

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 1244

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20101, 20114d, 20114e, 20120a, and 20120b (MCL 324.20101, 324.20114d, 324.20114e, 324.20120a, and 324.20120b), sections 20101, 20114d, 20120a, and 20120b as amended by 2014 PA 542 and section 20114e as amended by 2014 PA 178, and by adding section 20120f.

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

1           Sec. 20101. (1) As used in this part:

2           (a) "Act of God" means an unanticipated grave natural disaster  
3 or other natural phenomenon of an exceptional, inevitable, and  
4 irresistible character, the effects of which could not have been  
5 prevented or avoided by the exercise of due care or foresight.

6           (b) "Agricultural property" means real property used for  
7 farming in any of its branches, including cultivating of soil;

1 growing and harvesting of any agricultural, horticultural, or  
2 floricultural commodity; dairying; raising of livestock, bees,  
3 fish, fur-bearing animals, or poultry; turf and tree farming; ~~and~~  
4 **OR** performing any practices on a farm as an incident to, or in  
5 conjunction with, these farming operations. Agricultural property  
6 does not include property used for commercial storage, processing,  
7 distribution, marketing, or shipping operations.

8 (c) "All appropriate inquiry" means an evaluation of  
9 environmental conditions at a property at the time of purchase,  
10 occupancy, or foreclosure that reasonably defines the existing  
11 conditions and circumstances at the property in conformance with 40  
12 CFR 312 (2014).

13 (d) "Attorney general" means the department of the attorney  
14 general.

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

22 (i) The hazardous substance complies with the statewide  
23 default background levels under **TABLE 2 AS REFERENCED IN R 299.46**  
24 of the Michigan ~~administrative code~~. **ADMINISTRATIVE CODE**.

25 (ii) The hazardous substance is listed in table 2, 3, or 4 of  
26 the department's 2005 Michigan background soil survey, is present  
27 in a soil type identified in 1 or more of those tables, and meets 1

1 of the following:

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

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

8 (II) The uppermost value in the typical range of data for the  
9 hazardous substance in table 1 of the department's 2005 Michigan  
10 background soil survey.

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

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

17 (II) The uppermost value in the typical range of data for the  
18 hazardous substance in table 1 of the department's 2005 Michigan  
19 background soil survey.

20 (C) The concentration of the hazardous substance meets a level  
21 established using the 2005 Michigan background soil survey in a  
22 manner that is approved by the department.

23 (iii) The hazardous substance is listed in any other study or  
24 survey conducted or approved by the department and is within the  
25 concentrations or falls within the typical ranges published in that  
26 study or survey.

27 (iv) A site-specific demonstration.

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

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

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

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

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

18 (ii) Cleanup criteria for unrestricted residential use under  
19 part 213.

20 (iii) Site-specific cleanup criteria approved by the  
21 department for unrestricted residential use pursuant to sections  
22 20120a and 20120b.

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

25 (k) "Director" means the director of the department of  
26 environmental quality.

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

1 departments of environmental quality, community health, agriculture  
2 and rural development, and state police.

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

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

13 (o) "Environment" or "natural resources" means land, surface  
14 water, groundwater, subsurface strata, air, fish, wildlife, or  
15 biota within ~~the~~ **THIS** state.

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

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

25 (r) "Exacerbation" means the occurrence of either of the  
26 following caused by an activity undertaken by the person who owns  
27 or operates the property, with respect to contamination for which

1 the person is not liable:

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

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

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

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

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

25 (iii) Site-specific criteria that have been approved by the  
26 department for application at the area, place, parcel of property,  
27 or portion of a parcel of property are met or satisfied and

1 hazardous substances at the area, place, or property that are not  
2 addressed by site-specific criteria satisfy the cleanup criteria  
3 for unrestricted residential use.

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

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

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

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

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

21 (v) "Foreclosure" means possession ~~of a property~~ by a lender  
22 **OF A PROPERTY** on which it has foreclosed on a security interest or  
23 the expiration of a lawful redemption period, whichever occurs  
24 first.

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

27 (x) "Hazardous substance" means 1 or more of the following,

1 but does not include fruit, vegetable, or field crop residuals or  
2 processing by-products, or aquatic plants, that are applied to the  
3 land for an agricultural use or for use as an animal feed, if the  
4 use is consistent with generally accepted agricultural management  
5 practices at the time of the application or stamp sands:

6 (i) Any substance that the department demonstrates, on a case  
7 by case basis, poses an unacceptable risk to the public health,  
8 safety, or welfare, or the environment, considering the fate of the  
9 material, dose-response, toxicity, or adverse impact on natural  
10 resources.

11 (ii) Hazardous substance as defined in the comprehensive  
12 environmental response, compensation, and liability act, 42 USC  
13 9601 to 9675.

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

15 (iv) Petroleum as described as a regulated substance in  
16 section 21303.

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



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

2 (i) A state or nationally chartered bank.

3 (ii) A state or federally chartered savings and loan  
4 association or savings bank.

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

6 (iv) Any other state or federally chartered lending  
7 institution.

8 (v) Any state or federally regulated affiliate or regulated  
9 subsidiary of any entity listed in subparagraphs (i) to (iv).

10 (vi) An insurance company authorized to do business in this  
11 state pursuant to the insurance code of 1956, 1956 PA 218, MCL  
12 500.100 to 500.8302.

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

16 (viii) A foreign bank.

17 (ix) A retirement fund regulated pursuant to state law or a  
18 pension fund regulated pursuant to federal law with net assets in  
19 excess of \$50,000,000.00.

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

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

26 (xii) Any other person ~~who~~ **THAT** loans money for the purchase  
27 of or improvement of real property.

1           (xiii) Any person ~~who~~**THAT** retains or receives a security  
2 interest to service a debt or to secure a performance obligation.

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

5           (bb) "Local unit of government" means a county, city,  
6 township, or village, an agency of a local unit of government, an  
7 authority or any other public body or entity created by or pursuant  
8 to state law. Local unit of government does not include this state  
9 or the federal government or a state or federal agency.

10          (cc) "Method detection limit" means the minimum concentration  
11 of a hazardous substance that can be measured and reported with 99%  
12 confidence that the analyte concentration is greater than zero and  
13 is determined from analysis of a sample in a given matrix that  
14 contains the analyte.

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

17          (ee) "Mobile NAPL" means that term as it is defined in section  
18 21302.

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

20          (gg) "No further action letter" means a written response  
21 provided by the department under section 20114d confirming that a  
22 no further action report has been approved after review by the  
23 department.

24          (hh) "No further action report" means a report under section  
25 20114d detailing the completion of remedial actions and including a  
26 postclosure plan and a postclosure agreement, if appropriate.

27          (ii) "Nonresidential" means that category of land use for

1 parcels of property or portions of parcels of property that is not  
2 residential. This category of land use may include, but is not  
3 limited to, any of the following:

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

5 (ii) Recreational properties that are not contiguous to  
6 residential property.

7 (iii) Hotels, hospitals, and campgrounds.

8 (iv) Natural areas such as woodlands, brushlands, grasslands,  
9 and wetlands.

10 (jj) "Operator" means a person who is in control of or  
11 responsible for the operation of a facility. Operator does not  
12 include either of the following:

13 (i) A person who holds indicia of ownership primarily to  
14 protect the person's security interest in the facility, unless that  
15 person participates in the management of the facility as described  
16 in section 20101a.

17 (ii) A person who is acting as a fiduciary in compliance with  
18 section 20101b.

19 (kk) "Owner" means a person who owns a facility. Owner does  
20 not include either of the following:

21 (i) A person who holds indicia of ownership primarily to  
22 protect the person's security interest in the facility, including,  
23 but not limited to, a vendor's interest under a recorded land  
24 contract, unless that person participates in the management of the  
25 facility as described in section 20101a.

26 (ii) A person who is acting as a fiduciary in compliance with  
27 section 20101b.

1 (ll) "Panel" means the response activity review panel ~~created~~  
2 ~~in~~ **ESTABLISHED UNDER** section 20114e.

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

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

6 (ii) A lawful and authorized discharge into a permitted waste  
7 treatment facility.

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

11 (nn) "Postclosure agreement" means an agreement between the  
12 department and a person who has submitted a no further action  
13 report that prescribes, as appropriate, activities required to be  
14 undertaken upon completion of remedial actions as provided for in  
15 section 20114d.

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

19 (pp) "Release" includes, but is not limited to, any spilling,  
20 leaking, pumping, pouring, emitting, emptying, discharging,  
21 injecting, escaping, leaching, dumping, or disposing of a hazardous  
22 substance into the environment, or the abandonment or discarding of  
23 barrels, containers, and other closed receptacles containing a  
24 hazardous substance. Release does not include any of the following:

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

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

3           (iii) A release of source, by-product, or special nuclear  
4 material from a nuclear incident, as those terms are defined in the  
5 atomic energy act of 1954, 42 USC 2011 to 2286i, if the release is  
6 subject to requirements with respect to financial protection  
7 established by the nuclear regulatory commission under 42 USC 2210,  
8 or any release of source by-product or special nuclear material  
9 from any processing site designated under 42 USC 7912(a)(1) or 42  
10 USC 7942(a).

11           (iv) If applied according to label directions and according to  
12 generally accepted agricultural and management practices at the  
13 time of the application, the application of a fertilizer, soil  
14 conditioner, agronomically applied manure, or pesticide, or fruit,  
15 vegetable, or field crop residuals or processing by-products,  
16 aquatic plants, or a combination of these substances. As used in  
17 this subparagraph, fertilizer and soil conditioner have the meaning  
18 given to these terms in part 85, and pesticide has the meaning  
19 given to that term in part 83.

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

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

26           (vii) The placement, storage, or use of beneficial use by-  
27 products or inert materials at the site of storage or use if in

1 compliance with part 115.

2 (qq) "Remedial action" includes, but is not limited to,  
3 cleanup, removal, containment, isolation, destruction, or treatment  
4 of a hazardous substance released or threatened to be released into  
5 the environment, monitoring, maintenance, or the taking of other  
6 actions that may be necessary to prevent, minimize, or mitigate  
7 injury to the public health, safety, or welfare, or to the  
8 environment.

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

11 (ss) "Residential" means that category of land use for parcels  
12 of property or portions of parcels of property where people live  
13 and sleep for significant periods of time such that the frequency  
14 of exposure is reasonably expected or foreseeable to meet the  
15 exposure assumptions used by the department to develop generic  
16 residential cleanup criteria as set forth in rules promulgated  
17 under this part. This category of land use may include, but is not  
18 limited to, homes and surrounding yards, condominiums, and  
19 apartments.

20 (tt) "Residential closure" means a property at which the  
21 contamination has been addressed in a no further action report that  
22 satisfies the limited residential cleanup criteria under section  
23 20120a(1)(c) or the site-specific residential cleanup criteria  
24 under sections 20120a(2) and 20120b, that contains land use or  
25 resource use restrictions, and that is approved by the department  
26 or is considered approved by the department under section 20120d.

27 (uu) "Residual NAPL saturation" means that term as it is

1 defined in part 213.

2 (vv) "Response activity" means evaluation, interim response  
3 activity, remedial action, demolition, providing an alternative  
4 water supply, or the taking of other actions necessary to protect  
5 the public health, safety, or welfare, or the environment or the  
6 natural resources. Response activity also includes health  
7 assessments or health effect studies carried out under the  
8 supervision, or with the approval of, the department of community  
9 health and enforcement actions related to any response activity.

10 (ww) "Response activity costs" or "costs of response activity"  
11 means all costs incurred in taking or conducting a response  
12 activity, including enforcement costs.

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

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

17 (ii) A plan for evaluation activities.

18 (iii) A feasibility study.

19 (iv) A remedial action plan.

20 (yy) "Security interest" means any interest, including a  
21 reversionary interest, in real property created or established for  
22 the purpose of securing a loan or other obligation. Security  
23 interests include, but are not limited to, mortgages, deeds of  
24 trusts, liens, and title pursuant to lease financing transactions.  
25 Security interests may also arise from transactions such as sale  
26 and leasebacks, conditional sales, installment sales, trust receipt  
27 transactions, certain assignments, factoring agreements, accounts

1 receivable financing arrangements, consignments, or any other  
2 transaction in which evidence of title is created if the  
3 transaction creates or establishes an interest in real property for  
4 the purpose of securing a loan or other obligation.

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

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

12 (bbb) "Target detection limit" means the detection limit for a  
13 hazardous substance in a given environmental medium that is  
14 specified **IN A RULE PROMULGATED** by the department. ~~on a list that~~  
15 ~~it publishes not more than once a year.~~ The department shall  
16 identify 1 or more analytical methods, when a method is available,  
17 that are judged to be capable of achieving the target detection  
18 limit for a hazardous substance in a given environmental medium.  
19 The target detection limit for a given hazardous substance is  
20 greater than or equal to the method detection limit for that  
21 hazardous substance. In establishing a target detection limit, the  
22 department shall consider the following factors:

23 (i) The low level capabilities of methods published by  
24 government agencies.

25 (ii) Reported method detection limits published by state  
26 laboratories.

27 (iii) Reported method detection limits published by commercial



1 laboratories.

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

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

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

8 (2) As used in this part:

9 (a) The phrase "a person who is liable" includes a person who  
10 is described as being subject to liability in section 20126. The  
11 phrase "a person who is liable" does not presume that liability has  
12 been adjudicated.

13 (b) The phrase "this part" includes "rules promulgated under  
14 this part".

15 Sec. 20114d. (1) ~~Upon completion of remedial actions that~~  
16 ~~satisfy the requirements of this part, a person may submit a no~~  
17 ~~further action report to the department.~~ A person may submit a no  
18 further action report under this subsection for remedial actions  
19 addressing contamination for which the person is or is not liable.  
20 Remedial actions included in a no further action report may address  
21 all or a portion of contamination at a facility as follows:

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

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

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

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

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

5 (2) A no further action report submitted under subsection (1)  
6 ~~shall~~**MUST** document the basis for concluding that the remedial  
7 actions ~~have been completed.~~**INCLUDED IN THE NO FURTHER ACTION**  
8 **REPORT ARE PROTECTIVE OF THE PUBLIC HEALTH, SAFETY, AND WELFARE,**  
9 **AND THE ENVIRONMENT WITH RESPECT TO THE ENVIRONMENTAL CONTAMINATION**  
10 **ADDRESSED BY THE REMEDIAL ACTIONS.** A no further action report may  
11 include a request that, upon approval, the release or conditions  
12 addressed by the no further action report be designated as a  
13 residential closure. A no further action report shall be submitted  
14 with a form developed by the department. The department shall make  
15 this form available on its website.

16 (3) A no further action report submitted under subsection (1)  
17 shall be submitted with the following, as applicable:

18 (a) If the remedial action at the facility satisfies the  
19 cleanup criteria for unrestricted residential use for the hazardous  
20 substances and portion of the facility addressed in the no further  
21 action report, neither a postclosure plan or a proposed postclosure  
22 agreement is required to be submitted.

23 (b) If the remedial action requires only land use or resource  
24 use restrictions and financial assurance is not required or the  
25 financial assurance is de minimis, a postclosure plan is required  
26 but a proposed postclosure agreement is not required to be  
27 submitted.

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

4 (4) A proposed postclosure agreement that is submitted as part  
5 of a no further action report ~~shall~~**MUST** include all of the  
6 following:

7 (a) Provisions for monitoring, operation and maintenance, and  
8 oversight necessary to assure the effectiveness and integrity of  
9 the remedial action.

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

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

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

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

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

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

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

24           (c) Contractor pollution liability insurance with limits of  
25 not less than \$1,000,000.00 per claim, if not included under the  
26 professional liability errors and omissions insurance required  
27 under subdivision (b). The insurance requirement under this

1 subdivision is not required for environmental consultants who do  
2 not perform contracting functions.

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

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

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

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

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

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

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

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

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

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

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

15       (2) The panel ~~shall~~**MUST** consist of 15 individuals, appointed  
16 by the director. Each member of the panel ~~shall~~**MUST** meet all of  
17 the following minimum requirements:

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

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

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

27       (iii) Have a master's degree from an accredited institution of

1 higher education in a discipline of engineering or science and the  
2 equivalent of 8 years of full-time relevant experience.

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

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

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

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

13 (c) The individual is employed by an entity that is a party to  
14 1 or more contracts with the department and the compensation paid  
15 to the individual's employer under these contracts represented more  
16 than 5% of the employer's annual gross revenue in any of the  
17 preceding 3 years.

18 (d) The individual was employed by the department within the  
19 preceding 3 years.

20 (4) An individual appointed to the panel ~~shall serve~~ **SERVES**  
21 for a term of 3 years and may be reappointed for 1 additional 3-  
22 year term. After serving 2 consecutive terms, the individual shall  
23 not be a member of the panel for a period of at least 2 years  
24 before being eligible to be appointed to the panel again. The terms  
25 for members first appointed ~~shall~~ **MUST** be staggered so that not  
26 more than 5 vacancies are scheduled to occur in a single year.  
27 Individuals appointed to the panel ~~shall serve~~ without



1 compensation. However, members of the panel may be reimbursed for  
2 their actual and necessary expenses incurred in the performance of  
3 their official duties as members of the panel.

4 (5) A vacancy on the panel shall be filled in the same manner  
5 as the original appointment.

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

9 (7) A person who submitted a response activity plan; **REMEDIAL**  
10 **ACTION PLAN; POSTCLOSURE PLAN;** a no further action report; a  
11 request for certificate of completion or documentation of due care  
12 compliance under this part; or an initial assessment report, final  
13 assessment report, closure report, or documentation of due care  
14 compliance under part 213 may appeal a decision made by the  
15 department regarding a ~~technical or scientific dispute , including~~  
16 ~~a dispute regarding assessment of risk, concerning the response~~  
17 ~~activity plan, no further action report, request for certificate of~~  
18 ~~completion, initial assessment report, final assessment report,~~  
19 ~~closure report, or documentation of due care compliance by~~  
20 submitting a petition to the director. However, an issue that was  
21 addressed as part of the final decision of the director under  
22 section 21332 or that is the subject of a contested case hearing  
23 under section 21332 is not eligible for review by the panel. The  
24 petition shall **MUST** include the issues in dispute, the relevant  
25 facts upon which the dispute is based, factual data, analysis,  
26 opinion, and supporting documentation for the petitioner's  
27 position. The petitioner shall also submit a fee of \$3,500.00. If

1 the director believes that the dispute may be able to be resolved  
2 without convening the panel, the director may contact the  
3 petitioner regarding the issues in dispute and may negotiate a  
4 resolution of the dispute. This negotiation period ~~shall~~**MUST** not  
5 exceed 45 days. If the dispute is resolved without convening the  
6 panel, any fee that is submitted with the petition shall be  
7 returned.

8 (8) If a dispute is not resolved pursuant to subsection (7),  
9 the director shall schedule a meeting of 5 members of the panel,  
10 selected on the basis of their relevant expertise, within 45 days  
11 after receiving the original petition. If the dispute involves an  
12 underground storage tank system, at least 3 of the members selected  
13 ~~shall~~**MUST** have relevant experience in the American ~~society for~~  
14 ~~testing and materials~~**SOCIETY FOR TESTING AND MATERIALS** risk-based  
15 corrective action processes described in part 213. A member  
16 selected for the dispute resolution process shall agree not to  
17 accept employment by the person bringing the dispute before the  
18 panel, or to undertake any employment concerning the facility in  
19 question for a period of 1 year after the decision has been  
20 rendered on the matter if that employment would represent more than  
21 5% of the member's gross revenue in any of the preceding 3 years.  
22 The director shall provide a copy of all supporting documentation  
23 to members of the panel who will hear the dispute. An alternative  
24 member may be selected by the director to replace a member who is  
25 unable to participate in the dispute resolution process. Any action  
26 by the members selected to hear the dispute ~~shall require~~**REQUIRES**  
27 a majority of the votes cast. The members selected for the dispute

1 resolution process shall elect a chairperson of the dispute  
2 resolution process. At a meeting scheduled to hear the dispute,  
3 representatives of the petitioner and the department ~~shall~~**MUST**  
4 each be afforded an opportunity to present their positions to the  
5 panel. The fee that is received by the director along with the  
6 petition shall be forwarded to the state treasurer for deposit into  
7 the fund.

8 (9) Within 45 days after hearing the dispute, the members of  
9 the panel who were selected for and participated in the dispute  
10 resolution process shall make a recommendation regarding the  
11 petition and provide written notice of the recommendation to the  
12 director of the department and the petitioner. The written  
13 recommendation ~~shall~~**MUST** include the specific scientific or  
14 technical rationale for the recommendation. The panel's  
15 recommendation regarding the petition may be to adopt, modify, or  
16 reverse, in whole or in part, the department's decision that is the  
17 subject of the petition. If the panel does not make its  
18 recommendation within this 45-day time period, the decision of the  
19 department is the final decision of the director.

20 (10) Within 60 days after receiving written notice of the  
21 panel's recommendation, the director shall issue a final decision,  
22 in writing, regarding the petition. However, this time period may  
23 be extended by written agreement between the director and the  
24 petitioner. If the director agrees with the recommendation of the  
25 panel, the department shall incorporate the recommendation into its  
26 response to the response activity plan, no further action report,  
27 request for certificate of completion, initial assessment report,

1 final assessment report, closure report, or documentation of due  
2 care compliance. If the director rejects the recommendation of the  
3 panel, the director shall issue a written decision to the  
4 petitioner with a specific rationale for rejecting the  
5 recommendation of the panel. If the director fails to issue a final  
6 decision within the time period provided for in this subsection,  
7 the recommendation of the panel shall be considered the final  
8 decision of the director. The final decision of the director under  
9 this subsection is subject to review pursuant to section 631 of the  
10 revised judicature act of 1961, 1961 PA 236, MCL 600.631.

11 (11) Upon request of the director, the panel shall make a  
12 recommendation to the department on whether a member should be  
13 removed from the panel **FOR NONCOMPLIANCE WITH THIS PART**. Prior to  
14 making this recommendation, the panel may convene a peer review  
15 panel to evaluate the conduct of the member. ~~with regard to~~  
16 ~~compliance with this part.~~

17 (12) A member of the panel shall not participate in the  
18 dispute resolution process for any appeal in which that member has  
19 a conflict of interest. The director shall select a member of the  
20 panel to replace a member who has a conflict of interest under this  
21 subsection. For purposes of this subsection, a member has a  
22 conflict of interest if a petitioner has hired that member or the  
23 member's employer on any environmental matter within the preceding  
24 3 years.

25 (13) As used in this section: ~~,"relevant~~

26 **(A) "DISPUTE" MEANS ANY DISAGREEMENT OVER A TECHNICAL,**  
27 **SCIENTIFIC, OR ADMINISTRATIVE ISSUE, INCLUDING, BUT NOT LIMITED TO,**

1 DISAGREEMENTS OVER ASSESSMENT OF RISK, RESPONSE ACTIVITY PLANS,  
2 REMEDIAL ACTION PLANS, NO FURTHER ACTION REPORTS, CERTIFICATES OF  
3 COMPLETION, DOCUMENTATION OF DUE CARE COMPLIANCE UNDER THIS PART,  
4 DETERMINATIONS OF WHETHER A PERSON HAS SUBMITTED SUFFICIENT  
5 INFORMATION FOR THE DEPARTMENT TO MAKE A DECISION REGARDING A  
6 SUBMITTAL UNDER THIS PART OR PART 213, AND INITIAL ASSESSMENT  
7 REPORTS, FINAL ASSESSMENT REPORTS, CLOSURE REPORTS, POSTCLOSURE  
8 PLANS, AND DOCUMENTATIONS OF DUE CARE COMPLIANCE UNDER PART 213.

9 (B) "RELEVANT" experience" means active participation in the  
10 preparation, design, implementation, and assessment of remedial  
11 investigations, feasibility studies, interim response activities,  
12 and remedial actions under this part or experience in the American  
13 society for testing and materials risk-based corrective action  
14 processes described in part 213. This experience must demonstrate  
15 the exercise of sound professional judgment and knowledge of the  
16 requirements of this part or part 213, or both.

17 Sec. 20120a. (1) The department may establish cleanup criteria  
18 and approve of remedial actions in the categories listed in this  
19 subsection. The cleanup category proposed shall be the option of  
20 the person proposing the remedial action, subject to department  
21 approval if required, considering the appropriateness of the  
22 categorical criteria to the facility. The categories are as  
23 follows:

- 24 (a) Residential.  
25 (b) Nonresidential.  
26 (c) Limited residential.  
27 (d) Limited nonresidential.

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

11           (3) The department shall develop cleanup criteria pursuant to  
12 subsection (1) based on generic human health risk assessment  
13 assumptions **THAT ARE** determined by the department to appropriately  
14 characterize patterns of human exposure associated with certain  
15 land uses. The department shall ~~utilize~~**CONSIDER** only reasonable  
16 and relevant exposure pathways **AND FACTORS** in determining these  
17 assumptions. The department may prescribe more than 1 generic set  
18 of exposure assumptions within each category described in  
19 subsection (1). If the department prescribes more than 1 generic  
20 set of exposure assumptions within a category, each set of exposure  
21 assumptions creates a subcategory within a category described in  
22 subsection (1). The department shall specify facility  
23 characteristics that determine the applicability of criteria  
24 derived for these categories or subcategories. **WHEN DEVELOPING AND**  
25 **PROMULGATING CLEANUP CRITERIA UNDER SUBSECTION (1), THE DEPARTMENT**  
26 **SHALL DO ALL OF THE FOLLOWING:**

27           **(A) EXCEPT AS SET FORTH IN SUBDIVISION (C), FOR EACH HAZARDOUS**

1 SUBSTANCE, USE FINAL TOXICITY VALUES FROM THE UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY INTEGRATED RISK INFORMATION SYSTEM,  
3 OR MORE RECENT UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OFFICE  
4 OF PESTICIDE PROGRAMS TOXICITY VALUES FOR PESTICIDES THAT ARE  
5 INCORPORATED BY THE INTEGRATED RISK INFORMATION SYSTEM IN PLACE OF  
6 VALUES THAT HAVE BEEN ARCHIVED BY THE INTEGRATED RISK INFORMATION  
7 SYSTEM, IF AVAILABLE. IF THE UNITED STATES ENVIRONMENTAL PROTECTION  
8 AGENCY HAS DETERMINED THAT THERE IS INSUFFICIENT SCIENTIFIC DATA TO  
9 DERIVE A VALUE FOR INCLUSION IN THE INTEGRATED RISK INFORMATION  
10 SYSTEM, THE DEPARTMENT SHALL NOT DERIVE OR ADOPT SUCH A VALUE FOR  
11 THAT HAZARDOUS SUBSTANCE. IF A VALUE IS NOT AVAILABLE IN THE  
12 INTEGRATED RISK INFORMATION SYSTEM, THE DEPARTMENT SHALL APPLY THE  
13 FOLLOWING ORDER OF PRECEDENCE WHEN SELECTING TOXICITY VALUES:

14 (i) THE BEST VALUE FROM THE AGENCY FOR TOXIC SUBSTANCES AND  
15 DISEASE REGISTRY FINAL MINIMAL RISK LEVELS FOR HAZARDOUS SUBSTANCES  
16 OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROVISIONAL  
17 PEER-REVIEWED TOXICITY VALUES.

18 (ii) IF A VALUE IS NOT AVAILABLE UNDER SUBPARAGRAPH (i), THE  
19 BEST FINAL VALUE FROM THE UNITED STATES ENVIRONMENTAL PROTECTION  
20 AGENCY HEALTH EFFECTS ASSESSMENT SUMMARY TABLE, OR FINAL VALUES  
21 ADOPTED BY OTHER STATES, THE WORLD HEALTH ORGANIZATION, CANADA, OR  
22 THE EUROPEAN UNION.

23 (iii) IF A VALUE IS NOT AVAILABLE UNDER SUBPARAGRAPH (i) OR  
24 (ii), A VALUE DEVELOPED BY THE DEPARTMENT IF THERE IS SUFFICIENT  
25 SUPPORTING TOXICITY DATA AND INFORMATION AVAILABLE IN THE PEER-  
26 REVIEWED PUBLISHED SCIENTIFIC LITERATURE.

27 (B) APPLY THE FOLLOWING ORDER OF PRECEDENCE WHEN SELECTING

1 CHEMICAL OR PHYSICAL DATA FOR THE DEVELOPMENT OF CLEANUP CRITERIA:

2 (i) THE BEST RELEVANT EXPERIMENTALLY MEASURED DATA.

3 (ii) IF DATA IS NOT AVAILABLE UNDER SUBPARAGRAPH (i), THE BEST  
4 RELEVANT MODELED OR ESTIMATED DATA.

5 (C) IF THE DEPARTMENT DESIRES TO USE A TOXICITY VALUE OR INPUT  
6 THAT IS DIFFERENT THAN A VALUE THAT IS AVAILABLE ON THE UNITED  
7 STATES ENVIRONMENTAL PROTECTION AGENCY INTEGRATED RISK INFORMATION  
8 SYSTEM, OR MORE RECENT UNITED STATES ENVIRONMENTAL PROTECTION  
9 AGENCY OFFICE OF PESTICIDE PROGRAMS TOXICITY VALUES FOR PESTICIDES  
10 THAT ARE INCORPORATED BY THE INTEGRATED RISK INFORMATION SYSTEM IN  
11 PLACE OF VALUES THAT HAVE BEEN ARCHIVED BY THE INTEGRATED RISK  
12 INFORMATION SYSTEM, OR DESIRES TO ESTABLISH A VALUE WHEN THE  
13 ENVIRONMENTAL PROTECTION AGENCY DETERMINED THAT THERE WAS  
14 INSUFFICIENT SCIENTIFIC DATA TO DO SO WHEN LAST EVALUATED BY THE  
15 ENVIRONMENTAL PROTECTION AGENCY, THE DEPARTMENT SHALL PROVIDE  
16 PUBLIC NOTICE AND A WRITTEN EXPLANATION OF ITS INTENT TO DO SO AND  
17 CONDUCT A STAKEHOLDER PROCESS TO OBTAIN INPUT. AFTER OBTAINING  
18 STAKEHOLDER INPUT, THE DEPARTMENT MAY PROMULGATE A RULE TO USE AN  
19 ALTERNATIVE VALUE IN ACCORDANCE WITH THE ORDER OF PRECEDENCE SET  
20 FORTH IN SUBDIVISION (A) (i) THROUGH (iii), IF THE DEPARTMENT  
21 DEMONSTRATES ALL OF THE FOLLOWING:

22 (i) THE INTEGRATED RISK INFORMATION SYSTEM VALUE IS BASED ON A  
23 DETERMINATION THAT IS AT LEAST 10 YEARS OLD.

24 (ii) THERE IS MORE CURRENT DATA IN THE PEER-REVIEWED  
25 SCIENTIFIC LITERATURE THAT IS USED ON A GENERAL BASIS BY THE UNITED  
26 STATES ENVIRONMENTAL PROTECTION AGENCY OR MULTIPLE OTHER REGULATORY  
27 AGENCIES NATIONALLY FOR THE PURPOSE OF CALCULATING CLEANUP CRITERIA



1 OR STANDARDS.

2 (iii) AFTER ASSESSING THE BODY OF EVIDENCE FOR THE HAZARDOUS  
3 SUBSTANCE USING A RIGOROUS SYSTEMATIC REVIEW METHODOLOGY, SUCH AS  
4 THAT USED BY THE NATIONAL TOXICOLOGY PROGRAM'S OFFICE OF HEALTH  
5 ASSESSMENT AND TRANSLATION AND THE EUROPEAN FOOD SAFETY AUTHORITY,  
6 THE WEIGHT OF SCIENTIFIC EVIDENCE CLEARLY SUPPORTS THE USE OF THE  
7 PROPOSED VALUE AS BEST AVAILABLE SCIENCE FOR THE PURPOSE OF  
8 CALCULATING GENERIC CLEANUP CRITERIA.

9 (D) USE A DAILY EXPOSURE TIME FOR INHALATION IN THE EXPOSURE  
10 INTAKE FOR A NONRESIDENTIAL WORKER IN AN ALGORITHM OR EQUATION USED  
11 TO CALCULATE GENERIC CLEANUP CRITERIA UNDER THIS PART THAT IS EQUAL  
12 TO THE AVERAGE NUMBER OF HOURS, NOT TO EXCEED 10 HOURS, THAT A  
13 NONRESIDENTIAL WORKER SPENDS WORKING IN A 5-DAY WORK WEEK ACCORDING  
14 TO THE MOST APPROPRIATE GOVERNMENTAL DATA OR INFORMATION.

15 (E) WHEN THE DEPARTMENT CONSIDERS THE PREGNANT WOMAN AS A  
16 POTENTIAL SENSITIVE RECEPTOR TO ADDRESS PRENATAL DEVELOPMENTAL  
17 EFFECTS, THE DEPARTMENT MAY APPLY A SINGLE-EVENT EXPOSURE SCENARIO  
18 FOR A HAZARDOUS SUBSTANCE, PURSUANT TO THE PROCESS SET FORTH IN  
19 SUBDIVISION (F), ONLY WHEN EITHER OF THE FOLLOWING OCCURS:

20 (i) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY APPLIES  
21 A SINGLE-EVENT EXPOSURE SCENARIO TO ESTABLISH REGIONAL SCREENING  
22 LEVELS FOR THAT HAZARDOUS SUBSTANCE.

23 (ii) THE DEPARTMENT DEMONSTRATES, AFTER CONDUCTING A  
24 COMPREHENSIVE ASSESSMENT OF THE SPECIFIC HAZARDOUS SUBSTANCE, THAT,  
25 FOR THAT SPECIFIC HAZARDOUS SUBSTANCE, A SINGLE EXPOSURE MAY RESULT  
26 IN AN ADVERSE EFFECT AND THE WEIGHT OF SCIENTIFIC EVIDENCE SUPPORTS  
27 THE APPLICATION OF A SINGLE-EVENT EXPOSURE SCENARIO. THE

1 DEPARTMENT'S COMPREHENSIVE ASSESSMENT MUST EVALUATE THE BODY OF  
2 SCIENTIFIC EVIDENCE USING A SYSTEMATIC REVIEW METHODOLOGY, SUCH AS  
3 THAT USED BY THE NATIONAL TOXICOLOGY PROGRAM'S OFFICE OF HEALTH  
4 ASSESSMENT AND TRANSLATION AND THE EUROPEAN FOOD SAFETY AUTHORITY.  
5 THE COMPREHENSIVE ASSESSMENT MUST, IF APPROPRIATE, TAKE INTO  
6 ACCOUNT ALL OF THE FOLLOWING:

7 (A) WHETHER THERE IS DATA AVAILABLE INVOLVING SINGLE-DAY  
8 EXPOSURES TO THE HAZARDOUS SUBSTANCE DURING PREGNANCY.

9 (B) THE DIFFERENCES IN SENSITIVITY, PERIODS OF DEVELOPMENT,  
10 AND PROGRESSION OF DIFFERENT TYPES OF DEVELOPMENTAL EFFECTS IN  
11 HUMANS AND ANIMALS.

12 (C) DIFFERENCES IN TOXICOKINETICS BETWEEN SPECIES.

13 (F) BEFORE CONDUCTING THE COMPREHENSIVE ASSESSMENT IN  
14 SUBDIVISION (E) (ii), THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE AND  
15 A WRITTEN EXPLANATION OF ITS INTENT TO DO SO. UPON COMPLETION OF  
16 THE ASSESSMENT, THE DEPARTMENT SHALL CONDUCT A STAKEHOLDER PROCESS  
17 TO OBTAIN INPUT. IF, UPON OBTAINING STAKEHOLDER INPUT, THE  
18 DEPARTMENT ELECTS TO APPLY A SINGLE-EVENT EXPOSURE SCENARIO FOR A  
19 PARTICULAR HAZARDOUS SUBSTANCE, THE DEPARTMENT SHALL DO SO IN A  
20 RULE.

21 (4) If a hazardous substance poses a carcinogenic risk to  
22 humans, the cleanup criteria derived for cancer risk under this  
23 section shall be the 95% upper bound on the calculated risk of 1  
24 additional cancer above the background cancer rate per 100,000  
25 individuals using the generic set of exposure assumptions  
26 established under subsection (3) for the appropriate category or  
27 subcategory. If the hazardous substance poses a risk of an adverse

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

14 (5) If a cleanup criterion derived under subsection (4) for  
15 groundwater in an aquifer differs from either: (a) the state  
16 drinking water standards established pursuant to section 5 of the  
17 safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the  
18 national secondary drinking water regulations established pursuant  
19 to 42 USC 300g-1, or (c), if there is not national secondary  
20 drinking water regulation for a contaminant, the concentration  
21 determined by the department according to methods approved by the  
22 United States ~~environmental protection agency~~ **ENVIRONMENTAL**  
23 **PROTECTION AGENCY** below which taste, odor, appearance, or other  
24 aesthetic characteristics are not adversely affected, the cleanup  
25 criterion ~~shall be~~ **IS** the more stringent of (a), (b), or (c) unless  
26 the department determines that compliance with this subsection is  
27 not necessary because the use of the aquifer is reliably restricted

1 or controlled under provisions of a postclosure plan or a  
2 postclosure agreement or by site-specific criteria approved by the  
3 department under section 20120b.

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

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

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

1 hazardous substances in soil shall consider the vulnerability of  
2 the aquifer or aquifers potentially affected if the soil remains at  
3 the facility. Migration of hazardous substances in soil to an  
4 aquifer is a pertinent pathway if appropriate based on  
5 consideration of site specific factors.

6 (9) The department may establish cleanup criteria for a  
7 hazardous substance using a biologically based model developed or  
8 identified as appropriate by the United States ~~environmental~~  
9 ~~protection agency~~ **ENVIRONMENTAL PROTECTION AGENCY** if the department  
10 determines all of the following:

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

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

16 (c) The United States ~~environmental protection agency~~  
17 **ENVIRONMENTAL PROTECTION AGENCY** has determined that application of  
18 the model is appropriate for the hazardous substance in question.

19 (10) If the target detection limit or the background  
20 concentration for a hazardous substance is greater than a cleanup  
21 criterion developed for a category pursuant to subsection (1), the  
22 criterion ~~shall be~~ **IS** the target detection limit or background  
23 concentration, whichever is larger, for that hazardous substance in  
24 that category.

25 (11) The department may also approve cleanup criteria if  
26 necessary to address conditions that prevent a hazardous substance  
27 from being reliably measured at levels that are consistently

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

6 (12) In determining the adequacy of a land-use based response  
7 activity to address sites contaminated by polychlorinated  
8 biphenyls, the department shall not require response activity in  
9 addition to that which is subject to and complies with applicable  
10 federal regulations and policies that implement the toxic  
11 substances control act, 15 USC 2601 to 2692.

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

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

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

27 (16) Remedial actions that rely on categorical cleanup

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

9 ~~(17) Not later than December 31, 2013, the department shall~~  
10 ~~evaluate and revise the cleanup criteria derived under this~~  
11 ~~section. The evaluation and any revisions shall incorporate~~ **THE**  
12 **DEPARTMENT SHALL PROMULGATE ALL GENERIC CLEANUP CRITERIA AND TARGET**  
13 **DETECTION LIMITS AS RULES. EXCEPT FOR GENERIC CLEANUP CRITERIA AND**  
14 **TARGET DETECTION LIMITS DEVELOPED BEFORE JANUARY 11, 2018, AND**  
15 **THOSE GENERIC CLEANUP CRITERIA DETERMINED AS SET FORTH IN**  
16 **SUBSECTIONS (5) AND (23) AND SECTION 20120E(1) (A), GENERIC CLEANUP**  
17 **CRITERIA AND TARGET DETECTION LIMITS, AND ANY MODIFICATIONS OR**  
18 **REVISIONS TO GENERIC CLEANUP CRITERIA AND TARGET DETECTION LIMITS,**  
19 **ARE NOT LEGALLY ENFORCEABLE UNTIL PROMULGATED AS RULES. THE GENERIC**  
20 **CLEANUP CRITERIA AND TARGET DETECTION LIMITS ARE SUBJECT TO ALL OF**  
21 **THE FOLLOWING:**

22 **(A) THE DEPARTMENT MAY PERIODICALLY REPROMULGATE RULES FOR ANY**  
23 **PORTION OF THE GENERIC CLEANUP CRITERIA TO ADOPT AND USE NEW**  
24 **TOXICITY VALUES OR CHEMICAL OR PHYSICAL DATA SELECTED PURSUANT TO**  
25 **SUBSECTION (3) (A) AND (B) OR TO OTHERWISE UPDATE THE GENERIC**  
26 **CLEANUP CRITERIA IN ACCORDANCE WITH THIS PART TO INCORPORATE, AS**  
27 **APPROPRIATE,** knowledge gained through research and studies in the

1 areas of fate and transport and risk assessment ~~and shall take~~  
2 **TAKING** into account best practices from other states, reasonable  
3 and realistic conditions, and sound science. ~~Following this~~  
4 ~~revision, the department shall periodically evaluate whether new~~  
5 ~~information is available regarding the cleanup criteria and shall~~  
6 ~~make revisions as appropriate. The department shall prepare and~~  
7 ~~submit to the legislature a report detailing any revisions made to~~  
8 ~~cleanup criteria under this section.~~ **THE DEPARTMENT MAY ALSO**  
9 **REPROMULGATE RULES THAT ESTABLISH TARGET DETECTION LIMITS TO UPDATE**  
10 **THOSE LIMITS IN ACCORDANCE WITH THIS PART.**

11 (B) IF GENERIC CLEANUP CRITERIA ARE INCLUDED IN OR RELIED UPON  
12 AS A BASIS FOR DECISION IN A WORK PLAN, RESPONSE ACTIVITY PLAN,  
13 REMEDIAL ACTION PLAN, POSTCLOSURE PLAN, REQUEST FOR CERTIFICATE OF  
14 COMPLETION, OR SIMILAR DOCUMENT, THAT IS SUBMITTED TO THE  
15 DEPARTMENT OR APPROVED BY THE DEPARTMENT PRIOR TO THE EFFECTIVE  
16 DATE OF A RULE REVISING THOSE CLEANUP CRITERIA, THEN THE GENERIC  
17 CLEANUP CRITERIA EFFECTIVE AT THE TIME OF SUBMITTAL OR PRIOR  
18 APPROVAL CONTINUE TO APPLY TO THE REVIEW, REVISION, OR  
19 IMPLEMENTATION OF THE PLAN, REQUEST, OR DOCUMENT, AS WELL AS TO ANY  
20 FUTURE REVIEW, APPROVAL, OR DISAPPROVAL OF A NO FURTHER ACTION  
21 REPORT OR ANY PART THEREOF THAT IS BASED ON THE PLAN, REQUEST, OR  
22 DOCUMENT, UNLESS EITHER OF THE FOLLOWING OCCUR:

23 (i) THE PERSON MAKING THE SUBMITTAL VOLUNTARILY ELECTS TO  
24 APPLY THE REVISED CLEANUP CRITERIA.

25 (ii) THE DEPARTMENT DIRECTOR MAKES A SITE-SPECIFIC  
26 DEMONSTRATION, BASED ON CLEAR AND CONVINCING EVIDENCE, THAT THE  
27 PRIOR CLEANUP CRITERIA ARE NO LONGER PROTECTIVE OF THE PUBLIC



1 HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT, GIVEN THE TOTALITY  
2 OF CIRCUMSTANCES AT THE SITE, INCLUDING ANY SITE-SPECIFIC FACTORS  
3 THAT REDUCE EXPOSURE OR RISK, SUCH AS THE EXISTENCE OF LAND OR  
4 RESOURCE USE RESTRICTIONS THAT REDUCE OR RESTRICT EXPOSURE. THIS  
5 SUBPARAGRAPH DOES NOT APPLY IF, NO LATER THAN 6 MONTHS AFTER THE  
6 PROMULGATION OF THE RULE REVISION CHANGING THE CLEANUP CRITERIA,  
7 BOTH OF THE FOLLOWING CONDITIONS ARE MET:

8 (A) THE PERSON HAS SUBSTANTIALLY COMPLETED ALL ACTIVE  
9 REMEDIATION AS SET FORTH IN THE APPROVED PLAN, REQUEST, OR SIMILAR  
10 DOCUMENT, AND ONLY MONITORING, MAINTENANCE, OR POSTCLOSURE  
11 ACTIVITIES REMAIN.

12 (B) THE PERSON SUBMITS A REQUEST FOR A NO FURTHER ACTION  
13 APPROVAL TO THE DEPARTMENT.

14 (C) NO FURTHER ACTION REPORTS THAT HAVE BEEN APPROVED BY THE  
15 DEPARTMENT AND THAT RELY ON CLEANUP CRITERIA THAT HAVE BEEN  
16 SUBSEQUENTLY REVISED REMAIN VALID, SUBJECT TO THE LIABILITY  
17 PROVISIONS OF SECTION 20126(4) (E).

18 (D) IF GENERIC CLEANUP CRITERIA ARE INCLUDED IN OR RELIED UPON  
19 AS A BASIS FOR DECISION IN A NO FURTHER ACTION REPORT, OTHER THAN A  
20 NO FURTHER ACTION REPORT DESCRIBED IN SUBDIVISION (B) (ii), THAT IS  
21 SUBMITTED TO THE DEPARTMENT BUT NOT YET APPROVED BY THE DEPARTMENT  
22 PRIOR TO THE EFFECTIVE DATE OF A RULE REVISING THOSE CLEANUP  
23 CRITERIA, THEN THE GENERIC CLEANUP CRITERIA EFFECTIVE AT THE TIME  
24 OF SUBMITTAL CONTINUE TO APPLY TO THE REVIEW, REVISION, AND  
25 APPROVAL OF THE REPORT UNLESS EITHER OF THE FOLLOWING OCCUR:

26 (i) THE PERSON MAKING THE SUBMITTAL VOLUNTARILY ELECTS TO  
27 APPLY THE REVISED CLEANUP CRITERIA.

1           (ii) THE DEPARTMENT DIRECTOR MAKES A SITE-SPECIFIC  
2 DEMONSTRATION, BASED ON CLEAR AND CONVINCING EVIDENCE, THAT THE  
3 PRIOR GENERIC CLEANUP CRITERIA ARE NO LONGER PROTECTIVE OF THE  
4 PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT, GIVEN THE  
5 TOTALITY OF CIRCUMSTANCES AT THE SITE, INCLUDING ANY SITE-SPECIFIC  
6 FACTORS THAT REDUCE EXPOSURE OR RISK, SUCH AS THE EXISTENCE OF LAND  
7 OR RESOURCE USE RESTRICTIONS THAT REDUCE OR RESTRICT EXPOSURE.

8           (E) A DEMONSTRATION BY THE DEPARTMENT DIRECTOR UNDER  
9 SUBDIVISION (B) OR (D) THAT PRIOR CLEANUP CRITERIA ARE NO LONGER  
10 PROTECTIVE OF THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE  
11 ENVIRONMENT, IS APPEALABLE IN ACCORDANCE WITH SECTION 20114E.

12           (F) NOTWITHSTANDING SUBDIVISIONS (B) THROUGH (D), AN OWNER'S  
13 OR OPERATOR'S OBLIGATIONS UNDER SECTION 20107A SHALL BE BASED UPON  
14 THE CURRENT NUMERIC CLEANUP CRITERIA UNDER SECTION 20120A(1) OR  
15 SITE-SPECIFIC CRITERIA APPROVED UNDER SECTION 20120B.

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

19           (a) The facility is an establishment covered by the  
20 classifications provided by sector 31-33 - manufacturing, of the  
21 North American ~~industry classification system,~~ **INDUSTRY**  
22 **CLASSIFICATION SYSTEM**, United States, 2012, published by the ~~office~~  
23 ~~of management and budget.~~ **OFFICE OF MANAGEMENT AND BUDGET**.

24           (b) The person complies with the Michigan occupational safety  
25 and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the  
26 rules promulgated under that act applicable to the exposure to the  
27 hazardous substance, including, but not limited to, the

1 occupational health standards for air contaminants, R 325.51101 to  
2 R 325.51108 of the Michigan ~~administrative code.~~**ADMINISTRATIVE**  
3 **CODE.**

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

13 (19) The department shall ~~make available~~**PROMULGATE AS RULES**  
14 the algorithms used to calculate, **MODIFY, OR REVISE** all residential  
15 and nonresidential generic cleanup criteria, ~~and~~**AS WELL AS THE**  
16 tables listing, by hazardous substance, all toxicity, exposure, and  
17 other algorithm factors or variables used in the department's  
18 calculations, **MODIFICATIONS, OR REVISIONS.**

19 **(20) CALCULATION AND APPLICATION OF TOXIC EQUIVALENCY**  
20 **QUOTIENTS ARE SUBJECT TO THE FOLLOWING:**

21 **(A) THE TOXIC EQUIVALENCY FACTORS USED MUST ONLY BE THOSE**  
22 **ADOPTED BY THE WORLD HEALTH ORGANIZATION.**

23 **(B) WHEN COMPOUNDS CONTRIBUTED BY 2 OR MORE PERSONS ACTING**  
24 **INDEPENDENTLY ARE COMBINED IN A TOXIC EQUIVALENCY QUOTIENT TO**  
25 **ASSESS HUMAN HEALTH RISKS, HARM IS DIVISIBLE AND SUBJECT TO**  
26 **APPORTIONMENT OF LIABILITY UNDER SUBSECTIONS 20129(1) AND (2) .**

27 **(C) TO ASSESS HUMAN HEALTH RISKS, THE TOXIC EQUIVALENCY**

1 QUOTIENT MUST BE COMPARED TO GENERIC OR SITE-SPECIFIC CRITERIA FOR  
2 THE REFERENCE HAZARDOUS SUBSTANCE.

3 (21) POLYCHLORINATED DIBENZODIOXIN AND DIBENZOFURAN CONGENERS  
4 ARE NOT LIKELY TO LEACH FROM SOIL TO GROUNDWATER. THE GROUNDWATER  
5 SURFACE WATER INTERFACE PROTECTION AND THE RESIDENTIAL DRINKING  
6 WATER PROTECTION EXPOSURE PATHWAYS ARE NOT APPLICABLE OR RELEVANT  
7 WHEN ASSESSING POLYCHLORINATED DIBENZODIOXIN AND DIBENZOFURAN  
8 CONGENERS UNLESS THE DEPARTMENT DEMONSTRATES THAT THOSE CONGENERS  
9 ARE LEACHING AT MATERIAL CONCENTRATIONS THROUGH CO-SOLVATION.

10 (22) POLYCHLORINATED DIBENZODIOXIN AND DIBENZOFURAN CONGENERS  
11 ARE NOT LIKELY TO VOLATILIZE FROM SOIL OR GROUNDWATER INTO THE AIR.  
12 VAPOR INHALATION EXPOSURE PATHWAYS ARE NOT APPLICABLE OR RELEVANT  
13 WHEN ASSESSING POLYCHLORINATED DIBENZODIOXIN AND DIBENZOFURAN  
14 CONGENERS.

15 (23) FOR A SUBSTANCE THAT DOES NOT HAVE GENERIC CLEANUP  
16 CRITERIA, IF, BASED ON THE BEST AVAILABLE INFORMATION, THE  
17 DEPARTMENT DETERMINES THAT THE SUBSTANCE IS A HAZARDOUS SUBSTANCE,  
18 THE DEPARTMENT MAY CALCULATE GENERIC CLEANUP CRITERIA FOR THAT  
19 HAZARDOUS SUBSTANCE USING TOXICITY VALUES AND CHEMICAL AND PHYSICAL  
20 DATA SELECTED PURSUANT TO SUBSECTION (3) (A) AND (B) AND IN  
21 ACCORDANCE WITH ALL OTHER REQUIREMENTS OF THIS PART AND PUBLISH THE  
22 GENERIC CLEANUP CRITERIA ON THE DEPARTMENT'S WEBSITE. WITHIN 30  
23 DAYS AFTER PUBLISHING THE NEW GENERIC CLEANUP CRITERIA, THE  
24 DEPARTMENT SHALL INITIATE RULE-MAKING TO PROMULGATE RULES FOR THE  
25 NEW CRITERIA BY FILING A RULE-MAKING REQUEST UNDER SECTION 39 OF  
26 THE ADMINISTRATIVE PROCEDURES ACT, 1969 PA 306, MCL 24.239. THE  
27 RULE-MAKING REQUEST SHALL ONLY INCLUDE THE REVISIONS NECESSARY TO

1 PROMULGATE THE NEW GENERIC CLEANUP CRITERIA. THE NEW GENERIC  
2 CLEANUP CRITERIA PUBLISHED PURSUANT TO THIS SUBSECTION TAKE EFFECT  
3 AND ARE LEGALLY ENFORCEABLE WHEN PUBLISHED BY THE DEPARTMENT IF THE  
4 DEPARTMENT ALSO INITIATES RULE-MAKING TO PROMULGATE RULES FOR THE  
5 NEW CRITERIA WITHIN 30 DAYS. THE NEW GENERIC CLEANUP CRITERIA  
6 PUBLISHED PURSUANT TO THIS SUBSECTION REMAIN EFFECTIVE AND LEGALLY  
7 ENFORCEABLE UNTIL REPLACED BY A FINAL RULE OR, UNTIL THE DIRECTOR  
8 DIRECTS THE DEPARTMENT TO WITHDRAW THE RULE REQUEST UNDER SECTION  
9 66(11) OF THE ADMINISTRATIVE PROCEDURES ACT, 1969 PA 306, MCL  
10 24.266, OR THE TIME LIMITATION IN EITHER SECTION 45(1) OR SECTION  
11 66(12) OF THE ADMINISTRATIVE PROCEDURES ACT, 1969 PA 306, MCL  
12 24.245 AND 24.266, IS NOT MET.

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

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

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

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

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

1 serve as an exposure barrier.

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

5 (e) Use probabilistic methods of calculation.

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

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

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

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

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

27 (c) For venting groundwater, use a modeling demonstration, an

1 ecological demonstration, or a combination of both, consistent with  
2 section 20120e(9) and (10), to demonstrate that the hazardous  
3 substance is not likely to migrate to a surface water body or has  
4 not or will not impair the existing or designated uses for a  
5 surface water body.

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

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

15 **(4) SITE-SPECIFIC CRITERIA APPROVED BY THE DEPARTMENT ARE NOT**  
16 **INVALIDATED BY SUBSEQUENT CHANGES TO THE GENERIC CRITERIA FOR THAT**  
17 **HAZARDOUS SUBSTANCE, INCLUDING CHANGES TO TOXICITY, EXPOSURE, OR**  
18 **OTHER VALUES OR VARIABLES USED BY THE DEPARTMENT TO CALCULATE THE**  
19 **GENERIC CRITERIA.**

20 **SEC. 20120F. (1) TO SATISFY THE REQUIREMENTS OF THIS PART, A**  
21 **PERSON MAY EVALUATE, ADDRESS, AND MANAGE THE VAPOR INTRUSION TO THE**  
22 **INDOOR AIR INHALATION EXPOSURE PATHWAY FOR A HAZARDOUS SUBSTANCE**  
23 **USING ANY OF THE FOLLOWING METHODS:**

24 **(A) MEETING ALL OF THE CONDITIONS IN SECTION 20120A(18).**

25 **(B) FOR PURPOSES OF EVALUATING AND ADDRESSING THE VAPOR**  
26 **INTRUSION TO THE INDOOR AIR INHALATION PATHWAY IN CONNECTION WITH**  
27 **ANY RELEASE OF PETROLEUM AS DESCRIBED AS A REGULATED SUBSTANCE**

1 DEFINED IN SECTION 21303(H) (ii) , THE PROCESS OUTLINED IN THE  
2 INTERSTATE TECHNOLOGY REGULATORY COUNCIL PETROLEUM VAPOR INTRUSION  
3 GUIDANCE DOCUMENT (PVI-1, OCT-14) .

4 (C) AN APPROACH, USING MULTIPLE LINES OF EVIDENCE,  
5 DEMONSTRATING THAT THE VAPOR INTRUSION TO THE INDOOR AIR INHALATION  
6 EXPOSURE PATHWAY DOES NOT POSE AN UNACCEPTABLE RISK TO THE PUBLIC  
7 HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT CONSISTENT WITH ALL  
8 OR A COMBINATION OF 1 OR MORE OF THE FOLLOWING:

9 (i) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY "OSWER  
10 TECHNICAL GUIDE FOR ASSESSING AND MITIGATING THE VAPOR INTRUSION  
11 PATHWAY FROM SUBSURFACE VAPOR SOURCES TO INDOOR AIR" (OSWER  
12 PUBLICATION 9200.2-154, JUNE 2015) .

13 (ii) THE INTERSTATE TECHNOLOGY REGULATORY COUNCIL PETROLEUM  
14 VAPOR INTRUSION GUIDANCE DOCUMENT (PVI-1, OCT-14) .

15 (iii) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S  
16 "DOCUMENTATION FOR EPA'S IMPLEMENTATION OF THE JOHNSON AND ETTINGER  
17 MODEL TO EVALUATE SITE SPECIFIC VAPOR INTRUSION INTO BUILDINGS  
18 VERSION 6.0" (USEPA, SEPTEMBER 2017) .

19 (D) INDOOR AIR SAMPLING THAT ACCOUNTS FOR ACTUAL SITE  
20 CONDITIONS AND DEMONSTRATES ACCEPTABLE INDOOR AIR CONCENTRATIONS  
21 RESULTING FROM VAPOR INTRUSION COMPARED TO ANY OF THE FOLLOWING:

22 (i) WHEN CRITERIA IN SUBPARAGRAPH (ii) ARE NOT AVAILABLE,  
23 REGIONAL SCREENING LEVELS PUBLISHED BY THE UNITED STATES  
24 ENVIRONMENTAL PROTECTION AGENCY THAT ARE APPLICABLE TO RESIDENTIAL  
25 OR NONRESIDENTIAL LAND USE, AS APPROPRIATE, AT CANCER AND NONCANCER  
26 RISK LEVELS SPECIFIED IN SECTION 20120A(4) .

27 (ii) APPLICABLE INDOOR AIR INHALATION GENERIC CLEANUP CRITERIA



1 PROMULGATED BY THE DEPARTMENT.

2 (iii) SITE-SPECIFIC CRITERIA APPROVED BY THE DEPARTMENT.

3 (E) AN ALTERNATIVE METHOD OR MODEL FOR ASSESSING VAPOR  
4 INTRUSION RISK THAT UTILIZES ONLY SITE-SPECIFIC VARIABLES OR A  
5 COMBINATION OF SITE-SPECIFIC OR BUILDING-SPECIFIC VARIABLES IF THE  
6 METHOD OR MODEL IS SCIENTIFICALLY SOUND AND SUPPORTED BY ADEQUATE  
7 SITE INFORMATION. AN ALTERNATIVE METHOD OR MODEL UNDER THIS  
8 SUBDIVISION TO ADDRESS CONTAMINATION THAT HAS MIGRATED BEYOND THE  
9 BOUNDARIES OF THE PROPERTY THAT IS THE SOURCE OF THE RELEASE MUST  
10 BE APPROVED BY THE DEPARTMENT.

11 (F) A METHOD OR MODEL ALLOWED IN A PROMULGATED RULE.

12 (2) THE INDOOR AIR INHALATION PATHWAY IS NOT A REASONABLE AND  
13 RELEVANT PATHWAY FOR PURPOSES OF RESPONSE ACTIVITIES UNDERTAKEN  
14 UNDER THIS PART IF THERE IS NO OCCUPIED BUILDING OR PLANNED  
15 OCCUPIED BUILDING THAT IS WITHIN THE FOLLOWING DISTANCES FROM  
16 SUBSURFACE VOLATILE HAZARDOUS SUBSTANCE CONTAMINATION:

17 (A) FOR PETROLEUM CONTAMINATION, WITHIN BOTH A 30-FOOT LATERAL  
18 SEPARATION DISTANCE AND THE PERMISSIBLE VERTICAL SEPARATION  
19 DISTANCE UNDER THE INTERSTATE TECHNOLOGY REGULATORY COUNCIL  
20 PETROLEUM VAPOR INTRUSION GUIDANCE DOCUMENT (PVI-1, OCT-14).

21 (B) FOR ANY VOLATILE HAZARDOUS SUBSTANCE CONTAMINATION OTHER  
22 THAN PETROLEUM, WITHIN BOTH A 100-FOOT LATERAL SEPARATION DISTANCE  
23 AND A 100-FOOT VERTICAL SEPARATION DISTANCE.

24 (3) IF THERE IS AN OCCUPIED BUILDING OR PLANNED OCCUPIED  
25 BUILDING WITHIN THE DISTANCES FROM SUBSURFACE VOLATILE HAZARDOUS  
26 SUBSTANCE CONTAMINATION IN SUBSECTION (2), THE INDOOR AIR  
27 INHALATION PATHWAY IS NOT NECESSARILY A REASONABLE AND RELEVANT

1 PATHWAY; RATHER, FURTHER EVALUATION IS NEEDED TO DETERMINE WHETHER  
2 THE INDOOR AIR INHALATION PATHWAY IS REASONABLE AND RELEVANT  
3 CONSIDERING SITE-SPECIFIC FACTORS SUCH AS SITE-SPECIFIC GEOLOGY OR  
4 HYDROGEOLOGY, MEASURED CONTAMINANT CONCENTRATIONS, THE EXISTENCE OF  
5 INSTITUTIONAL CONTROLS, INCLUDING LAND USE OR RESOURCE USE  
6 RESTRICTIONS, OR THE EXISTENCE OF EXPOSURE CONTROLS, EXPOSURE  
7 BARRIERS, OR OTHER MITIGATING FACTORS, INCLUDING BUILDING  
8 VENTILATION OR USE.