

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4617**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20101 and 20120a (MCL 324.20101 and
324.20120a), section 20101 as amended by 1996 PA 383 and section
20120a as added by 1995 PA 71.

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 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) "AREA OF CONCERN" MEANS A GEOGRAPHIC AREA IDENTIFIED BY
9 THE DEPARTMENT THAT MEETS ALL OF THE FOLLOWING CONDITIONS:

10 (i) THE AREA IS COMPOSED OF MORE THAN 50 PARCELS OF PROPERTY.

11 (ii) THE PRIMARY CONCERN WITH REGARD TO NECESSARY RESPONSE
12 ACTIVITIES WITHIN THE AREA IS THE PRESENCE OF PERSISTENT,
13 BIOACCUMULATIVE, AND TOXIC POLLUTANTS, OTHER THAN MERCURY OR
14 POLYCHLORINATED BIPHENYLS (PCBS).

15 (iii) THE PREDOMINANT MECHANISMS OF TRANSPORT OF THE SUBSTANCES
16 DESCRIBED IN SUBPARAGRAPH (ii) WITHIN THE AREA ARE AIR DEPOSITION
17 AND DEPOSITION OF CONTAMINATED SOIL AND SEDIMENT CARRIED BY FLOOD
18 WATERS.

19 (D) ~~—(e)—~~ "Attorney general" means the department of the
20 attorney general.

21 (E) ~~—(d)—~~ "Baseline environmental assessment" means an
22 evaluation of environmental conditions which exist at a facility at
23 the time of purchase, occupancy, or foreclosure that reasonably
24 defines the existing conditions and circumstance at the facility so
25 that, in the event of a subsequent release, there is a means of
26 distinguishing the new release from existing contamination.

27 (F) ~~—(e)—~~ "Board" means the brownfield redevelopment board

1 created in section 20104a.

2 (G) ~~—(f)—~~ "Department" means the director of the department of
3 environmental quality or his or her designee to whom the director
4 delegates a power or duty by written instrument.

5 (H) ~~—(g)—~~ "Director" means the director of the department of
6 environmental quality.

7 (I) ~~—(h)—~~ "Directors" means the directors or their designees
8 of the departments of environmental quality, community health,
9 agriculture, and state police.

10 (J) ~~—(i)—~~ "Disposal" means the discharge, deposit, injection,
11 dumping, spilling, leaking, or placing of any hazardous substance
12 into or on any land or water so that the hazardous substance or any
13 constituent of the hazardous substance may enter the environment or
14 be emitted into the air or discharged into any groundwater or
15 surface water.

16 (K) ~~—(j)—~~ "Enforcement costs" means court expenses, reasonable
17 attorney fees of the attorney general, and other reasonable
18 expenses of an executive department that are incurred in relation
19 to enforcement under this part or rules promulgated under this
20 part, or both.

21 (L) ~~—(k)—~~ "Environment" or "natural resources" means land,
22 surface water, groundwater, subsurface — strata, air, fish,
23 wildlife, or biota within the state.

24 (M) ~~—(l)—~~ "Environmental contamination" means the release of a
25 hazardous substance, or the potential release of a discarded
26 hazardous substance, in a quantity which is or may become injurious
27 to the environment or to the public health, safety, or welfare.

1 (N) ~~—(m)—~~ "Evaluation" means those activities including, but
2 not limited to, investigation, studies, sampling, analysis,
3 development of feasibility studies, and administrative efforts that
4 are needed to determine the nature, extent, and impact of a release
5 or threat of release and necessary response activities.

6 (O) ~~—(n)—~~ "Exacerbation" means the occurrence of either of the
7 following caused by an activity undertaken by the person who owns
8 or operates the property, with respect to existing contamination:

9 (i) Contamination that has migrated beyond the boundaries of
10 the property which is the source of the release at levels above
11 cleanup criteria specified in section 20120a(1)(a) unless a
12 criterion is not relevant because exposure is reliably restricted
13 pursuant to section 20120b.

14 (ii) A change in facility conditions that increases response
15 activity costs.

16 (P) ~~—(e)—~~ "Facility" means ~~any area, place, or~~ **A PARCEL OF**
17 **property OR A PORTION OF A PARCEL OF PROPERTY** where a hazardous
18 substance in excess of the concentrations which satisfy the
19 requirements of section 20120a(1)(a) or (17) or the cleanup
20 criteria for unrestricted residential use under part 213 has been
21 released, deposited, disposed of, or otherwise comes to be located.
22 **A DETERMINATION THAT A PARCEL OR PORTION OF A PARCEL OF PROPERTY IS**
23 **A FACILITY DUE TO SOIL CONTAMINATION THAT IS MADE AFTER THE**
24 **EFFECTIVE DATE OF THE 2005 AMENDMENTS TO THIS SECTION OR THAT IS**
25 **MADE FOR PROPERTY WITHIN AN AREA OF CONCERN SHALL BE BASED UPON**
26 **TESTING CONDUCTED ACCORDING TO SCIENTIFICALLY ACCEPTED METHODS ON**
27 **SOIL COLLECTED FROM THE PARCEL OR PORTION OF THE PARCEL. IN THE**

House Bill No. 4617 as amended December 7, 2005

1 ABSENCE OF TESTING, A PARCEL OR A PORTION OF A PARCEL OF PROPERTY
 2 MAY BE CONSIDERED A FACILITY IF THE OWNER OF THE PROPERTY AND THE
 3 DEPARTMENT, IN WRITING, BASED ON THE PRESENCE OF HAZARDOUS
 4 SUBSTANCES IN THE VICINITY OF THE PROPERTY, AGREE TO THE
 5 DESIGNATION. <<HOWEVER, IF A PERSON WHO IS OR MAY BE LIABLE UNDER
 6 SECTION 20126 FOR ANY CONTAMINATION ON THE PROPERTY DISAGREES WITH THE
 7 DESIGNATION, THAT PERSON MAY CONTEST SUCH DESIGNATION BY TESTING THE
 8 PROPERTY IN A TIMELY MANNER AFTER OBTAINING WRITTEN NOTICE OF SUCH A
 9 DETERMINATION FROM THE DEPARTMENT AND ACCESS IS PROVIDED BY THE OWNER.>>
 IF

10 THE TESTING DETERMINES THAT HAZARDOUS SUBSTANCES IN EXCESS OF THE
 11 CONCENTRATIONS NECESSARY TO DESIGNATE THE PARCEL OR PORTION OF THE
 12 PARCEL A FACILITY ARE NOT FOUND TO BE PRESENT ON THE PROPERTY, THE
 13 PERSON OR PERSONS CONDUCTING THE TESTING SHALL BE REIMBURSED BY THE
 14 DEPARTMENT FOR THE COSTS OF THE TESTING. Facility does not include
 15 ~~any area, place, or~~ EITHER OF THE FOLLOWING:

16 (i) A PARCEL OF PROPERTY OR A PORTION OF A PARCEL OF property
 17 at which response activities have been completed which satisfy the
 18 cleanup criteria for the residential category provided for in
 19 section 20120a(1)(a) and (17) or at which corrective action has
 20 been completed under part 213 which satisfies the cleanup criteria
 21 for unrestricted residential use.

22 (ii) A REMEDIATED SITE.

23 (Q) ~~-(p)-~~ "Feasibility study" means a process for developing,
 24 evaluating, and selecting appropriate response activities.

25 (R) ~~-(q)-~~ "Foreclosure" means possession of a property by a
 26 lender on which it has foreclosed on a security interest or the
 27 expiration of a lawful redemption period, whichever occurs first.

1 (S) ~~—(r)—~~ "Free product" means a hazardous substance in a
 2 liquid phase equal to or greater than 1/8 inch of measurable
 3 thickness that is not dissolved in water and that has been released
 4 into the environment.

5 (T) ~~—(s)—~~ "Fund" means the cleanup and redevelopment fund
 6 established in section 20108.

7 (U) ~~—(t)—~~ "Hazardous substance" means 1 or more of the
 8 following, but does not include fruit, vegetable, or field crop
 9 residuals or processing by-products, or aquatic plants, that are
 10 applied to the land for an agricultural use or for use as an animal
 11 feed, if the use is consistent with generally accepted agricultural
 12 management practices developed pursuant to the Michigan right to
 13 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
 14 ~~286.471 to 286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL**
 15 **286.471 TO 286.474:**

16 (i) Any substance that the department demonstrates, on a case
 17 by case basis, poses an unacceptable risk to the public health,
 18 safety, or welfare, or the environment, considering the fate of the
 19 material, dose-response, toxicity, or adverse impact on natural
 20 resources.

21 (ii) Hazardous substance as defined in the comprehensive
 22 environmental response, compensation, and liability act of 1980,
 23 ~~Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601 TO 9675.**

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

25 (iv) Petroleum as described in part 213.

26 (V) ~~—(u)—~~ "Interim response activity" means the cleanup or
 27 removal of a released hazardous substance or the taking of other

1 actions, prior to the implementation of a remedial action, as may
2 be necessary to prevent, minimize, or mitigate injury to the public
3 health, safety, or welfare, or to the environment. Interim response
4 activity also includes, but is not limited to, measures to limit
5 access, replacement of water supplies, and temporary relocation of
6 people as determined to be necessary by the department. In
7 addition, interim response activity means the taking of other
8 actions as may be necessary to prevent, minimize, or mitigate a
9 threatened release.

10 (W) ~~-(v)-~~ "Lender" means any of the following:

11 (i) A state or nationally chartered bank.

12 (ii) A state or federally chartered savings and loan
13 association or savings bank.

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

15 (iv) Any other state or federally chartered lending institution
16 or regulated affiliate or regulated subsidiary of any entity listed
17 in this subparagraph or subparagraphs (i) to (iii).

18 (v) An insurance company authorized to do business in this
19 state pursuant to the insurance code of 1956, ~~Act No. 218 of the~~
20 ~~Public Acts of 1956, being sections 500.100 to 500.8302 of the~~
21 ~~Michigan Compiled Laws~~ **1956 PA 218, MCL 500.100 TO 500.8302.**

22 (vi) A motor vehicle finance company subject to the motor
23 vehicle finance act, ~~Act No. 27 of the Extra Session of 1950,~~
24 ~~being sections 492.101 to 492.141 of the Michigan Compiled Laws~~
25 **1950 (EX SESS) PA 27, MCL 492.101 TO 492.141,** with net assets in
26 excess of \$50,000,000.00.

27 (vii) A foreign bank.

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

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

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

(xi) Any other person who loans money for the purchase of or improvement of real property.

(xii) Any person who retains or receives a security interest to service a debt or to secure a performance obligation.

(X) ~~-(w)-~~ "Local health department" means that term as defined in section 1105 of the public health code, ~~Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws~~ **1978 PA 368, MCL 333.1105.**

(Y) ~~-(x)-~~ "Local unit of government" means a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law. Local unit of government does not include the state or federal government or a state or federal agency.

(Z) ~~-(y)-~~ "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:

(i) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that

1 person participates in the management of the facility as described
2 in section 20101a.

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

5 (AA) ~~—(z)—~~ "Owner" means a person who owns a facility. Owner
6 does not include either of the following:

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

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

14 (BB) ~~—(aa)—~~ "Permitted release" means 1 or more of the
15 following:

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

18 (ii) A lawful and authorized discharge into a permitted waste
19 treatment facility.

20 (iii) A federally permitted release as defined in the
21 comprehensive environmental response, compensation, and liability
22 act of 1980, ~~Public Law 96-510, 94 Stat. 2767~~ 42 USC 9601 TO
23 9675.

24 (CC) "PERSISTENT, BIOACCUMULATIVE, AND TOXIC POLLUTANT" MEANS
25 A SUBSTANCE THAT IS TOXIC AND LONG-LASTING IN THE ENVIRONMENT THAT
26 CAN BUILD UP IN THE FOOD CHAIN TO LEVELS THAT ARE HARMFUL TO HUMAN
27 AND ECOSYSTEM HEALTH.

1 (DD) ~~(bb)~~ "Release" includes, but is not limited to, any
 2 spilling, leaking, pumping, pouring, emitting, emptying,
 3 discharging, injecting, escaping, leaching, dumping, or disposing
 4 of a hazardous substance into the environment, or the abandonment
 5 or discarding of barrels, containers, and other closed receptacles
 6 containing a hazardous substance. Release does not include any of
 7 the following:

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

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

13 (iii) A release of source, by-product, or special nuclear
 14 material from a nuclear incident, as those terms are defined in
 15 ~~the atomic energy act of 1954, chapter 1073, 68 Stat. 919~~ **42 USC**
 16 **2014**, if the release is subject to requirements with respect to
 17 financial protection established by the nuclear regulatory
 18 commission under ~~section 170 of chapter 14 of title I of the~~
 19 ~~atomic energy act of 1954, chapter 1073, 71 Stat. 576,~~ **42 U.S.C.**
 20 **USC 2210**, or any release of source by-product or special nuclear
 21 material from any processing site designated under ~~section~~
 22 ~~102(a)(1) of title I or 302(a) of title III of the uranium mill~~
 23 ~~tailings radiation control act of 1978, Public Law 95-604,~~ **42**
 24 **U.S.C. USC 7912 and OR 42 USC 7942.**

25 (iv) If applied according to label directions and according to
 26 generally accepted agricultural and management practices, the
 27 application of a fertilizer, soil conditioner, agronomically

1 applied manure, or pesticide, or fruit, vegetable, or field crop
2 residuals or processing by-products, aquatic plants, or a
3 combination of these substances. As used in this subparagraph,
4 fertilizer and soil conditioner have the meaning given to these
5 terms in part 85, and pesticide has the meaning given to that term
6 in part 83.

7 (v) A release does not include fruits, vegetables, field crop
8 processing by-products, or aquatic plants, that are applied to the
9 land for an agricultural use or for use as an animal feed, if the
10 use is consistent with generally accepted agricultural and
11 management practices developed pursuant to the Michigan right to
12 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
13 ~~286.471 to 286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL**
14 **286.471 TO 286.474.**

15 **(EE)** ~~—(ee)—~~ "Remedial action" includes, but is not limited to,
16 cleanup, removal, containment, isolation, destruction, or treatment
17 of a hazardous substance released or threatened to be released into
18 the environment, monitoring, maintenance, or the taking of other
19 actions that may be necessary to prevent, minimize, or mitigate
20 injury to the public health, safety, or welfare, or to the
21 environment.

22 **(FF)** ~~—(dd)—~~ "Remedial action plan" means a work plan for
23 performing remedial action under this part.

24 **(GG) "REMEDIATED SITE" MEANS A PARCEL OF PROPERTY OR A PORTION**
25 **OF A PARCEL OF PROPERTY AT WHICH ALL RESPONSE ACTIVITIES REQUIRED**
26 **TO MEET APPLICABLE STANDARDS UNDER THIS PART HAVE BEEN COMPLETED.**
27 **HOWEVER, REMEDIATED SITE DOES NOT INCLUDE A PARCEL OF PROPERTY OR A**

1 PORTION OF A PARCEL OF PROPERTY UNDER ANY OF THE FOLLOWING
2 CIRCUMSTANCES:

3 (i) A NEW RELEASE OCCURS AFTER THE DATE ON WHICH THE RESPONSE
4 ACTIVITIES REQUIRED TO MEET APPLICABLE STANDARDS UNDER THIS PART
5 WERE COMPLETED.

6 (ii) A PRIOR RELEASE IS DISCOVERED AT THE SITE THAT WAS NOT
7 PREVIOUSLY IDENTIFIED OR ADDRESSED BY THE RESPONSE ACTIVITIES
8 COMPLETED TO MEET APPLICABLE STANDARDS UNDER THIS PART.

9 (iii) INSTITUTIONAL OR ENGINEERED CONTROLS, OR BOTH, DESIGNED TO
10 ASSURE THE LONG-TERM RELIABILITY AND EFFICACY OF THE RESPONSE
11 ACTIVITIES REQUIRED TO MEET APPLICABLE STANDARDS UNDER THIS PART
12 HAVE FAILED OR ARE NOT BEING OPERATED AND MAINTAINED IN COMPLIANCE
13 WITH AN APPROVED PLAN FOR ENVIRONMENTAL RESPONSE ACTIVITIES.

14 (iv) CHANGES IN THE USE OR USES OF THE SITE RENDER INVALID THE
15 RISK ASSESSMENT SCENARIOS AND ASSUMPTIONS WHICH WERE THE BASIS FOR
16 THE SELECTION OF APPLICABLE STANDARDS UNDER THIS PART.

17 (HH) ~~—(ee)—~~ "Response activity" means evaluation, interim
18 response activity, remedial action, demolition, or the taking of
19 other actions necessary to protect the public health, safety, or
20 welfare, or the environment or the natural resources. Response
21 activity also includes health assessments or health effect studies
22 carried out under the supervision, or with the approval of, the
23 department of public health and enforcement actions related to any
24 response activity.

25 (II) ~~—(ff)—~~ "Response activity costs" or "costs of response
26 activity" means all costs incurred in taking or conducting a
27 response activity, including enforcement costs.

1 (JJ) ~~(gg)~~ "Security interest" means any interest, including
2 a reversionary interest, in real property created or established
3 for the purpose of securing a loan or other obligation. Security
4 interests include, but are not limited to, mortgages, deeds of
5 trusts, liens, and title pursuant to lease financing transactions.
6 Security interests may also arise from transactions such as sale
7 and leasebacks, conditional sales, installment sales, trust receipt
8 transactions, certain assignments, factoring agreements, accounts
9 receivable financing arrangements, consignments, or any other
10 transaction in which evidence of title is created if the
11 transaction creates or establishes an interest in real property for
12 the purpose of securing a loan or other obligation.

13 (KK) ~~(hh)~~ "Site" means the location of environmental
14 contamination.

15 (LL) ~~(ii)~~ "Threatened release" or "threat of release" means
16 any circumstance that may reasonably be anticipated to cause a
17 release.

18 (2) As used in this part, the phrase "a person who is liable"
19 includes a person who is described as being subject to liability in
20 section 20126. The phrase "a person who is liable" does not presume
21 that liability has been adjudicated.

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

1 (a) Residential.

2 (b) Commercial.

3 (c) Recreational.

4 (d) Industrial.

5 (e) Other land use based categories established by the
6 department.

7 (f) Limited residential.

8 (g) Limited commercial.

9 (h) Limited recreational.

10 (i) Limited industrial.

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

12 (2) The department may approve a remedial action plan based on
13 site specific criteria that satisfy the applicable requirements of
14 this part and the rules promulgated under this part. The department
15 shall utilize only reasonable and relevant exposure pathways in
16 determining the adequacy of a site specific criterion.

17 Additionally, the department may approve a remedial action plan for
18 a designated area-wide zone encompassing more than 1 facility, and
19 may consolidate remedial actions for more than 1 facility. **WITHIN**
20 **AN AREA OF CONCERN, THE DEPARTMENT SHALL INCORPORATE INTO A**
21 **REMEDIAL ACTION PLAN AREA-WIDE OR SITE-SPECIFIC CLEANUP CRITERIA**
22 **DERIVED FROM PEER-REVIEWED BIOAVAILABILITY STUDIES, PEER-REVIEWED**
23 **SITE-SPECIFIC HUMAN EXPOSURE DATA, AND ANY OTHER PEER-REVIEWED**
24 **SCIENTIFICALLY BASED RISK ASSESSMENT STUDIES THAT ARE AVAILABLE AND**
25 **RELEVANT. A PERSON WHO IS OR MAY BE LIABLE UNDER SECTION 20126 MAY**
26 **SUBMIT TO THE DEPARTMENT STUDIES OR DATA DESCRIBED IN THIS**
27 **SUBSECTION, OR OTHER RELEVANT INFORMATION, INCLUDING INFORMATION**

1 THAT HAS NOT BEEN PEER REVIEWED, THAT THE PERSON BELIEVES MAY
2 ASSIST THE DEPARTMENT IN DEVELOPING OR APPROVING A REMEDIAL ACTION
3 PLAN.

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

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

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

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

22 (6) The department shall not approve of a remedial action plan
23 in categories set forth in subsection (1)(b) to (j), unless the
24 person proposing the plan documents that the current zoning of the
25 property is consistent with the categorical criteria being
26 proposed, or that the governing zoning authority intends to change
27 the zoning designation so that the proposed criteria are consistent

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

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

17 (8) Except as provided in subsection (4) and subsections (9)
18 to (13), compliance with the residential category in subsection
19 (1)(a) shall be based on ~~R 299.5709 through R 299.5711(4), R~~
20 ~~299.5711(6) through R 299.5715 and R 299.5727 of the Michigan~~
21 ~~administrative code. R 299.5711(5), R 299.5723, and R 299.5725 of~~
22 ~~the Michigan administrative code shall not apply for calculations~~
23 ~~of residential criteria under subsection (1)(a) R 299.5706A TO R~~
24 ~~299.5710, R 299.5714, R 299.5718, AND R 299.5722 TO R 299.5726 OF~~
25 **THE MICHIGAN ADMINISTRATIVE CODE.**

26 (9) The need for soil remediation to protect an aquifer from
27 hazardous substances in soil shall be determined by ~~R 299.5711(2)~~

1 R 299.5720 of the Michigan administrative code, considering the
2 vulnerability of the aquifer or aquifers potentially affected if
3 the soil remains at the facility. Migration of hazardous substances
4 in soil to an aquifer is a pertinent pathway if appropriate based
5 on consideration of site specific factors.

6 (10) 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 if the department determines all of the
10 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 has
17 determined that application of the model is appropriate for the
18 hazardous substance in question.

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

25 (12) In determining the adequacy of a land-use based response
26 activity to address sites contaminated by polychlorinated
27 biphenyls, the department shall not require response activity in

1 addition to that which is subject to and complies with applicable
2 federal regulations and policies that implement the toxic
3 substances control act, ~~Public Law 94-469,~~ 15 ~~U.S.C.~~ **USC** 2601
4 to ~~2629, 2641 to 2656, 2661 to 2671, and 2681 to~~ 2692.

5 (13) Response activity to address the release of
6 uncontaminated mineral oil satisfies R 299.5709 for groundwater or
7 ~~R 299.5711~~ **R 299.5720** for soil under the Michigan administrative
8 code if all visible traces of mineral oil are removed from
9 groundwater and soil.

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

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

27 (16) A remedial action plan shall provide response activity to

1 meet the residential categorical criteria, or provide for
2 acceptable land use or resource use restrictions pursuant to
3 section 20120b.

4 (17) A remedial action plan that relies on categorical cleanup
5 criteria developed pursuant to subsection (1) shall also consider
6 other factors necessary to protect the public health, safety, and
7 welfare, and the environment as specified by the department, if the
8 department determines based on data and existing information that
9 such considerations are relevant to a specific facility. These
10 factors include, but are not limited to, the protection of surface
11 water quality and consideration of ecological risks if pertinent to
12 the facility based on the requirements of ~~R 299.5717~~ **R 299.5728**
13 of the Michigan administrative code.

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