12 actual site conditions and exposure potential.

13 (15) If a discharge of venting groundwater complies with this  
14 part, a permit for the discharge is not required.

15 (16) Remedial actions that rely on categorical cleanup  
16 criteria developed ~~pursuant to~~**under** subsection (1) ~~shall~~**must** also  
17 consider other factors necessary to protect the public health,  
18 safety, and welfare, and the environment as specified by the  
19 department, if the department determines based on data and existing  
20 information that such considerations are relevant to a specific  
21 facility. These factors include, but are not limited to, the  
22 protection of surface water quality and consideration of ecological  
23 risks if pertinent to the facility based on the requirements of  
24 this part.

25 ~~The department shall promulgate all generic cleanup~~  
26 ~~criteria and target detection limits as rules. Except for generic~~  
27 ~~cleanup criteria and target detection limits developed before~~  
28 ~~January 11, 2018, and those generic cleanup criteria determined as~~  
29 ~~set forth in subsections (5) and (23) and section 20120e(1)(a),~~

1 ~~generic cleanup criteria and target detection limits, and any~~  
2 ~~modifications or revisions to generic cleanup criteria and target~~  
3 ~~detection limits, are not legally enforceable until promulgated as~~  
4 ~~rules. The generic cleanup criteria and target detection limits are~~  
5 ~~subject to all of the following:~~

6 ~~(a) The department may periodically repromulgate rules for any~~  
7 ~~portion of the generic cleanup criteria to adopt and use new~~  
8 ~~toxicity values or chemical or physical data selected pursuant to~~  
9 ~~subsection (3) (a) and (b) or to otherwise update the generic~~  
10 ~~cleanup criteria in accordance with this part to incorporate, as~~  
11 ~~appropriate, **Not later than December 31, 2013, the department shall**~~  
12 ~~**evaluate and revise the cleanup criteria derived under this**~~  
13 ~~**section. The evaluation and any revisions must incorporate**~~  
14 ~~knowledge gained through research and studies in the areas of fate~~  
15 ~~and transport and risk assessment taking into account best~~  
16 ~~practices from other states, reasonable and realistic conditions,~~  
17 ~~and sound science. **Following this revision, the department shall**~~  
18 ~~**periodically evaluate whether new information is available**~~  
19 ~~**regarding the cleanup criteria and shall make revisions as**~~  
20 ~~**appropriate. The department shall prepare and submit to the**~~  
21 ~~**legislature a report detailing any revisions made to cleanup**~~  
22 ~~**criteria under this section.** The department may also repromulgate~~  
23 ~~rules that establish target detection limits to update those limits~~  
24 ~~in accordance with this part.~~

25 ~~(b) If generic cleanup criteria are included in or relied upon~~  
26 ~~as a basis for decision in a work plan, response activity plan,~~  
27 ~~remedial action plan, postclosure plan, request for certificate of~~  
28 ~~completion, or similar document, that is submitted to the~~  
29 ~~department or approved by the department prior to the effective~~

~~1 date of a rule revising those cleanup criteria, then the generic  
2 cleanup criteria effective at the time of submittal or prior  
3 approval continue to apply to the review, revision, or  
4 implementation of the plan, request, or document, as well as to any  
5 future review, approval, or disapproval of a no further action  
6 report or any part thereof that is based on the plan, request, or  
7 document, unless either of the following occur:~~

~~8 (i) The person making the submittal voluntarily elects to apply  
9 the revised cleanup criteria.~~

~~10 (ii) The department director makes a site-specific  
11 demonstration, based on clear and convincing evidence, that the  
12 prior cleanup criteria are no longer protective of the public  
13 health, safety, or welfare, or the environment, given the totality  
14 of circumstances at the site, including any site-specific factors  
15 that reduce exposure or risk, such as the existence of land or  
16 resource use restrictions that reduce or restrict exposure. This  
17 subparagraph does not apply if, no later than 6 months after the  
18 promulgation of the rule revision changing the cleanup criteria,  
19 both of the following conditions are met:~~

~~20 (A) The person has substantially completed all active  
21 remediation as set forth in the approved plan, request, or similar  
22 document, and only monitoring, maintenance, or postclosure  
23 activities remain.~~

~~24 (B) The person submits a request for a no further action  
25 approval to the department.~~

~~26 (c) No further action reports that have been approved by the  
27 department and that rely on cleanup criteria that have been  
28 subsequently revised remain valid, subject to the liability  
29 provisions of section 20126(4)(c).~~

1 ~~(d) If generic cleanup criteria are included in or relied upon~~  
2 ~~as a basis for decision in a no further action report, other than a~~  
3 ~~no further action report described in subdivision (b) (ii), that is~~  
4 ~~submitted to the department but not yet approved by the department~~  
5 ~~prior to the effective date of a rule revising those cleanup~~  
6 ~~criteria, then the generic cleanup criteria effective at the time~~  
7 ~~of submittal continue to apply to the review, revision, and~~  
8 ~~approval of the report unless either of the following occur:~~

9 ~~(i) The person making the submittal voluntarily elects to apply~~  
10 ~~the revised cleanup criteria.~~

11 ~~(ii) The department director makes a site specific~~  
12 ~~demonstration, based on clear and convincing evidence, that the~~  
13 ~~prior generic cleanup criteria are no longer protective of the~~  
14 ~~public health, safety, or welfare, or the environment, given the~~  
15 ~~totality of circumstances at the site, including any site specific~~  
16 ~~factors that reduce exposure or risk, such as the existence of land~~  
17 ~~or resource use restrictions that reduce or restrict exposure.~~

18 ~~(c) A demonstration by the department director under~~  
19 ~~subdivision (b) or (d) that prior cleanup criteria are no longer~~  
20 ~~protective of the public health, safety, or welfare, or the~~  
21 ~~environment, is appealable in accordance with section 20114e.~~

22 ~~(f) Notwithstanding subdivisions (b) through (d), an owner's~~  
23 ~~or operator's obligations under section 20107a shall be based upon~~  
24 ~~the current numeric cleanup criteria under section 20120a(1) or~~  
25 ~~site-specific criteria approved under section 20120b.~~

26 (18) A person demonstrates compliance with indoor air  
27 inhalation criteria for a hazardous substance at a facility under  
28 this part if all of the following conditions are met:

29 (a) The facility is an establishment covered by the

1 classifications provided by sector 31-33 - manufacturing, of the  
 2 North American Industry Classification System, United States, 2012,  
 3 published by the Office of Management and Budget.

4 (b) The person complies with the Michigan occupational safety  
 5 and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the  
 6 rules promulgated under that act applicable to the exposure to the  
 7 hazardous substance, including, but not limited to, the  
 8 occupational health standards for air contaminants, R 325.51101 to  
 9 R 325.51108 of the Michigan Administrative Code.

10 (c) The hazardous substance is included in the facility's  
 11 hazard communication program under section 14a of the Michigan  
 12 occupational safety and health act, 1974 PA 154, MCL 408.1014a, and  
 13 the hazard communication rules, R 325.77001 to R 325.77004 of the  
 14 Michigan Administrative Code, except that, unless the hazardous  
 15 substance is in use in the facility, the requirement to have a  
 16 material safety data sheet in the workplace requires only a generic  
 17 material safety data sheet for the hazardous substance and the  
 18 labeling requirements do not apply.

19 (19) The department shall ~~promulgate as rules~~ **make available**  
 20 the algorithms used to calculate, modify, or revise all residential  
 21 and nonresidential generic cleanup criteria, as well as the tables  
 22 listing, by hazardous substance, all toxicity, exposure, and other  
 23 algorithm factors or variables used in the department's  
 24 calculations, modifications, or revisions.

25 ~~(20) Calculation and application of toxic equivalency~~  
 26 ~~quotients are subject to the following:~~

27 ~~(a) The toxic equivalency factors used must only be those~~  
 28 ~~adopted by the World Health Organization.~~

29 ~~(b) When compounds contributed by 2 or more persons acting~~

1 ~~independently are combined in a toxic equivalency quotient to~~  
2 ~~assess human health risks, harm is divisible and subject to~~  
3 ~~apportionment of liability under subsections 20129(1) and (2).~~

4 ~~(c) To assess human health risks, the toxic equivalency~~  
5 ~~quotient must be compared to generic or site-specific criteria for~~  
6 ~~the reference hazardous substance.~~

7 ~~(21) Polychlorinated dibenzodioxin and dibenzofuran congeners~~  
8 ~~are not likely to leach from soil to groundwater. The groundwater~~  
9 ~~surface water interface protection and the residential drinking~~  
10 ~~water protection exposure pathways are not applicable or relevant~~  
11 ~~when assessing polychlorinated dibenzodioxin and dibenzofuran~~  
12 ~~congeners unless the department demonstrates that those congeners~~  
13 ~~are leaching at material concentrations through co-solvation.~~

14 ~~(22) Polychlorinated dibenzodioxin and dibenzofuran congeners~~  
15 ~~are not likely to volatilize from soil or groundwater into the air.~~  
16 ~~Vapor inhalation exposure pathways are not applicable or relevant~~  
17 ~~when assessing polychlorinated dibenzodioxin and dibenzofuran~~  
18 ~~congeners.~~

19 ~~(23) For a substance that does not have generic cleanup~~  
20 ~~criteria, if, based on the best available information, the~~  
21 ~~department determines that the substance is a hazardous substance,~~  
22 ~~the department may calculate generic cleanup criteria for that~~  
23 ~~hazardous substance using toxicity values and chemical and physical~~  
24 ~~data selected pursuant to subsection (3) (a) and (b) and in~~  
25 ~~accordance with all other requirements of this part and publish the~~  
26 ~~generic cleanup criteria on the department's website. Within 30~~  
27 ~~days after publishing the new generic cleanup criteria, the~~  
28 ~~department shall initiate rule-making to promulgate rules for the~~  
29 ~~new criteria by filing a rule-making request under section 39 of~~

~~1 the administrative procedures act, 1969 PA 306, MCL 24.239. The~~  
~~2 rule-making request shall only include the revisions necessary to~~  
~~3 promulgate the new generic cleanup criteria. The new generic~~  
~~4 cleanup criteria published pursuant to this subsection take effect~~  
~~5 and are legally enforceable when published by the department if the~~  
~~6 department also initiates rule-making to promulgate rules for the~~  
~~7 new criteria within 30 days. The new generic cleanup criteria~~  
~~8 published pursuant to this subsection remain effective and legally~~  
~~9 enforceable until replaced by a final rule or, until the director~~  
~~10 directs the department to withdraw the rule request under section~~  
~~11 66(11) of the administrative procedures act, 1969 PA 306, MCL~~  
~~12 24.266, or the time limitation in either section 45(1) or section~~  
~~13 66(12) of the administrative procedures act, 1969 PA 306, MCL~~  
~~14 24.245 and 24.266, is not met.~~

15       Sec. 20120b. (1) ~~Subject to subsection (4), the~~ **The** department  
 16 shall approve numeric or nonnumeric site-specific criteria in a  
 17 response activity under section 20120a if such criteria, in  
 18 comparison to generic criteria, better reflect best available  
 19 information concerning the toxicity or exposure risk posed by the  
 20 hazardous substance or other factors.

21       (2) Site-specific criteria approved under subsection (1) may,  
 22 as appropriate:

23       (a) Use the algorithms for calculating generic criteria  
 24 established by rule or propose and use different algorithms.

25       (b) Alter any value, parameter, or assumption used to  
 26 calculate generic criteria, with the exception of the risk targets  
 27 specified in section 20120a(4).

28       (c) Take into consideration the depth below the ground surface  
 29 of contamination, which may reduce the potential for exposure and

1 serve as an exposure barrier.

2 (d) Be based on information related to the specific facility  
3 or information of general applicability, including peer-reviewed  
4 scientific literature.

5 (e) Use probabilistic methods of calculation.

6 (f) Use nonlinear-threshold-based calculations where  
7 scientifically justified.

8 (g) Take into account a land use or resource use restriction.

9 (3) If there is not a generic cleanup criterion for a  
10 hazardous substance in regard to a relevant exposure pathway,  
11 releases of the hazardous substance may be addressed through any of  
12 the following means, singly or in combination:

13 (a) Eliminate exposure to the hazardous substance through  
14 removal, containment, exposure barriers, or land use or resource  
15 use restrictions.

16 (b) If another hazardous substance is expected to have similar  
17 fate, mobility, bioaccumulation, and toxicity characteristics,  
18 apply the cleanup criteria for that hazardous substance as a  
19 surrogate. Before using a surrogate, the person shall notify the  
20 department, provide a written explanation why the surrogate is  
21 suitable, and request approval. If the department does not notify  
22 the person that it disapproves the use of the chosen surrogate  
23 within 90 days after receipt of the notice, the surrogate is  
24 considered approved. A hazardous substance may be used as a  
25 surrogate for a single hazardous substance or for a class or  
26 category of hazardous substances.

27 (c) For venting groundwater, use a modeling demonstration, an  
28 ecological demonstration, or a combination of both, consistent with  
29 section 20120e(9) and (10), to demonstrate that the hazardous

1 substance is not likely to migrate to a surface water body or has  
2 not or will not impair the existing or designated uses for a  
3 surface water body.

4 (d) If toxicity information is available for the hazardous  
5 substance, develop site-specific cleanup criteria for the hazardous  
6 substance ~~pursuant to~~ **under** subsections (1) and (2), or develop  
7 simplified site-specific screening criteria based upon toxicity and  
8 concentrations found on site, and request department approval. If  
9 the department does not notify the person that it disapproves the  
10 site-specific criteria or screening criteria within 90 days after  
11 receipt of the request, the criteria are considered approved.

12 (e) Any other method approved by the department.

13 ~~(4) Site-specific criteria approved by the department are not~~  
14 ~~invalidated by subsequent changes to the generic criteria for that~~  
15 ~~hazardous substance, including changes to toxicity, exposure, or~~  
16 ~~other values or variables used by the department to calculate the~~  
17 ~~generic criteria.~~

18 Enacting section 1. Section 20120f of 1994 PA 451, MCL  
19 324.20120f, is repealed.