

SENATE BILL NO. 392

June 10, 2025, Introduced by Senators MOSS, IRWIN, MCMORROW, CHANG, POLEHANKI, KLINEFELT, BAYER and SHINK and referred to Committee on Energy and Environment.

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

1 approve of response activity proposed by a person that is
2 consistent with this part ~~and the rules promulgated under this part~~
3 relating to the selection and implementation of response activity
4 that the department concludes is necessary and appropriate to
5 protect the public health, safety, or welfare, or the environment.

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

8 ~~(a) Remedial action may address 1 or more releases at a~~
9 ~~facility.~~

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

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

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

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

18 ~~(2) (3)~~ Remedial action undertaken under subsection (1) ~~shall~~
19 **must** accomplish all of the following:

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

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

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

(ii) To the extent technically practical, stops or reverses any vertical or horizontal expansion of the contaminated area or a groundwater contamination plume.

(iii) Otherwise complies with all applicable or relevant and appropriate requirements, rules, criteria, limitations, and standards of state and federal environmental law.

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

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

~~(4) (5) A remedial action may be selected or approved pursuant to subsection (4) with regard to R 299.3(5) or R 299.3(6), or both,~~

1 of the Michigan ~~administrative code~~, **Administrative Code**, if the
2 department determines, based on the administrative record, that 1
3 or more of the following conditions are satisfied:

4 (a) Compliance with R 299.3(5) or R 299.3(6), or both, of the
5 Michigan ~~administrative code~~ **Administrative Code** is technically
6 ~~impractical.~~ **infeasible.**

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

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

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

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

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

29 Sec. 20120a. (1) The department may establish cleanup criteria

1 and approve of remedial actions in the categories listed in this
2 subsection. ~~The cleanup category proposed must be the option of the~~
3 ~~person proposing the remedial action, subject to department~~
4 ~~approval if required, considering the appropriateness of the~~
5 ~~categorical criteria to the facility.~~ The categories are as
6 follows:

7 (a) Residential.

8 (b) Nonresidential.

9 (c) Limited residential.

10 (d) Limited nonresidential.

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

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

of exposure assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify facility characteristics that determine the applicability of criteria derived for these categories or subcategories. When developing and ~~promulgating~~ **publishing** cleanup criteria under subsection ~~(1)~~, **(17)**, the department shall ~~do all of~~ **review and consider using** the following **sources for determining final toxicity values**:

(a) ~~Except as set forth in subdivision (c), for each hazardous substance, use final toxicity values from the~~ **The** United States Environmental Protection Agency integrated risk information system. ~~, or more recent~~

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

(c) ~~(i)~~ **The best value from the agency for toxic substances and disease registry** **Agency for Toxic Substances and Disease Registry within the United States Department of Health and Human Services** **for** final minimal risk levels for hazardous substances or the

1 United States Environmental Protection Agency provisional peer-
2 reviewed toxicity values.

3 ~~(d) (ii) If a value is not available under subparagraph (i), the~~
4 **The** best final value from the United States Environmental
5 Protection Agency health effects assessment summary table, or final
6 values adopted by other states, the World Health Organization,
7 Canada, or the European Union.

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

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

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

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

19 ~~(c) If the department desires to use a toxicity value or input~~
20 ~~that is different than a value that is available on the United~~
21 ~~States Environmental Protection Agency integrated risk information~~
22 ~~system, or more recent United States Environmental Protection~~
23 ~~Agency Office of Pesticide Programs toxicity values for pesticides~~
24 ~~that are incorporated by the integrated risk information system in~~
25 ~~place of values that have been archived by the integrated risk~~
26 ~~information system, or desires to establish a value when the United~~
27 ~~States Environmental Protection Agency determined that there was~~
28 ~~insufficient scientific data to do so when last evaluated by the~~
29 ~~United States Environmental Protection Agency, the department shall~~

~~provide public notice and a written explanation of its intent to do so and conduct a stakeholder process to obtain input. After obtaining stakeholder input, the department may promulgate a rule to use an alternative value in accordance with the order of precedence set forth in subdivision (a) (i) to (iii), if the department demonstrates all of the following:~~

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

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

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

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

~~(e) When the department considers the pregnant woman as a potential sensitive receptor to address prenatal developmental effects, the department may apply a single-event exposure scenario~~

~~for a hazardous substance, under the process set forth in subdivision (f), only when either of the following occurs:~~

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

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

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

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

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

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

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

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standards ~~established under section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005,~~ or (b) the national secondary drinking water regulations established under 42 USC 300g-1, or (c), if there is not national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the United States Environmental Protection Agency below which taste, odor,

1 appearance, or other aesthetic characteristics are not adversely
2 affected, the cleanup criterion is the more stringent of (a), (b),
3 or (c) unless the department determines that compliance with this
4 subsection is ~~not necessary because the use of the aquifer is~~
5 ~~reliably restricted or controlled under provisions of a postclosure~~
6 ~~plan or a postclosure agreement or by site-specific criteria~~
7 ~~approved by the department under section 20120b.~~ **technically**
8 **infeasible, in which case the cleanup criterion must be the most**
9 **stringent criterion that is technically feasible.**

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

1 be considered on the basis of zoning classifications as described
2 above.

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

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

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

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

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

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

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

1 that category.

2 (11) The department may also approve cleanup criteria if
3 necessary to address conditions that prevent a hazardous substance
4 from being reliably measured at levels that are consistently
5 achievable in samples from the facility in order to allow for
6 comparison with generic cleanup criteria. A person ~~seeking that~~
7 **wants** approval of a criterion under this subsection shall document
8 the basis for determining that the relevant published target
9 detection limit cannot be achieved in samples from the facility.

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

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

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

29 (15) If a discharge of venting groundwater complies with this

1 part, a permit for the discharge is not required.

2 (16) Remedial actions that rely on categorical cleanup
3 criteria developed under subsection (1) must also consider other
4 factors necessary to protect the public health, safety, and
5 welfare, and the environment as specified by the department, if the
6 department determines based on data and existing information that
7 these considerations are relevant to a specific facility. These
8 factors include, but are not limited to, the protection of surface
9 water quality and consideration of ecological risks if pertinent to
10 the facility based on the requirements of this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The facility is an establishment covered by the

1 classifications provided by sector 31-33 - manufacturing, of the
 2 North American Industry Classification System, United States, ~~2012,~~
 3 **2017**, published by the Office of Management and Budget.

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

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

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

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

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

~~(b) When compounds contributed by 2 or more persons acting independently are combined in a toxic equivalency quotient to assess human health risks, harm is divisible and subject to apportionment of liability under subsections 20129(1) and (2).~~

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

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

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

~~(23) For a substance that does not have generic cleanup criteria, if, based on the best available information, the department determines that the substance is a hazardous substance, the department may calculate generic cleanup criteria for that hazardous substance using toxicity values and chemical and physical data selected under subsection (3) (a) and (b) and in accordance with all other requirements of this part and publish the generic cleanup criteria on the department's website. Within 30 days after publishing the new generic cleanup criteria, the department shall~~

~~initiate rule making to promulgate rules for the new criteria by filing a rule-making request under section 39 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.239. The rule-making request must only include the revisions necessary to promulgate the new generic cleanup criteria. The new generic cleanup criteria published under this subsection take effect and are legally enforceable when published by the department if the department also initiates rule making to promulgate rules for the new criteria within 30 days. The new generic cleanup criteria published under this subsection remain effective and legally enforceable until replaced by a final rule, or the time limitation in section 45(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.245, is not met.~~

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

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

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

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

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

1 ~~serve as an exposure barrier.~~**characteristics of the site that**
2 **increase or decrease the potential for exposure, including, but not**
3 **limited to, the depth of the contamination below the ground**
4 **surface, geomorphological and hydrological dynamics, proximity to**
5 **residential areas, and proximity to drinking water wells and**
6 **surface drinking water sources.**

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

10 (e) Use probabilistic methods of calculation.

11 (f) Use nonlinear-threshold-based calculations where
12 scientifically justified.

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

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

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

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

surrogate is considered approved. A hazardous substance may be used as a surrogate for a single hazardous substance or for a class or category of hazardous substances.

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

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

(ii) Cause vapor intrusion in occupied structures.

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

(e) Any other method approved by the department.

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

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

1 Subject to other requirements of this section, a person may
2 demonstrate compliance with requirements ~~under this part~~ for a
3 response ~~activity providing for~~ **activities involving** venting
4 groundwater by meeting any of the following, singly or in
5 combination:

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

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

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

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

1 evaluations of analyses of the samples from the sentinel wells
 2 ~~shall~~**must** be performed in connection with this determination.

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

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

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

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

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

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

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

25 (d) The direction of groundwater movement.

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

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

3 (g) Documented facility-specific evidence of natural
4 attenuation, if any.

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

15 **(i) The existing or designated uses of the receiving surface**
16 **water and whether the receiving surface water is a drinking water**
17 **source.**

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

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

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

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

27 ~~(a) Evaluation activities associated with a response activity~~
28 ~~providing for venting groundwater using alternative monitoring~~
29 ~~points, an ecological demonstration, a modeling demonstration, or~~

~~any combination of these. If a person who is liable under section 20126 decides not to take additional response activities to address the GSI pathway based on alternative monitoring points, an ecological demonstration, a modeling demonstration, or a determination under subsection (14), or any combination of these, the person shall notify the department and request department approval. A notification and request for approval under this subdivision shall not be considered an admission of liability under section 20126.~~

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

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

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

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

~~(a) An applicable criterion is based on acute toxicity~~

1 endpoints.

2 ~~(b) The venting groundwater contains a bioaccumulative~~
3 ~~chemical of concern as identified in the water quality standards~~
4 ~~for surface waters developed pursuant to part 31 and for which the~~
5 ~~person is liable under this part.~~

6 ~~(c) The venting groundwater is entering a surface water body~~
7 ~~protected for coldwater fisheries identified in the following~~
8 ~~publications:~~

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

11 ~~(ii) "Designated Trout Lakes and Regulations," issued September~~
12 ~~10, 1998, by the director of the department of natural resources~~
13 ~~under the authority of part 411.~~

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

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

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

28 ~~(5) (8)~~ Alternative monitoring points may be used to
29 demonstrate compliance with subsection (1) if the alternative

1 monitoring points meet the following standards:

2 (a) The locations where venting groundwater enters surface
3 water have been reasonably identified to allow monitoring for the
4 evaluation of compliance with criteria. This identification ~~shall~~
5 **must** include all of the following:

6 (i) Identification of the location of alternative monitoring
7 points within areas of venting groundwater.

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

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

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

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

29 (6) ~~(9)~~—An ecological demonstration may be used to demonstrate

1 compliance with subsection (1) if the ecological demonstration
2 meets the following:

3 (a) The boundaries of the area where the groundwater plume
4 vents to surface water are documented as provided in subsection
5 ~~(8) (a) (ii)~~. **(5) (a) (ii)** .

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) ~~(13)~~ If there is an exceedance of an applicable GSI criterion based on acute toxicity at a compliance monitoring point applicable at a particular facility, then action ~~shall~~**must** be taken as follows:

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

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

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

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

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

(c) The department may approve a schedule as submitted under subdivision (b) or ~~direct~~**require** reasonable modifications in the

1 schedule. The department may grant extensions of time for actions
2 required under subdivision (b) and for activities in an approved or
3 department-modified schedule if the person is acting in good faith
4 and site conditions inhibit progress or completion of the activity.
5 The department's decision to grant an extension or impose a
6 schedule modification shall consider the practical problems
7 associated with carrying out the response activity and the nature
8 and extent of the exceedances of applicable GSI criteria.

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

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

1 provides a detailed description of the reasons for denial.

2 (12) ~~(16)~~ Natural attenuation of hazardous substances in
3 venting groundwater upgradient of the GSI is **not** an acceptable form
4 of remediation and may **not** be relied ~~upon in lieu of~~ **instead** of any
5 active remediation of the groundwater, **unless active remediation is**
6 **not technically practical**. Natural attenuation may ~~be occurring~~
7 **occur** by way of ~~dispersion, diffusion, sorption, degradation,~~
8 transformative reactions, and other methods. **Natural attenuation**
9 **may be allowed to occur by dispersion or diffusion only if it is**
10 **not technically practical to prevent the dispersion or diffusion**.

11 (13) ~~(17)~~ A permit ~~shall~~ **is** not ~~be~~ required under part 31 for
12 any venting groundwater contamination plume that is addressed under
13 this section.

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

20 (15) ~~(19)~~ If a groundwater contamination plume is entering a
21 sewer that discharges to surface water, and the GSI pathway is
22 relevant, all of the following apply:

23 (a) If the groundwater enters a storm sewer that is owned or
24 operated by an entity that is subject to federal municipal separate
25 storm sewer system regulations and a part 31 permit for the
26 discharges from the system, the contaminated groundwater entering
27 the sewer is subject to regulation by the entity's ordinance
28 regarding illicit discharges, but the regulation of the
29 contaminated groundwater ~~shall~~ **does** not prevent the use of

subdivision (b) or other provisions of this section to determine the need for response activity under this part.

(b) All of the following apply:

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

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

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

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

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

(vi) The contaminant mass flow, and the rate and amount of

1 groundwater flow, into the sewer may be considered and may result
 2 in a determination that the migration into the sewer is de minimis
 3 and does not require any response activity in addition to the
 4 evaluation that leads to such determination.

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

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

17 **(17)** ~~(21)~~—This section is intended to allow a person to
 18 demonstrate compliance with requirements under this part for a
 19 response activity involving venting groundwater, and, for this
 20 purpose, this section ~~shall be given retroactive application and~~
 21 ~~shall be~~ **applies retroactively and is** available for use by ~~such the~~
 22 person. A person performing response activity involving venting
 23 groundwater under any judgment, consent judgment, order, consent
 24 order, or agreement that was entered ~~prior to the effective date of~~
 25 ~~the 2012 amendatory act that amended this section~~ **before June 20,**
 26 **2012** may pursue, alter, or terminate ~~such the~~ response activity
 27 based on any provision of this section subject to any necessary
 28 entry or approval by the court in a case of a judgment, consent
 29 judgment, or court order or any necessary amendment procedure to

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

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

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

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

22 (b) "Ecological demonstration" means an ecological
 23 demonstration authorized under subsection (1)(e).

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

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

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

(f) "Modeling demonstration" means a modeling demonstration authorized under subsection (1)(f).

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

(i) Groundwater.

(ii) Hyporheic zone water.

(iii) Water in enclosed sewers.

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

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

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

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

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

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

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

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

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

1 (a) All technically practical steps have been taken or are
2 scheduled to be taken to address a release and limit the horizontal
3 and vertical extent of hazardous substance concentrations above
4 cleanup criteria for unrestricted residential use.

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

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

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

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

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

29 (a) Is in place before the effective date of the amendatory

1 act that added this subsection.

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

3 (5) ~~(2)~~—A restrictive covenant used to impose land or resource
4 use restrictions under subsection (1) ~~shall,~~**must**, at a minimum,
5 include all of the following:

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

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

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

15 (iii) Another type of description or drawing approved by the
16 department.

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

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

27 (d) A grant to the department of the ability to enforce the
28 restrictive covenant by legal action in a court of appropriate
29 jurisdiction.

1 (e) A signature of the property owner or someone with the
2 express written consent of the property owner unless the
3 restrictive covenant has been ordered by a court. ~~of competent~~
4 ~~jurisdiction.~~ For condominium common elements and similar commonly
5 owned property, the restrictive covenant may be signed by an
6 authorized person.

7 (f) A provision that plainly states that the land use
8 restriction is being placed on the property in accordance with this
9 part.

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

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

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

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

~~(b) A provision granting rights of access to the department or other persons. These rights may include, but are not limited to, the right to enter the property for the purpose of monitoring compliance with the restrictive covenant, the right to take samples, and the right to implement response activities.~~

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

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

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

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

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

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

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

1 (a) Runs with the land.

2 (b) Is perpetual unless, by its terms, it is limited to a
3 specific duration or is terminated by the occurrence of a specific
4 event.

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

11 (10) ~~(7)~~ The following instruments may impose the land or
12 resource use restrictions described in subsection (1) if they meet
13 the requirements of a restrictive covenant under this section:

14 (a) A conservation easement.

15 (b) A court order or judicially approved settlement involving
16 the property.

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

~~to~~**before** the lapsing or revocation of the ordinance. **A general description of the institutional control and where to find more information must be recorded on each property covered by the institutional control or filed as an ordinance affecting multiple properties.**

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

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

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

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

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

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

(d) It imposes a negative burden.

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

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

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

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

3 (15) **Imposing a land or resource use restriction under this**
4 **section does not relieve a person from undertaking response**
5 **activities required under this part.**

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

16 Enacting section 1. This amendatory act does not take effect
17 unless all of the following bills of the 103rd Legislature are
18 enacted into law:

19 (a) Senate Bill No. 385.

20
21 (b) Senate Bill No. 391.