

SENATE BILL No. 1584

November 10, 2010, Introduced by Senator BRATER 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 20120a and 21304a (MCL 324.20120a and 324.21304a), 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. 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.

1 (b) Commercial.

2 (c) Recreational.

3 (d) Industrial.

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

6 (f) Limited residential.

7 (g) Limited commercial.

8 (h) Limited recreational.

9 (i) Limited industrial.

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

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

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

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

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

6 (4) If a hazardous substance poses a carcinogenic risk to
7 humans, the cleanup criteria derived for cancer risk under this
8 section shall be the 95% upper bound on the calculated risk of 1
9 additional cancer above the background cancer rate per ~~100,000~~
10 **1,000,000** individuals using the generic set of exposure assumptions
11 established under subsection (3) for the appropriate category or
12 subcategory. If the hazardous substance poses a risk of an adverse
13 health effect other than cancer, cleanup criteria shall be derived
14 using appropriate human health risk assessment methods for that
15 adverse health effect and the generic set of exposure assumptions
16 established under subsection (3) for the appropriate category or
17 subcategory. A hazard quotient of 1.0 shall be used to derive
18 noncancer cleanup criteria. For the noncarcinogenic effects of a
19 hazardous substance present in soils, the intake shall be assumed
20 to be 100% of the protective level, unless compound and site-
21 specific data are available to demonstrate that a different source
22 contribution is appropriate. If a hazardous substance poses a risk
23 of both cancer and 1 or more adverse health effects other than
24 cancer, cleanup criteria shall be derived under this section for
25 the most sensitive effect.

26 (5) If a cleanup criterion derived under subsection (4) for
27 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 399,~~
4 **MCL 325.1005**, or (b) criteria for adverse aesthetic characteristics
5 derived pursuant to R 299.5709 of the Michigan administrative code,
6 the cleanup criterion shall be the more stringent of (a) or (b)
7 unless the department determines that compliance with this rule is
8 not necessary because the use of the aquifer is reliably restricted
9 pursuant to section 20120b(4) or (5).

10 (6) The department shall not approve of a remedial action plan
11 in categories set forth in subsection (1)(b) to (j), unless the
12 person proposing the plan documents that the current zoning of the
13 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 that relies on a change in
19 zoning designation until a final determination of that zoning
20 change has been made by the local unit of government. The
21 department may approve of a remedial action that achieves
22 categorical criteria that is based on greater exposure potential
23 than 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
27 considered on the basis of zoning classifications as described

1 above.

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

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

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

19 (10) The department may establish cleanup criteria for a
20 hazardous substance using a biologically based model developed or
21 identified as appropriate by the United States environmental
22 protection agency if the department determines all of the
23 following:

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

26 (b) That data of sufficient quantity and quality are available
27 for a specified hazardous substance to allow the scientifically

1 valid application of the model.

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

5 (11) If the cleanup criterion for a hazardous substance
6 determined by R 299.5707 of the Michigan administrative code is
7 greater than a cleanup criterion developed for a category pursuant
8 to subsection (1), the criterion determined pursuant to R 299.5707
9 of the Michigan administrative code shall be the cleanup criterion
10 for that hazardous substance in that category.

11 (12) In determining the adequacy of a land-use based response
12 activity to address sites contaminated by polychlorinated
13 biphenyls, the department shall not require response activity in
14 addition to that which is subject to and complies with applicable
15 federal regulations and policies that implement the toxic
16 substances control act, ~~Public Law 94 469, 15 U.S.C. 2601 to 2629,~~
17 ~~2641 to 2656, 2661 to 2671, and 2681 to 2692~~ **15 USC 2601 TO 2695D.**

18 (13) Response activity to address the release of
19 uncontaminated mineral oil satisfies R 299.5709 **OF THE MICHIGAN**
20 **ADMINISTRATIVE CODE** for groundwater or R 299.5711 **OF THE MICHIGAN**
21 **ADMINISTRATIVE CODE** for soil ~~under the Michigan administrative code~~
22 if all visible traces of mineral oil are removed from groundwater
23 and soil.

24 (14) Approval by the department of a remedial action plan
25 based on 1 or more categorical ~~standard~~ **STANDARDS** in subsection
26 (1)(a) to (e) shall be granted only if the pertinent criteria are
27 satisfied in the affected media. The department shall approve the

1 use of probabilistic or statistical methods or other scientific
2 methods of evaluating environmental data when determining
3 compliance with a pertinent cleanup criterion if the methods are
4 determined by the department to be reliable ~~—AND~~ scientifically
5 valid ~~—and~~ **TO** best represent actual site conditions and exposure
6 potential.

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

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

19 (17) A remedial action plan that relies on categorical cleanup
20 criteria developed pursuant to subsection (1) shall also consider
21 other factors necessary to protect the public health, safety, and
22 welfare, and the environment as specified by the department, if the
23 department determines based on data and existing information that
24 such considerations are relevant to a specific facility. These
25 factors include, but are not limited to, the protection of surface
26 water quality and consideration of ecological risks if pertinent to
27 the facility based on the requirements of R 299.5717 of the

1 Michigan administrative code.

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

8 Sec. 21304a. (1) Corrective action activities undertaken
9 pursuant to this part shall be conducted in accordance with the
10 process outlined in RBCA in a manner that is protective of the
11 public health, safety, and welfare, and the environment.

12 (2) Subject to subsections (3) and (4), the department shall
13 establish cleanup criteria for corrective action activities
14 undertaken under this part using the process outlined in RBCA. The
15 department shall utilize only reasonable and relevant exposure
16 assumptions and pathways in determining the cleanup criteria.

17 (3) If a regulated substance poses a carcinogenic risk to
18 humans, the cleanup criteria derived for cancer risk shall be the
19 95% upper bound on the calculated risk of 1 additional cancer above
20 the background cancer rate per ~~100,000~~ **1,000,000** individuals using
21 the exposure assumptions and pathways established by the department
22 and the process in RBCA. If a regulated substance poses a risk of
23 both cancer and an adverse health effect other than cancer, cleanup
24 criteria shall be derived for cancer and each adverse health
25 effect.

26 (4) If a cleanup criterion for groundwater differs from either
27 (a) the state drinking water standard established pursuant to

1 section 5 of the safe drinking water act, ~~Act No. 399 of the Public~~
2 ~~Acts of 1976, being section 325.1005 of the Michigan Compiled Laws~~
3 **1976 PA 399, MCL 325.1005**, or (b) criteria for adverse aesthetic
4 characteristics derived pursuant to R 299.5709 of the Michigan
5 administrative code, the cleanup criterion shall be the more
6 stringent of (a) or (b) unless a consultant retained by the owner
7 or operator determines that compliance with (a) or (b) is not
8 necessary because the use of the groundwater is reliably restricted
9 pursuant to section 21310a.

10 (5) Notwithstanding any other provision of this part, if a
11 release or threat of release at a site is not solely the result of
12 a release or threat of release from an underground storage tank
13 system, the owner or operator of the underground storage tank
14 system may choose to perform response activities pursuant to part
15 201 in lieu of corrective actions pursuant to this part.