

HOUSE BILL No. 5872

March 15, 2006, Introduced by Reps. Moolenaar, Caul and Kahn and referred to the Committee on Government Operations.

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 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, considering the appropriateness of the categorical
6 criteria to the facility. The categories are as follows:

7 (a) Residential.

8 (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 on
11 site specific criteria that satisfy the applicable requirements of
12 this part and the rules promulgated under this part. The department
13 shall utilize only reasonable and relevant exposure pathways in
14 determining the adequacy of a site specific criterion.

15 Additionally, the department may approve a remedial action plan for
16 a designated area-wide zone encompassing more than 1 facility, and
17 may consolidate remedial actions for more than 1 facility.

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

1 creates a subcategory within a category described in subsection
2 (1). The department shall specify site characteristics that
3 determine the applicability of criteria derived for these
4 categories or subcategories.

5 (4) ~~If~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF** a
6 hazardous substance poses a carcinogenic risk to humans, the
7 cleanup criteria derived for cancer risk under this section shall
8 be the 95% upper bound on the calculated risk of 1 additional
9 cancer above the background cancer rate per 100,000 individuals
10 using the generic set of exposure assumptions established under
11 subsection (3) for the appropriate category or subcategory.
12 **HOWEVER, THE CLEANUP CRITERIA FOR A HAZARDOUS SUBSTANCE SHALL BE**
13 **THE ACTION LEVEL PROVIDED BY THE AGENCY FOR TOXIC SUBSTANCES AND**
14 **DISEASE REGISTRY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN**
15 **SERVICES, IF ONE IS AVAILABLE.** If the hazardous substance poses a
16 risk of an adverse health effect other than cancer, cleanup
17 criteria shall be derived using appropriate human health risk
18 assessment methods for that adverse health effect and the generic
19 set of exposure assumptions established under subsection (3) for
20 the appropriate category or subcategory. A hazard quotient of 1.0
21 shall be used to derive noncancer cleanup criteria. For the
22 noncarcinogenic effects of a hazardous substance present in soils,
23 the intake shall be assumed to be 100% of the protective level,
24 unless compound and site-specific data are available to demonstrate
25 that a different source contribution is appropriate. If a hazardous
26 substance poses a risk of both cancer and 1 or more adverse health
27 effects other than cancer, cleanup criteria shall be derived under

1 this section for the most sensitive effect.

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

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

1 property use is consistent with the current zoning or is a legal
2 nonconforming use. Abandoned or inactive property shall be
3 considered on the basis of zoning classifications as described
4 above.

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

8 (8) Except as provided in subsection (4) and subsections (9)
9 to (13), compliance with the residential category in subsection
10 (1)(a) shall be based on ~~R 299.5709 through R 299.5711(4), R~~
11 ~~299.5711(6) through R 299.5715 and R 299.5727 of the Michigan~~
12 ~~administrative code. R 299.5711(5), R 299.5723, and R 299.5725 of~~
13 ~~the Michigan administrative code shall not apply for calculations~~
14 ~~of residential criteria under subsection (1)(a) **R 299.5707 TO R**~~
15 ~~**299.5710, R 299.5712, R 299.5714, R 299.5716, R 299.5718, R**~~
16 ~~**299.5720, R 299.5722, R 299.5724, R 299.5726, R 299.5728, AND R**~~
17 ~~**299.5730 OF THE MICHIGAN ADMINISTRATIVE CODE.**~~

18 (9) The need for soil remediation to protect an aquifer from
19 hazardous substances in soil shall be determined by ~~R 299.5711(2)~~
20 ~~**R 299.5718 AND R 299.5726**~~ of the Michigan administrative code,
21 considering the vulnerability of the aquifer or aquifers
22 potentially affected if the soil remains at the facility. Migration
23 of hazardous substances in soil to an aquifer is a pertinent
24 pathway if appropriate based on consideration of site specific
25 factors.

26 (10) The department may establish cleanup criteria for a
27 hazardous substance using a biologically based model developed or

1 identified as appropriate by the United States environmental
2 protection agency if the department determines all of the
3 following:

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

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

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

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

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

25 (13) Response activity to address the release of
26 uncontaminated mineral oil satisfies R 299.5709 **OF THE MICHIGAN**
27 **ADMINISTRATIVE CODE** for groundwater or ~~R 299.5711~~ **R 299.5718 TO R**

1 **299.5726 OF THE MICHIGAN ADMINISTRATIVE CODE** for soil ~~under the~~
2 ~~Michigan administrative code~~ if all visible traces of mineral oil
3 are removed from groundwater and soil.

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

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

21 (16) A remedial action plan shall provide response activity to
22 meet the residential categorical criteria, or provide for
23 acceptable land use or resource use restrictions pursuant to
24 section 20120b.

25 (17) A remedial action plan that relies on categorical cleanup
26 criteria developed pursuant to subsection (1) shall also consider
27 other factors necessary to protect the public health, safety, and

1 welfare, and the environment as specified by the department, if the
2 department determines based on data and existing information that
3 such considerations are relevant to a specific facility. These
4 factors include, but are not limited to, the protection of surface
5 water quality and consideration of ecological risks if pertinent to
6 the facility based on the requirements of ~~R 299.5717~~ **R 299.5728**
7 of the Michigan administrative code.

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