

HOUSE BILL No. 6168

June 5, 2002, Introduced by Rep. Kolb and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20120a (MCL 324.20120a), as added by 1995 PA
71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 (c) Recreational.

2 (d) Industrial.

3 (e) Other land use based categories established by the
4 department.

5 (f) Limited residential.

6 (g) Limited commercial.

7 (h) Limited recreational.

8 (i) Limited industrial.

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

10 (2) The department may approve a remedial action plan based
11 on site specific criteria that satisfy the applicable require-
12 ments of this part and the rules promulgated under this part.
13 The department shall utilize only reasonable and relevant expo-
14 sure pathways in determining the adequacy of a site specific
15 criterion. Additionally, the department may approve a remedial
16 action plan for a designated area-wide zone encompassing more
17 than 1 facility, and may consolidate remedial actions for more
18 than 1 facility.

19 (3) The department shall develop cleanup criteria pursuant
20 to subsection (1) based on generic human health risk assessment
21 assumptions determined by the department to appropriately charac-
22 terize patterns of human exposure associated with certain land
23 uses. The department shall utilize only reasonable and relevant
24 exposure pathways in determining these assumptions. The depart-
25 ment may prescribe more than 1 generic set of exposure assump-
26 tions within each category described in subsection (1). If the
27 department prescribes more than 1 generic set of exposure

assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify site characteristics that determine the applicability of criteria derived for these categories or subcategories.

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

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state

1 drinking water standard established pursuant to section 5 of the
2 safe drinking water act, ~~Act No. 399 of the Public Acts of 1976,~~
3 ~~being section 325.1005 of the Michigan Compiled Laws~~ 1976 PA
4 399, MCL 325.1005, or (b) criteria for adverse aesthetic charac-
5 teristics derived pursuant to R 299.5709 of the Michigan adminis-
6 trative code, the cleanup criterion shall be the more stringent
7 of (a) or (b) unless the department determines that compliance
8 with this rule is not necessary because the use of the aquifer is
9 reliably restricted pursuant to section 20120b(4) or (5).

10 (6) The department shall not approve of a remedial action
11 plan in categories set forth in subsection (1)(b) to (j), unless
12 the person proposing the plan documents that the current zoning
13 of the property is consistent with the categorical criteria being
14 proposed, or that the governing zoning authority intends to
15 change the zoning designation so that the proposed criteria are
16 consistent with the new zoning designation, or the current prop-
17 erty use is a legal nonconforming use. The department shall not
18 grant final approval for a remedial action plan that relies on a
19 change in zoning designation until a final determination of that
20 zoning change has been made by the local unit of government. The
21 department may approve of a remedial action that achieves cate-
22 gorical criteria that is based on greater exposure potential than
23 the criteria applicable to current zoning. In addition, the
24 remedial action plan shall include documentation that the current
25 property use is consistent with the current zoning or is a legal
26 nonconforming use. Abandoned or inactive property shall be

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

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

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

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

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

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

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

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

9 (11) If the cleanup criterion for a hazardous substance
10 determined by R 299.5707 of the Michigan administrative code is
11 greater than a cleanup criterion developed for a category pursu-
12 ant to subsection (1), the criterion determined pursuant to
13 R 299.5707 of the Michigan administrative code shall be the
14 cleanup criterion for that hazardous substance in that category.

15 (12) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
16 THE CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE UNDER SUB-
17 SECTION (1)(A) FOR DIOXIN SHALL BE 90 PARTS PER BILLION OR OTHER
18 LEVEL THAT IS MORE PROTECTIVE OF PUBLIC HEALTH AND THE
19 ENVIRONMENT.

20 (13) ~~-(12)-~~ In determining the adequacy of a land-use based
21 response activity to address sites contaminated by polychlori-
22 nated biphenyls, the department shall not require response activ-
23 ity in addition to that which is subject to and complies with
24 applicable federal regulations and policies that implement the
25 toxic substances control act, Public Law 94-469, 15 U.S.C. 2601
26 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692.

1 (14) ~~-(13)-~~ Response activity to address the release of
2 uncontaminated mineral oil satisfies R 299.5709 for groundwater
3 or R 299.5711 for soil under the Michigan administrative code if
4 all visible traces of mineral oil are removed from groundwater
5 and soil.

6 (15) ~~-(14)-~~ Approval by the department of a remedial action
7 plan based on 1 or more categorical standard in subsection (1)(a)
8 to (e) shall be granted only if the pertinent criteria are satis-
9 fied in the affected media. The department shall approve the use
10 of probabilistic or statistical methods or other scientific
11 methods of evaluating environmental data when determining compli-
12 ance with a pertinent cleanup criterion if the methods are deter-
13 mined by the department to be reliable, scientifically valid, and
14 best represent actual site conditions and exposure potential.

15 (16) ~~-(15)-~~ If a remedial action allows for venting ground-
16 water, the discharge shall comply with requirements of part 31,
17 and the rules promulgated under that part or an alternative
18 method established by rule. If the discharge of venting ground-
19 water is provided for in a remedial action plan that is approved
20 by the department, a permit for the discharge is not required.
21 As used in this subsection, "venting groundwater" means groundwa-
22 ter that is entering a surface water of the state from a
23 facility.

24 (17) ~~-(16)-~~ A remedial action plan shall provide response
25 activity to meet the residential categorical criteria, or provide
26 for acceptable land use or resource use restrictions pursuant to
27 section 20120b.

1 (18) ~~—(17)—~~ A remedial action plan that relies on
2 categorical cleanup criteria developed pursuant to subsection (1)
3 shall also consider other factors necessary to protect the public
4 health, safety, and welfare, and the environment as specified by
5 the department, if the department determines based on data and
6 existing information that such considerations are relevant to a
7 specific facility. These factors include, but are not limited
8 to, the protection of surface water quality and consideration of
9 ecological risks if pertinent to the facility based on the
10 requirements of R 299.5717 of the Michigan administrative code.

11 (19) ~~—(18)—~~ The department shall annually evaluate and
12 revise, if appropriate, the cleanup criteria derived under this
13 section. The evaluation shall incorporate knowledge gained
14 through research and studies in the areas of fate and transport
15 and risk assessment. The department shall prepare and submit to
16 the legislature a report detailing revisions made to cleanup cri-
17 teria under this section.