

HOUSE BILL No. 6358

July 28, 2010, Introduced by Rep. Haveman and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20114a, 20120a, 20120b, 20120c, and 20120d (MCL 324.20114a, 324.20120a, 324.20120b, 324.20120c, and 324.20120d), section 20114a as amended by 1996 PA 115, sections 20120a, 20120b, and 20120c as added by 1995 PA 71, and section 20120d as amended by 1996 PA 383, and by adding sections 20114b, 20114c, 20114d, 20120, and 20120e; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20114a. ~~(1) A person who, after June 5, 1995, is~~
2 ~~responsible for an activity causing a release in excess of the~~
3 ~~concentrations that satisfy the criteria established pursuant to~~
4 ~~section 20120a(1) (a) through (c), as appropriate for the use of the~~
5 ~~property, is subject to a civil fine as provided in this part~~

1 ~~unless a fine or penalty has already been imposed for the release~~
2 ~~under another part of this act. However, a civil fine shall not be~~
3 ~~imposed under this section against a person who made a good faith~~
4 ~~effort to prevent the release and to comply with the provisions of~~
5 ~~this part.~~

6 ~~— (2) This section does not apply to a release from an~~
7 ~~underground storage tank system as defined in part 213.~~

8 (1) SUBJECT TO SECTION 20114 AND OTHER APPLICABLE LAW, A
9 PERSON MAY UNDERTAKE RESPONSE ACTIVITIES WITHOUT PRIOR APPROVAL BY
10 THE DEPARTMENT UNLESS 1 OR MORE RESPONSE ACTIVITIES ARE BEING
11 CONDUCTED PURSUANT TO AN ADMINISTRATIVE ORDER OR AGREEMENT OR
12 JUDICIAL DECREE THAT REQUIRES PRIOR DEPARTMENT APPROVAL. EXCEPT AS
13 OTHERWISE PROVIDED IN THIS PART, CONDUCTING RESPONSE ACTIVITIES
14 UNDER THIS SECTION DOES NOT RELIEVE ANY PERSON WHO IS LIABLE UNDER
15 THIS PART FROM THE OBLIGATION TO CONDUCT FURTHER RESPONSE
16 ACTIVITIES AS MAY BE REQUIRED BY THE DEPARTMENT UNDER THIS PART OR
17 OTHER APPLICABLE LAW.

18 (2) UPON COMPLETION OF REMEDIAL ACTIONS THAT SATISFY THE
19 CLEANUP CRITERIA ESTABLISHED UNDER THIS PART, A PERSON UNDERTAKING
20 REMEDIAL ACTIONS MAY SUBMIT TO THE DEPARTMENT A NO FURTHER ACTION
21 REPORT.

22 SEC. 20114B. (1) SUBJECT TO SECTION 20114(1)(H), A PERSON
23 UNDERTAKING RESPONSE ACTIVITY UNDER THIS PART MAY SUBMIT TO THE
24 DEPARTMENT A RESPONSE ACTIVITY PLAN THAT INCLUDES A REQUEST FOR
25 DEPARTMENT APPROVAL OF 1 OR MORE ASPECTS OF RESPONSE ACTIVITY.

26 (2) A PERSON WHO SUBMITS A RESPONSE ACTIVITY PLAN UNDER THIS
27 SECTION AND WHO IS NOT SUBJECT TO AN ADMINISTRATIVE ORDER OR

1 AGREEMENT OR JUDICIAL DECREE THAT REQUIRES PRIOR DEPARTMENT
2 APPROVAL OF RESPONSE ACTIVITY SHALL SUBMIT A RESPONSE ACTIVITY PLAN
3 REVIEW REQUEST FORM WITH THE RESPONSE ACTIVITY PLAN. THE DEPARTMENT
4 SHALL SPECIFY THE REQUIRED CONTENT OF THE RESPONSE ACTIVITY REQUEST
5 FORM AND MAKE THE FORM AVAILABLE ON THE DEPARTMENT'S WEBSITE.

6 (3) UPON RECEIPT OF A RESPONSE ACTIVITY PLAN SUBMITTED FOR
7 APPROVAL UNDER THIS SUBSECTION, THE DEPARTMENT SHALL APPROVE,
8 APPROVE WITH CONDITIONS, OR DENY THE RESPONSE ACTIVITY PLAN, OR
9 SHALL NOTIFY THE SUBMITTER THAT THE PLAN DOES NOT CONTAIN
10 SUFFICIENT INFORMATION FOR THE DEPARTMENT TO MAKE A DECISION. THE
11 DEPARTMENT SHALL PROVIDE ITS DETERMINATION WITHIN 150 DAYS AFTER
12 THE PLAN WAS RECEIVED BY THE DEPARTMENT UNLESS THE PLAN REQUIRES
13 PUBLIC PARTICIPATION UNDER SECTION 20120D(2). IF THE PLAN REQUIRES
14 PUBLIC PARTICIPATION UNDER SECTION 20120D(2), THE DEPARTMENT SHALL
15 RESPOND WITHIN 180 DAYS. IF THE DEPARTMENT'S RESPONSE IS THAT THE
16 PLAN DOES NOT INCLUDE SUFFICIENT INFORMATION, THE DEPARTMENT SHALL
17 IDENTIFY THE INFORMATION THAT IS REQUIRED FOR THE DEPARTMENT TO
18 MAKE A DECISION. IF A PLAN IS APPROVED WITH CONDITIONS, THE
19 DEPARTMENT'S APPROVAL SHALL STATE WITH SPECIFICITY THE CONDITIONS
20 OF THE APPROVAL. IF THE PLAN IS DENIED, THE DEPARTMENT'S DENIAL
21 SHALL, TO THE EXTENT PRACTICAL, STATE WITH SPECIFICITY ALL OF THE
22 REASONS FOR DENIAL.

23 (4) IF THE DEPARTMENT FAILS TO PROVIDE A WRITTEN RESPONSE
24 WITHIN THE TIME FRAMES REQUIRED BY SUBSECTION (3), THE RESPONSE
25 ACTIVITY PLAN IS CONSIDERED APPROVED. IF THE DEPARTMENT DENIES A
26 RESPONSE ACTIVITY PLAN UNDER SUBSECTION (3), A PERSON MAY
27 SUBSEQUENTLY REVISE AND RESUBMIT THE RESPONSE ACTIVITY PLAN FOR

1 APPROVAL.

2 (5) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED BY
3 MUTUAL AGREEMENT OF THE DEPARTMENT AND A PERSON SUBMITTING A
4 RESPONSE ACTIVITY PLAN. AN AGREEMENT EXTENDING A TIME FRAME SHALL
5 BE IN WRITING.

6 (6) A PERSON REQUESTING APPROVAL OF A RESPONSE ACTIVITY PLAN
7 MAY APPEAL THE DEPARTMENT'S DECISION IN ACCORDANCE WITH SECTION
8 20114E, IF APPLICABLE.

9 SEC. 20114C. (1) IF REMEDIAL ACTIONS AT A FACILITY SATISFY
10 CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE, LAND USE OR
11 RESOURCE USE RESTRICTIONS OR MONITORING IS NOT REQUIRED.

12 (2) UPON COMPLETION OF REMEDIAL ACTIONS AT A FACILITY FOR A
13 CATEGORY OF CLEANUP THAT DOES NOT SATISFY CLEANUP CRITERIA FOR
14 UNRESTRICTED RESIDENTIAL USE, THE PERSON CONDUCTING THE REMEDIAL
15 ACTIONS SHALL PREPARE AND IMPLEMENT A POSTCLOSURE PLAN FOR THAT
16 FACILITY. A POSTCLOSURE PLAN SHALL INCLUDE BOTH OF THE FOLLOWING:

17 (A) LAND USE OR RESOURCE USE RESTRICTIONS AS PROVIDED IN
18 SUBSECTION (3).

19 (B) PERMANENT MARKERS TO DESCRIBE RESTRICTED AREAS OF THE
20 FACILITY AND THE NATURE OF ANY RESTRICTIONS. A PERMANENT MARKER IS
21 NOT REQUIRED UNDER THIS SUBDIVISION IF THE ONLY APPLICABLE LAND USE
22 OR RESOURCE USE RESTRICTIONS RELATE TO 1 OR MORE OF THE FOLLOWING:

23 (i) A FACILITY AT WHICH REMEDIAL ACTION SATISFIES THE CLEANUP
24 CRITERIA FOR THE NONRESIDENTIAL CATEGORY UNDER SECTION
25 20120A(1)(B).

26 (ii) USE OF GROUNDWATER.

27 (iii) PROTECTION OF THE INTEGRITY OF EXPOSURE CONTROLS THAT

1 PREVENT CONTACT WITH SOIL, AND THOSE CONTROLS ARE COMPOSED SOLELY
2 OF ASPHALT, CONCRETE, OR LANDSCAPING MATERIALS. THIS SUBPARAGRAPH
3 DOES NOT APPLY IF THE HAZARDOUS SUBSTANCES THAT ARE ADDRESSED BY
4 THE BARRIER EXCEED A CLEANUP CRITERION BASED ON ACUTE TOXIC
5 EFFECTS, REACTIVITY, CORROSIVITY, IGNITABILITY, EXPLOSIVITY, OR
6 FLAMMABILITY, OR IF ANY HAZARDOUS SUBSTANCE ADDRESSED BY THE
7 EXPOSURE CONTROL IS PRESENT AT A CONCENTRATION OF MORE THAN 10
8 TIMES AN APPLICABLE SOIL DIRECT CONTACT CLEANUP CRITERION.

9 (iv) CONSTRUCTION REQUIREMENTS OR LIMITATIONS FOR STRUCTURES
10 THAT MAY BE BUILT IN THE FUTURE.

11 (3) LAND USE OR RESOURCE USE RESTRICTIONS THAT ASSURE THE
12 EFFECTIVENESS AND INTEGRITY OF ANY CONTAINMENT, EXPOSURE BARRIER,
13 OR OTHER LAND USE OR RESOURCE USE RESTRICTIONS NECESSARY TO ASSURE
14 THE EFFECTIVENESS AND INTEGRITY OF THE REMEDY SHALL BE DESCRIBED IN
15 A RESTRICTIVE COVENANT. A RESTRICTIVE COVENANT DEVELOPED TO COMPLY
16 WITH THIS PART SHALL BE IN A FORMAT MADE AVAILABLE ON THE
17 DEPARTMENT'S WEBSITE, WITH MODIFICATIONS TO REFLECT THE FACTS
18 APPLICABLE TO THE FACILITY. THE RESTRICTIVE COVENANT SHALL BE
19 RECORDED WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE
20 PROPERTY IS LOCATED WITHIN 21 DAYS AFTER THE COMPLETION OF THE
21 REMEDIAL ACTIONS OR WITHIN 21 DAYS AFTER THE COMPLETION OF
22 CONSTRUCTION OF THE CONTAINMENT OR BARRIER, AS APPROPRIATE. THE
23 RESTRICTIVE COVENANT SHALL ONLY BE RECORDED BY THE PROPERTY OWNER
24 OR WITH THE EXPRESS WRITTEN PERMISSION OF THE PROPERTY OWNER. THE
25 RESTRICTIONS SHALL RUN WITH THE LAND AND BE BINDING ON THE OWNER'S
26 SUCCESSORS, ASSIGNS, AND LESSEES. THE RESTRICTIVE COVENANT SHALL
27 INCLUDE A SURVEY AND PROPERTY DESCRIPTION THAT DEFINE THE AREAS

1 ADDRESSED BY THE REMEDIAL ACTIONS AND THE SCOPE OF ANY LAND USE OR
2 RESOURCE USE RESTRICTIONS. AT A MINIMUM, THE RESTRICTIVE COVENANT
3 SHALL DO ALL OF THE FOLLOWING:

4 (A) DESCRIBE THE GENERAL USES OF THE PROPERTY THAT ARE
5 CONSISTENT WITH THE CLEANUP CRITERIA.

6 (B) RESTRICT ACTIVITIES AT THE FACILITY THAT MAY INTERFERE
7 WITH REMEDIAL ACTIONS, OPERATION AND MAINTENANCE, MONITORING, OR
8 OTHER MEASURES NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY
9 OF THE REMEDIAL ACTIONS.

10 (C) RESTRICT ACTIVITIES THAT MAY RESULT IN EXPOSURES ABOVE
11 LEVELS ATTAINED IN THE REMEDIAL ACTIONS.

12 (D) GRANT TO THE DEPARTMENT THE ABILITY TO ENFORCE THE
13 RESTRICTIVE COVENANT BY LEGAL ACTION IN A COURT OF APPROPRIATE
14 JURISDICTION.

15 (4) A PERSON SHALL NOT RECORD A RESTRICTIVE COVENANT
16 INDICATING APPROVAL BY THE DEPARTMENT UNLESS THE DEPARTMENT HAS
17 APPROVED THE RECORDING OF THE RESTRICTIVE COVENANT.

18 (5) A PERSON WHO IMPLEMENTS A POSTCLOSURE PLAN SHALL PROVIDE
19 NOTICE OF THE LAND USE OR RESOURCE USE RESTRICTIONS TO THE
20 DEPARTMENT AND TO THE ZONING AUTHORITY FOR THE LOCAL UNIT OF
21 GOVERNMENT IN WHICH THE FACILITY IS LOCATED WITHIN 30 DAYS AFTER
22 RECORDING THE LAND USE OR RESOURCE USE RESTRICTIONS WITH THE
23 REGISTER OF DEEDS.

24 (6) THE DEPARTMENT, WITH THE APPROVAL OF THE STATE
25 ADMINISTRATIVE BOARD, MAY PLACE RESTRICTIVE COVENANTS RELATED TO
26 LAND USE OR RESOURCE USE RESTRICTIONS ON DEEDS OF STATE-OWNED
27 PROPERTY.

1 (7) IMPLEMENTATION OF REMEDIAL ACTIONS DOES NOT RELIEVE A
2 PERSON WHO IS LIABLE UNDER SECTION 20126 OF THAT PERSON'S
3 RESPONSIBILITY TO REPORT AND PROVIDE FOR RESPONSE ACTIVITY TO
4 ADDRESS A SUBSEQUENT RELEASE OR THREAT OF RELEASE.

5 (8) IMPLEMENTATION BY ANY PERSON OF REMEDIAL ACTIONS WITHOUT
6 DEPARTMENT APPROVAL DOES NOT RELIEVE THAT PERSON OF AN OBLIGATION
7 TO UNDERTAKE RESPONSE ACTIVITIES OR LIMIT THE ABILITY OF THE
8 DEPARTMENT TO TAKE ACTION TO REQUIRE RESPONSE ACTIVITIES NECESSARY
9 TO COMPLY WITH THIS PART BY A PERSON WHO IS LIABLE UNDER SECTION
10 20126.

11 SEC. 20114D. (1) UPON COMPLETION OF REMEDIAL ACTIONS THAT
12 SATISFY APPLICABLE CLEANUP CRITERIA ESTABLISHED UNDER THIS PART,
13 AND ALL OTHER REQUIREMENTS OF THIS PART THAT ARE APPLICABLE TO
14 REMEDIAL ACTION, A PERSON MAY SUBMIT A NO FURTHER ACTION REPORT TO
15 THE DEPARTMENT. THE NO FURTHER ACTION REPORT SHALL DOCUMENT THE
16 BASIS FOR CONCLUDING THAT THE REMEDIAL ACTIONS HAVE BEEN COMPLETED.
17 A NO FURTHER ACTION REPORT MAY INCLUDE A REQUEST THAT, UPON
18 APPROVAL, THE FACILITY BE DESIGNATED AS A RESIDENTIAL CLOSURE. A NO
19 FURTHER ACTION REPORT SHALL BE SUBMITTED WITH A FORM DEVELOPED BY
20 THE DEPARTMENT. THE DEPARTMENT SHALL MAKE THIS FORM AVAILABLE ON
21 ITS WEBSITE.

22 (2) A NO FURTHER ACTION REPORT SUBMITTED UNDER SUBSECTION (1)
23 SHALL 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, NEITHER A
26 POSTCLOSURE PLAN OR A PROPOSED POSTCLOSURE AGREEMENT IS REQUIRED TO
27 BE SUBMITTED.

1 (B) IF THE REMEDIAL ACTION REQUIRES ONLY LAND USE OR RESOURCE
2 USE RESTRICTIONS AND FINANCIAL ASSURANCE IS NOT REQUIRED OR THE
3 FINANCIAL ASSURANCE IS DE MINIMIS, A POSTCLOSURE PLAN IS REQUIRED
4 BUT A PROPOSED POSTCLOSURE AGREEMENT IS NOT REQUIRED TO BE
5 SUBMITTED.

6 (C) FOR FACILITIES OTHER THAN THOSE DESCRIBED IN SUBDIVISION
7 (A) OR (B), A POSTCLOSURE PLAN AND A PROPOSED POSTCLOSURE AGREEMENT
8 ARE REQUIRED TO BE SUBMITTED.

9 (3) A PROPOSED POSTCLOSURE AGREEMENT THAT IS SUBMITTED AS PART
10 OF A NO FURTHER ACTION REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

11 (A) PROVISIONS FOR MONITORING, OPERATION AND MAINTENANCE, AND
12 OVERSIGHT NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF
13 THE REMEDIAL ACTION.

14 (B) FINANCIAL ASSURANCE TO PAY FOR MONITORING, OPERATION AND
15 MAINTENANCE, OVERSIGHT, AND OTHER COSTS DETERMINED BY THE
16 DEPARTMENT TO BE NECESSARY TO ASSURE THE EFFECTIVENESS AND
17 INTEGRITY OF THE REMEDIAL ACTION.

18 (C) A PROVISION REQUIRING NOTICE TO THE DEPARTMENT OF THE
19 OWNER'S INTENT TO CONVEY ANY INTEREST IN THE FACILITY 14 DAYS PRIOR
20 TO CONSUMMATING THE CONVEYANCE. A CONVEYANCE OF TITLE, AN EASEMENT,
21 OR OTHER INTEREST IN THE PROPERTY SHALL NOT BE CONSUMMATED BY THE
22 PROPERTY OWNER WITHOUT ADEQUATE AND COMPLETE PROVISION FOR
23 COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE POSTCLOSURE PLAN
24 AND THE POSTCLOSURE AGREEMENT.

25 (D) A PROVISION GRANTING THE DEPARTMENT THE RIGHT TO ENTER THE
26 PROPERTY AT REASONABLE TIMES FOR THE PURPOSE OF DETERMINING AND
27 MONITORING COMPLIANCE WITH THE POSTCLOSURE PLAN AND POSTCLOSURE

1 AGREEMENT, INCLUDING THE RIGHT TO TAKE SAMPLES, INSPECT THE
2 OPERATION OF THE REMEDIAL ACTION MEASURES, AND INSPECT RECORDS.

3 (4) A POSTCLOSURE AGREEMENT MAY MODIFY THE TERMS OF A
4 POSTCLOSURE PLAN AS FOLLOWS:

5 (A) IF THE EXPOSURE TO HAZARDOUS SUBSTANCES MAY BE RELIABLY
6 RESTRICTED BY AN INSTITUTIONAL CONTROL IN LIEU OF A RESTRICTIVE
7 COVENANT, AND IMPOSITION OF LAND USE OR RESOURCE USE RESTRICTIONS
8 THROUGH RESTRICTIVE COVENANTS IS IMPRACTICAL, THE POSTCLOSURE
9 AGREEMENT MAY ALLOW FOR A REMEDIAL ACTION UNDER SECTION
10 20120A(1)(C) OR (D) OR (2) TO RELY ON AN INSTITUTIONAL CONTROL IN
11 LIEU OF A RESTRICTIVE COVENANT IN A POSTCLOSURE PLAN. MECHANISMS
12 THAT MAY BE CONSIDERED UNDER THIS SUBSECTION INCLUDE, BUT ARE NOT
13 LIMITED TO, AN ORDINANCE THAT RESTRICTS THE USE OF GROUNDWATER OR
14 AN AQUIFER IN A MANNER AND TO A DEGREE THAT PROTECTS AGAINST
15 UNACCEPTABLE EXPOSURES. AN ORDINANCE THAT SERVES AS AN EXPOSURE
16 CONTROL PURSUANT TO THIS SUBSECTION SHALL BE PUBLISHED AND
17 MAINTAINED IN THE SAME MANNER AS ZONING ORDINANCES AND SHALL
18 INCLUDE A REQUIREMENT THAT THE LOCAL UNIT OF GOVERNMENT NOTIFY THE
19 DEPARTMENT AT LEAST 30 DAYS PRIOR TO ADOPTING A MODIFICATION TO THE
20 ORDINANCE, OR TO THE LAPSING OR REVOCATION OF THE ORDINANCE.

21 (B) A POSTCLOSURE AGREEMENT MAY WAIVE THE REQUIREMENT FOR
22 PERMANENT MARKERS.

23 (5) THE PERSON SUBMITTING A NO FURTHER ACTION REPORT SHALL
24 INCLUDE A SIGNED AFFIDAVIT ATTESTING TO THE FACT THAT THE
25 INFORMATION UPON WHICH THE NO FURTHER ACTION REPORT IS BASED IS
26 COMPLETE AND TRUE TO THE BEST OF THAT PERSON'S KNOWLEDGE. THE NO
27 FURTHER ACTION REPORT SHALL ALSO INCLUDE A SIGNED AFFIDAVIT FROM AN

1 ENVIRONMENTAL CONSULTANT WHO MEETS THE PROFESSIONAL QUALIFICATIONS
2 DESCRIBED IN SECTION 20114E(2) AND WHO PREPARED THE NO FURTHER
3 ACTION REPORT, ATTESTING TO THE FACT THAT THE REMEDIAL ACTIONS
4 DETAILED IN THE NO FURTHER ACTION REPORT COMPLY WITH ALL APPLICABLE
5 REQUIREMENTS AND THAT THE INFORMATION UPON WHICH THE NO FURTHER
6 ACTION REPORT IS BASED IS COMPLETE AND TRUE TO THE BEST OF THAT
7 PERSON'S KNOWLEDGE. IN ADDITION, THE ENVIRONMENTAL CONSULTANT SHALL
8 ATTACH A CERTIFICATE OF INSURANCE DEMONSTRATING THAT THE
9 ENVIRONMENTAL CONSULTANT HAS OBTAINED AT LEAST ALL OF THE FOLLOWING
10 FROM A CARRIER THAT IS AUTHORIZED TO CONDUCT BUSINESS IN THIS
11 STATE:

12 (A) STATUTORY WORKER COMPENSATION INSURANCE AS REQUIRED IN
13 THIS STATE.

14 (B) PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE.
15 THIS POLICY MAY NOT EXCLUDE BODILY INJURY, PROPERTY DAMAGE, OR
16 CLAIMS ARISING OUT OF POLLUTION FOR ENVIRONMENTAL WORK AND SHALL BE
17 ISSUED WITH A LIMIT OF NOT LESS THAN \$1,000,000.00 PER CLAIM.

18 (C) CONTRACTOR POLLUTION LIABILITY INSURANCE WITH LIMITS OF
19 NOT LESS THAN \$1,000,000.00 PER CLAIM, IF NOT INCLUDED UNDER THE
20 PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE REQUIRED
21 UNDER SUBDIVISION (B). THE INSURANCE REQUIREMENT UNDER THIS
22 SUBDIVISION IS NOT REQUIRED FOR ENVIRONMENTAL CONSULTANTS WHO DO
23 NOT PERFORM CONTRACTING FUNCTIONS.

24 (D) COMMERCIAL GENERAL LIABILITY INSURANCE WITH LIMITS OF NOT
25 LESS THAN \$1,000,000.00 PER CLAIM AND \$2,000,000.00 AGGREGATE.

26 (E) AUTOMOBILE LIABILITY INSURANCE WITH LIMITS OF NOT LESS
27 THAN \$1,000,000.00 PER CLAIM.

1 (6) A PERSON SUBMITTING A NO FURTHER ACTION REPORT SHALL
2 MAINTAIN ALL DOCUMENTS AND DATA PREPARED, ACQUIRED, OR RELIED UPON
3 IN CONNECTION WITH THE NO FURTHER ACTION REPORT FOR NOT LESS THAN
4 10 YEARS AFTER THE LATER OF THE DATE ON WHICH THE DEPARTMENT
5 APPROVES THE NO FURTHER ACTION REPORT UNDER THIS SECTION, OR THE
6 DATE ON WHICH NO FURTHER MONITORING, OPERATION, OR MAINTENANCE IS
7 REQUIRED TO BE UNDERTAKEN AS PART OF THE REMEDIAL ACTION COVERED BY
8 THE REPORT. ALL DOCUMENTS AND DATA REQUIRED TO BE MAINTAINED UNDER
9 THIS SECTION SHALL BE MADE AVAILABLE TO THE DEPARTMENT UPON
10 REQUEST.

11 (7) UPON RECEIPT OF A NO FURTHER ACTION REPORT SUBMITTED UNDER
12 THIS SUBSECTION, THE DEPARTMENT SHALL APPROVE OR DENY THE NO
13 FURTHER ACTION REPORT OR SHALL NOTIFY THE SUBMITTER THAT THE REPORT
14 DOES NOT CONTAIN SUFFICIENT INFORMATION FOR THE DEPARTMENT TO MAKE
15 A DECISION. IF THE NO FURTHER ACTION REPORT REQUIRES A POSTCLOSURE
16 AGREEMENT, THE DEPARTMENT MAY NEGOTIATE ALTERNATIVE TERMS THAN
17 THOSE INCLUDED WITHIN THE PROPOSED POSTCLOSURE AGREEMENT. THE
18 DEPARTMENT SHALL PROVIDE ITS DETERMINATION WITHIN 150 DAYS AFTER
19 THE REPORT WAS RECEIVED BY THE DEPARTMENT UNDER THIS SUBSECTION
20 UNLESS THE REPORT REQUIRES PUBLIC PARTICIPATION UNDER SECTION
21 20120D(2). IF THE REPORT REQUIRES PUBLIC PARTICIPATION UNDER
22 SECTION 20120D(2), THE DEPARTMENT SHALL RESPOND WITHIN 180 DAYS. IF
23 THE DEPARTMENT'S RESPONSE IS THAT THE REPORT DOES NOT INCLUDE
24 SUFFICIENT INFORMATION, THE DEPARTMENT SHALL IDENTIFY THE
25 INFORMATION THAT IS REQUIRED FOR THE DEPARTMENT TO MAKE A DECISION.
26 IF THE REPORT IS DENIED, THE DEPARTMENT'S DENIAL SHALL, TO THE
27 EXTENT PRACTICAL, STATE WITH SPECIFICITY ALL OF THE REASONS FOR

1 DENIAL. IF THE NO FURTHER ACTION REPORT, INCLUDING ANY REQUIRED
2 POSTCLOSURE PLAN AND POSTCLOSURE AGREEMENT, IS APPROVED, THE
3 DEPARTMENT SHALL PROVIDE THE PERSON SUBMITTING THE NO FURTHER
4 ACTION REPORT WITH A NO FURTHER ACTION LETTER. THE DEPARTMENT SHALL
5 REVIEW AND PROVIDE A WRITTEN RESPONSE WITHIN THE TIME FRAMES
6 REQUIRED BY THIS SUBSECTION FOR AT LEAST 90% OF THE NO FURTHER
7 ACTION REPORTS SUBMITTED TO THE DEPARTMENT UNDER THIS SECTION IN
8 EACH CALENDAR YEAR.

9 (8) IF THE DEPARTMENT FAILS TO PROVIDE A WRITTEN RESPONSE
10 WITHIN THE TIME FRAMES REQUIRED BY SUBSECTION (7), THE NO FURTHER
11 ACTION REPORT IS CONSIDERED APPROVED.

12 (9) A PERSON REQUESTING APPROVAL OF A NO FURTHER ACTION REPORT
13 UNDER SUBSECTION (7) MAY APPEAL THE DEPARTMENT'S DECISION IN
14 ACCORDANCE WITH SECTION 20114E.

15 (10) ANY TIME FRAME REQUIRED BY THIS SECTION MAY BE EXTENDED
16 BY MUTUAL AGREEMENT OF THE DEPARTMENT AND A PERSON SUBMITTING A NO
17 FURTHER ACTION REPORT. AN AGREEMENT EXTENDING A TIME FRAME SHALL BE
18 IN WRITING.

19 (11) FOLLOWING APPROVAL OF A NO FURTHER ACTION REPORT UNDER
20 THIS SECTION, THE OWNER OR OPERATOR OF THE FACILITY ADDRESSED BY
21 THE NO FURTHER ACTION REPORT MAY SUBMIT TO THE DEPARTMENT AN
22 AMENDED NO FURTHER ACTION REPORT. THE AMENDED NO FURTHER ACTION
23 REPORT SHALL INCLUDE THE PROPOSED CHANGES TO THE ORIGINAL NO
24 FURTHER ACTION REPORT AND AN ACCOMPANYING RATIONALE FOR THE
25 PROPOSED CHANGE. THE PROCESS FOR REVIEW AND APPROVAL OF AN AMENDED
26 NO FURTHER ACTION REPORT IS THE SAME AS THE PROCESS FOR NO FURTHER
27 ACTION REPORTS.

1 SEC. 20120. (1) ALL OF THE FOLLOWING SHALL BE CONSIDERED WHEN
2 A PERSON IS SELECTING A REMEDIAL ACTION OR THE DEPARTMENT IS
3 SELECTING OR APPROVING A REMEDIAL ACTION:

4 (A) THE EFFECTIVENESS OF ALTERNATIVES IN PROTECTING THE PUBLIC
5 HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT.

6 (B) THE LONG-TERM UNCERTAINTIES ASSOCIATED WITH THE PROPOSED
7 REMEDIAL ACTION.

8 (C) THE PERSISTENCE, TOXICITY, MOBILITY, AND PROPENSITY TO
9 BIOACCUMULATE OF THE HAZARDOUS SUBSTANCES.

10 (D) THE SHORT- AND LONG-TERM POTENTIAL FOR ADVERSE HEALTH
11 EFFECTS FROM HUMAN EXPOSURE.

12 (E) COSTS OF REMEDIAL ACTION, INCLUDING LONG-TERM MAINTENANCE
13 COSTS. HOWEVER, THE COST OF A REMEDIAL ACTION SHALL BE A FACTOR
14 ONLY IN CHOOSING AMONG ALTERNATIVES THAT ADEQUATELY PROTECT THE
15 PUBLIC HEALTH, SAFETY, AND WELFARE AND THE ENVIRONMENT, CONSISTENT
16 WITH THE REQUIREMENTS OF SECTION 20120A.

17 (F) RELIABILITY OF THE ALTERNATIVES.

18 (G) THE POTENTIAL FOR FUTURE RESPONSE ACTIVITY COSTS IF AN
19 ALTERNATIVE FAILS.

20 (H) THE POTENTIAL THREAT TO HUMAN HEALTH, SAFETY, AND WELFARE
21 AND THE ENVIRONMENT ASSOCIATED WITH EXCAVATION, TRANSPORTATION, AND
22 REDISPOSAL OR CONTAINMENT.

23 (I) THE ABILITY TO MONITOR REMEDIAL PERFORMANCE.

24 (J) FOR REMEDIAL ACTIONS THAT REQUIRE THE OPPORTUNITY FOR
25 PUBLIC PARTICIPATION UNDER SECTION 20120D, THE PUBLIC'S PERSPECTIVE
26 ABOUT THE EXTENT TO WHICH THE PROPOSED REMEDIAL ACTION EFFECTIVELY
27 ADDRESSES REQUIREMENTS OF THIS PART.

1 (2) EVALUATION OF THE FACTORS IN SUBSECTION (1) SHALL CONSIDER
2 ALL FACTORS IN BALANCE WITH ONE ANOTHER AS NECESSARY TO ACHIEVE THE
3 OBJECTIVES OF THIS PART. NO SINGLE FACTOR IN SUBSECTION (1) SHALL
4 BE CONSIDERED THE MOST IMPORTANT.

5 Sec. 20120a. (1) The department may establish cleanup criteria
6 and approve of remedial actions in the categories listed in this
7 subsection. The cleanup category proposed shall be the option of
8 the person proposing the remedial action, subject to department
9 approval **IF REQUIRED**, considering the appropriateness of the
10 categorical criteria to the facility. The categories are as
11 follows:

12 (a) Residential.

13 (b) ~~Commercial~~ **NONRESIDENTIAL. BEGINNING ON THE EFFECTIVE DATE**
14 **OF THE 2010 AMENDATORY ACT THAT AMENDED THIS SECTION, THE**
15 **NONRESIDENTIAL CLEANUP CRITERIA SHALL BE THE FORMER INDUSTRIAL**
16 **CATEGORICAL CLEANUP CRITERIA DEVELOPED BY THE DEPARTMENT PURSUANT**
17 **TO THIS SECTION UNTIL NEW NONRESIDENTIAL CLEANUP CRITERIA ARE**
18 **DEVELOPED AND PUBLISHED BY THE DEPARTMENT PURSUANT TO SUBSECTION**
19 **(17).**

20 ~~(c) Recreational.~~

21 ~~(d) Industrial.~~

22 ~~(e) Other land use based categories established by the~~
23 ~~department.~~

24 (C) ~~(f)~~ Limited residential.

25 (D) ~~(g)~~ Limited ~~commercial~~ **NONRESIDENTIAL.**

26 ~~(h) Limited recreational.~~

27 ~~(i) Limited industrial.~~

1 ~~—— (j) Other limited categories established by the department.~~

2 (2) ~~The department may approve a remedial action plan based on~~
3 ~~site specific criteria that satisfy the~~ **AS AN ALTERNATIVE TO THE**
4 **CATEGORICAL CRITERIA UNDER SUBSECTION (1), THE DEPARTMENT MAY**
5 **APPROVE A RESPONSE ACTIVITY PLAN OR A NO FURTHER ACTION REPORT**
6 **CONTAINING SITE-SPECIFIC CRITERIA THAT SATISFY THE REQUIREMENTS OF**
7 **SECTION 20120B AND OTHER** applicable requirements of this part. ~~and~~
8 ~~the rules promulgated under this part.~~ The department shall utilize
9 only reasonable and relevant exposure pathways in determining the
10 adequacy of a site-specific criterion. Additionally, the department
11 may approve a remedial action plan for a designated area-wide zone
12 encompassing more than 1 facility, and may consolidate remedial
13 actions for more than 1 facility.

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

1 (4) If a hazardous substance poses a carcinogenic risk to
2 humans, the cleanup criteria derived for cancer risk under this
3 section shall be the 95% upper bound on the calculated risk of 1
4 additional cancer above the background cancer rate per 100,000
5 individuals using the generic set of exposure assumptions
6 established under subsection (3) for the appropriate category or
7 subcategory. If the hazardous substance poses a risk of an adverse
8 health effect other than cancer, cleanup criteria shall be derived
9 using appropriate human health risk assessment methods for that
10 adverse health effect and the generic set of exposure assumptions
11 established under subsection (3) for the appropriate category or
12 subcategory. A hazard quotient of 1.0 shall be used to derive
13 noncancer cleanup criteria. For the noncarcinogenic effects of a
14 hazardous substance present in soils, the intake shall be assumed
15 to be 100% of the protective level, unless compound and site-
16 specific data are available to demonstrate that a different source
17 contribution is appropriate. If a hazardous substance poses a risk
18 of both cancer and 1 or more adverse health effects other than
19 cancer, cleanup criteria shall be derived under this section for
20 the most sensitive effect.

21 (5) If a cleanup criterion derived under subsection (4) for
22 groundwater in an aquifer differs from either: (a) the state
23 drinking water standard established pursuant to section 5 of the
24 safe drinking water act, ~~Act No. 399 of the Public Acts of 1976,~~
25 ~~being section 325.1005 of the Michigan Compiled Laws 1976 PA 399,~~
26 **MCL 325.1005**, or (b) ~~criteria for adverse aesthetic characteristics~~
27 ~~derived pursuant to R 299.5709 of the Michigan administrative code~~

1 THE NATIONAL SECONDARY DRINKING WATER REGULATIONS ESTABLISHED
2 PURSUANT TO 42 USC 300G-1, OR (C) IF THERE IS NOT NATIONAL
3 SECONDARY DRINKING WATER REGULATION FOR A CONTAMINANT, THE
4 CONCENTRATION DETERMINED BY THE DEPARTMENT ACCORDING TO METHODS
5 APPROVED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BELOW
6 WHICH TASTE, ODOR, APPEARANCE, OR OTHER AESTHETIC CHARACTERISTICS
7 ARE NOT ADVERSELY AFFECTED, the cleanup criterion shall be the more
8 stringent of (a), ~~or (b)~~, OR (C) unless the department determines
9 that compliance with this ~~rule~~-SUBSECTION is not necessary because
10 the use of the aquifer is reliably restricted ~~pursuant to section~~
11 ~~20120b(4) or (5)~~. UNDER PROVISIONS OF A POSTCLOSURE PLAN OR A
12 POSTCLOSURE AGREEMENT.

13 (6) The department shall not approve ~~of a~~ remedial action plan
14 OR NO FURTHER ACTION REPORT in categories set forth in subsection
15 (1)(b) to ~~(j)~~-(D), unless the person ~~proposing the plan~~ documents
16 that the current zoning of the property is consistent with the
17 categorical criteria being proposed, or that the governing zoning
18 authority intends to change the zoning designation so that the
19 proposed criteria are consistent with the new zoning designation,
20 or the current property use is a legal nonconforming use. The
21 department shall not grant final approval for a remedial action
22 plan OR NO FURTHER ACTION REPORT that relies on a change in zoning
23 designation until a final determination of that zoning change has
24 been made by the local unit of government. The department may
25 approve of a remedial action PLAN OR NO FURTHER ACTION REPORT that
26 achieves categorical criteria that ~~is~~-ARE based on greater exposure
27 potential than the criteria applicable to current zoning. In

1 addition, the remedial action plan **OR NO FURTHER ACTION REPORT**
2 shall include documentation that the current property use is
3 consistent with the current zoning or is a legal nonconforming use.
4 Abandoned or inactive property shall be considered on the basis of
5 zoning classifications as described above.

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

9 ~~(8) Except as provided in subsection (4) and subsections (9)~~
10 ~~to (13), compliance with the residential category in subsection~~
11 ~~(1)(a) shall be based on R 299.5709 through R 299.5711(4), R~~
12 ~~299.5711(6) through R 299.5715 and R 299.5727 of the Michigan~~
13 ~~administrative code. R 299.5711(5), R 299.5723, and R 299.5725 of~~
14 ~~the Michigan administrative code shall not apply for calculations~~
15 ~~of residential criteria under subsection (1)(a).~~

16 (8) ~~(9)~~The need for soil remediation to protect an aquifer
17 from hazardous substances in soil shall ~~be determined by R~~
18 ~~299.5711(2) of the Michigan administrative code, considering~~
19 **CONSIDER** the vulnerability of the aquifer or aquifers potentially
20 affected if the soil remains at the facility. Migration of
21 hazardous substances in soil to an aquifer is a pertinent pathway
22 if appropriate based on consideration of site specific factors.

23 (9) ~~(10)~~The department may establish cleanup criteria for a
24 hazardous substance using a biologically based model developed or
25 identified as appropriate by the United States environmental
26 protection agency if the department determines all of the
27 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) ~~(11) If the cleanup criterion for a hazardous substance~~
10 ~~determined by R 299.5707 of the Michigan administrative code~~ **TARGET**
11 **DETECTION LIMIT OR THE BACKGROUND CONCENTRATION FOR A HAZARDOUS**
12 **SUBSTANCE** is greater than a cleanup criterion developed for a
13 category pursuant to subsection (1), the criterion ~~determined~~
14 ~~pursuant to R 299.5707 of the Michigan administrative code~~ shall be
15 the ~~cleanup criterion~~ **TARGET DETECTION LIMIT OR BACKGROUND**
16 **CONCENTRATION, WHICHEVER IS LARGER,** for that hazardous substance in
17 that category.

18 (11) **THE DEPARTMENT MAY ALSO APPROVE CLEANUP CRITERIA IF**
19 **NECESSARY TO ADDRESS CONDITIONS THAT PREVENT A HAZARDOUS SUBSTANCE**
20 **FROM BEING RELIABLY MEASURED AT LEVELS THAT ARE CONSISTENTLY**
21 **ACHIEVABLE IN SAMPLES FROM THE FACILITY IN ORDER TO ALLOW FOR**
22 **COMPARISON WITH GENERIC CLEANUP CRITERIA. A PERSON SEEKING APPROVAL**
23 **OF A CRITERION UNDER THIS SUBSECTION SHALL DOCUMENT THE BASIS FOR**
24 **DETERMINING THAT THE RELEVANT PUBLISHED TARGET DETECTION LIMIT**
25 **CANNOT BE ACHIEVED IN SAMPLES FROM THE FACILITY.**

26 (12) In determining the adequacy of a land-use based response
27 activity to address sites contaminated by polychlorinated

1 biphenyls, the department shall not require response activity in
2 addition to that which is subject to and complies with applicable
3 federal regulations and policies that implement the toxic
4 substances control act, ~~Public Law 94-469,~~ 15 U.S.C. **USC** 2601 to
5 ~~2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692.~~

6 (13) ~~Response activity~~ **REMEDIAL ACTION** to address the release
7 of uncontaminated mineral oil satisfies ~~R-299.5709~~ **CLEANUP CRITERIA**
8 **UNDER THIS PART** for groundwater or ~~R-299.5711~~ for soil ~~under the~~
9 ~~Michigan administrative code~~ if all visible traces of mineral oil
10 are removed from groundwater and soil.

11 (14) Approval by the department of ~~a remedial action plan~~
12 based on ~~1 or more~~ **THE** categorical standard in subsection (1)(a) ~~to~~
13 ~~(e)~~ **OR (B)** shall be granted only if the pertinent criteria are
14 satisfied in the affected media. The department shall approve the
15 use of probabilistic or statistical methods or other scientific
16 methods of evaluating environmental data when determining
17 compliance with a pertinent cleanup criterion if the methods are
18 determined by the department to be reliable, scientifically valid,
19 and best represent actual site conditions and exposure potential.

20 (15) ~~If a remedial action allows for venting groundwater, the~~
21 ~~discharge shall comply with requirements of part 31, and the rules~~
22 ~~promulgated under that part or an alternative method established by~~
23 ~~rule. If the~~ **A** discharge of venting groundwater is provided for in
24 a remedial action plan that is approved by the department, **COMPLIES**
25 **WITH THIS PART**, a permit for the discharge is not required. ~~As used~~
26 ~~in this subsection, "venting groundwater" means groundwater that is~~
27 ~~entering a surface water of the state from a facility.~~

1 (16) ~~A remedial action plan~~ **REMEDIAL ACTIONS** shall provide
2 ~~response activity to meet the residential categorical~~ **CLEANUP**
3 ~~criteria~~ **, FOR UNRESTRICTED RESIDENTIAL USE** or **SHALL** provide for
4 acceptable land use or resource use restrictions ~~pursuant to~~
5 ~~section 20120b.~~ **IN A POSTCLOSURE PLAN OR A POSTCLOSURE AGREEMENT.**

6 (17) ~~A remedial action plan~~ **REMEDIAL ACTIONS** that ~~relies~~ **RELY**
7 on categorical cleanup criteria developed pursuant to subsection
8 (1) shall also consider other factors necessary to protect the
9 public health, safety, and welfare, and the environment as
10 specified by the department, if the department determines based on
11 data and existing information that such considerations are relevant
12 to a specific facility. These factors include, but are not limited
13 to, the protection of surface water quality and consideration of
14 ecological risks if pertinent to the facility based on the
15 requirements of ~~R 299.5717 of the Michigan administrative code~~ **THIS**
16 **PART.**

17 (18) ~~The~~ **NOT LATER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF**
18 **THE 2010 AMENDATORY ACT THAT AMENDED THIS SECTION, THE** department
19 shall ~~annually evaluate and revise~~ **, if appropriate,** the cleanup
20 criteria derived under this section. The evaluation shall
21 incorporate knowledge gained through research and studies in the
22 areas of fate and transport and risk assessment. **FOLLOWING THIS**
23 **REVISION, THE DEPARTMENT SHALL PERIODICALLY EVALUATE WHETHER NEW**
24 **INFORMATION IS AVAILABLE REGARDING THE CLEANUP CRITERIA AND SHALL**
25 **MAKE REVISIONS AS APPROPRIATE.** The department shall prepare and
26 submit to the legislature a report detailing **ANY** revisions made to
27 cleanup criteria under this section.

1 Sec. 20120b. ~~(1) If a remedial action plan is selected or~~
2 ~~approved by the department based on criteria for the residential~~
3 ~~category provided for in section 20120a(1)(a), land use~~
4 ~~restrictions or monitoring are not required once those standards~~
5 ~~have been achieved by the remedial action.~~

6 ~~(2) If a remedial action plan is selected or approved by the~~
7 ~~department based on criteria in categories provided for in section~~
8 ~~20120a(1)(b) to (e), a notice of approved environmental remediation~~
9 ~~shall be recorded with the register of deeds for the county in~~
10 ~~which the facility is located within 21 days after selection or~~
11 ~~approval by the department of the remedial action, or within 21~~
12 ~~days after completion of construction of the remedial action as~~
13 ~~appropriate to the circumstances. A notice shall be filed pursuant~~
14 ~~to this section only by the property owner or by another person who~~
15 ~~has the express written permission of the property owner. The form~~
16 ~~and content of the notice are subject to approval by the state. Any~~
17 ~~restrictions contained in the notice shall be binding on the~~
18 ~~owner's successors, assigns, and lessees, and shall run with the~~
19 ~~land. A notice of environmental remediation recorded pursuant to~~
20 ~~this subsection shall state which of the categories of land use~~
21 ~~specified in section 20120a(1)(b) to (d) are consistent with the~~
22 ~~environmental conditions at the property to which the notice~~
23 ~~applies, and that a change from that land use or uses may~~
24 ~~necessitate further evaluation of potential risks to the public~~
25 ~~health, safety, or welfare, or the environment. The notice of~~
26 ~~approved environmental remediation shall include a survey and~~
27 ~~property description that define the areas addressed by the~~

1 ~~remedial action plan if land use or resource use restrictions apply~~
2 ~~to less than the entire parcel or if different restrictions apply~~
3 ~~to different areas of a parcel, and the scope of any land use or~~
4 ~~resource use limitations. Additional requirements for financial~~
5 ~~assurance, monitoring, or operation, and maintenance do not apply~~
6 ~~if a remedial action complies with criteria provided for in section~~
7 ~~20120a(1)(b) to (e), unless monitoring or operation and maintenance~~
8 ~~are required to assure the compliance with criteria that apply~~
9 ~~outside the boundary of the property that is the source of the~~
10 ~~release.~~

11 ~~—— (3) If a remedial action plan is selected or approved by the~~
12 ~~department based on criteria provided for in section 20120a(1)(f)~~
13 ~~to (j) or (2), provisions concerning subdivisions (a) through (e)~~
14 ~~shall be stipulated in a legally enforceable agreement with the~~
15 ~~department. If the department concurs with an analysis provided in~~
16 ~~a remedial action plan that 1 or more of the requirements specified~~
17 ~~in subdivisions (b) to (e) is not necessary to protect the public~~
18 ~~health, safety, or welfare, or the environment and to assure the~~
19 ~~effectiveness and integrity of the remedial action, that element~~
20 ~~may be omitted from the agreement. If provisions for any of the~~
21 ~~following, determined by the department to be applicable for a~~
22 ~~facility, lapse or are not complied with as provided in the~~
23 ~~agreement or remedial action plan, the department's approval of the~~
24 ~~remedial action plan is void from the time of the lapse or~~
25 ~~violation, unless the lapse or violation is corrected to the~~
26 ~~satisfaction of the department.~~

27 ~~—— (a) Land use or resource use restrictions.~~

1 ~~—— (b) Monitoring.~~

2 ~~—— (c) Operation and maintenance.~~

3 ~~—— (d) Permanent markers to describe restricted areas of the site~~
4 ~~and the nature of any restrictions.~~

5 ~~—— (e) Financial assurance, in a mechanism acceptable to the~~
6 ~~department to pay for monitoring, operation and maintenance,~~
7 ~~oversight, and other costs determined by the department to be~~
8 ~~necessary to assure the effectiveness and integrity of the remedial~~
9 ~~action.~~

10 ~~—— (4) If a remedial action plan relies in whole or in part on~~
11 ~~cleanup criteria approved pursuant to section 20120a(1)(f) to (j)~~
12 ~~or (2), land use or resource use restrictions to assure the~~
13 ~~effectiveness and integrity of any containment, exposure barrier,~~
14 ~~or other land use or resource use restrictions necessary to assure~~
15 ~~the effectiveness and integrity of the remedy shall be described in~~
16 ~~a restrictive covenant. The restrictive covenant shall be recorded~~
17 ~~with the register of deeds for the county in which the property is~~
18 ~~located within 21 days of the department's selection or approval of~~
19 ~~the remedial action plan, or within 21 days of the completion of~~
20 ~~construction of the containment or barrier, as appropriate to the~~
21 ~~circumstances. The restrictive covenant shall be filed by the~~
22 ~~property owner or with the express written permission of the~~
23 ~~property owner. The restrictions shall run with the land and be~~
24 ~~binding on the owner's successors, assigns, and lessees. Such~~
25 ~~restrictions shall apply until the department determines that~~
26 ~~hazardous substances that are controlled by the barrier or~~
27 ~~contained no longer present an unacceptable risk to the public~~

1 ~~health, safety, or welfare, or the environment as defined by the~~
2 ~~cleanup criteria and exposure control requirements set forth in the~~
3 ~~remedial action plan. The restrictive covenant shall include a~~
4 ~~survey and property description that define the areas addressed by~~
5 ~~the remedial action plan and the scope of any land use or resource~~
6 ~~use limitations. The form and content of the restrictive covenant~~
7 ~~are subject to approval by the department and shall include~~
8 ~~provisions to accomplish all of the following:~~

9 ~~—— (a) Restrict activities at the facility that may interfere~~
10 ~~with a remedial action, operation and maintenance, monitoring, or~~
11 ~~other measures necessary to assure the effectiveness and integrity~~
12 ~~of the remedial action.~~

13 ~~—— (b) Restrict activities that may result in exposures above~~
14 ~~levels established in the remedial action plan.~~

15 ~~—— (c) Require notice to the department of the owner's intent to~~
16 ~~convey any interest in the facility 14 days prior to consummating~~
17 ~~the conveyance. A conveyance of title, an easement, or other~~
18 ~~interest in the property shall not be consummated by the property~~
19 ~~owner without adequate and complete provision for compliance with~~
20 ~~the terms and conditions of the agreement described in subsection~~
21 ~~(3) and the prevention of releases and exposures described in~~
22 ~~subdivision (b).~~

23 ~~—— (d) Grant to the department the right to enter the property at~~
24 ~~reasonable times for the purpose of determining and monitoring~~
25 ~~compliance with the remedial action plan, including the right to~~
26 ~~take samples, inspect the operation of the remedial action~~
27 ~~measures, and inspect records.~~

1 ~~—— (e) Allow the state to enforce the restriction set forth in~~
2 ~~the covenant by legal action in a court of appropriate~~
3 ~~jurisdiction.~~

4 ~~—— (f) Describe generally the uses of the property that are~~
5 ~~consistent with the categorical criteria and limitations approved~~
6 ~~as part of a remedial action plan.~~

7 ~~—— (5) If the department determines that exposure to hazardous~~
8 ~~substances may be reliably restricted by an institutional control~~
9 ~~in lieu of a restrictive covenant, and that imposition of land use~~
10 ~~or resource use restrictions through restrictive covenants is~~
11 ~~impractical, the department may approve of a remedial action plan~~
12 ~~under section 20120a(1)(f) to (j) or (2) that relies on such~~
13 ~~institutional control. Mechanisms that may be considered under this~~
14 ~~subsection include, but are not limited to, an ordinance that~~
15 ~~prohibits the use of groundwater or an aquifer in a manner and to a~~
16 ~~degree that protects against unacceptable exposures as defined by~~
17 ~~the cleanup criteria approved as part of the remedial action plan.~~
18 ~~An ordinance that serves as an exposure control pursuant to this~~
19 ~~subsection shall be published and maintained in the same manner as~~
20 ~~zoning ordinances and shall include a requirement that the local~~
21 ~~unit of government notify the department at least 30 days prior to~~
22 ~~adopting a modification to the ordinance, or to the lapsing or~~
23 ~~revocation of the ordinance.~~

24 ~~—— (6) Selection or approval by the department of a remedial~~
25 ~~action does not relieve a person who is liable under section 20126~~
26 ~~of that person's responsibility to report and provide for response~~
27 ~~activity to address a subsequent release or threat of release at~~

1 ~~the facility.~~

2 ~~—— (7) A remedial action shall not be considered approved by the~~
3 ~~department unless a remedial action plan is submitted to the~~
4 ~~department and the department approves the plan. Implementation by~~
5 ~~any person of response activity without department approval does~~
6 ~~not relieve that person of an obligation to undertake response~~
7 ~~activity or limit the ability of the department to take action to~~
8 ~~require response activity necessary to comply with this act by a~~
9 ~~person who is liable under section 20126.~~

10 ~~—— (8) A person shall not file a notice of approved environmental~~
11 ~~remediation indicating approval or a determination of the~~
12 ~~department unless the department has approved of the filing of the~~
13 ~~notice.~~

14 ~~—— (9) A person who implements a remedial action plan approved by~~
15 ~~the department pursuant to subsections (2) to (5) shall provide~~
16 ~~notice of the land use restrictions that are part of the remedial~~
17 ~~action plan to the zoning authority for the local unit of~~
18 ~~government in which the facility is located within 30 days of~~
19 ~~approval of the plan.~~

20 ~~—— (10) The state, with the approval of the state administrative~~
21 ~~board, may place restrictive covenants related to land or resource~~
22 ~~use on deeds of state owned property.~~

23 **(1) THE DEPARTMENT SHALL APPROVE SITE-SPECIFIC CRITERIA IN A**
24 **RESPONSE ACTIVITY UNDER SECTION 20120A IF SUCH CRITERIA, IN**
25 **COMPARISON TO GENERIC CRITERIA, BETTER REFLECT BEST AVAILABLE**
26 **INFORMATION CONCERNING THE TOXICITY OR EXPOSURE RISK POSED BY THE**
27 **HAZARDOUS SUBSTANCE OR OTHER FACTORS.**

1 (2) SITE-SPECIFIC CRITERIA APPROVED UNDER SUBSECTION (1) MAY,
2 AS APPROPRIATE:

3 (A) USE THE ALGORITHMS FOR CALCULATING GENERIC CRITERIA
4 ESTABLISHED BY RULE OR PROPOSE AND USE DIFFERENT ALGORITHMS.

5 (B) ALTER ANY VALUE, PARAMETER, OR ASSUMPTION USED TO
6 CALCULATE GENERIC CRITERIA.

7 (C) TAKE INTO CONSIDERATION THE DEPTH BELOW THE GROUND SURFACE
8 OF CONTAMINATION, WHICH MAY REDUCE THE POTENTIAL FOR EXPOSURE AND
9 SERVE AS AN EXPOSURE BARRIER.

10 (D) BE BASED ON INFORMATION RELATED TO THE SPECIFIC FACILITY
11 OR INFORMATION OF GENERAL APPLICABILITY, INCLUDING PEER-REVIEWED
12 SCIENTIFIC LITERATURE.

13 (E) USE PROBABILISTIC METHODS OF CALCULATION.

14 (F) USE NONLINEAR-THRESHOLD-BASED CALCULATIONS WHERE
15 SCIENTIFICALLY JUSTIFIED.

16 Sec. 20120c. (1) An owner or operator shall not remove soil,
17 or allow soil to be removed, from a facility to an off-site
18 location unless that person determines that the soil can be
19 lawfully relocated without posing a threat to the public health,
20 safety, or welfare, or the environment. The determination shall
21 consider whether the soil is subject to regulation pursuant to part
22 111.

23 (2) For the purposes of subsection (1), soil poses a threat to
24 the public health, safety, or welfare, or the environment if
25 concentrations of hazardous substances in the soil exceed the
26 cleanup criterion determined pursuant to section 20120a(1) or (2)
27 that apply to the location to which the soil will be moved or

1 relocated, except that if the soil is to be removed from the
2 facility for disposal or treatment, the soil shall satisfy the
3 appropriate regulatory criteria for disposal or treatment. Any land
4 use **OR RESOURCE USE** restrictions that would be required for the
5 application of a criterion pursuant to section 20120a(1) or (2)
6 shall be in place at the location to which the soil will be moved.
7 Soil may be relocated only to another location that is similarly
8 contaminated, considering the general nature, concentration, and
9 mobility of hazardous substances present at the location to which
10 contaminated soil will be moved. Contaminated soil shall not be
11 moved to a location that is not a facility unless it is taken there
12 for treatment or disposal in conformance with applicable laws and
13 regulations.

14 (3) An owner or operator shall not relocate soil, or allow
15 soil to be relocated, within a ~~site of environmental contamination~~
16 **FACILITY** where a remedial action plan has been approved unless that
17 person assures that the same degree of control required for
18 application of the criteria of section 20120a(1) or (2) is provided
19 for the contaminated soil.

20 (4) The prohibition in subsection (3) against relocation of
21 contaminated soil within a ~~site of environmental contamination~~
22 **FACILITY** does not apply to soils that are temporarily relocated for
23 the purpose of implementing response activity or utility
24 construction if the response activity or utility construction is
25 completed in a timely fashion and the short-term hazards are
26 appropriately controlled.

27 (5) If soil is being moved off-site from, moved to, or

1 relocated on-site at a facility where a remedial action plan has
2 been approved by the department based on a categorical cleanup
3 criterion in section ~~20120a(1)(f) to (j)~~ **20120A(1)(C) OR (D)** or
4 (2), the soil shall not be moved without prior department approval.

5 (6) If soil is being relocated in a manner not addressed by
6 subsection (5), the owner or operator of the facility from which
7 soil is being moved must provide notice to the department within 14
8 days after the soil is moved. The notice shall include all of the
9 following:

10 (a) The location from which soil will be removed.

11 (b) The location to which the soil will be taken.

12 (c) The volume of soil to be moved.

13 (d) A summary of information or data on which the owner or
14 operator is basing the determination required in subsection (2)
15 that the soil does not present a threat to the public health,
16 safety, or welfare, or the environment.

17 (e) If land use **OR RESOURCE USE** restrictions **IN A POSTCLOSURE**
18 **PLAN OR A POSTCLOSURE AGREEMENT** would apply pursuant to section
19 ~~20120a(1)~~ to the soil when it is relocated, the notice shall
20 include documentation that those restrictions are in place.

21 (7) The determination required by subsections (1) and (3)
22 shall be based on knowledge of the person undertaking or approving
23 of the removal or relocation of soil, or on characterization of the
24 soil for the purpose of compliance with this section.

25 (8) This section does not apply to soil that is designated as
26 an inert material pursuant to section 11507(3). ~~of the natural~~
27 ~~resources and environmental protection act, Act No. 451 of the~~

1 ~~Public Acts of 1994, being section 324.11507 of the Michigan~~
2 ~~Compiled Laws.~~

3 Sec. 20120d. (1) At a facility where state funds will be spent
4 to develop or implement a remedial action plan or where the
5 department determines there is a significant public interest,
6 within 30 days after the completion of a remedial investigation for
7 the facility, the department shall provide the county and the
8 township, city, or village in which the facility is located a
9 notice of the completion of the remedial investigation, a summary
10 of the remedial investigation, and notice of an opportunity for ~~the~~
11 ~~people in~~ **RESIDENTS OF** the local unit of government to meet with
12 the department regarding the remedial investigation and any
13 proposed feasibility study for the facility. Upon a request for a
14 public meeting by the governing body of the local unit of
15 government or by 25 citizens of the local unit of government, the
16 department shall, within 30 days of the request, meet with persons
17 in the local unit of government. The person or persons requesting
18 the public meeting shall publicize and provide accommodations for
19 the meeting. The meeting shall be held in the local unit of
20 government in which the facility is located. The department shall
21 provide copies of the notices and summary required in this
22 subsection to the governing body of the local unit of government,
23 to the known persons who are liable under section 20126, and to the
24 main public library of the local unit of government in which the
25 facility is located. The department shall send representatives to
26 the meeting who are familiar with the facility and who are involved
27 with determining the appropriate remedial actions to be taken at

1 the facility. Persons who are liable under section 20126 for the
2 facility may send representatives to the meeting.

3 ~~(2) The department shall maintain, and periodically publish, a~~
4 ~~list of remedial action plans submitted for approval that comply~~
5 ~~with the requirements of R 299.5515 of the Michigan administrative~~
6 ~~code.~~

7 (2) ~~(3)~~ Before approval of a proposed remedial action plan
8 which is to be implemented with money from the fund, or is based on
9 categorical criteria provided for in section ~~20120a(1)(f) to (j)~~
10 **20120A(1)(C) OR (D)** or (2), or if section 20118(5) or (6) applies,
11 or the department determines that there is significant public
12 interest, the department shall do all of the following:

13 (a) Publish a notice and brief summary of the proposed
14 remedial action plan.

15 (b) Provide for public review and comment pertinent to
16 documents relating to the proposed remedial action plan, including,
17 if applicable, the feasibility study that outlines alternative
18 remedial action measures considered.

19 (c) Provide an opportunity for a public meeting at or near the
20 facility when any of the following occur:

21 (i) The department determines that there is a significant
22 public interest or that for any other reason a public meeting is
23 appropriate.

24 (ii) A city, township, or village in which the facility is
25 located, by a majority vote of its governing body, requests a
26 public meeting.

27 (iii) A local health department with jurisdiction in the area in

1 which the facility is located requests a public meeting.

2 (d) Provide a document that summarizes the major issues raised
3 by the public and how they are to be addressed by the final
4 approved remedial action plan.

5 (3) ~~(4)~~—For purposes of this section, publication shall
6 include, at a minimum, publication in a local newspaper or
7 newspaper of general circulation in this state. In addition, the
8 administrative record shall be made available by the department for
9 inspection by members of the public at or near the facility and in
10 Lansing.

11 (4) ~~(5)~~—The department shall prepare a summary document that
12 explains the reasons for the selection or approval of a remedial
13 action plan **UNDER SUBSECTION (2)**. In addition, the department shall
14 compile an administrative record of the decision process that
15 results in the selection of a remedial action plan. The
16 administrative record shall contain all of the following:

17 (a) Remedial investigation data regarding the facility.

18 (b) If applicable, a feasibility study and potential remedial
19 actions.

20 (c) If applicable, a summary document that explains the
21 reasons why a remedial investigation or feasibility study was not
22 conducted.

23 (d) Applicable comments and information received from the
24 public, if any.

25 (e) If applicable, a document that summarizes the significant
26 concerns raised by the members of the public and how they are to be
27 addressed.

1 (f) Other information appropriate to the facility.

2 (5) ~~(6)~~—If comments or information are submitted for inclusion
3 in the administrative record that are not included in the
4 administrative record, a brief explanation of why the information
5 was not considered relevant shall be sent to the party by the
6 department and included in the record.

7 SEC. 20120E. (1) A PERSON MAY DEMONSTRATE COMPLIANCE WITH
8 REQUIREMENTS UNDER THIS PART FOR A RESPONSE ACTIVITY PROVIDING FOR
9 VENTING GROUNDWATER BY MEETING ANY OF THE FOLLOWING, SINGLY OR IN
10 COMBINATION:

11 (A) GENERIC GROUNDWATER-SURFACE WATER INTERFACE CRITERIA,
12 WHICH ARE THE WATER QUALITY STANDARDS FOR SURFACE WATERS DEVELOPED
13 BY THE DEPARTMENT PURSUANT TO PART 31. THE USE OF SURFACE WATER
14 QUALITY STANDARDS SHALL BE ALLOWABLE IN ANY OF THE CLEANUP
15 CATEGORIES PROVIDED FOR IN SECTION 20120A(1).

16 (B) MIXING ZONE-BASED GROUNDWATER-SURFACE WATER INTERFACE
17 CRITERIA ESTABLISHED UNDER THIS PART. THE USE OF MIXING ZONE-BASED
18 CRITERIA SHALL BE ALLOWABLE IN ANY OF THE CATEGORIES PROVIDED FOR
19 IN SECTION 20120A(1) AND (2).

20 (C) SITE-SPECIFIC CRITERIA ESTABLISHED UNDER SECTION
21 20120A(2). THE USE OF MIXING ZONES ESTABLISHED UNDER THIS PART MAY
22 BE APPLIED TO, OR INCLUDED AS, SITE-SPECIFIC CRITERIA.

23 (2) A PERSON MAY PROCEED UNDER SECTION 20114A TO UNDERTAKE THE
24 FOLLOWING RESPONSE ACTIVITIES:

25 (A) A PERSON MAY UNDERTAKE EVALUATION ACTIVITIES ASSOCIATED
26 WITH A RESPONSE ACTIVITY PROVIDING FOR VENTING GROUNDWATER USING
27 GROUNDWATER-SURFACE WATER INTERFACE MONITORING WELLS OR ALTERNATIVE

1 MONITORING POINTS.

2 (B) A PERSON MAY UNDERTAKE RESPONSE ACTIVITIES THAT RELY ON
3 MONITORING FROM GROUNDWATER-SURFACE WATER INTERFACE MONITORING
4 WELLS TO DEMONSTRATE COMPLIANCE UNDER SUBSECTION (1) (A) .

5 (C) EXCEPT AS PROVIDED IN SUBDIVISION (A) AND SUBSECTION (3) ,
6 A PERSON MAY UNDERTAKE RESPONSE ACTIVITIES THAT RELY ON MONITORING
7 FROM ALTERNATIVE MONITORING POINTS TO DEMONSTRATE COMPLIANCE WITH
8 SUBSECTION (1) (A) IF THE PERSON SUBMITS TO THE DEPARTMENT A NOTICE
9 OF ALTERNATIVE MONITORING POINTS AT LEAST 30 DAYS PRIOR TO RELYING
10 ON THOSE ALTERNATIVE MONITORING POINTS THAT CONTAINS SUBSTANTIATING
11 EVIDENCE THAT THE ALTERNATIVE MONITORING POINTS COMPLY WITH THIS
12 SECTION.

13 (3) A PERSON MUST PROCEED UNDER SECTION 20114B TO UNDERTAKE
14 RESPONSE ACTIVITIES THAT RELY ON MONITORING FROM ALTERNATIVE
15 MONITORING POINTS TO DEMONSTRATE COMPLIANCE WITH SUBSECTION (1) (A)
16 IF 1 OR MORE OF THE FOLLOWING CONDITIONS APPLY TO THE VENTING
17 GROUNDWATER:

18 (A) AN APPLICABLE CRITERION IS BASED ON ACUTE TOXICITY
19 ENDPOINTS.

20 (B) THE VENTING GROUNDWATER CONTAINS A BIOACCUMULATIVE
21 CHEMICAL OF CONCERN AS IDENTIFIED IN THE WATER QUALITY STANDARDS
22 FOR SURFACE WATERS DEVELOPED PURSUANT TO PART 31 AND FOR WHICH THE
23 PERSON IS LIABLE UNDER THIS PART.

24 (C) THE VENTING GROUNDWATER IS ENTERING A SURFACE WATER BODY
25 PROTECTED FOR COLDWATER FISHERIES IDENTIFIED IN THE FOLLOWING
26 PUBLICATIONS:

27 (i) "COLDWATER LAKES OF MICHIGAN," AS PUBLISHED IN 1976 BY THE

1 DEPARTMENT OF NATURAL RESOURCES.

2 (ii) "DESIGNATED TROUT LAKES AND REGULATIONS," ISSUED SEPTEMBER
3 10, 1998, BY THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES
4 UNDER THIS AUTHORITY OF PART 411.

5 (iii) "DESIGNATED TROUT STREAMS FOR THE STATE OF MICHIGAN," AS
6 ISSUED UNDER ORDER OF THE DIRECTOR OF THE DEPARTMENT OF NATURAL
7 RESOURCES, FO-210.08, ON NOVEMBER 8, 2007.

8 (D) THE VENTING GROUNDWATER IS ENTERING A SURFACE WATER BODY
9 DESIGNATED AS AN OUTSTANDING STATE RESOURCE WATER OR OUTSTANDING
10 INTERNATIONAL RESOURCE WATER AS IDENTIFIED IN THE WATER QUALITY
11 STANDARDS FOR SURFACE WATERS DEVELOPED PURSUANT TO PART 31.

12 (4) ALTERNATIVE MONITORING POINTS MAY DEMONSTRATE COMPLIANCE
13 WITH THIS SECTION IF THE ALTERNATIVE MONITORING POINTS MEET THE
14 FOLLOWING STANDARDS:

15 (A) THE LOCATIONS WHERE VENTING GROUNDWATER ENTERS SURFACE
16 WATER HAVE BEEN SUFFICIENTLY IDENTIFIED TO ALLOW MONITORING FOR THE
17 EVALUATION OF COMPLIANCE WITH CRITERIA. SUFFICIENT IDENTIFICATION
18 SHALL INCLUDE ALL OF THE FOLLOWING:

19 (i) IDENTIFICATION OF THE LOCATION OF ALTERNATIVE MONITORING
20 POINTS WITHIN AREAS OF VENTING GROUNDWATER.

21 (ii) DOCUMENTATION OF THE BOUNDARIES OF THE AREAS WHERE THE
22 GROUNDWATER PLUME VENTS TO SURFACE WATER, INCLUDING THE SIZE,
23 SHAPE, AND LOCATION. THIS DOCUMENTATION SHALL INCLUDE INFORMATION
24 ABOUT THE SUBSTRATE CHARACTER AND GEOLOGY IN THE AREAS WHERE
25 GROUNDWATER VENTS TO SURFACE WATER.

26 (iii) DOCUMENTATION THAT THE VENTING AREA IDENTIFIED AND
27 ALTERNATIVE MONITORING POINTS INCLUDE POINTS THAT ARE

1 REPRESENTATIVE OF THE HIGHEST CONCENTRATIONS OF HAZARDOUS
2 SUBSTANCES PRESENT IN THE GROUNDWATER AT THE GROUNDWATER-SURFACE
3 WATER INTERFACE, CONSIDERING SPATIAL AND TEMPORAL VARIABILITY.

4 (B) THE ALTERNATIVE MONITORING POINTS ALLOW FOR VENTING
5 GROUNDWATER TO BE SAMPLED AT A POINT BEFORE MIXING WITH SURFACE
6 WATER. THIS REQUIREMENT DOES NOT PRECLUDE LOCATION OF ALTERNATIVE
7 MONITORING POINTS IN A FLOODPLAIN.

8 (C) THE ALTERNATIVE MONITORING POINTS ALLOW FOR RELIABLE,
9 REPRESENTATIVE MONITORING OF GROUNDWATER QUALITY AT THE
10 GROUNDWATER-SURFACE WATER INTERFACE, TAKING INTO ACCOUNT ALL OF THE
11 FOLLOWING:

12 (i) TEMPORAL AND SPATIAL VARIABILITY OF HAZARDOUS SUBSTANCE
13 CONCENTRATIONS IN GROUNDWATER IN THE PLUME.

14 (ii) SEASONAL OR PERIODIC CHANGES IN GROUNDWATER FLOW.

15 (iii) OTHER NATURAL OR HUMAN-MADE FEATURES THAT AFFECT
16 GROUNDWATER FLOW.

17 (D) THE POTENTIAL FATE AND TRANSPORT MECHANISMS FOR
18 GROUNDWATER CONTAMINANTS, INCLUDING ANY CHEMICAL, PHYSICAL, OR
19 BIOLOGICAL PROCESSES THAT RESULT IN THE REDUCTION OF HAZARDOUS
20 SUBSTANCE CONCENTRATIONS BETWEEN THE MONITORING WELLS AND THE
21 ALTERNATIVE MONITORING POINTS ARE IDENTIFIED.

22 (E) SENTINEL MONITORING POINTS ARE USED IN CONJUNCTION WITH
23 THE ALTERNATIVE MONITORING POINTS TO ASSURE THAT ANY POTENTIAL
24 EXCEEDANCE OF AN APPLICABLE WATER QUALITY STANDARD CAN BE
25 IDENTIFIED WITH SUFFICIENT NOTICE TO ALLOW ADDITIONAL RESPONSE
26 ACTIVITY, IF NEEDED, TO BE IMPLEMENTED THAT WILL PREVENT THE
27 EXCEEDANCE. SENTINEL MONITORING POINTS SHALL INCLUDE, AT A MINIMUM,

1 MONITORING POINTS UPLAND OF THE SURFACE WATER BODY.

2 (5) IF A PERSON INTENDS TO UTILIZE MIXING ZONE-BASED
3 GROUNDWATER-SURFACE WATER INTERFACE CRITERIA UNDER SUBSECTION
4 (1) (B) OR SITE-SPECIFIC CRITERIA UNDER SUBSECTION (1) (C) IN
5 CONJUNCTION WITH ALTERNATIVE MONITORING POINTS, THE PERSON SHALL
6 SUBMIT TO THE DEPARTMENT A RESPONSE ACTIVITY PLAN THAT INCLUDES THE
7 FOLLOWING:

8 (A) A DEMONSTRATION OF COMPLIANCE WITH THE STANDARDS IN
9 SUBSECTION (4).

10 (B) IF COMPLIANCE WITH A MIXING ZONE-BASED GROUNDWATER-SURFACE
11 WATER INTERFACE CRITERION UNDER SUBSECTION (1) (B) IS TO BE
12 DETERMINED WITH DATA FROM THE ALTERNATIVE MONITORING POINTS,
13 DOCUMENTATION THAT IT IS POSSIBLE TO ACCURATELY ESTIMATE THE VOLUME
14 OF VENTING GROUNDWATER.

15 (6) FOR THE PURPOSE OF THIS SECTION, SURFACE WATER DOES NOT
16 INCLUDE GROUNDWATER OR ENCLOSED SEWERS OR UTILITY LINES.

17 (7) IF THE DEPARTMENT DENIES A RESPONSE ACTIVITY PLAN
18 CONTAINING A PROPOSAL FOR ALTERNATIVE MONITORING POINTS, THE
19 DEPARTMENT SHALL STATE THE REASONS FOR DENIAL, INCLUDING THE
20 SCIENTIFIC AND TECHNICAL BASIS FOR THE DENIAL.

21 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, A
22 RESPONSE ACTIVITY PLAN THAT INCLUDES A MIXING ZONE RELATING TO
23 GROUNDWATER VENTING TO SURFACE WATER IS SUBJECT TO A 30-DAY PUBLIC
24 COMMENT PERIOD.

25 (9) A PERSON MAY APPEAL A DECISION OF THE DEPARTMENT IN A
26 RESPONSE ACTIVITY PLAN OR NO FURTHER ACTION REPORT REGARDING
27 VENTING GROUNDWATER AS A SCIENTIFIC OR TECHNICAL DISPUTE UNDER

1 SECTION 20114E.

2 (10) AS USED IN THIS SECTION, "GROUNDWATER-SURFACE WATER
3 INTERFACE MONITORING WELL" MEANS A VERTICAL WELL INSTALLED IN THE
4 SATURATED ZONE AS CLOSE AS PRACTICABLE TO SURFACE WATER WITH A
5 SCREENED INTERVAL OR INTERVALS THAT ARE REPRESENTATIVE OF THE
6 GROUNDWATER VENTING TO THE SURFACE WATER.

7 Enacting section 1. Sections 20105, 20109a, and 20129a of the
8 natural resources and environmental protection act, 1994 PA 451,
9 MCL 324.20105, 324.20109a, and 324.20129a, are repealed.

10 Enacting section 2. The following rules are rescinded:

11 (a) R 299.5209 to R 299.5219 of the Michigan administrative
12 code.

13 (b) R 299.5601 to R 299.5607 of the Michigan administrative
14 code.

15 (c) R 299.5801 to R 299.5823 of the Michigan administrative
16 code.

17 Enacting section 3. This amendatory act does not take effect
18 unless all of the following bills of the 95th Legislature are
19 enacted into law:

20 (a) Senate Bill No. 1346.

21 (b) Senate Bill No. 1348.

22 (c) House Bill No. 6360(request no. H06270'10 *).

23 (d) House Bill No. 6363(request no. H06271'10 *).

24 (e) Senate Bill No. _____ or House Bill No. 6359(request no.
25 07378'10).