

**SUBSTITUTE FOR
SENATE BILL NO. 606**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20118, 20120a, 20120b, 20120e, and 20121 (MCL
324.20118, 324.20120a, 324.20120b, 324.20120e, and 324.20121),
section 20118 as amended and section 20121 as added by 2014 PA 542,
section 20120a as amended by 2024 PA 7, section 20120b as amended
by 2018 PA 581, and section 20120e as amended by 2012 PA 190.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20118. (1) The department may take response activity or
2 approve of response activity proposed by a person that is
3 consistent with this part ~~and the rules promulgated under this part~~
4 relating to the selection and implementation of response activity
5 that the department concludes is necessary and appropriate to

1 protect the public health, safety, or welfare, or the environment.

2 ~~(2) Remedial action undertaken under subsection (1) may~~
3 ~~address all or a portion of contamination at a facility as follows:~~

4 ~~(a) Remedial action may address 1 or more releases at a~~
5 ~~facility.~~

6 ~~(b) Remedial action may address 1 or more hazardous substances~~
7 ~~at a facility.~~

8 ~~(c) Remedial action may address contamination in 1 or more~~
9 ~~environmental media at a facility.~~

10 ~~(d) Remedial action may address contamination within the~~
11 ~~entire facility or only a portion of a facility.~~

12 ~~(e) Remedial action may address contamination at a facility~~
13 ~~through any combination of subdivisions (a) through (d).~~

14 **(2)** ~~(3)~~ Remedial action undertaken under subsection (1) ~~shall~~
15 **must** accomplish all of the following:

16 (a) ~~Assure~~ **Ensure** the protection of the public health, safety,
17 and welfare, and the environment with respect to the environmental
18 contamination addressed by the remedial action.

19 (b) Except as otherwise provided in subsections **(3) and (4)**,
20 ~~and (5)~~, attain a degree of cleanup and control of the
21 environmental contamination addressed by the remedial action that
22 **meets all of the following requirements:**

23 **(i) To the extent technically practical, meets the cleanup**
24 **criteria for the intended land use and restores any affected**
25 **aquifer to state drinking water standards.**

26 **(ii) To the extent technically practical, stops or reverses any**
27 **vertical or horizontal expansion of the contaminated area or a**
28 **ground contamination plume.**

29 **(iii) Otherwise** complies with all applicable or relevant and

1 appropriate requirements, rules, criteria, limitations, and
2 standards of state and federal environmental law.

3 (c) Except as otherwise provided in subsections (4) and (5),
4 be consistent with any cleanup criteria ~~incorporated in rules~~
5 ~~promulgated under this part~~ **established by the department** for the
6 environmental contamination addressed by the remedial action.

7 **(3)** ~~(4) The department may select or approve of a remedial~~
8 ~~action meeting the criteria provided for in section 20120a that~~
9 ~~does not attain a degree of control or cleanup of hazardous~~
10 ~~substances that complies with R 299.3(5) or R 299.3(6) of the~~
11 ~~Michigan administrative code, or both, if the department makes a~~
12 ~~finding that the remedial action is protective of the public~~
13 ~~health, safety, and welfare, and the environment. Notwithstanding~~
14 ~~any other provision of this subsection, the department shall not~~
15 ~~approve of a remedial action that does not attain a degree of~~
16 ~~control or cleanup of hazardous substances that complies with R~~
17 ~~299.3(5) or R 299.3(6) of the Michigan administrative code~~
18 **Administrative Code** if the remedial action is being implemented by
19 a person who is liable under section 20126 and the release was
20 grossly negligent or intentional, unless attaining that degree of
21 control is technically infeasible, or the adverse environmental
22 impact of implementing a remedial action to satisfy the rule would
23 exceed the environmental benefit of that remedial action.

24 **(4)** ~~(5) A remedial action may be selected or approved pursuant~~
25 ~~to subsection (4) with regard to R 299.3(5) or R 299.3(6), or both,~~
26 ~~of the Michigan administrative code, **Administrative Code**, if the~~
27 ~~department determines, based on the administrative record, that 1~~
28 ~~or more of the following conditions are satisfied:~~

29 (a) Compliance with R 299.3(5) or R 299.3(6), or both, of the

1 Michigan ~~administrative code~~ **Administrative Code** is technically
2 ~~impractical.infeasible.~~

3 (b) The remedial action selected or approved will, within a
4 reasonable period of time, attain a standard of performance that is
5 equivalent to that required under R 299.3(5) or R 299.3(6) of the
6 Michigan ~~administrative code~~ **Administrative Code**.

7 (c) The adverse environmental impact of implementing a
8 remedial action to satisfy R 299.3(5) or R 299.3(6), or both, of
9 the Michigan ~~administrative code~~ **Administrative Code** would exceed
10 the environmental benefit of the remedial action.

11 (d) The remedial action provides for the reduction of
12 hazardous substance concentrations in the aquifer through a
13 naturally occurring process that is documented to occur at the
14 facility, and both of the following conditions are met:

15 (i) It ~~has been~~ **is** demonstrated that there will be no adverse
16 impact on the environment as the result of migration of the
17 hazardous substances during the remedial action. ~~, except for that~~
18 ~~part of the aquifer approved by the department in connection with~~
19 ~~the remedial action.~~

20 (ii) The remedial action includes enforceable land use
21 restrictions or other institutional controls necessary to prevent
22 unacceptable risk from exposure to the hazardous substances, as
23 defined by the cleanup criteria approved as part of the remedial
24 action.

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

1 ~~categorical criteria to the facility.~~ The categories are as
2 follows:

3 (a) Residential.

4 (b) Nonresidential.

5 (c) Limited residential.

6 (d) Limited nonresidential.

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

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

1 subsection (1). The department shall specify facility
 2 characteristics that determine the applicability of criteria
 3 derived for these categories or subcategories. When developing and
 4 ~~promulgating~~ **publishing** cleanup criteria under subsection ~~(1)~~,
 5 **(17)**, the department shall ~~do all of~~ **review and consider using** the
 6 following :-

7 ~~(a) Except as set forth in subdivision (c), for each hazardous~~
 8 ~~substance, use final toxicity values from the~~ **sources for**
 9 **determining final toxicity values:**

10 **(a) The** United States Environmental Protection Agency
 11 integrated risk information system. ~~, or more recent~~

12 **(b) The** United States Environmental Protection Agency Office
 13 of Pesticide Programs toxicity values for pesticides that are
 14 incorporated by the integrated risk information system in place of
 15 values that have been archived by the integrated risk information
 16 system. ~~, if available. If the United States Environmental~~
 17 ~~Protection Agency has determined that there is insufficient~~
 18 ~~scientific data to derive a value for inclusion in the integrated~~
 19 ~~risk information system, the department shall not derive or adopt a~~
 20 ~~value for that hazardous substance. If a value is not available in~~
 21 ~~the integrated risk information system, the department shall apply~~
 22 ~~the following order of precedence when selecting toxicity values:~~

23 **(c) (i)** ~~The best value from the agency for toxic substances and~~
 24 ~~disease registry~~ **Agency for Toxic Substances and Disease Registry**
 25 **within the United States Department of Health and Human Services**
 26 **for** final minimal risk levels for hazardous substances or the
 27 United States Environmental Protection Agency provisional peer-
 28 reviewed toxicity values.

29 **(d) (ii)** ~~If a value is not available under subparagraph (i), the~~

1 **The** best final value from the United States Environmental
2 Protection Agency health effects assessment summary table, or final
3 values adopted by other states, the World Health Organization,
4 Canada, or the European Union.

5 **(e)** ~~(iii)~~—If a value is **either** not available under subparagraph
6 ~~(i)~~ **subdivision (a), (b), (c), or (ii), (d), or is unsupported based**
7 **on more recent scientific studies,** a value **may be identified**
8 **through the use of alternate sources or** developed by the department
9 if there is sufficient supporting toxicity data and information
10 available in the peer-reviewed published scientific literature.

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

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

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

16 ~~(c) If the department desires to use a toxicity value or input~~
17 ~~that is different than a value that is available on the United~~
18 ~~States Environmental Protection Agency integrated risk information~~
19 ~~system, or more recent United States Environmental Protection~~
20 ~~Agency Office of Pesticide Programs toxicity values for pesticides~~
21 ~~that are incorporated by the integrated risk information system in~~
22 ~~place of values that have been archived by the integrated risk~~
23 ~~information system, or desires to establish a value when the United~~
24 ~~States Environmental Protection Agency determined that there was~~
25 ~~insufficient scientific data to do so when last evaluated by the~~
26 ~~United States Environmental Protection Agency, the department shall~~
27 ~~provide public notice and a written explanation of its intent to do~~
28 ~~so and conduct a stakeholder process to obtain input. After~~
29 ~~obtaining stakeholder input, the department may promulgate a rule~~

1 ~~to use an alternative value in accordance with the order of~~
2 ~~precedence set forth in subdivision (a) (i) to (iii), if the~~
3 ~~department demonstrates all of the following:~~

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

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

11 ~~(iii) After assessing the body of evidence for the hazardous~~
12 ~~substance using a rigorous systematic review methodology, such as~~
13 ~~that used by the National Toxicology Program's Office of Health~~
14 ~~Assessment and Translation and the European Food Safety Authority,~~
15 ~~the weight of scientific evidence clearly supports the use of the~~
16 ~~proposed value as best available science for the purpose of~~
17 ~~calculating generic cleanup criteria.~~

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

24 ~~(e) When the department considers the pregnant woman as a~~
25 ~~potential sensitive receptor to address prenatal developmental~~
26 ~~effects, the department may apply a single event exposure scenario~~
27 ~~for a hazardous substance, under the process set forth in~~
28 ~~subdivision (f), only when either of the following occurs:~~

29 ~~(i) The United States Environmental Protection Agency applies a~~

1 ~~single-event exposure scenario to establish regional screening~~
2 ~~levels for that hazardous substance.~~

3 ~~(ii) The department demonstrates, after conducting a~~
4 ~~comprehensive assessment of the specific hazardous substance, that,~~
5 ~~for that specific hazardous substance, a single exposure may result~~
6 ~~in an adverse effect and the weight of scientific evidence supports~~
7 ~~the application of a single-event exposure scenario. The~~
8 ~~department's comprehensive assessment must evaluate the body of~~
9 ~~scientific evidence using a systematic review methodology, such as~~
10 ~~that used by the National Toxicology Program's Office of Health~~
11 ~~Assessment and Translation and the European Food Safety Authority.~~
12 ~~The comprehensive assessment must, if appropriate, take into~~
13 ~~account all of the following:~~

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

16 ~~(B) The differences in sensitivity, periods of development,~~
17 ~~and progression of different types of developmental effects in~~
18 ~~humans and animals.~~

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

20 ~~(f) Before conducting the comprehensive assessment in~~
21 ~~subdivision (e) (ii), the department shall provide public notice and~~
22 ~~a written explanation of its intent to do so. On completion of the~~
23 ~~assessment, the department shall conduct a stakeholder process to~~
24 ~~obtain input. If, after obtaining stakeholder input, the department~~
25 ~~elects to apply a single event exposure scenario for a particular~~
26 ~~hazardous substance, the department shall do so in a rule.~~

27 (4) If a hazardous substance poses a carcinogenic risk to
28 humans, the cleanup criteria derived for cancer risk under this
29 section must be the 95% upper bound on the calculated risk of 1

1 additional cancer above the background cancer rate per 100,000
2 individuals using the generic set of exposure assumptions
3 established under subsection (3) for the appropriate category or
4 subcategory. If the hazardous substance poses a risk of an adverse
5 health effect other than cancer, cleanup criteria must be derived
6 using appropriate human health risk assessment methods for that
7 adverse health effect and the generic set of exposure assumptions
8 established under subsection (3) for the appropriate category or
9 subcategory. A hazard quotient of 1.0 must be used to derive
10 noncancer cleanup criteria. For the noncarcinogenic effects of a
11 hazardous substance present in soils, the intake must be assumed to
12 be 100% of the protective level, unless compound and site-specific
13 data are available to demonstrate that a different source
14 contribution is appropriate. If a hazardous substance poses a risk
15 of both cancer and 1 or more adverse health effects other than
16 cancer, cleanup criteria must be derived under this section for the
17 most sensitive effect.

18 (5) If a cleanup criterion derived under subsection (4) for
19 groundwater in an aquifer differs from either: (a) the state
20 drinking water standards ~~established under section 5 of the safe~~
21 ~~drinking water act, 1976 PA 399, MCL 325.1005,~~ or (b) the national
22 secondary drinking water regulations established under 42 USC 300g-
23 1, or (c), if there is not national secondary drinking water
24 regulation for a contaminant, the concentration determined by the
25 department according to methods approved by the United States
26 Environmental Protection Agency below which taste, odor,
27 appearance, or other aesthetic characteristics are not adversely
28 affected, the cleanup criterion is the more stringent of (a), (b),
29 or (c) unless the department determines that compliance with this

1 subsection is ~~not necessary because the use of the aquifer is~~
2 ~~reliably restricted or controlled under provisions of a postclosure~~
3 ~~plan or a postclosure agreement or by site-specific criteria~~
4 ~~approved by the department under section 20120b.~~ **technically**
5 **infeasible, in which case the cleanup criterion must be the most**
6 **stringent criterion that is technically feasible.**

7 (6) The department shall not approve a remedial action plan,
8 **remedial action closure report**, or no further action report in **the**
9 categories ~~set forth in~~ **listed under** subsection (1) (b) to (d),
10 unless the person documents that the current zoning of the property
11 is consistent with the categorical criteria being proposed, or that
12 the governing zoning authority intends to change the zoning
13 designation so that the proposed criteria are consistent with the
14 new zoning designation, or the current property use is a legal
15 nonconforming use. The department shall not grant final approval
16 for a remedial action plan, **remedial action closure report**, or no
17 further action report that relies on a change in zoning designation
18 until a final determination of that zoning change has been made by
19 the local unit of government. The department may approve a remedial
20 action plan, **remedial action closure report**, or no further action
21 report that achieves categorical criteria that are based on greater
22 exposure potential than the criteria applicable to current zoning.
23 In addition, the remedial action plan, **remedial action closure**
24 **report**, or no further action report must include documentation that
25 the current property use is consistent with the current zoning or
26 is a legal nonconforming use. Abandoned or inactive property must
27 be considered on the basis of zoning classifications as described
28 above.

29 (7) Cleanup criteria from 1 or more categories in subsection

1 (1) may be applied at a facility, if all relevant requirements are
2 satisfied for application of a pertinent criterion.

3 (8) The need for soil remediation to protect an aquifer from
4 hazardous substances in soil must consider the vulnerability of the
5 aquifer or aquifers potentially affected if the soil remains at the
6 facility. Migration of hazardous substances in soil to an aquifer
7 is a pertinent pathway if appropriately based on consideration of
8 site-specific factors.

9 (9) The department may establish cleanup criteria for a
10 hazardous substance using a biologically based model developed or
11 identified as appropriate by the United States Environmental
12 Protection Agency if the department determines all of the
13 following:

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

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

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

22 (10) If the target detection limit or the background
23 concentration for a hazardous substance is greater than a cleanup
24 criterion developed for a category under subsection (1), the
25 criterion is the target detection limit or background
26 concentration, whichever is larger, for that hazardous substance in
27 that category.

28 (11) The department may also approve cleanup criteria if
29 necessary to address conditions that prevent a hazardous substance

1 from being reliably measured at levels that are consistently
2 achievable in samples from the facility in order to allow for
3 comparison with generic cleanup criteria. A person ~~seeking~~**that**
4 **wants** approval of a criterion under this subsection shall document
5 the basis for determining that the relevant published target
6 detection limit cannot be achieved in samples from the facility.

7 (12) In determining the adequacy of a land-use based response
8 activity to address sites contaminated by polychlorinated
9 biphenyls, the department shall not require response activity in
10 addition to that which is subject to and complies with applicable
11 federal regulations and policies that implement the toxic
12 substances control act, 15 USC 2601 to 2697.

13 (13) Remedial action to address the release of uncontaminated
14 mineral oil satisfies cleanup criteria under this part for
15 groundwater or for soil if all visible traces of mineral oil are
16 removed from groundwater and soil.

17 (14) Approval by the department of remedial action based on
18 the categorical standard in subsection (1) (a) or (b) must be
19 granted only if the pertinent criteria are satisfied in the
20 affected media. The department shall approve the use of
21 probabilistic or statistical methods or other scientific methods of
22 evaluating environmental data when determining compliance with a
23 pertinent cleanup criterion if the methods are determined by the
24 department to be reliable, scientifically valid, and best represent
25 actual site conditions and exposure potential.

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

28 (16) Remedial actions that rely on categorical cleanup
29 criteria developed under subsection (1) must also consider other

1 factors necessary to protect the public health, safety, and
2 welfare, and the environment as specified by the department, if the
3 department determines based on data and existing information that
4 these considerations are relevant to a specific facility. These
5 factors include, but are not limited to, the protection of surface
6 water quality and consideration of ecological risks if pertinent to
7 the facility based on the requirements of this part.

8 (17) The department shall promulgate ~~all generic cleanup~~
9 ~~criteria and target detection limits as rules. Except for generic~~
10 ~~cleanup criteria and target detection limits developed before~~
11 ~~January 11, 2018, and those generic cleanup criteria determined as~~
12 ~~set forth in subsections (5) and (23) and section 20120c(1)(a),~~
13 ~~generic cleanup criteria and target detection limits, and any~~
14 ~~modifications or revisions to generic cleanup criteria and target~~
15 ~~detection limits, are not legally enforceable until promulgated as~~
16 ~~rules. The generic cleanup criteria and target detection limits are~~
17 ~~subject to all of the following:~~

18 ~~(a) The department may periodically repromulgate rules for any~~
19 ~~portion of the generic cleanup criteria to adopt and use new~~
20 ~~toxicity values or chemical or physical data selected under~~
21 ~~subsection (3)(a) and (b) or to otherwise update the generic~~
22 ~~cleanup criteria in accordance with this part to incorporate, as~~
23 ~~appropriate, **the algorithms used to develop the generic cleanup**~~
24 ~~**criteria as rules in accordance with the administrative procedures**~~
25 ~~**act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department**~~
26 ~~**shall publish the generic cleanup criteria derived from the**~~
27 ~~**algorithms and target detection limits on its website. Generic**~~
28 ~~**cleanup criteria and target detection limits in force on the**~~
29 ~~**effective date of the amendatory act that added this sentence**~~

1 remain in effect until new generic cleanup criteria are published
2 by the department. The department shall evaluate and revise generic
3 cleanup criteria in effect on the effective date of the amendatory
4 act that added this sentence. The evaluation and revisions must
5 incorporate knowledge gained through research and studies in the
6 areas of fate and transport and risk assessment taking into account
7 best practices from other states, reasonable and realistic
8 conditions, and sound science. ~~The department may also repromulgate~~
9 ~~rules that establish target detection limits to update those limits~~
10 ~~in accordance with this part.~~ **The department shall provide notice to**
11 **the public before revising generic cleanup criteria and allow at**
12 **least 60 days for public comment on the proposed revisions. The**
13 **final version of revised generic cleanup criteria must be made**
14 **available on the department's website and include an explanation of**
15 **and basis for the revisions. After the evaluation and revisions,**
16 **the department shall periodically evaluate whether new information**
17 **is available regarding the generic cleanup criteria and shall make**
18 **revisions as appropriate. The department shall prepare and submit**
19 **to the legislature a report that details any revisions made to the**
20 **generic cleanup criteria developed under this section not later**
21 **than 90 days after the revisions are made.**

22 ~~(b) If generic cleanup criteria are included in or relied on~~
23 ~~as a basis for decision in a work plan, response activity plan,~~
24 ~~remedial action plan, postclosure plan, request for certificate of~~
25 ~~completion, or similar document, that is submitted to the~~
26 ~~department or approved by the department before the effective date~~
27 ~~of a rule revising those cleanup criteria, then the generic cleanup~~
28 ~~criteria effective at the time of submittal or prior approval~~
29 ~~continue to apply to the review, revision, or implementation of the~~

1 ~~plan, request, or document, as well as to any future review,~~
2 ~~approval, or disapproval of a no further action report or any part~~
3 ~~of the no further action report that is based on the plan, request,~~
4 ~~or document, unless either of the following occurs:~~

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

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

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

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

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

27 ~~(d) If generic cleanup criteria are included in or relied on~~
28 ~~as a basis for decision in a no further action report, other than a~~
29 ~~no further action report described in subdivision (b) (ii), that is~~

1 ~~submitted to the department but not yet approved by the department~~
 2 ~~before the effective date of a rule revising those cleanup~~
 3 ~~criteria, then the generic cleanup criteria effective at the time~~
 4 ~~of submittal continue to apply to the review, revision, and~~
 5 ~~approval of the report unless either of the following occurs:~~

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

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

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

19 ~~(f) Notwithstanding subdivisions (b) to (d), an owner's or~~
 20 ~~operator's obligations under section 20107a are based on the~~
 21 ~~current numeric cleanup criteria under subsection (1) or site-~~
 22 ~~specific criteria approved under section 20120b.~~

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

26 (a) The facility is an establishment covered by the
 27 classifications provided by sector 31-33 - manufacturing, of the
 28 North American Industry Classification System, United States, ~~2012,~~
 29 **2017**, published by the Office of Management and Budget.

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

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

16 (19) The department shall ~~promulgate as rules the algorithms~~
17 ~~used to calculate, modify, or revise all residential and~~
18 ~~nonresidential generic cleanup criteria, as well as~~ **make available**
19 **on its website** the tables listing, by hazardous substance, all
20 toxicity, exposure, and other algorithm factors or variables used
21 in the department's calculations **and promulgation of rules under**
22 **subsection (17).** ~~, modifications, or revisions.~~

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

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

27 ~~(b) When compounds contributed by 2 or more persons acting~~
28 ~~independently are combined in a toxic equivalency quotient to~~
29 ~~assess human health risks, harm is divisible and subject to~~

1 ~~apportionment of liability under subsections 20129(1) and (2).~~

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

5 **(20)** ~~(21)~~ Polychlorinated dibenzodioxin and dibenzofuran
6 congeners are not likely to leach from soil to groundwater. The
7 groundwater surface water interface protection and the residential
8 drinking water protection exposure pathways are not applicable or
9 relevant when assessing polychlorinated dibenzodioxin and
10 dibenzofuran congeners unless the department demonstrates that
11 those congeners are leaching at material concentrations through co-
12 solvation.

13 **(21)** ~~(22)~~ Polychlorinated dibenzodioxin and dibenzofuran
14 congeners are not likely to volatilize from soil or groundwater
15 into the air. Vapor inhalation exposure pathways are not applicable
16 or relevant when assessing polychlorinated dibenzodioxin and
17 dibenzofuran congeners.

18 ~~(23) For a substance that does not have generic cleanup~~
19 ~~criteria, if, based on the best available information, the~~
20 ~~department determines that the substance is a hazardous substance,~~
21 ~~the department may calculate generic cleanup criteria for that~~
22 ~~hazardous substance using toxicity values and chemical and physical~~
23 ~~data selected under subsection (3) (a) and (b) and in accordance~~
24 ~~with all other requirements of this part and publish the generic~~
25 ~~cleanup criteria on the department's website. Within 30 days after~~
26 ~~publishing the new generic cleanup criteria, the department shall~~
27 ~~initiate rule-making to promulgate rules for the new criteria by~~
28 ~~filing a rule-making request under section 39 of the administrative~~
29 ~~procedures act of 1969, 1969 PA 306, MCL 24.239. The rule making~~

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

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

17 (2) Site-specific criteria approved under subsection (1) may,
 18 as appropriate, **do any of the following:**

19 (a) Use the algorithms for calculating generic criteria
 20 established by rule **under section 20120a(17)** or propose and use
 21 different algorithms.

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

25 (c) Take into consideration the ~~depth below the ground surface~~
 26 ~~of contamination, which may reduce the potential for exposure and~~
 27 ~~serve as an exposure barrier.~~**characteristics of the site that**
 28 **increase or decrease the potential for exposure, including, but not**
 29 **limited to, the depth of the contamination below the ground**

1 **surface, geomorphological and hydrological dynamics, proximity to**
2 **residential areas, and proximity to drinking water wells and**
3 **surface drinking water sources.**

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

7 (e) Use probabilistic methods of calculation.

8 (f) Use nonlinear-threshold-based calculations where
9 scientifically justified.

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

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

15 (a) Eliminate exposure to the hazardous substance through
16 removal, **if technically practical. If removal is not technically**
17 **practical**, containment, exposure barriers, or land use or resource
18 use restrictions **may be used**.

19 (b) If another hazardous substance is expected to have similar
20 fate, mobility, bioaccumulation, and toxicity characteristics,
21 apply the cleanup criteria for that hazardous substance as a
22 surrogate. Before using a surrogate, the person shall notify the
23 department, provide a written explanation why the surrogate is
24 suitable, and request approval. If the department does not notify
25 the person that it disapproves the use of the chosen surrogate
26 ~~within 90~~ **not later than 120** days after receipt of the notice, the
27 surrogate is considered approved. A hazardous substance may be used
28 as a surrogate for a single hazardous substance or for a class or
29 category of hazardous substances.

1 (c) For venting groundwater, use **an ecological demonstration,**
 2 a modeling demonstration, ~~an ecological demonstration,~~ or a
 3 combination of both, consistent with section ~~20120e(9) and (10),~~
 4 **20120e(6) and (7),** to demonstrate that the hazardous substance is
 5 not likely to ~~migrate~~ **do either of the following:**

6 **(i) Migrate** to a surface water body or ~~has not or will not~~
 7 ~~impair the existing or designated uses for a surface~~ **a drinking**
 8 ~~water body.~~ **well.**

9 **(ii) Cause vapor intrusion in occupied structures.**

10 (d) If toxicity information is available for the hazardous
 11 substance, develop site-specific cleanup criteria for the hazardous
 12 substance ~~pursuant to~~ **under** subsections (1) and (2), or develop
 13 simplified site-specific screening criteria based ~~upon~~ **on** toxicity
 14 and concentrations found on site, and request department approval.
 15 If the department does not notify the person that it disapproves
 16 the site-specific criteria or screening criteria ~~within 90~~ **not**
 17 **later than 120** days after receipt of the request, the criteria are
 18 considered approved.

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

20 (4) Site-specific criteria approved by the department are ~~not~~
 21 invalidated by subsequent changes to the generic criteria for that
 22 hazardous substance, including changes to toxicity, exposure, or
 23 other values or variables used by the department to calculate the
 24 generic criteria.

25 Sec. 20120e. (1) **A person shall proceed under section 20114b**
 26 **to undertake response activities involving venting groundwater.**

27 Subject to other requirements of this section, a person may
 28 demonstrate compliance with requirements ~~under this part~~ for a
 29 response ~~activity providing for~~ **activities involving** venting

1 groundwater by meeting any of the following, singly or in
2 combination:

3 (a) Generic GSI criteria, which are ~~the~~**surface** water quality
4 standards ~~for surface waters~~ developed by the department pursuant
5 ~~to~~**under** part 31. The use of surface water quality standards or
6 variances ~~shall be~~**is** allowable in any of the cleanup categories
7 provided for in section 20120a(1).

8 (b) A variance from the surface water quality standards as
9 approved by the department under part 31. A variance ~~shall~~**must** be
10 used only if the variance is **technically feasible and** requested by
11 ~~a~~**the** person performing response activities with respect to venting
12 groundwater.

13 (c) Mixing zone-based GSI criteria established under this part
14 ~~, which~~**that** are consistent with part 31. The use of mixing zone-
15 based GSI criteria ~~shall be~~**is** allowable in any of the **cleanup**
16 categories provided for in section 20120a(1) and (2) and ~~shall be~~
17 ~~allowable~~ for criteria based on chronic-based or acute-based
18 surface water quality criteria.

19 (d) Site-specific criteria established under section 20120b or
20 this subdivision or a combination of both. The use of mixing zones
21 established under this part may be applied to, or included as,
22 site-specific criteria. Biological criteria may be used as site-
23 specific criteria. If biological criteria are used, then sentinel
24 wells ~~shall~~**must** be used for a period as needed to determine if the
25 biological criteria may be exceeded due to future increased mass
26 loading to the surface water from the venting plume. Numerical
27 evaluations of analyses of the samples from the sentinel wells
28 ~~shall~~**must** be performed in connection with this determination.

29 (e) An ecological demonstration under subsection ~~(9)~~**(6)**.

1 (f) A modeling demonstration under subsection ~~(10)~~ **(7)**.

2 (2) Whole effluent toxicity testing ~~shall~~ **must** not be required
3 or be a criterion or ~~be~~ the basis for any criteria under subsection
4 (1) for venting groundwater except for samples taken at the GSI.

5 (3) The pathway addressed by GSI criteria under subsection (1)
6 ~~shall~~ **must** be considered a relevant pathway when a remedial
7 investigation or application of best professional judgment leads to
8 the conclusion that a hazardous substance in groundwater is
9 reasonably expected to vent to surface water in concentrations that
10 exceed the generic GSI criteria. The factors to be considered in
11 determining whether the pathway is relevant include all of the
12 following:

13 (a) Whether there is a hydraulic connection between **the**
14 groundwater and ~~the~~ surface water in question.

15 (b) The proximity of surface water to source areas and areas
16 of the groundwater contaminant plume that currently, or may in the
17 future be expected to, exceed the generic GSI criteria.

18 (c) Subject to subsection ~~(23)(g)~~, **(19)(g)**, whether the
19 receiving surface water is a ~~surface~~ water of the state, as that
20 term is defined in ~~part 31~~ **section 3101** and **the** rules promulgated
21 under ~~that~~ part **31**.

22 (d) The direction of groundwater movement.

23 (e) The presence of artificial structures or natural features
24 that would alter hydraulic pathways. This includes, but is not
25 limited to, highly permeable zones, utility corridors, and
26 seawalls.

27 (f) The mass of hazardous substances present at the facility
28 that may affect groundwater.

29 (g) Documented facility-specific evidence of natural

1 attenuation, if any.

2 (h) Whether ~~or not~~ a sewer that has an outfall to surface
3 water has openings in the portion of the sewer where the sewer and
4 the groundwater contaminant plume intersect that allows the
5 groundwater contaminant plume to migrate into the sewer. If it can
6 be demonstrated that the sewer is sufficiently tight to prevent
7 inflow to the sewer where the groundwater contaminant plume
8 intersects the sewer or if the sewer is otherwise impervious, based
9 on accepted industry standards, to prevent inflow from groundwater
10 into the sewer at that location, then the GSI pathway with respect
11 to the sewer is not relevant and ~~shall~~ **does** not apply.

12 **(i) The existing or designated uses of the receiving surface**
13 **water and whether the receiving surface water is a drinking water**
14 **source.**

15 (4) For purposes of determining the relevance of a pathway
16 under subsection (3), both of the following apply:

17 (a) GSI monitoring wells are not required in order to make a
18 determination if other information is sufficient to make a judgment
19 that the pathway is not relevant.

20 (b) Fate and transport modeling may be used, if appropriate,
21 to support a professional judgment.

22 ~~(5) A person may proceed under section 20114a to undertake the~~
23 ~~following response activities involving venting groundwater:~~

24 ~~(a) Evaluation activities associated with a response activity~~
25 ~~providing for venting groundwater using alternative monitoring~~
26 ~~points, an ecological demonstration, a modeling demonstration, or~~
27 ~~any combination of these. If a person who is liable under section~~
28 ~~20126 decides not to take additional response activities to address~~
29 ~~the GSI pathway based on alternative monitoring points, an~~

1 ~~ecological demonstration, a modeling demonstration, or a~~
2 ~~determination under subsection (14), or any combination of these,~~
3 ~~the person shall notify the department and request department~~
4 ~~approval. A notification and request for approval under this~~
5 ~~subdivision shall not be considered an admission of liability under~~
6 ~~section 20126.~~

7 ~~(b) Response activities that rely on GSI monitoring wells to~~
8 ~~demonstrate compliance under subsection (1)(a).~~

9 ~~(c) Except as provided in subdivision (a) and subsection (6),~~
10 ~~response activities that rely on monitoring from alternative~~
11 ~~monitoring points to demonstrate compliance with subsection (1)(a)~~
12 ~~if the person submits to the department a notice of alternative~~
13 ~~monitoring points at least 30 days prior to relying on those~~
14 ~~alternative monitoring points that contains substantiating evidence~~
15 ~~that the alternative monitoring points comply with this section.~~

16 ~~(d) Response activities implemented by a person who is not~~
17 ~~liable under section 20126 that rely on a modeling demonstration,~~
18 ~~or rely on an ecological demonstration, or a combination of these,~~
19 ~~to demonstrate compliance with subsection (1)(a).~~

20 ~~(6) A person shall proceed under section 20114b to undertake~~
21 ~~response activities that rely on monitoring from alternative~~
22 ~~monitoring points or rely on an ecological demonstration, a~~
23 ~~modeling demonstration, or a combination of these, to demonstrate~~
24 ~~compliance with subsection (1)(a) if 1 or more of the following~~
25 ~~conditions apply to the venting groundwater:~~

26 ~~(a) An applicable criterion is based on acute toxicity~~
27 ~~endpoints.~~

28 ~~(b) The venting groundwater contains a bioaccumulative~~
29 ~~chemical of concern as identified in the water quality standards~~

1 ~~for surface waters developed pursuant to part 31 and for which the~~
2 ~~person is liable under this part.~~

3 ~~(c) The venting groundwater is entering a surface water body~~
4 ~~protected for coldwater fisheries identified in the following~~
5 ~~publications:~~

6 ~~(i) "Coldwater Lakes of Michigan," as published in 1976 by the~~
7 ~~department of natural resources.~~

8 ~~(ii) "Designated Trout Lakes and Regulations," issued September~~
9 ~~10, 1998, by the director of the department of natural resources~~
10 ~~under the authority of part 411.~~

11 ~~(iii) "Designated Trout Streams for the State of Michigan," as~~
12 ~~issued under order of the director of the department of natural~~
13 ~~resources, FO-210.08, on November 8, 2007.~~

14 ~~(d) The venting groundwater is entering a surface water body~~
15 ~~designated as an outstanding state resource water or outstanding~~
16 ~~international resource water as identified in the water quality~~
17 ~~standards for surface waters developed pursuant to part 31.~~

18 ~~(7) A person shall proceed under section 20114b to undertake~~
19 ~~response activities that rely on monitoring from alternative~~
20 ~~monitoring points, or rely on an ecological demonstration, or rely~~
21 ~~on a modeling demonstration or that use mixing zone-based GSI~~
22 ~~criteria, or any combination of these, as applicable, to~~
23 ~~demonstrate compliance with subsection (1) (b), (c), (d), (e), or~~
24 ~~(f).~~

25 ~~(5) (8) Alternative monitoring points may be used to~~
26 ~~demonstrate compliance with subsection (1) if the alternative~~
27 ~~monitoring points meet the following standards:~~

28 ~~(a) The locations where venting groundwater enters surface~~
29 ~~water have been reasonably identified to allow monitoring for the~~

1 evaluation of compliance with criteria. This identification ~~shall~~
2 **must** include all of the following:

3 (i) Identification of the location of alternative monitoring
4 points within areas of venting groundwater.

5 (ii) Documentation of the approximate boundaries of the areas
6 where the groundwater plume vents to surface water. This
7 documentation ~~shall~~**must** include information about the substrate
8 character and geology in the areas where groundwater vents to
9 surface water.

10 (iii) Documentation that the venting area identified and
11 alternative monitoring points include points that are reasonably
12 representative of the higher concentrations of hazardous substances
13 present in the groundwater at the GSI.

14 (b) The alternative monitoring points allow for venting
15 groundwater to be sampled at the GSI. Devices used for sampling at
16 alternative monitoring points may be beyond the water's edge and on
17 top of or into the sediments, at the GSI.

18 (c) Sentinel monitoring points are used in conjunction with
19 the alternative monitoring points for a period as needed to ~~assure~~
20 **ensure** that any potential exceedance of an applicable surface water
21 quality standard can be identified with sufficient notice to allow
22 additional response activity, if needed, to be implemented that
23 will address the exceedance. Sentinel monitoring points ~~shall~~**must**
24 include, at a minimum, monitoring points upland of the surface
25 water body.

26 (6) ~~(9)~~—An ecological demonstration may be used to demonstrate
27 compliance with subsection (1) if the ecological demonstration
28 meets the following:

29 (a) The boundaries of the area where the groundwater plume

1 vents to surface water are documented as provided in subsection
2 ~~(8)(a)(ii)~~. **(5) (a) (ii)** .

3 (b) Sampling data for the area described in subdivision (a),
4 when compared to other reasonably proximate areas of that surface
5 water body, do not show an impairment of existing or designated
6 uses for that surface water body caused by, or contributed to by,
7 the venting plume, or do not show that the venting plume will cause
8 or contribute to impairment of existing or designated uses of that
9 surface water body in a situation where the area of the surface
10 water immediately outside the venting area of the venting plume
11 shows an impairment of existing or designated uses.

12 (c) Sampling data for the area described in subdivision (a) do
13 not show exceedances of applicable criteria under subsection (1) in
14 the surface water body caused by, or contributed to by, the venting
15 plume.

16 (d) The sampling data in subdivisions (b) and (c) may be data
17 on benthic organisms, fish, and the water column of the surface
18 water, which data may be in the form of an in situ bioassay or a
19 biological community assessment.

20 (e) Sentinel monitoring in on-land wells is performed for a
21 period as needed to show that the groundwater plume is not likely
22 to migrate to the surface water body and vent in the future in a
23 mass amount and rate that would impair the existing or designated
24 uses for that surface water body, or cause or contribute to
25 exceedances of surface water quality standards in the surface water
26 body.

27 **(7)** ~~(10)~~—A modeling demonstration may be used to demonstrate
28 compliance with subsection (1) if the modeling demonstration meets
29 all of the following:

1 (a) The modeling methodology is generally recognized as a
2 means to model venting groundwater plumes or is an innovative
3 method that is scientifically justifiable.

4 (b) The results of the modeling show that the venting plume at
5 the GSI complies with the applicable criteria under subsection (1)
6 or supports the ecological demonstration, as applicable.

7 (c) The model is supported by site-specific information and
8 appropriate field measurements.

9 **(8)** ~~(11)~~—If alternative monitoring points, ~~or~~ an ecological
10 demonstration, or ~~a~~ modeling demonstration, or a combination of
11 these, is used for the response activity and sentinel wells are
12 installed, a contingency plan for potential additional response
13 activity may be required.

14 **(9)** ~~(12)~~—If a person intends to utilize mixing zone-based GSI
15 criteria under subsection (1)(c) or site-specific criteria under
16 subsection (1)(d) in conjunction with alternative monitoring
17 points, an ecological demonstration, or a modeling demonstration,
18 or a combination of these, the person shall submit to the
19 department a response activity plan that includes the following:

20 (a) A demonstration of compliance with the standards in
21 subsection ~~(6), (7), or (8),~~ **(5)**, as applicable.

22 (b) If compliance with a mixing zone-based groundwater-surface
23 water interface criterion under subsection (1)(c) is to be
24 determined with data from the alternative monitoring points,
25 documentation that it is possible to reasonably estimate the volume
26 and rate of venting groundwater.

27 (c) A site-specific monitoring plan that takes into account
28 the basis for the site-specific criterion or mixing zone criterion.

29 **(10)** ~~(13)~~—If there is an exceedance of an applicable GSI

1 criterion based on acute toxicity at a compliance monitoring point
2 applicable at a particular facility, then action ~~shall~~**must** be
3 taken as follows:

4 (a) A person that is implementing the response activity at
5 that facility and ~~that~~ determines that there is an exceedance shall
6 notify the department of that condition ~~within~~**not later than** 7
7 days ~~of obtaining knowledge~~**after discovering** that the exceedance
8 is occurring.

9 (b) If the person described in subdivision (a) is a person
10 liable under section 20126, ~~then~~ that person shall, ~~within~~**not**
11 **later than** 30 days ~~of~~**after** the date on which notice is required
12 under subdivision (a), do 1 or more of the following:

13 (i) Commence response activity to address the exceedance at the
14 applicable compliance monitoring point and submit a schedule to the
15 department for the response activity.

16 (ii) Submit a notice of intent to the department to propose an
17 alternative monitoring point or perform an ecological demonstration
18 or perform a modeling demonstration or a combination of these. The
19 notice ~~shall~~**must** include a schedule for ~~submission of~~**submitting**
20 the proposal.

21 (iii) Submit a notice of intent to the department to propose a
22 site-specific criterion or a mixing zone criterion under sections
23 20120a and 20120b. The notice ~~shall~~**must** include a schedule for
24 ~~submission of~~**submitting** the proposal.

25 (c) The department may approve a schedule as submitted under
26 subdivision (b) or ~~direct~~**require** reasonable modifications in the
27 schedule. The department may grant extensions of time for actions
28 required under subdivision (b) and for activities in an approved or
29 department-modified schedule if the person is acting in good faith

1 and site conditions inhibit progress or completion of the activity.
 2 The department's decision to grant an extension or impose a
 3 schedule modification shall consider the practical problems
 4 associated with carrying out the response activity and the nature
 5 and extent of the exceedances of applicable GSI criteria.

6 ~~(14) Response activity beyond evaluations shall not be~~
 7 ~~required if venting groundwater has no effect or only a de minimis~~
 8 ~~effect on a surface water body. A determination under this~~
 9 ~~subsection may be based on mass flow and rate of groundwater~~
 10 ~~movement calculations. A person evaluating a venting plume that~~
 11 ~~determines that the plume has no effect or only a de minimis effect~~
 12 ~~on a surface water body shall notify the department of the~~
 13 ~~determination. The department may, within 90 days after receipt of~~
 14 ~~the determination, disapprove the determination. If the department~~
 15 ~~does not notify the person that it disapproves the determination~~
 16 ~~within the 90-day period, then the person's determination shall be~~
 17 ~~final.~~

18 **(11)** ~~(15)~~ If a person has controlled the source of groundwater
 19 contamination and ~~has~~ demonstrated that compliance with GSI
 20 criteria developed under this part is unachievable, that person may
 21 file a technical ~~impracticability~~ **infeasibility** waiver request with
 22 the department. The technical ~~impracticability~~ **infeasibility** waiver
 23 ~~shall~~ **must** document the reasons why compliance is unachievable. The
 24 department shall respond to the **technical infeasibility** waiver
 25 ~~within~~ **not later than** 180 days **after the waiver is received** with an
 26 approval, request for additional information, or denial that
 27 provides a detailed description of the reasons for denial.

28 **(12)** ~~(16)~~ Natural attenuation of hazardous substances in
 29 venting groundwater upgradient of the GSI is **not** an acceptable form

1 of remediation and may **not** be relied ~~upon in lieu of~~ **instead** of any
2 active remediation of the groundwater, **unless active remediation is**
3 **not technically practical**. Natural attenuation may ~~be occurring~~
4 **occur** by way of ~~dispersion, diffusion, sorption,~~ degradation,
5 transformative reactions, and other methods. **Natural attenuation**
6 **may be allowed to occur by dispersion or diffusion only if it is**
7 **not technically practical to prevent the dispersion or diffusion**.

8 (13) ~~(17)~~ A permit ~~shall~~ **is** not ~~be~~ required under part 31 for
9 any venting groundwater contamination plume that is addressed under
10 this section.

11 (14) ~~(18)~~ Wetlands ~~shall~~ **must** be protected for the groundwater
12 surface water pathway to the extent that particular designated
13 uses, as **that term is** defined ~~by~~ **in** part 31, ~~which~~ **that** are
14 specific to that wetland would otherwise be impaired by a
15 groundwater contamination plume venting to surface water in the
16 wetland.

17 (15) ~~(19)~~ If a groundwater contamination plume is entering a
18 sewer that discharges to surface water, and the GSI pathway is
19 relevant, all of the following apply:

20 (a) If the groundwater enters a storm sewer that is owned or
21 operated by an entity that is subject to federal municipal separate
22 storm sewer system regulations and a part 31 permit for the
23 discharges from the system, the contaminated groundwater entering
24 the sewer is subject to regulation by the entity's ordinance
25 regarding illicit discharges, but the regulation of the
26 contaminated groundwater ~~shall~~ **does** not prevent the use of
27 subdivision (b) or other provisions of this section to determine
28 the need for response activity under this part.

29 (b) All of the following apply:

1 (i) The compliance monitoring point may be a groundwater
2 monitoring well, if proposed by the person performing the response
3 action, or that person may choose another point for measuring
4 compliance under this subparagraph.

5 (ii) A mixing zone may be applied that accounts for the mixing
6 ~~which~~**that** occurs in the receiving surface water into which the
7 sewer system discharges.

8 (iii) Attenuation that occurs in the sewer system ~~prior to~~
9 **before** the sewer system outfall to surface water ~~shall~~**must** be
10 considered.

11 (iv) The compliance point is at the sewer system outfall to
12 surface water, which ~~shall~~**must** account for any applicable mixing
13 zone for the sewer system outfall.

14 (v) Monitoring to determine compliance may be performed at a
15 location where the contaminated groundwater enters the sewer or
16 downstream from that location but upstream of the sewer outfall at
17 the surface water, if practicable and representative. Appropriate
18 back calculation from the compliance point to the monitoring point
19 may be applied to account for mixing and other attenuation that
20 occurs in the sewer system before the compliance point. As
21 appropriate, ~~such~~**a monitoring point described in this subparagraph**
22 may require another monitoring point in the sewer system upstream
23 from the area where the contaminated groundwater enters the sewer.
24 Upstream sampling in the sewer may be performed to determine source
25 contribution.

26 (vi) The contaminant mass flow, and the rate and amount of
27 groundwater flow, into the sewer may be considered and may result
28 in a determination that the migration into the sewer is de minimis
29 and does not require any response activity in addition to the

1 evaluation that leads to such determination.

2 (c) Factors in subdivision (b) may be considered and applied
3 to determine if an illicit discharge is occurring and how to
4 regulate the discharge.

5 **(16)** ~~(20)~~—If the department denies a response activity plan
6 containing a proposal for alternative monitoring points, an
7 ecological demonstration, ~~or~~ a modeling demonstration, or a
8 combination of these, the department shall state the reasons for
9 denial, including the scientific and technical basis for the
10 denial. A person may appeal a decision of the department in a
11 response activity plan or no further action report regarding
12 venting groundwater as a scientific or technical dispute under
13 section 20114e.

14 **(17)** ~~(21)~~—This section is intended to allow a person to
15 demonstrate compliance with requirements under this part for a
16 response activity involving venting groundwater, and, for this
17 purpose, this section ~~shall be given retroactive application and~~
18 ~~shall be~~ **applies retroactively and is** available for use by ~~such the~~
19 person. A person performing response activity involving venting
20 groundwater under any judgment, consent judgment, order, consent
21 order, or agreement that was entered ~~prior to the effective date of~~
22 ~~the 2012 amendatory act that amended this section~~ **before June 20,**
23 **2012** may pursue, alter, or terminate ~~such the~~ response activity
24 based on any provision of this section subject to any necessary
25 entry or approval by the court in a case of a judgment, consent
26 judgment, or court order or any necessary amendment procedure to
27 amend an agreement. The department shall not oppose use of any
28 provision of this section as grounds to amend an agreement or for a
29 court to modify or terminate response activity obligations

1 involving venting groundwater under a judgment, consent judgment,
 2 or court order. A person performing response activity involving
 3 venting groundwater under any remedial action plan, interim
 4 response plan designed to meet criteria, interim response action
 5 plan, or response activity plan that was approved by the department
 6 ~~prior to the effective date of the 2012 amendatory act that amended~~
 7 ~~this section~~ **before June 20, 2012** may submit an amended plan to the
 8 department for approval that pursues, alters, or terminates
 9 response activity based on any provision of this section. The
 10 department shall not oppose use of any provision of this section in
 11 approving an amended plan.

12 **(18)** ~~(22)~~ A person that ~~undertakes response activity under~~
 13 ~~subsection (4) or that takes action under subsection (13)(b) shall~~
 14 **(10)(b) is** not be ~~considered to be~~ making an admission of liability
 15 by undertaking ~~such the~~ response activities or taking ~~such~~ action.

16 **(19)** ~~(23)~~ As used in this section:

17 (a) "Alternative monitoring points" means alternative
 18 monitoring points authorized under subsection ~~(8)~~ **(5)**.

19 (b) "Ecological demonstration" means an ecological
 20 demonstration authorized under subsection (1)(e).

21 (c) "GSI" means groundwater-surface water interface, ~~which and~~
 22 is the location at which groundwater enters surface water.

23 (d) "GSI monitoring well" means a vertical well installed in
 24 the saturated zone as close as practicable to surface water with a
 25 screened interval or intervals that are representative of the
 26 groundwater venting to the surface water.

27 (e) "Mixing zone-based GSI criteria" means mixing zone-based
 28 GSI criteria authorized under subsection (1)(c).

29 (f) "Modeling demonstration" means a modeling demonstration

1 authorized under subsection (1) (f).

2 (g) "Surface water" does not include any of the following:

3 (i) Groundwater.

4 (ii) Hyporheic zone water.

5 (iii) Water in enclosed sewers.

6 (iv) Water in drainage ways and ponds used solely for
7 wastewater or storm water conveyance, treatment, or control.

8 (v) Water in subgrade utility runs and utility lines and
9 permeable fill in and around them.

10 Sec. 20121. (1) ~~A~~ **Except as otherwise provided under**
11 **subsection (3), a person may impose shall request department**
12 **approval before imposing or relying on** land or resource use
13 restrictions ~~to~~ **for any of the following purposes:**

14 (a) **To** reduce or restrict exposure to hazardous substances. ~~to~~
15 ~~to~~

16 (b) **To** eliminate a potential exposure pathway. ~~to~~ ~~to assure~~

17 (c) **To ensure** the effectiveness and integrity of containment
18 or exposure barriers ~~to~~ **when the land or resource use**
19 **restrictions are proposed to achieve compliance, in whole or in**
20 **part, with the requirements in sections 20114a, 20114b, 20114c, and**
21 **20114d.**

22 (d) **To** provide for access. ~~or to~~

23 (e) **To** otherwise ~~assure~~ **ensure** the effectiveness and integrity
24 of response activities undertaken at a property.

25 (2) **The department may approve a request under subsection (1)**
26 **only if all of the following conditions have been met:**

27 (a) **All technically practical steps have been taken or are**
28 **scheduled to be taken to address a release and limit the horizontal**
29 **and vertical extent of hazardous substance concentrations above**

1 cleanup criteria for unrestricted residential use.

2 (b) If necessary, monitoring is conducted or is scheduled to
3 be conducted that defines the extent of contamination of
4 groundwater resources and can predict the contamination's long-term
5 movement vertically and horizontally.

6 (c) If applicable, to the extent technically practical, any
7 groundwater contamination is contained, and the potential impacts
8 of conducting further remedial actions exceeds the benefit of
9 conducting the remedial actions.

10 (d) If applicable, notice requirements under section 20113a(1)
11 regarding hazardous substances emanating beyond the boundary of the
12 property are met.

13 (3) A person may impose or rely on land or resource
14 restrictions without department approval under subsection (2) in
15 order to comply with section 20107a or as an interim response
16 activity until a remedial action for the facility is complete that
17 no longer relies on land or resource use restrictions or the person
18 receives department approval under subsection (2).

19 (4) A land or resource use restriction that meets either of
20 the following requirements does not satisfy a person's obligation
21 to perform response activities as otherwise required under this
22 part and does not relieve a person's obligation to meet the
23 department approval requirement under subsection (2) to rely on an
24 existing land or resource use restriction to achieve compliance
25 with this part:

26 (a) Is in place before the effective date of the amendatory
27 act that added this subsection.

28 (b) Is imposed to comply with section 20107a.

29 (5) ~~(2)~~—A restrictive covenant used to impose land or resource

1 use restrictions under subsection (1) ~~shall,~~**must**, at a minimum,
2 include all of the following:

3 (a) A legal description of the property that is subject to the
4 restrictions that is sufficient to identify the property and is
5 sufficient to record the document with the register of deeds for
6 the county where the property is located. If the property being
7 restricted constitutes a portion of a parcel, the restrictive
8 covenant ~~shall~~**must** also include 1 of the following:

9 (i) A legal description and a scaled drawing of the portion
10 that is restricted.

11 (ii) A survey of the portion that is restricted.

12 (iii) Another type of description or drawing approved by the
13 department.

14 (b) A brief narrative description of response activities and
15 environmental contamination at the property or identify a publicly
16 accessible information repository where that information may be
17 obtained, such as a public library.

18 (c) A description of the activity and use limitations imposed
19 on the property. The description should be drafted, to the extent
20 practicable, using plain, everyday language in an effort to make
21 the activity and use limitations understandable to the reader
22 without having to reference statutory or regulatory text or
23 department guidance.

24 (d) A grant to the department of the ability to enforce the
25 restrictive covenant by legal action in a court of appropriate
26 jurisdiction.

27 (e) A signature of the property owner or someone with the
28 express written consent of the property owner unless the
29 restrictive covenant has been ordered by a court. ~~of competent~~

1 ~~jurisdiction.~~ For condominium common elements and similar commonly
 2 owned property, the restrictive covenant may be signed by an
 3 authorized person.

4 **(f) A provision that plainly states that the land use**
 5 **restriction is being placed on the property in accordance with part**
 6 **201.**

7 **(g) A provision that requires notice be provided to the**
 8 **department on transfer of ownership, or before construction or**
 9 **changes in the land use occur that could affect environmental**
 10 **contamination or increase exposure at the property.**

11 **(h) A provision that grants a right of access to the**
 12 **department and a person responsible for performing response**
 13 **activities at the property. A right of access under this**
 14 **subdivision must include, but is not limited to, the right to enter**
 15 **the property for the purpose of monitoring compliance with the**
 16 **restrictive covenant, the right to take samples, and the right to**
 17 **implement response activities.**

18 **(6)** ~~(3)~~ In addition to the requirements of subsection ~~(2)~~,
 19 **(5)**, a restrictive covenant may contain other information,
 20 restrictions, requirements, and rights agreed to by the persons
 21 signing it, including, but not limited to, 1 or more of the
 22 following:

23 ~~(a) A provision requiring notice to the department or other~~
 24 ~~persons upon transfer or before construction or changes in use that~~
 25 ~~could affect environmental contamination or increase exposure at~~
 26 ~~the property.~~

27 ~~(b) A provision granting rights of access to the department or~~
 28 ~~other persons. These rights may include, but are not limited to,~~
 29 ~~the right to enter the property for the purpose of monitoring~~

1 ~~compliance with the restrictive covenant, the right to take~~
 2 ~~samples, and the right to implement response activities.~~

3 **(a)** ~~(e)~~—A provision subordinating a property interest that has
 4 priority, if agreed to by the person that owns the superior
 5 interest.

6 **(b)** ~~(d)~~—A provision granting the right to enforce the
 7 restrictive covenant to persons in addition to the department,
 8 including, but not limited to, the local unit of government in
 9 which the property is located or the United States ~~environmental~~
 10 ~~protection agency.~~ **Environmental Protection Agency.**

11 **(c)** ~~(e)~~—A provision obligating the owner of the land subject
 12 to the restrictive covenant to inspect or maintain exposure
 13 barriers, permanent markers, fences, **monitoring wells**, or other
 14 aspects of the response action or remedy.

15 ~~(f) A provision limiting the restrictive covenant to a~~
 16 ~~specific duration, or terminating the restrictive covenant upon the~~
 17 ~~occurrence of a specific event or condition, such as the completion~~
 18 ~~of additional response activities that are approved by the~~
 19 ~~department.~~

20 **(d)** ~~(g)~~—A provision providing notice of hazardous substances
 21 that exceed aesthetic-based cleanup criteria.

22 **(7)** ~~(4)~~—A restrictive covenant used to impose land or resource
 23 use restrictions under this section ~~shall~~ **must** be recorded with the
 24 register of deeds for the county where the property is located.

25 **(8)** ~~(5)~~—A restrictive covenant under this section that is
 26 recorded under subsection ~~(4)~~ **(7)** does both of the following:

27 (a) Runs with the land.

28 (b) Is perpetual unless, by its terms, it is limited to a
 29 specific duration or is terminated by the occurrence of a specific

1 event.

2 **(9)** ~~(6) Upon~~ **On** recording, a copy of the restrictive covenant
 3 ~~shall~~ **must** be provided to the department together with a notice
 4 that includes the street address or parcel number for the property
 5 or properties subject to the covenant. A restrictive covenant that
 6 meets the requirements of this section need not be approved by the
 7 department except as expressly required elsewhere in this part.

8 **(10)** ~~(7)~~—The following instruments may impose the land or
 9 resource use restrictions described in subsection (1) if they meet
 10 the requirements of a restrictive covenant under this section:

11 (a) A conservation easement.

12 (b) A court order or judicially approved settlement involving
 13 the property.

14 **(11)** ~~(8)~~—An institutional control may be used to impose the
 15 land or resource use restrictions described in subsection (1)
 16 instead of or in addition to a restrictive covenant. Institutional
 17 controls that may be considered include, but are not limited to,
 18 local ordinances ~~or state laws and regulations~~ that limit or
 19 prohibit the use of contaminated groundwater, prohibit the raising
 20 of livestock, prohibit development in certain locations, or
 21 restrict property to certain uses, such as a zoning ordinance. A
 22 local ordinance that serves as an institutional control under this
 23 section ~~shall~~ **must** be published and maintained in the same manner
 24 as a zoning ordinance and ~~shall~~ **must** include a requirement that the
 25 local unit of government notify the department at least 30 days
 26 ~~prior to~~ **before** adopting a modification to the ordinance or ~~prior~~
 27 ~~to~~ **before** the lapsing or revocation of the ordinance. **A general**
 28 **description of the institutional control and where to find more**
 29 **information must be recorded on each property covered by the**

1 **institutional control or filed as an ordinance affecting multiple**
 2 **properties.**

3 (12) ~~(9)~~ Alternative instruments and means may be used, with
 4 department approval, to impose the land or resource use
 5 restrictions described in subsection (1), including, but not
 6 limited to, licenses and license agreements, contracts with local,
 7 state, or federal units of government, ~~health codes or regulations,~~
 8 or government permitting requirements.

9 (13) ~~(10)~~ The department, with the approval of the state
 10 administrative board, may place restrictive covenants described in
 11 this section on deeds of state-owned property.

12 (14) ~~(11)~~ A restrictive covenant recorded ~~pursuant to~~ **under**
 13 this part, whether recorded **on**, before, or after ~~the effective date~~
 14 ~~of the amendatory act that added this section,~~ **January 15, 2015**, is
 15 valid and enforceable even if 1 or more of the following situations
 16 exist:

17 (a) It is not appurtenant to an interest in real property.

18 (b) The right to enforce it can be or has been assigned.

19 (c) It is not of a character that has been recognized
 20 traditionally at common law.

21 (d) It imposes a negative burden.

22 (e) It imposes an affirmative obligation on a person having an
 23 interest in the real property.

24 (f) The benefit or burden does not touch or concern real
 25 property.

26 (g) There is no privity of estate or contract.

27 (h) The owner of the land subject to the restrictive covenant
 28 and the person benefited or burdened are the same person.

29 **(15) Imposing a land or resource use restriction under this**

1 **section does not relieve a person from undertaking response**
2 **activities required under this part.**

3 **(16)** ~~(12)~~ Restrictive covenants or other instruments that
4 impose land or resource use restrictions that were recorded before
5 ~~the effective date of the amendatory act that added this section~~
6 **January 15, 2015** are not invalidated or made unenforceable by this
7 section. Except as provided in subsection ~~(11)~~, **(14)**, this section
8 only applies to a restrictive covenant or other instrument recorded
9 after ~~the effective date of the amendatory act that added this~~
10 ~~section.~~ **January 15, 2015**. This section does not invalidate or
11 render unenforceable any instrument or interest that is otherwise
12 enforceable under the law of this state.

13 Enacting section 1. This amendatory act does not take effect
14 unless all of the following bills of the 102nd Legislature are
15 enacted into law:

- 16 (a) Senate Bill No. 605.
17 (b) Senate Bill No. 607.