

HOUSE BILL NO. 5456

February 04, 2020, Introduced by Reps. Sowerby, Hammoud, Tyrone Carter, Ellison, Cynthia Johnson, Robinson, Greig, Pohutsky, Koleszar, Anthony, Garza, Coleman, Brenda Carter, Shannon, Byrd, Chirkun, Hertel, Manoogian, Hood, Lasinski, Clemente, Hope, Witwer, Sabo, Wittenberg, Brixie, Haadsma, Love, Camilleri, Tate, Hoadley, Cherry, Kuppa, Stone, Yancey, Garrett, Gay-Dagnogo, Jones and Rabhi and referred to the Committee on Natural Resources and Outdoor Recreation.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 20114d. (1) **After completing remedial actions that**
- 2 **satisfy the requirements of this part, a person may submit a no**



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1 **further action report to the department.** A person may submit a no
2 further action report under this subsection for remedial actions
3 addressing contamination for which the person is or is not liable.
4 Remedial actions included in a no further action report may address
5 all or a portion of contamination at a facility as follows:

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

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

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

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

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

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

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

29 (a) If the remedial action at the facility satisfies the



1 cleanup criteria for unrestricted residential use for the hazardous
2 substances and portion of the facility addressed in the no further
3 action report, neither a postclosure plan or a proposed postclosure
4 agreement is required to be submitted.

5 (b) If the remedial action requires only land use or resource
6 use restrictions and financial assurance is not required or the
7 financial assurance is de minimis, a postclosure plan is required
8 but a proposed postclosure agreement is not required to be
9 submitted.

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

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

15 (a) Provisions for monitoring, operation and maintenance, and
16 oversight necessary to ~~assure~~**ensure** the effectiveness and
17 integrity of the remedial action.

18 (b) Financial assurance to pay for monitoring, operation and
19 maintenance, oversight, and other costs determined by the
20 department to be necessary to ~~assure~~**ensure** the effectiveness and
21 integrity of the remedial action.

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

29 (d) A provision granting the department the right to enter the



1 property at reasonable times for the purpose of determining and
2 monitoring compliance with the postclosure plan and postclosure
3 agreement, including the right to take samples, inspect the
4 operation of the remedial action measures, and inspect records.

5 (5) A postclosure agreement may waive the requirement for
6 permanent markers.

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

23 (a) Statutory worker compensation insurance as required in
24 this state.

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

29 (c) Contractor pollution liability insurance with limits of



1 not less than \$1,000,000.00 per claim, if not included under the
2 professional liability errors and omissions insurance required
3 under subdivision (b). The insurance requirement under this
4 subdivision is not required for environmental consultants who do
5 not perform contracting functions.

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

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

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

20 (8) ~~Upon receipt of~~ **After receiving** a no further action report
21 submitted under this subsection, the department shall approve or
22 deny the no further action report or shall notify the submitter
23 that the report does not contain sufficient information for the
24 department to make a decision. If the no further action report
25 requires a postclosure agreement, the department may negotiate
26 alternative terms than those included within the proposed
27 postclosure agreement. The department shall provide its
28 determination within 150 days after the report was received by the
29 department under this subsection unless the report requires public



1 participation under section 20120d(2). If the report requires
2 public participation under section 20120d(2), the department shall
3 respond within 180 days. If the department's response is that the
4 report does not include sufficient information, the department
5 shall identify the information that is required for the department
6 to make a decision. If the report is denied, the department's
7 denial must, to the extent practical, state with specificity all of
8 the reasons for denial. If the no further action report, including
9 any required postclosure plan and postclosure agreement, is
10 approved, the department shall provide the person submitting the no
11 further action report with a no further action letter. The
12 department shall review and provide a written response within the
13 time frames required by this subsection for at least 90% of the no
14 further action reports submitted to the department under this
15 section in each calendar year.

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

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

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

26 (12) Following approval of a no further action report under
27 this section, the owner or operator of the facility addressed by
28 the no further action report may submit to the department an
29 amended no further action report. The amended no further action



1 report must include the proposed changes to the original no further
2 action report and an accompanying rationale for the proposed
3 change. The process for review and approval of an amended no
4 further action report is the same as the process for no further
5 action reports.

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

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

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

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

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

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

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



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

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

5 (b) The individual is a party to 1 or more contracts with the
6 department and the compensation paid under those contracts
7 represented more than 5% of the individual's annual gross revenue
8 in any of the preceding 3 years.

9 (c) The individual is employed by an entity that is a party to
10 1 or more contracts with the department and the compensation paid
11 to the individual's employer under these contracts represented more
12 than 5% of the employer's annual gross revenue in any of the
13 preceding 3 years.

14 (d) The individual was employed by the department within the
15 preceding 3 years.

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

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

29 (6) The business that the panel may perform ~~shall~~ **must** be



1 conducted at a public meeting of the panel held in compliance with
2 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

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

28 (8) If a dispute is not resolved pursuant to subsection (7),
29 the director shall schedule a meeting of 5 members of the panel,



1 selected on the basis of their relevant expertise, within 45 days
2 after receiving the original petition. If the dispute involves an
3 underground storage tank system, at least 3 of the members selected
4 must have relevant experience in the American Society for Testing
5 and Materials risk-based corrective action processes described in
6 part 213. A member selected for the dispute resolution process
7 shall agree not to accept employment by the person bringing the
8 dispute before the panel, or to undertake any employment concerning
9 the facility in question for a period of 1 year after the decision
10 has been rendered on the matter if that employment would represent
11 more than 5% of the member's gross revenue in any of the preceding
12 3 years. The director shall provide a copy of all supporting
13 documentation to members of the panel who will hear the dispute. An
14 alternative member may be selected by the director to replace a
15 member who is unable to participate in the dispute resolution
16 process. Any action by the members selected to hear the dispute
17 requires a majority of the votes cast. The members selected for the
18 dispute resolution process shall elect a chairperson of the dispute
19 resolution process. At a meeting scheduled to hear the dispute,
20 representatives of the petitioner and the department must each be
21 afforded an opportunity to present their positions to the panel.
22 The fee that is received by the director along with the petition
23 ~~shall~~**must** be forwarded to the state treasurer for deposit into the
24 fund.

25 (9) Within 45 days after hearing the dispute, the members of
26 the panel who were selected for and participated in the dispute
27 resolution process shall make a recommendation regarding the
28 petition and provide written notice of the recommendation to the
29 director of the department and the petitioner. The written



1 recommendation must include the specific scientific or technical
2 rationale for the recommendation. The panel's recommendation
3 regarding the petition may be to adopt, modify, or reverse, in
4 whole or in part, the department's decision that is the subject of
5 the petition. If the panel does not make its recommendation within
6 this 45-day time period, the decision of the department is the
7 final decision of the director.

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

26 (11) Upon request of the director, the panel shall make a
27 recommendation to the department on whether a member should be
28 removed from the panel for noncompliance with this part. ~~Prior to~~
29 **Before** making this recommendation, the panel may convene a peer



1 review panel to evaluate the conduct of the member.

2 (12) A member of the panel shall not participate in the
3 dispute resolution process for any appeal in which that member has
4 a conflict of interest. The director shall select a member of the
5 panel to replace a member who has a conflict of interest under this
6 subsection. For purposes of this subsection, a member has a
7 conflict of interest if a petitioner has hired that member or the
8 member's employer on any environmental matter within the preceding
9 3 years.

10 (13) As used in this section, ÷

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

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



1 Sec. 20120a. (1) The department may establish cleanup criteria
2 and approve of remedial actions in the categories listed in this
3 subsection. The cleanup category proposed ~~shall~~**must** be the option
4 of the person proposing the remedial action, subject to department
5 approval if required, considering the appropriateness of the
6 categorical criteria to the facility. The categories are as
7 follows:

8 (a) Residential.

9 (b) Nonresidential.

10 (c) Limited residential.

11 (d) Limited nonresidential.

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

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

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

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

~~(ii) If a value is not available under subparagraph (i), the best final value from the United States Environmental Protection Agency health effects assessment summary table, or final values~~



1 ~~adopted by other states, the World Health Organization, Canada, or~~
2 ~~the European Union.~~

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

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

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

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

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

29 ~~(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, pursuant to 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 (e) (ii), the department shall provide public notice and a written explanation of its intent to do so. Upon completion of the assessment, the department shall conduct a stakeholder process to obtain input. If, upon 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 ~~shall be~~ **is** 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



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

15 (5) If a cleanup criterion derived under subsection (4) for
16 groundwater in an aquifer differs from either: (a) the state
17 drinking water standards established ~~pursuant to~~**under** section 5 of
18 the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the
19 national secondary drinking water regulations established ~~pursuant~~
20 ~~to~~**under** 42 USC 300g-1, or (c), if there is ~~not~~**no** national
21 secondary drinking water regulation for a contaminant, the
22 concentration determined by the department according to methods
23 approved by the United States Environmental Protection Agency below
24 which taste, odor, appearance, or other aesthetic characteristics
25 are not adversely affected, the cleanup criterion is the more
26 stringent of (a), (b), or (c) unless the department determines that
27 compliance with this subsection is not necessary because the use of
28 the aquifer is reliably restricted or controlled under provisions
29 of a postclosure plan or a postclosure agreement or by site-



1 specific criteria approved by the department under section 20120b.

2 (6) The department shall not approve a remedial action plan or
3 no further action report in categories set forth in subsection

4 (1)(b) to (d), unless the person documents that the current zoning
5 of the property is consistent with the categorical criteria being
6 proposed, or that the governing zoning authority intends to change
7 the zoning designation so that the proposed criteria are consistent
8 with the new zoning designation, or the current property use is a

9 legal nonconforming use. The department shall not grant final

10 approval for a remedial action plan or no further action report

11 that relies on a change in zoning designation until a final

12 determination of that zoning change has been made by the local unit

13 of government. The department may approve of a remedial action plan

14 or no further action report that achieves categorical criteria that

15 are based on greater exposure potential than the criteria

16 applicable to current zoning. In addition, the remedial action plan

17 or no further action report must include documentation that the

18 current property use is consistent with the current zoning or is a

19 legal nonconforming use. Abandoned or inactive property must be

20 considered on the basis of zoning classifications as described

21 above.

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

23 (1) may be applied at a facility, if all relevant requirements are

24 satisfied for application of a pertinent criterion.

25 (8) The need for soil remediation to protect an aquifer from

26 hazardous substances in soil ~~shall~~**must** consider the vulnerability

27 of the aquifer or aquifers potentially affected if the soil remains

28 at the facility. Migration of hazardous substances in soil to an

29 aquifer is a pertinent pathway if appropriate based on



1 consideration of site specific factors.

2 (9) The department may establish cleanup criteria for a
3 hazardous substance using a biologically based model developed or
4 identified as appropriate by the United States Environmental
5 Protection Agency if the department determines all of the
6 following:

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

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

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

15 (10) If the target detection limit or the background
16 concentration for a hazardous substance is greater than a cleanup
17 criterion developed for a category pursuant to subsection (1), the
18 criterion is the target detection limit or background
19 concentration, whichever is larger, for that hazardous substance in
20 that category.

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

29 (12) In determining the adequacy of a land-use based response



1 activity to address sites contaminated by polychlorinated
2 biphenyls, the department shall not require response activity in
3 addition to that which is subject to and complies with applicable
4 federal regulations and policies that implement the toxic
5 substances control act, 15 USC 2601 to 2692.

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

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

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

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



1 this part.

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

12 ~~(a) The department may periodically repromulgate rules for any~~
13 ~~portion of the generic cleanup criteria to adopt and use new~~
14 ~~toxicity values or chemical or physical data selected pursuant to~~
15 ~~subsection (3)(a) and (b) or to otherwise update the generic~~
16 ~~cleanup criteria in accordance with this part to incorporate, as~~
17 ~~appropriate,~~ **The department shall evaluate and revise the cleanup**
18 **criteria derived under this section. The evaluation and any**
19 **revisions must incorporate** knowledge gained through research and
20 studies in the areas of fate and transport and risk assessment
21 taking into account best practices from other states, reasonable
22 and realistic conditions, and sound science. ~~The department may~~
23 ~~also repromulgate rules that establish target detection limits to~~
24 ~~update those limits in accordance with this part.~~

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



~~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 thereof that is based on the plan, request, or document, unless either of the following occur:~~

~~(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 upon 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 prior to 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 occur:~~

~~(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) through (d), an owner's or operator's obligations under section 20107a shall be based upon the current numeric cleanup criteria under section 20120a(1) or site-specific criteria approved under section 20120b.~~**Following this revision, the department shall periodically evaluate whether new information is available regarding the cleanup criteria and shall make revisions as appropriate. The department shall prepare and submit to the legislature a report detailing any revisions made to**



1 **cleanup criteria under this section.**

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

5 (a) The facility is an establishment covered by the
6 classifications provided by sector 31-33 - manufacturing, of the
7 North American Industry Classification System, United States, 2012,
8 published by the Office of Management and Budget.

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

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

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



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

~~(a) The toxic equivalency factors used must only be those
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.~~

~~(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.~~

~~(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 pursuant to 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, 1969 PA 306, MCL 24.239. The~~
~~rule-making request shall only include the revisions necessary to~~
~~promulgate the new generic cleanup criteria. The new generic~~
~~cleanup criteria published pursuant to 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 pursuant to this subsection remain effective and legally~~
~~enforceable until replaced by a final rule or, until the director~~
~~directs the department to withdraw the rule request under section~~
~~66(11) of the administrative procedures act, 1969 PA 306, MCL~~
~~24.266, or the time limitation in either section 45(1) or section~~
~~66(12) of the administrative procedures act, 1969 PA 306, MCL~~
~~24.245 and 24.266, is not met.~~

Sec. 20120b. (1) ~~Subject to subsection (4), the~~ **The** department
 shall approve numeric or nonnumeric site-specific criteria in a
 response activity under section 20120a if ~~such~~ **these** 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:

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



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

4 (c) Take into consideration the depth below the ground surface
5 of contamination, which may reduce the potential for exposure and
6 serve as an exposure barrier.

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, containment, exposure barriers, or land use or resource
20 use restrictions.

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



1 surrogate for a single hazardous substance or for a class or
2 category of hazardous substances.

3 (c) For venting groundwater, use a modeling demonstration, an
4 ecological demonstration, or a combination of both, consistent with
5 section 20120e(9) and (10), to demonstrate that the hazardous
6 substance is not likely to migrate to a surface water body or has
7 not or will not impair the existing or designated uses for a
8 surface water body.

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

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

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

23 Enacting section 1. Section 20120f of the natural resources
24 and environmental protection act, 1994 PA 451, MCL 324.20120f, is
25 repealed.

