

SENATE BILL NO. 39

January 26, 1999, Introduced by Senator A. SMITH and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20107a, 20120a, and 21304a (MCL 324.20107a, 324.20120a, and 324.21304a), section 20107a as amended by 1996 PA 383, section 20120a as added by 1995 PA 71, and section 21304a as amended by 1996 PA 116.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 20107a. (1) A person who owns or operates property
2 that he or she has knowledge is a facility shall do all of the
3 following with respect to hazardous substances at the facility:
- 4 (a) Undertake measures as are necessary to prevent exacerba-
5 tion of the existing contamination.
- 6 (b) Exercise due care by undertaking response activity
7 necessary to mitigate unacceptable exposure to hazardous
8 substances, mitigate fire and explosion hazards due to hazardous

1 substances, and allow for the intended use of the facility in a
2 manner that protects the public health and safety.

3 (C) IF THE PERSON KNOWS THAT CONTAMINATION ON THE PROPERTY
4 HAS MIGRATED OFF OF THE PROPERTY, NOTIFY EACH AFFECTED PROPERTY
5 OWNER THAT CONTAMINATION HAS MIGRATED ONTO THEIR PROPERTY.

6 (D) ~~(c)~~ Take reasonable precautions against the reasonably
7 foreseeable acts or omissions of a third party and the conse-
8 quences that foreseeably could result from those acts or
9 omissions.

10 (2) Notwithstanding any other provision of this part, a
11 person who violates subsection (1) is liable for response activ-
12 ity costs and natural resource damages attributable to any exac-
13 erbation of existing contamination and any fines or penalties
14 imposed under this part resulting from the violation of
15 subsection (1) but is not liable for performance of additional
16 response activities unless the person is otherwise liable under
17 this part for performance of additional response activities. The
18 burden of proof in a dispute as to what constitutes exacerbation
19 shall be borne by the party seeking relief.

20 (3) Compliance with this section does not satisfy a person's
21 obligation to perform response activities as otherwise required
22 under this part.

23 (4) Subsection (1) does not apply to the state or to a local
24 unit of government that is not liable under section 20126(3)(a),
25 (b), (c), or (e), ~~or~~ to a local unit of government that
26 acquired property by purchase, gift, transfer, or condemnation

1 prior to ~~the effective date of this section~~ JUNE 5, 1995, or to
2 a person who is exempt from liability under section 20126(4)(c).

3 (5) Subsection (1) does not apply to a person who is exempt
4 from liability under section 20126(3)(c) or (d) except with
5 regard to that person's activities at the facility.

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

13 (a) Residential.

14 (b) Commercial.

15 (c) Recreational.

16 (d) Industrial.

17 (e) Other land use based categories established by the
18 department.

19 (f) Limited residential.

20 (g) Limited commercial.

21 (h) Limited recreational.

22 (i) Limited industrial.

23 (j) Other limited categories established by the department.

24 (2) The department may approve a remedial action plan based
25 on site specific criteria that satisfy the applicable require-
26 ments of this part and the rules promulgated under this part.

27 The department shall utilize only reasonable and relevant

1 exposure pathways in determining the adequacy of a site specific
2 criterion. Additionally, the department may approve a remedial
3 action plan for a designated area-wide zone encompassing more
4 than 1 facility, and may consolidate remedial actions for more
5 than 1 facility.

6 (3) The department shall develop cleanup criteria pursuant
7 to subsection (1) based on generic human health risk assessment
8 assumptions determined by the department to appropriately charac-
9 terize patterns of human exposure associated with certain land
10 uses. The department shall utilize only reasonable and relevant
11 exposure pathways in determining these assumptions. The depart-
12 ment may prescribe more than 1 generic set of exposure assump-
13 tions within each category described in subsection (1). If the
14 department prescribes more than 1 generic set of exposure assump-
15 tions within a category, each set of exposure assumptions creates
16 a subcategory within a category described in subsection (1). The
17 department shall specify site characteristics that determine the
18 applicability of criteria derived for these categories or
19 subcategories.

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

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

13 (5) If a cleanup criterion derived under subsection (4) for
14 groundwater in an aquifer differs from either: (a) the state
15 drinking water standard established pursuant to section 5 of the
16 safe drinking water act, ~~Act No. 399 of the Public Acts of 1976,~~
17 ~~being section 325.1005 of the Michigan Compiled Laws,~~ 1976 PA
18 399, MCL 325.1005, or (b) criteria for adverse aesthetic charac-
19 teristics derived pursuant to R 299.5709 of the Michigan adminis-
20 trative code, the cleanup criterion shall be the more stringent
21 of (a) or (b) unless the department determines that compliance
22 with this rule is not necessary because the use of the aquifer is
23 reliably restricted pursuant to section 20120b(4) or (5).

24 (6) The department shall not approve of a remedial action
25 plan in categories set forth in subsection (1)(b) to (j), unless
26 the person proposing the plan documents that the current zoning
27 of the property is consistent with the categorical criteria being

1 proposed, or that the governing zoning authority intends to
2 change the zoning designation so that the proposed criteria are
3 consistent with the new zoning designation, or the current prop-
4 erty use is a legal nonconforming use. The department shall not
5 grant final approval for a remedial action plan that relies on a
6 change in zoning designation until a final determination of that
7 zoning change has been made by the local unit of government. The
8 department may approve of a remedial action that achieves cate-
9 gorical criteria that is based on greater exposure potential than
10 the criteria applicable to current zoning. In addition, the
11 remedial action plan shall include documentation that the current
12 property use is consistent with the current zoning or is a legal
13 nonconforming use. Abandoned or inactive property shall be con-
14 sidered on the basis of zoning classifications as described
15 above.

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

20 (8) Except as provided in subsection (4) and subsections (9)
21 to (13), compliance with the residential category in
22 subsection (1)(a) shall be based on R 299.5709 through
23 R 299.5711(4), R 299.5711(6) through R 299.5715 and R 299.5727 of
24 the Michigan administrative code. R 299.5711(5), R 299.5723, and
25 R 299.5725 of the Michigan administrative code shall not apply
26 for calculations of residential criteria under
27 subsection (1)(a).

1 (9) The need for soil remediation to protect an aquifer from
2 hazardous substances in soil shall be determined by R 299.5711(2)
3 of the Michigan administrative code, considering the vulnerabil-
4 ity of the aquifer or aquifers potentially affected if the soil
5 remains at the facility. Migration of hazardous substances in
6 soil to an aquifer is a pertinent pathway if appropriate based on
7 consideration of site specific factors.

8 (10) The department may establish cleanup criteria for a
9 hazardous substance using a biologically based model developed or
10 identified as appropriate by the United States environmental pro-
11 tection agency if the department determines all of the
12 following:

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

15 (b) That data of sufficient quantity and quality are avail-
16 able for a specified hazardous substance to allow the scientif-
17 ically valid application of the model.

18 (c) The United States environmental protection agency has
19 determined that application of the model is appropriate for the
20 hazardous substance in question.

21 (11) If the cleanup criterion for a hazardous substance
22 determined by R 299.5707 of the Michigan administrative code is
23 greater than a cleanup criterion developed for a category pursu-
24 ant to subsection (1), the criterion determined pursuant to
25 R 299.5707 of the Michigan administrative code shall be the
26 cleanup criterion for that hazardous substance in that category.

1 (12) In determining the adequacy of a land-use based
2 response activity to address sites contaminated by
3 polychlorinated biphenyls, the department shall not require
4 response activity in addition to that which is subject to and
5 complies with applicable federal regulations and policies that
6 implement the toxic substances control act, Public Law 94-469, 15
7 U.S.C. 2601 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to
8 2692.

9 (13) Response activity to address the release of uncontami-
10 nated mineral oil satisfies R 299.5709 OF THE MICHIGAN ADMINIS-
11 TRATIVE CODE for groundwater or R 299.5711 ~~for soil under~~ OF
12 the Michigan administrative code FOR SOIL if all visible traces
13 of mineral oil are removed from groundwater and soil.

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

24 (15) If a remedial action allows for venting groundwater,
25 the discharge shall comply with requirements of part 31, and the
26 rules promulgated under that part or an alternative method
27 established by rule. If the discharge of venting groundwater is

1 provided for in a remedial action plan that is approved by the
2 department, a permit for the discharge is not required. As used
3 in this subsection, "venting groundwater" means groundwater that
4 is entering a surface water of the state from a facility.

5 (16) A remedial action plan shall provide response activity
6 to meet the residential categorical criteria, or provide for
7 acceptable land use or resource use restrictions pursuant to sec-
8 tion 20120b.

9 (17) A remedial action plan that relies on categorical
10 cleanup criteria developed pursuant to subsection (1) shall also
11 consider other factors necessary to protect the public health,
12 safety, and welfare, and the environment as specified by the
13 department, if the department determines based on data and exist-
14 ing information that such considerations are relevant to a spe-
15 cific facility. These factors include, but are not limited to,
16 the protection of surface water quality and consideration of eco-
17 logical risks if pertinent to the facility based on the require-
18 ments of R 299.5717 of the Michigan administrative code.

19 (18) The department shall annually evaluate and revise, if
20 appropriate, the cleanup criteria derived under this section.
21 The evaluation shall incorporate knowledge gained through
22 research and studies in the areas of fate and transport and risk
23 assessment. The department shall prepare and submit to the leg-
24 islature a report detailing revisions made to cleanup criteria
25 under this section.

26 Sec. 21304a. (1) Corrective action activities undertaken
27 pursuant to this part shall be conducted in accordance with the

1 process outlined in RBCA in a manner that is protective of the
2 public health, safety, and welfare, and the environment.

3 (2) Subject to subsections (3) and (4), the department shall
4 establish cleanup criteria for corrective action activities
5 undertaken under this part using the process outlined in RBCA.
6 The department shall utilize only reasonable and relevant expo-
7 sure assumptions and pathways in determining the cleanup
8 criteria.

9 (3) If a regulated substance poses a carcinogenic risk to
10 humans, the cleanup criteria derived for cancer risk shall be the
11 95% upper bound on the calculated risk of 1 additional cancer
12 above the background cancer rate per ~~100,000~~ 1,000,000 individ-
13 uals using the exposure assumptions and pathways established by
14 the department and the process in RBCA. If a regulated substance
15 poses a risk of both cancer and an adverse health effect other
16 than cancer, cleanup criteria shall be derived for cancer and
17 each adverse health effect.

18 (4) If a cleanup criterion for groundwater differs from
19 either (a) the state drinking water standard established pursuant
20 to section 5 of the safe drinking water act, ~~Act No. 399 of the~~
21 ~~Public Acts of 1976, being section 325.1005 of the Michigan~~
22 ~~Compiled Laws,~~ 1976 PA 399, MCL 325.1005, or (b) criteria for
23 adverse aesthetic characteristics derived pursuant to R 299.5709
24 of the Michigan administrative code, the cleanup criterion shall
25 be the more stringent of (a) or (b) unless a consultant retained
26 by the owner or operator determines that compliance with (a) or

1 (b) is not necessary because the use of the groundwater is
2 reliably restricted pursuant to section 21310a.

3 (5) Notwithstanding any other provision of this part, if a
4 release or threat of release at a site is not solely the result
5 of a release or threat of release from an underground storage
6 tank system, the owner or operator of the underground storage
7 tank system may choose to perform response activities pursuant to
8 part 201 in lieu of corrective actions pursuant to this part.