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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;
8 growing and harvesting of any agricultural, horticultural, or



1 floricultural commodity; dairying; raising of livestock, bees,
2 fish, fur-bearing animals, or poultry; turf and tree farming; and
3 performing any practices on a farm as an incident to, or in
4 conjunction with, these farming operations. Agricultural property
5 does not include property used for commercial storage, processing,
6 distribution, marketing, or shipping operations.

7 (c) "Attorney general" means the department of the attorney
8 general.

9 (d) "Baseline environmental assessment" means an evaluation of
10 environmental conditions which exist at a facility at the time of
11 purchase, occupancy, or foreclosure that reasonably defines the
12 existing conditions and circumstance at the facility so that, in
13 the event of a subsequent release, there is a means of
14 distinguishing the new release from existing contamination.

15 (e) "Board" means the brownfield redevelopment board created
16 in section 20104a.

17 (f) "Department" means the director of the department of
18 environmental quality or his or her designee to whom the director
19 delegates a power or duty by written instrument.

20 (g) "Director" means the director of the department of
21 environmental quality.

22 (h) "Directors" means the directors or their designees of the
23 departments of environmental quality, community health,
24 agriculture, and state police.

25 (i) "Disposal" means the discharge, deposit, injection,
26 dumping, spilling, leaking, or placing of any hazardous substance
27 into or on any land or water so that the hazardous substance or any



1 constituent of the hazardous substance may enter the environment or
2 be emitted into the air or discharged into any groundwater or
3 surface water.

4 (j) "Enforcement costs" means court expenses, reasonable
5 attorney fees of the attorney general, and other reasonable
6 expenses of an executive department that are incurred in relation
7 to enforcement under this part or rules promulgated under this
8 part, or both.

9 (k) "Environment" or "natural resources" means land, surface
10 water, groundwater, subsurface — strata, air, fish, wildlife, or
11 biota within the state.

12 (l) "Environmental contamination" means the release of a
13 hazardous substance, or the potential release of a discarded
14 hazardous substance, in a quantity which is or may become injurious
15 to the environment or to the public health, safety, or welfare.

16 (m) "Evaluation" means those activities including, but not
17 limited to, investigation, studies, sampling, analysis, development
18 of feasibility studies, and administrative efforts that are needed
19 to determine the nature, extent, and impact of a release or threat
20 of release and necessary response activities.

21 (n) "Exacerbation" means the occurrence of either of the
22 following caused by an activity undertaken by the person who owns
23 or operates the property, with respect to existing contamination:

24 (i) Contamination that has migrated beyond the boundaries of
25 the property which is the source of the release at levels above
26 cleanup criteria specified in section 20120a(1)(a) unless a
27 criterion is not relevant because exposure is reliably restricted



1 pursuant to section 20120b.

2 (ii) A change in facility conditions that increases response
3 activity costs.

4 (o) "Facility" means ~~any area, place, or~~ **A PARCEL OF**
5 **property OR A PORTION OF A PARCEL OF PROPERTY** where a hazardous
6 substance in excess of the concentrations which satisfy the
7 requirements of section 20120a(1)(a) or (17) or the cleanup
8 criteria for unrestricted residential use under part 213 has been
9 released, deposited, disposed of, or otherwise comes to be located.
10 **A DETERMINATION THAT A PARCEL OR PORTION OF A PARCEL OF PROPERTY IS**
11 **A FACILITY DUE TO SOIL CONTAMINATION THAT IS MADE AFTER THE**
12 **EFFECTIVE DATE OF THE 2005 AMENDMENTS TO THIS SECTION OR IS WITHIN**
13 **A TOXIC POLLUTANT EXPOSURE AREA SHALL BE BASED UPON TESTING**
14 **CONDUCTED ACCORDING TO SCIENTIFICALLY ACCEPTED METHODS ON SOIL**
15 **COLLECTED FROM THE PARCEL OR PORTION OF THE PARCEL. IN THE ABSENCE**
16 **OF TESTING, A PARCEL OR A PORTION OF A PARCEL OF PROPERTY MAY BE**
17 **CONSIDERED A FACILITY IF THE OWNER OF THE PROPERTY AND THE**
18 **DEPARTMENT, IN WRITING, BASED ON THE PRESENCE OF HAZARDOUS**
19 **SUBSTANCES IN THE VICINITY OF THE PROPERTY, AGREE TO THE**
20 **DESIGNATION. HOWEVER, IF A PERSON WHO IS OR MAY BE LIABLE UNDER**
21 **SECTION 20126 FOR ANY CONTAMINATION ON THE PROPERTY DISAGREES WITH**
22 **THE DESIGNATION, THAT PERSON SHALL TEST THE PROPERTY IMMEDIATELY.**
23 **IF THE TESTING DETERMINES THAT HAZARDOUS SUBSTANCES IN EXCESS OF**
24 **THE CONCENTRATIONS NECESSARY TO DESIGNATE THE PARCEL OR PORTION OF**
25 **THE PARCEL A FACILITY ARE NOT FOUND TO BE PRESENT ON THE PROPERTY,**
26 **THE PERSON CONDUCTING THE TESTING SHALL BE REIMBURSED BY THE**
27 **DEPARTMENT FOR THE COSTS OF THE TESTING.** Facility does not include



1 ~~any area, place, or~~ **EITHER OF THE FOLLOWING:**

2 **(i) A PARCEL OF PROPERTY OR A PORTION OF A PARCEL OF** property
 3 at which response activities have been completed which satisfy the
 4 cleanup criteria for the residential category provided for in
 5 section 20120a(1)(a) and (17) or at which corrective action has
 6 been completed under part 213 which satisfies the cleanup criteria
 7 for unrestricted residential use.

8 **(ii) A REMEDIATED SITE.**

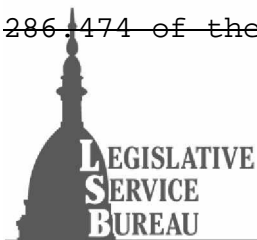
9 (p) "Feasibility study" means a process for developing,
 10 evaluating, and selecting appropriate response activities.

11 (q) "Foreclosure" means possession of a property by a lender
 12 on which it has foreclosed on a security interest or the expiration
 13 of a lawful redemption period, whichever occurs first.

14 (r) "Free product" means a hazardous substance in a liquid
 15 phase equal to or greater than 1/8 inch of measurable thickness
 16 that is not dissolved in water and that has been released into the
 17 environment.

18 (s) "Fund" means the cleanup and redevelopment fund
 19 established in section 20108.

20 (t) "Hazardous substance" means 1 or more of the following,
 21 but does not include fruit, vegetable, or field crop residuals or
 22 processing by-products, or aquatic plants, that are applied to the
 23 land for an agricultural use or for use as an animal feed, if the
 24 use is consistent with generally accepted agricultural management
 25 practices developed pursuant to the Michigan right to farm act,
 26 ~~Act No. 93 of the Public Acts of 1981, being sections 286.471 to~~
 27 ~~286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL 286.471 TO**



1 **286.474:**

2 (i) Any substance that the department demonstrates, on a case
3 by case basis, poses an unacceptable risk to the public health,
4 safety, or welfare, or the environment, considering the fate of the
5 material, dose-response, toxicity, or adverse impact on natural
6 resources.

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

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

11 (iv) Petroleum as described in part 213.

12 (u) "Interim response activity" means the cleanup or removal
13 of a released hazardous substance or the taking of other actions,
14 prior to the implementation of a remedial action, as may be
15 necessary to prevent, minimize, or mitigate injury to the public
16 health, safety, or welfare, or to the environment. Interim response
17 activity also includes, but is not limited to, measures to limit
18 access, replacement of water supplies, and temporary relocation of
19 people as determined to be necessary by the department. In
20 addition, interim response activity means the taking of other
21 actions as may be necessary to prevent, minimize, or mitigate a
22 threatened release.

23 (v) "Lender" means any of the following:

24 (i) A state or nationally chartered bank.

25 (ii) A state or federally chartered savings and loan
26 association or savings bank.

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



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

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

8 (vi) A motor vehicle finance company subject to the motor
 9 vehicle finance act, ~~Act No. 27 of the Extra Session of 1950,~~
 10 ~~being sections 492.101 to 492.141 of the Michigan Compiled Laws~~
 11 **1950 (EX SESS) PA 27, MCL 492.101 TO 492.141**, with net assets in
 12 excess of \$50,000,000.00.

13 (vii) A foreign bank.

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

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

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

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

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

27 (w) "Local health department" means that term as defined in



1 section 1105 of the public health code, ~~Act No. 368 of the Public~~
 2 ~~Acts of 1978, being section 333.1105 of the Michigan Compiled Laws~~
 3 **1978 PA 368, MCL 333.1105.**

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

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

12 (i) A person who holds indicia of ownership primarily to
 13 protect the person's security interest in the facility, unless that
 14 person participates in the management of the facility as described
 15 in section 20101a.

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

18 (z) "Owner" means a person who owns a facility. Owner does not
 19 include either of the following:

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

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

27 (aa) "Permitted release" means 1 or more of the following:



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

3 (ii) A lawful and authorized discharge into a permitted waste
4 treatment facility.

5 (iii) A federally permitted release as defined in the
6 comprehensive environmental response, compensation, and liability
7 act of 1980, ~~Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601 TO**
8 **9675.**

9 **(BB) "PERSISTENT, BIOACCUMULATIVE, AND TOXIC POLLUTANT" MEANS**
10 **A SUBSTANCE THAT IS TOXIC AND LONG-LASTING IN THE ENVIRONMENT THAT**
11 **CAN BUILD UP IN THE FOOD CHAIN TO LEVELS THAT ARE HARMFUL TO HUMAN**
12 **AND ECOSYSTEM HEALTH.**

13 **(CC) ~~(bb)~~** "Release" includes, but is not limited to, any
14 spilling, leaking, pumping, pouring, emitting, emptying,
15 discharging, injecting, escaping, leaching, dumping, or disposing
16 of a hazardous substance into the environment, or the abandonment
17 or discarding of barrels, containers, and other closed receptacles
18 containing a hazardous substance. Release does not include any of
19 the following:

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

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

25 (iii) A release of source, by-product, or special nuclear
26 material from a nuclear incident, as those terms are defined in
27 ~~the atomic energy act of 1954, chapter 1073, 68 Stat. 919~~ **42 USC**

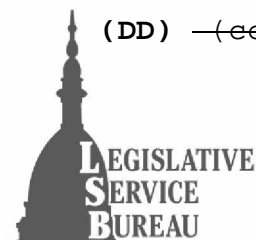


1 2014, if the release is subject to requirements with respect to
 2 financial protection established by the nuclear regulatory
 3 commission under ~~section 170 of chapter 14 of title I of the~~
 4 ~~atomic energy act of 1954, chapter 1073, 71 Stat. 576, 42 U.S.C.~~
 5 **USC 2210**, or any release of source by-product or special nuclear
 6 material from any processing site designated under ~~section~~
 7 ~~102(a)(1) of title I or 302(a) of title III of the uranium mill~~
 8 ~~tailings radiation control act of 1978, Public Law 95-604, 42~~
 9 ~~U.S.C. USC 7912 and OR 42 USC 7942.~~

10 (iv) If applied according to label directions and according to
 11 generally accepted agricultural and management practices, the
 12 application of a fertilizer, soil conditioner, agronomically
 13 applied manure, or pesticide, or fruit, vegetable, or field crop
 14 residuals or processing by-products, aquatic plants, or a
 15 combination of these substances. As used in this subparagraph,
 16 fertilizer and soil conditioner have the meaning given to these
 17 terms in part 85, and pesticide has the meaning given to that term
 18 in part 83.

19 (v) A release does not include fruits, vegetables, field crop
 20 processing by-products, or aquatic plants, that are applied to the
 21 land for an agricultural use or for use as an animal feed, if the
 22 use is consistent with generally accepted agricultural and
 23 management practices developed pursuant to the Michigan right to
 24 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
 25 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
 26 **286.471 TO 286.474.**

27 (DD) ~~(ee)~~ "Remedial action" includes, but is not limited to,



1 cleanup, removal, containment, isolation, destruction, or treatment
2 of a hazardous substance released or threatened to be released into
3 the environment, monitoring, maintenance, or the taking of other
4 actions that may be necessary to prevent, minimize, or mitigate
5 injury to the public health, safety, or welfare, or to the
6 environment.

7 (EE) ~~(dd)~~ "Remedial action plan" means a work plan for
8 performing remedial action under this part.

9 (FF) "REMEDIATED SITE" MEANS A PARCEL OF PROPERTY OR A PORTION
10 OF A PARCEL OF PROPERTY AT WHICH ALL RESPONSE ACTIVITIES REQUIRED
11 TO MEET APPLICABLE STANDARDS UNDER THIS PART HAVE BEEN COMPLETED.
12 HOWEVER, REMEDIATED SITE DOES NOT INCLUDE A PARCEL OF PROPERTY OR A
13 PORTION OF A PARCEL OF PROPERTY UNDER ANY OF THE FOLLOWING
14 CIRCUMSTANCES:

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

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

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

26 (iv) CHANGES IN THE USE OR USES OF THE SITE RENDER INVALID THE
27 RISK ASSESSMENT SCENARIOS AND ASSUMPTIONS WHICH WERE THE BASIS FOR



1 **THE SELECTION OF APPLICABLE STANDARDS UNDER THIS PART.**

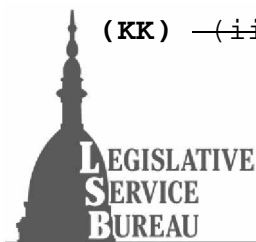
2 **(GG)** ~~-(ee)-~~ "Response activity" means evaluation, interim
 3 response activity, remedial action, demolition, or the taking of
 4 other actions necessary to protect the public health, safety, or
 5 welfare, or the environment or the natural resources. Response
 6 activity also includes health assessments or health effect studies
 7 carried out under the supervision, or with the approval of, the
 8 department of public health and enforcement actions related to any
 9 response activity.

10 **(HH)** ~~-(ff)-~~ "Response activity costs" or "costs of response
 11 activity" means all costs incurred in taking or conducting a
 12 response activity, including enforcement costs.

13 **(II)** ~~-(gg)-~~ "Security interest" means any interest, including
 14 a reversionary interest, in real property created or established
 15 for the purpose of securing a loan or other obligation. Security
 16 interests include, but are not limited to, mortgages, deeds of
 17 trusts, liens, and title pursuant to lease financing transactions.
 18 Security interests may also arise from transactions such as sale
 19 and leasebacks, conditional sales, installment sales, trust receipt
 20 transactions, certain assignments, factoring agreements, accounts
 21 receivable financing arrangements, consignments, or any other
 22 transaction in which evidence of title is created if the
 23 transaction creates or establishes an interest in real property for
 24 the purpose of securing a loan or other obligation.

25 **(JJ)** ~~-(hh)-~~ "Site" means the location of environmental
 26 contamination.

27 **(KK)** ~~-(ii)-~~ "Threatened release" or "threat of release" means



1 any circumstance that may reasonably be anticipated to cause a
2 release.

3 (ll) "TOXIC POLLUTANT EXPOSURE AREA" MEANS A GEOGRAPHIC AREA
4 IDENTIFIED BY THE DEPARTMENT THAT MEETS ALL OF THE FOLLOWING
5 CONDITIONS:

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

7 (ii) THE PRIMARY CONCERN WITH REGARD TO NECESSARY RESPONSE
8 ACTIVITIES IS THE PRESENCE OF PERSISTENT, BIOACCUMULATIVE, AND
9 TOXIC POLLUTANTS.

10 (iii) THE PREDOMINANT MECHANISMS OF TRANSPORT OF THE PERSISTENT,
11 BIOACCUMULATIVE, AND TOXIC POLLUTANTS WITHIN THE AREA ARE AIR
12 DEPOSITION AND DEPOSITION OF CONTAMINATED SOIL AND SEDIMENT CARRIED
13 BY FLOOD WATERS.

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

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

24 (a) Residential.

25 (b) Commercial.

26 (c) Recreational.

27 (d) Industrial.



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

3 (f) Limited residential.

4 (g) Limited commercial.

5 (h) Limited recreational.

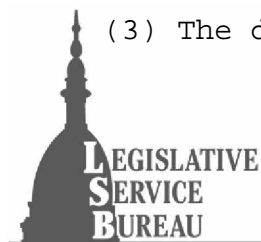
6 (i) Limited industrial.

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

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

13 Additionally, the department may approve a remedial action plan for
14 a designated area-wide zone encompassing more than 1 facility, and
15 may consolidate remedial actions for more than 1 facility. **WITHIN**
16 **TOXIC POLLUTANT EXPOSURE AREAS, THE DEPARTMENT SHALL INCORPORATE**
17 **INTO A REMEDIAL ACTION PLAN AREA-WIDE OR SITE-SPECIFIC CLEANUP**
18 **CRITERIA DERIVED FROM PEER-REVIEWED BIOAVAILABILITY STUDIES, PEER-**
19 **REVIEWED SITE-SPECIFIC HUMAN EXPOSURE DATA, AND ANY OTHER PEER-**
20 **REVIEWED SCIENTIFICALLY BASED RISK ASSESSMENT STUDIES THAT ARE**
21 **AVAILABLE AND RELEVANT. A PERSON WHO IS OR MAY BE LIABLE UNDER**
22 **SECTION 20126 MAY SUBMIT TO THE DEPARTMENT STUDIES OR DATA**
23 **DESCRIBED IN THIS SUBSECTION, OR OTHER RELEVANT INFORMATION,**
24 **INCLUDING INFORMATION THAT HAS NOT BEEN PEER REVIEWED, THAT THE**
25 **PERSON BELIEVES MAY ASSIST THE DEPARTMENT IN DEVELOPING OR**
26 **APPROVING A REMEDIAL ACTION PLAN.**

27 (3) The department shall develop cleanup criteria pursuant to



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

14 (4) If a hazardous substance poses a carcinogenic risk to
15 humans, the cleanup criteria derived for cancer risk under this
16 section shall be the 95% upper bound on the calculated risk of 1
17 additional cancer above the background cancer rate per 100,000
18 individuals using the generic set of exposure assumptions
19 established under subsection (3) for the appropriate category or
20 subcategory. If the hazardous substance poses a risk of an adverse
21 health effect other than cancer, cleanup criteria shall be derived
22 using appropriate human health risk assessment methods for that
23 adverse health effect and the generic set of exposure assumptions
24 established under subsection (3) for the appropriate category or
25 subcategory. A hazard quotient of 1.0 shall be used to derive
26 noncancer cleanup criteria. For the noncarcinogenic effects of a
27 hazardous substance present in soils, the intake shall be assumed



1 to be 100% of the protective level, unless compound and site-
 2 specific data are available to demonstrate that a different source
 3 contribution is appropriate. If a hazardous substance poses a risk
 4 of both cancer and 1 or more adverse health effects other than
 5 cancer, cleanup criteria shall be derived under this section for
 6 the most sensitive effect.

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

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



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

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

13 (8) Except as provided in subsection (4) and subsections (9)
 14 to (13), compliance with the residential category in subsection
 15 (1)(a) shall be based on ~~R 299.5709 through R 299.5711(4), R~~
 16 ~~299.5711(6) through R 299.5715 and R 299.5727 of the Michigan~~
 17 ~~administrative code. R 299.5711(5), R 299.5723, and R 299.5725 of~~
 18 ~~the Michigan administrative code shall not apply for calculations~~
 19 ~~of residential criteria under subsection (1)(a)~~ **R 299.5706A TO R**
 20 **299.5710, R 299.5714, R 299.5718, AND R 299.5722 TO R 299.5726 OF**
 21 **THE MICHIGAN ADMINISTRATIVE CODE.**

22 (9) The need for soil remediation to protect an aquifer from
 23 hazardous substances in soil shall be determined by ~~R 299.5711(2)~~
 24 **R 299.5720** of the Michigan administrative code, considering the
 25 vulnerability of the aquifer or aquifers potentially affected if
 26 the soil remains at the facility. Migration of hazardous substances
 27 in soil to an aquifer is a pertinent pathway if appropriate based



1 on consideration of site specific factors.

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

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

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

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

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

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



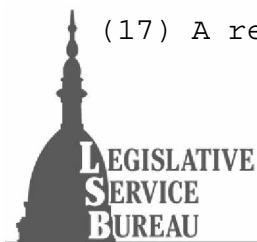
1 (13) Response activity to address the release of
2 uncontaminated mineral oil satisfies R 299.5709 for groundwater or
3 ~~R 299.5711~~ **R 299.5720** for soil under the Michigan administrative
4 code if all visible traces of mineral oil are removed from
5 groundwater and soil.

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

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

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

27 (17) A remedial action plan that relies on categorical cleanup



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

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

