

HOUSE BILL No. 6025

November 9, 2016, Introduced by Rep. Irwin and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20120a (MCL 324.20120a), as amended by 2014 PA
542.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

8 (a) Residential.

9 (b) Nonresidential.

1 (c) Limited residential.

2 (d) Limited nonresidential.

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

13 (3) The department shall develop cleanup criteria pursuant to
14 subsection (1) based on generic human health risk assessment
15 assumptions determined by the department to appropriately
16 characterize patterns of human exposure associated with certain
17 land uses. The department shall utilize only reasonable and
18 relevant exposure pathways in determining these assumptions. The
19 department may prescribe more than 1 generic set of exposure
20 assumptions within each category described in subsection (1). If
21 the department prescribes more than 1 generic set of exposure
22 assumptions within a category, each set of exposure assumptions
23 creates a subcategory within a category described in subsection
24 (1). The department shall specify facility characteristics that
25 determine the applicability of criteria derived for these
26 categories or subcategories.

27 (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 drinking water standards established pursuant to section 5 of the safe drinking water act, 1976 PA 399, MCL 325.1005, or (b) the national secondary drinking water regulations established pursuant to 42 USC 300g-1, or (c) if there is not **A** national secondary drinking water regulation for a contaminant, the concentration determined by the department according to methods approved by the

1 United States ~~environmental protection agency~~ **ENVIRONMENTAL**
2 **PROTECTION AGENCY** below which taste, odor, appearance, or other
3 aesthetic characteristics are not adversely affected, the cleanup
4 criterion shall be the more stringent of (a), (b), or (c) unless
5 the department determines that compliance with this subsection is
6 not necessary because the use of the aquifer is reliably restricted
7 or controlled under provisions of a postclosure plan or a
8 postclosure agreement or by site-specific criteria approved by the
9 department under section 20120b.

10 (6) The department shall not approve a remedial action plan or
11 no further action report in categories set forth in subsection
12 (1)(b) to (d), unless the person 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 change
15 the zoning designation so that the proposed criteria are consistent
16 with the new zoning designation, or the current property use is a
17 legal nonconforming use. The department shall not grant final
18 approval for a remedial action plan or no further action report
19 that relies on a change in zoning designation until a final
20 determination of that zoning change has been made by the local unit
21 of government. The department may approve of a remedial action plan
22 or no further action report that achieves categorical criteria that
23 are based on greater exposure potential than the criteria
24 applicable to current zoning. In addition, the remedial action plan
25 or no further action report shall include documentation that the
26 current property use is consistent with the current zoning or is a
27 legal 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 subsection
4 (1) may be applied at a facility, if all relevant requirements are
5 satisfied for application of a pertinent criterion.

6 (8) The need for soil remediation to protect an aquifer from
7 hazardous substances in soil shall consider the vulnerability of
8 the aquifer or aquifers potentially affected if the soil remains at
9 the facility. Migration of hazardous substances in soil to an
10 aquifer is a pertinent pathway if appropriate based on
11 consideration of site specific factors.

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

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

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

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

25 (10) If the target detection limit or the background
26 concentration for a hazardous substance is greater than a cleanup
27 criterion developed for a category pursuant to subsection (1), the

1 criterion shall be the target detection limit or background
2 concentration, whichever is larger, for that hazardous substance in
3 that category.

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

12 (12) In determining the adequacy of a land-use based response
13 activity to address sites contaminated by polychlorinated
14 biphenyls, the department shall not require response activity in
15 addition to that which is subject to and complies with applicable
16 federal regulations and policies that implement the toxic
17 substances control act, 15 USC 2601 to ~~2692-2697~~. **2697.**

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

22 (14) Approval by the department of remedial action based on
23 the categorical standard in subsection (1)(a) or (b) shall be
24 granted only if the pertinent criteria are satisfied in the
25 affected media. The department shall approve the use of
26 probabilistic or statistical methods or other scientific methods of
27 evaluating environmental data when determining compliance with a

1 pertinent cleanup criterion if the methods are determined by the
2 department to be reliable, scientifically valid, and best represent
3 actual site conditions and exposure potential.

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

6 (16) Remedial actions that rely on categorical cleanup
7 criteria developed pursuant to subsection (1) shall also consider
8 other factors necessary to protect the public health, safety, and
9 welfare, and the environment as specified by the department, if the
10 department determines based on data and existing information that
11 such considerations are relevant to a specific facility. These
12 factors include, but are not limited to, the protection of surface
13 water quality and consideration of ecological risks if pertinent to
14 the facility based on the requirements of this part.

15 **(17) THE DEPARTMENT SHALL DEVELOP CLEANUP CRITERIA PURSUANT TO**
16 **SUBSECTION (1) BASED UPON THE UNITED STATES ENVIRONMENTAL**
17 **PROTECTION AGENCY - IRIS HAZARDOUS SUBSTANCE CARCINOGENIC SLOPE**
18 **FACTOR AND NONCARCINOGENIC REFERENCE DOSE AND REFERENCE**
19 **CONCENTRATION FOR THE CALCULATION OF THE CLEANUP CRITERIA. IF A**
20 **HAZARDOUS SUBSTANCE DOES NOT HAVE AN ESTABLISHED UNITED STATES**
21 **ENVIRONMENTAL PROTECTION AGENCY - IRIS CARCINOGENIC SLOPE FACTOR OR**
22 **NONCARCINOGENIC REFERENCE DOSE AND REFERENCE CONCENTRATION, THE**
23 **DEPARTMENT SHALL WORK WITH THE UNITED STATES ENVIRONMENTAL**
24 **PROTECTION AGENCY TO GENERATE SUCH A VALUE FOLLOWING THE UNITED**
25 **STATES ENVIRONMENTAL PROTECTION AGENCY METHODOLOGY.**

26 **(18)** ~~(17)~~ Not later than December 31, ~~2013~~, **2017**, the
27 department shall evaluate and revise the cleanup criteria derived

under this section. ~~The evaluation and any revisions~~ **THIS REVISION** shall incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment and shall take into account best practices from other states, reasonable and realistic conditions, and sound science. Following this revision, the department shall periodically evaluate whether new information is available regarding the cleanup criteria and shall make revisions as appropriate. **NOT LATER THAN MARCH 31, 2017 AND EVERY 6 MONTHS THEREAFTER, THE DEPARTMENT SHALL REVISE THE CLEANUP CRITERIA DERIVED UNDER THIS SECTION WITH THE CURRENT UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - IRIS CARCINOGENIC SLOPE FACTOR AND NONCARCINOGENIC REFERENCE DOSE AND REFERENCE CONCENTRATION VALUES.** The department shall prepare and submit to the legislature a report detailing any revisions made to cleanup criteria under this section.

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

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

(b) The person complies with the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the rules promulgated under that act applicable to the exposure to the hazardous substance, including, but not limited to, **PART 301 OF** the

1 occupational health standards, ~~for~~ air contaminants **FOR GENERAL**
2 **INDUSTRY**, R 325.51101 to R 325.51108 of the Michigan 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~~ **PART 430 OF THE OCCUPATIONAL HEALTH STANDARDS**, hazard
8 communication, ~~rules,~~ R 325.77001 to R 325.77004 of the Michigan
9 administrative code, except that unless the hazardous substance is
10 in use in the facility, the requirement to have a material safety
11 data sheet in the workplace requires only a generic material safety
12 data sheet for the hazardous substance and the labeling
13 requirements do not apply.

14 **(20)** ~~(19)~~ The department shall make available the algorithms
15 used to calculate all residential and nonresidential generic
16 cleanup criteria, and tables listing, by hazardous substance, all
17 toxicity, exposure, and other algorithm factors or variables used
18 in the department's calculations.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.