

# HOUSE BILL No. 5963

June 1, 2004, Introduced by Reps. Moolenaar, Caul, Nofs, Stakoe, Ward, Emmons, Palmer, Pastor, Newell, Wenke, Hummel, Bisbee, Gaffney and Plakas 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  
2 criteria and approve of remedial actions in the categories listed  
3 in 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  
6 categorical criteria to the facility. The categories are as  
7 follows:  
8       (a) Residential.  
9       (b) Commercial.  
10       (c) Recreational.

1 (d) Industrial.

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

4 (f) Limited residential.

5 (g) Limited commercial.

6 (h) Limited recreational.

7 (i) Limited industrial.

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

9 (2) The department may approve a remedial action plan based  
10 on site specific criteria that satisfy the applicable  
11 requirements of this part and the rules promulgated under this  
12 part. The department shall utilize only reasonable and relevant  
13 exposure pathways in determining the adequacy of a site specific  
14 criterion. Additionally, the department may approve a remedial  
15 action plan for a designated area-wide zone encompassing more  
16 than 1 facility, and may consolidate remedial actions for more  
17 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**  
6 a 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. **If**  
12 **the hazardous substance is a dioxin, the cleanup criteria shall**  
13 **be the action level provided in the agency for toxic substances**  
14 **and disease registry, United States department of health and**  
15 **human services, document entitled "Dioxin and Dioxin-like**  
16 **Compounds in Soil, Part 1: ATSDR Interim Policy Guideline",**  
17 **dated August 21, 1997.** If the hazardous substance poses a risk of  
18 an adverse health effect other than cancer, cleanup criteria  
19 shall be derived using appropriate human health risk assessment  
20 methods for that adverse health effect and the generic set of  
21 exposure assumptions established under subsection (3) for the  
22 appropriate category or subcategory. A hazard quotient of 1.0  
23 shall be used to derive noncancer cleanup criteria. For the  
24 noncarcinogenic effects of a hazardous substance present in  
25 soils, the intake shall be assumed to be 100% of the protective  
26 level, unless compound and site-specific data are available to  
27 demonstrate that a different source contribution is appropriate.

1 If a hazardous substance poses a risk of both cancer and 1 or  
2 more adverse health effects other than cancer, cleanup criteria  
3 shall be derived under this section for the most sensitive  
4 effect.

5 (5) If a cleanup criterion derived under subsection (4) for  
6 groundwater in an aquifer differs from either: (a) the state  
7 drinking water standard established pursuant to section 5 of the  
8 safe drinking water act, ~~Act No. 399 of the Public Acts of 1976,~~  
9 ~~being section 325.1005 of the Michigan Compiled Laws 1976 PA~~  
10 **399, MCL 325.1005**, or (b) criteria for adverse aesthetic  
11 characteristics derived pursuant to R 299.5709 of the Michigan  
12 administrative code, the cleanup criterion shall be the more  
13 stringent of (a) or (b) unless the department determines that  
14 compliance with this rule is not necessary because the use of the  
15 aquifer is reliably restricted pursuant to section 20120b(4) or  
16 (5).

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

1 government. The department may approve of a remedial action that  
2 achieves categorical criteria that is based on greater exposure  
3 potential than the criteria applicable to current zoning. In  
4 addition, the remedial action plan shall include documentation  
5 that the current property use is consistent with the current  
6 zoning or is a legal nonconforming use. Abandoned or inactive  
7 property shall be considered on the basis of zoning  
8 classifications as described above.

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

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

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

1 (10) The department may establish cleanup criteria for a  
2 hazardous substance using a biologically based model developed or  
3 identified as appropriate by the United States environmental  
4 protection agency if the department determines all of the  
5 following:

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

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

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

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

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

27 (13) Response activity to address the release of

1 uncontaminated mineral oil satisfies R 299.5709 for groundwater  
2 or R 299.5711 for soil under the Michigan administrative code if  
3 all visible traces of mineral oil are removed from groundwater  
4 and soil.

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

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

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

26 (17) A remedial action plan that relies on categorical  
27 cleanup criteria developed pursuant to subsection (1) shall also

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

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

16 (19) **As used in this section, "dioxin" means 1 or more**  
17 **structurally related chlorinated dibenzodioxin and chlorinated**  
18 **dibenzofuran chemicals.**