

SENATE BILL No. 390

April 14, 2005, Introduced by Senators GOSCHKA, STAMAS, ALLEN, GARCIA, OLSHOVE, BARCIA and McMANUS 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 20101, 20117, and 20120a (MCL 324.20101,
324.20117, and 324.20120a), section 20101 as amended by 1996 PA 383
and section 20117 as amended and section 20120a as added by 1995 PA
71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 20101. (1) As used in this part:

(a) "Act of God" means an unanticipated grave natural disaster
or other natural phenomenon of an exceptional, inevitable, and
irresistible character, the effects of which could not have been
prevented or avoided by the exercise of due care or foresight.

(b) "Agricultural property" means real property used for

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

9 (c) "Attorney general" means the department of the attorney
10 general.

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

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

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

22 (g) "Director" means the director of the department of
23 environmental quality.

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

27 (i) "Disposal" means the discharge, deposit, injection,

1 dumping, spilling, leaking, or placing of any hazardous substance
2 into or on any land or water so that the hazardous substance or any
3 constituent of the hazardous substance may enter the environment or
4 be emitted into the air or discharged into any groundwater or
5 surface water.

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

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

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

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

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

26 (i) Contamination that has migrated beyond the boundaries of
27 the property which is the source of the release at levels above

cleanup criteria specified in section 20120a(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to section 20120b.

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

(o) "Facility" means ~~any area, place, or~~ **A PARCEL OF property OR A PORTION OF A PARCEL OF PROPERTY** where a hazardous substance in excess of the concentrations which satisfy the requirements of section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under part 213 has been released, deposited, disposed of, or otherwise comes to be located **AS DETERMINED BY TESTING CONDUCTED ON SOIL OR WATER SAMPLES, OR BOTH, COLLECTED FROM THE PARCEL OR PORTION OF THE PARCEL. IN THE ABSENCE OF TESTING, A PARCEL OF PROPERTY MAY BE CONSIDERED A FACILITY IF THE OWNER OF THE PROPERTY AGREES TO THE DESIGNATION IN WRITING BASED UPON THE PRESENCE OF HAZARDOUS SUBSTANCES IN THE VICINITY OF THE PROPERTY.** Facility does not include ~~any area, place, or~~ **EITHER OF THE FOLLOWING:**

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

(ii) **A REMEDIATED SITE.**

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

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

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

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

10 (t) "Hazardous substance" means 1 or more of the following,
11 but does not include fruit, vegetable, or field crop residuals or
12 processing by-products, or aquatic plants, that are applied to the
13 land for an agricultural use or for use as an animal feed, if the
14 use is consistent with generally accepted agricultural management
15 practices developed pursuant to the Michigan right to farm act,
16 ~~Act No. 93 of the Public Acts of 1981, being sections 286.471 to~~
17 ~~286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL 286.471 TO**
18 **286.474:**

19 (i) Any substance that the department demonstrates, on a case
20 by case basis, poses an unacceptable risk to the public health,
21 safety, or welfare, or the environment, considering the fate of the
22 material, dose-response, toxicity, or adverse impact on natural
23 resources.

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

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

(iv) Petroleum as described in part 213.

(U) "HOMESTEAD" MEANS A PRINCIPAL RESIDENCE THAT IS EXEMPT FROM TAXATION UNDER SECTION 7CC OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.7CC.

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

(W) ~~—(v)—~~ "Lender" means any of the following:

(i) A state or nationally chartered bank.

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

(iii) A state or federally chartered credit union.

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

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

1 (vi) A motor vehicle finance company subject to the motor
2 vehicle finance act, ~~Act No. 27 of the Extra Session of 1950,~~
3 ~~being sections 492.101 to 492.141 of the Michigan Compiled Laws~~
4 **1950 (EX SESS) PA 27, MCL 492.101 TO 492.141**, with net assets in
5 excess of \$50,000,000.00.

6 (vii) A foreign bank.

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

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

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

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

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

20 **(X)** ~~—(w)—~~ "Local health department" means that term as defined
21 in section 1105 of the public health code, ~~Act No. 368 of the~~
22 ~~Public Acts of 1978, being section 333.1105 of the Michigan~~
23 ~~Compiled Laws~~ **1978 PA 368, MCL 333.1105.**

24 **(Y)** ~~—(x)—~~ "Local unit of government" means a county, city,
25 township, or village, an agency of a local unit of government, an
26 authority or any other public body or entity created by or pursuant
27 to state law. Local unit of government does not include the state

1 or federal government or a state or federal agency.

2 (Z) ~~-(y)-~~ "Operator" means a person who is in control of or
3 responsible for the operation of a facility. Operator does not
4 include either of the following:

5 (i) A person who holds indicia of ownership primarily to
6 protect the person's security interest in the facility, unless that
7 person participates in the management of the facility as described
8 in section 20101a.

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

11 (AA) ~~-(z)-~~ "Owner" means a person who owns a facility. Owner
12 does not include either of the following:

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

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

20 (BB) ~~-(aa)-~~ "Permitted release" means 1 or more of the
21 following:

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

24 (ii) A lawful and authorized discharge into a permitted waste
25 treatment facility.

26 (iii) A federally permitted release as defined in the
27 comprehensive environmental response, compensation, and liability

1 act of 1980, ~~Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601 TO**
 2 **9675.**

3 **(CC)** ~~(bb)~~ "Release" includes, but is not limited to, any
 4 spilling, leaking, pumping, pouring, emitting, emptying,
 5 discharging, injecting, escaping, leaching, dumping, or disposing
 6 of a hazardous substance into the environment, or the abandonment
 7 or discarding of barrels, containers, and other closed receptacles
 8 containing a hazardous substance. Release does not include any of
 9 the following:

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

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

15 (iii) A release of source, by-product, or special nuclear
 16 material from a nuclear incident, as those terms are defined in
 17 ~~the atomic energy act of 1954, chapter 1073, 68 Stat. 919~~ **42 USC**
 18 **2014**, if the release is subject to requirements with respect to
 19 financial protection established by the nuclear regulatory
 20 commission under ~~section 170 of chapter 14 of title I of the~~
 21 ~~atomic energy act of 1954, chapter 1073, 71 Stat. 576,~~ ~~42 U.S.C.~~
 22 **USC 2210**, or any release of source by-product or special nuclear
 23 material from any processing site designated under ~~section~~
 24 ~~102(a)(1) of title I or 302(a) of title III of the uranium mill~~
 25 ~~tailings radiation control act of 1978, Public Law 95-604,~~ ~~42~~
 26 ~~U.S.C.~~ **USC 7912** ~~and~~ **OR 42 USC 7942.**

27 (iv) If applied according to label directions and according to

1 generally accepted agricultural and management practices, the
2 application of a fertilizer, soil conditioner, agronomically
3 applied manure, or pesticide, or fruit, vegetable, or field crop
4 residuals or processing by-products, aquatic plants, or a
5 combination of these substances. As used in this subparagraph,
6 fertilizer and soil conditioner have the meaning given to these
7 terms in part 85, and pesticide has the meaning given to that term
8 in part 83.

9 (v) A release does not include fruits, vegetables, field crop
10 processing by-products, or aquatic plants, that are applied to the
11 land for an agricultural use or for use as an animal feed, if the
12 use is consistent with generally accepted agricultural and
13 management practices developed pursuant to the Michigan right to
14 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
15 ~~286.471 to 286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL**
16 **286.471 TO 286.474.**

17 (DD) ~~(ee)~~ "Remedial action" includes, but is not limited to,
18 cleanup, removal, containment, isolation, destruction, or treatment
19 of a hazardous substance released or threatened to be released into
20 the environment, monitoring, maintenance, or the taking of other
21 actions that may be necessary to prevent, minimize, or mitigate
22 injury to the public health, safety, or welfare, or to the
23 environment.

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

26 (FF) **"REMEDIED SITE" MEANS A PARCEL OF PROPERTY OR A PORTION**
27 **OF A PARCEL OF PROPERTY AT WHICH ALL RESPONSE ACTIVITIES REQUIRED**

1 BY THE DEPARTMENT HAVE BEEN UNDERTAKEN.

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

7 Sec. 20117. (1) To determine the need for response activity or
8 selecting or taking a response activity or otherwise enforcing this
9 part or a rule promulgated under this part, the directors or their
10 authorized representatives may upon reasonable notice require a
11 person to furnish any information that the person may have relating
12 to any of the following:

13 (a) The identification, nature, and quantity of materials that
14 have been or are generated, treated, stored, handled, or disposed
15 of at a facility or transported to a facility.

16 (b) The nature or extent of a release or threatened release at
17 or from a facility.

18 (2) Upon reasonable notice, a person required to furnish
19 information pursuant to subsection (1) shall **DO** either **OF THE**
20 **FOLLOWING:**

21 (a) Grant the directors or their authorized representatives
22 access at all reasonable times to any place, property, or location
23 to inspect and copy the related information.

24 (b) Copy and furnish to the directors or their authorized
25 representatives the related information.

26 (3) ~~If~~ **EXCEPT AS PROVIDED IN SUBSECTION (4), IF** there is a
27 reasonable basis to believe that there may be a release or threat

1 of release, the directors or their authorized representatives have
2 the right to enter at all reasonable times any public or private
3 property for any of the following purposes:

4 (a) Identifying a facility.

5 (b) Investigating the existence, origin, nature, or extent of
6 a release or threatened release.

7 (c) Inspecting, testing, taking photographs or videotapes, or
8 sampling of any of the following: soils, air, surface water,
9 groundwater, suspected hazardous substances, or any containers or
10 labels of suspected hazardous substances.

11 (d) Determining the need for or selecting any response
12 activity.

13 (e) Taking or monitoring implementation of any response
14 activity.

15 (4) IF THE PROPERTY SUBJECT TO ENTRY UNDER SUBSECTION (3) IS A
16 HOMESTEAD, THE DIRECTORS OR THEIR AUTHORIZED REPRESENTATIVES MAY
17 ENTER THE PROPERTY ONLY IF THERE IS AN IMMINENT AND SUBSTANTIAL
18 THREAT TO PUBLIC HEALTH OR THE ENVIRONMENT.

19 (5) ~~—(4)—~~ A person ~~that~~ WHO enters public or private
20 property pursuant to subsection (3) OR (4) shall present
21 credentials; make a reasonable effort to contact the **PROPERTY**
22 **OWNER, THE** person in charge of the facility, or that person's
23 designee; describe the nature of the activities authorized under
24 subsection (3) to be undertaken; and inform the **PROPERTY OWNER OR**
25 **THE** person ~~that~~ WHO is in charge of the facility that he or she
26 is entitled to participate in the collection of split samples, and
27 is entitled to a copy of the results of any analysis of samples and

1 a copy of any photograph or videotape taken. The **PROPERTY OWNER OR**
2 **THE** person in charge **OF THE FACILITY** or his or her agent may
3 accompany the directors or their authorized representatives during
4 the activities authorized under subsection (3) that take place and
5 may participate in the collection of any split samples on the
6 property. The absence or unavailability of the **PROPERTY OWNER OR**
7 **THE** person in charge or that person's agent shall not delay or
8 limit the authority of the directors or their authorized
9 representatives to enter the property or proceed with the
10 activities authorized under subsection (3).

11 (6) ~~—(5)—~~ If the directors or their authorized representatives
12 obtain any samples, before leaving the property they shall give to
13 the **PROPERTY OWNER OR THE** person in charge of the property from
14 which the samples were obtained a receipt describing the ~~—sample~~
15 **SAMPLES**. A copy of the results of any analysis of the samples shall
16 upon request be furnished promptly to the **PROPERTY OWNER OR THE**
17 person in charge. A copy of any photograph or videotape taken
18 pursuant to subsection (3)(c) shall upon request be furnished
19 promptly to the **PROPERTY OWNER OR THE** person in charge.

20 (7) ~~—(6)—~~ All inspections and investigations undertaken by the
21 directors or their authorized representatives under this section
22 shall be completed with reasonable promptness.

23 (8) ~~—(7)—~~ If **THE DIRECTOR OR THEIR AUTHORIZED REPRESENTATIVES**
24 **ARE** refused entry or information under subsections (1) to ~~—(4)—~~
25 (5), for the purposes of enforcing the information gathering and
26 entry authority provided in this section, the attorney general, on
27 behalf of the state, may do either of the following:

1 (a) Petition the court of appropriate jurisdiction for a
2 warrant authorizing access to property or information pursuant to
3 this section.

4 (b) Commence a civil action to compel compliance with a
5 request for information or entry pursuant to this section, to
6 authorize information gathering and entry provided for in this
7 section, and to enjoin interference with the exercise of the
8 authority provided in this section.

9 (9) ~~—(8)—~~ In a civil action brought pursuant to subsection
10 ~~(7)—~~ (8), if there is a reasonable basis to believe there may be a
11 release or a threatened release, the court shall in the case of
12 interference or noncompliance with information requests pursuant to
13 subsection (1), or with entry or inspection requests pursuant to
14 subsection (3) **OR (4)**, enjoin interference with and direct
15 compliance with the requests unless the defendant establishes that,
16 under the circumstances of the case, the request is arbitrary and
17 capricious, an abuse of discretion, or otherwise not in accordance
18 with law.

19 (10) ~~—(9)—~~ In a civil action brought pursuant to subsection
20 ~~(7)—~~ (8), if there is a reasonable basis to believe there may be a
21 release or a threatened release, the court may assess a civil fine
22 not to exceed \$25,000.00 for each day of noncompliance against a
23 person that unreasonably fails to comply with subsection (1), (2),
24 ~~or~~ (3), **OR (4), AS APPLICABLE.**

25 (11) ~~—(10)—~~ Information obtained by the directors or their
26 authorized representatives as authorized under subsection (1) or
27 (2) shall be available to the public to the extent provided by the

1 freedom of information act, ~~Act No. 442 of the Public Acts of~~
2 ~~1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws~~
3 **1976 PA 442, MCL 15.231 TO 15.246.** A person who provides
4 information pursuant to subsection (1) or (2), or the person in
5 charge of a facility at which photographs or videotapes are taken
6 pursuant to subsection (3), may designate the information that the
7 person believes to be entitled to protection as if the information
8 was exempt from disclosure as being either trade secrets or
9 information of a personal nature under section 13(1)(a) or (g) of
10 the freedom of information act, ~~Act No. 442 of the Public Acts of~~
11 ~~1976, being section 15.243 of the Michigan Compiled Laws~~ **1976 PA**
12 **442, MCL 15.243,** and submit that specifically designated
13 information separately from other information required to be
14 provided under this section.

15 (12) ~~—(11)—~~ Notwithstanding subsection ~~—(10)—~~ (11), the
16 following information obtained by the directors or their authorized
17 representatives as required by this section shall be available to
18 the public:

19 (a) The trade name, common name, or generic class or category
20 of the hazardous substance.

21 (b) The physical properties of a hazardous substance,
22 including its boiling point, melting point, flash point, specific
23 gravity, vapor density, solubility in water, and vapor pressure at
24 20 degrees Celsius.

25 (c) The hazards to the public health, safety, or welfare, or
26 the environment posed by a hazardous substance, including physical
27 hazards, such as explosion, and potential acute and chronic health

1 hazards.

2 (d) The potential routes of human exposure to the hazardous
3 substance at the facility being investigated, entered, or inspected
4 under this section.

5 (e) The location of disposal of any waste stream released or
6 threatened to be released from the facility.

7 (f) Monitoring data or analysis of monitoring data pertaining
8 to disposal activities related to the facility.

9 (g) Hydrogeologic data.

10 (h) Groundwater monitoring data.

11 (13) ~~—(12)—~~ To collect information for the purpose of
12 identifying persons who are liable under section 20126 or to
13 otherwise enforce this part or a rule promulgated under this part,
14 the attorney general may by administrative subpoena require the
15 attendance and testimony of witnesses and production of papers,
16 reports, documents, answers to questions, and other information the
17 attorney general considers necessary. Witnesses shall be paid the
18 same fees and mileage that are paid witnesses in the courts of this
19 state. If a person fails or refuses to obey the administrative
20 subpoena, the circuit court for the county of Ingham or for the
21 county in which that person resides has jurisdiction to order that
22 person to comply with the subpoena. A failure to obey the order of
23 the court is punishable by the court as contempt.

24 (14) ~~—(13)—~~ As used in this section, "information" includes,
25 but is not limited to, documents, materials, records, photographs,
26 and videotapes.

27 Sec. 20120a. (1) The department may establish cleanup criteria

1 and approve of remedial actions in the categories listed in this
2 subsection. The cleanup category proposed shall be the option of
3 the person proposing the remedial action, subject to department
4 approval, considering the appropriateness of the categorical
5 criteria to the facility. The categories are as follows:

6 (a) Residential.

7 (b) Commercial.

8 (c) Recreational.

9 (d) Industrial.

10 (e) Other land use based categories established by the
11 department.

12 (f) Limited residential.

13 (g) Limited commercial.

14 (h) Limited recreational.

15 (i) Limited industrial.

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

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

22 Additionally, the department may approve a remedial action plan for
23 a designated area-wide zone encompassing more than 1 facility, and
24 may consolidate remedial actions for more than 1 facility. **IF THE**
25 **HAZARDOUS SUBSTANCE OF CONCERN IS DIOXIN, THE DEPARTMENT SHALL**
26 **APPROVE AREA-WIDE OR SITE SPECIFIC CLEANUP CRITERIA DERIVED FROM A**
27 **PROBABILISTIC RISK ASSESSMENT BASED ON BIOAVAILABILITY STUDIES**

1 APPROVED BY AN INDEPENDENT SCIENCE PANEL AND SITE SPECIFIC HUMAN
2 EXPOSURE DATA IF AVAILABLE AND RELEVANT.

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

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

1 subcategory. A hazard quotient of 1.0 shall be used to derive
2 noncancer cleanup criteria. For the noncarcinogenic effects of a
3 hazardous substance present in soils, the intake shall be assumed
4 to be 100% of the protective level, unless compound and site-
5 specific data are available to demonstrate that a different source
6 contribution is appropriate. If a hazardous substance poses a risk
7 of both cancer and 1 or more adverse health effects other than
8 cancer, cleanup criteria shall be derived under this section for
9 the most sensitive effect.

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

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

1 legal nonconforming use. The department shall not grant final
2 approval for a remedial action plan that relies on a change in
3 zoning designation until a final determination of that zoning
4 change has been made by the local unit of government. The
5 department may approve of a remedial action that achieves
6 categorical criteria that is based on greater exposure potential
7 than the criteria applicable to current zoning. In addition, the
8 remedial action plan shall include documentation that the current
9 property use is consistent with the current zoning or is a legal
10 nonconforming use. Abandoned or inactive property shall be
11 considered on the basis of zoning classifications as described
12 above.

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

16 (8) Except as provided in subsection (4) and subsections (9)
17 to (13), compliance with the residential category in subsection
18 (1)(a) shall be based on ~~R 299.5709 through R 299.5711(4), R~~
19 ~~299.5711(6) through R 299.5715 and R 299.5727 of the Michigan~~
20 ~~administrative code. R 299.5711(5), R 299.5723, and R 299.5725 of~~
21 ~~the Michigan administrative code shall not apply for calculations~~
22 ~~of residential criteria under subsection (1)(a) R 299.5706A TO R~~
23 ~~299.5710, R 299.5714, R 299.5718, AND R 299.5722 TO R 299.5726 OF~~
24 **THE MICHIGAN ADMINISTRATIVE CODE.**

25 (9) The need for soil remediation to protect an aquifer from
26 hazardous substances in soil shall be determined by ~~R 299.5711(2)~~
27 **R 299.5720** of the Michigan administrative code, considering the

1 vulnerability of the aquifer or aquifers potentially affected if
2 the soil remains at the facility. Migration of hazardous substances
3 in soil to an aquifer is a pertinent pathway if appropriate based
4 on consideration of site specific factors.

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

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

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

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

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

24 (12) In determining the adequacy of a land-use based response
25 activity to address sites contaminated by polychlorinated
26 biphenyls, the department shall not require response activity in
27 addition to that which is subject to and complies with applicable

1 federal regulations and policies that implement the toxic
2 substances control act, ~~Public Law 94-469,~~ 15 ~~U.S.C.~~ **USC** 2601
3 to ~~2629, 2641 to 2656, 2661 to 2671, and 2681 to~~ 2692.

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

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

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

26 (16) A remedial action plan shall provide response activity to
27 meet the residential categorical criteria, or provide for

1 acceptable land use or resource use restrictions pursuant to
2 section 20120b.

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

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

19 **(19) AS USED IN THIS SECTION, "DIOXIN" MEANS 1 OR MORE**
20 **STRUCTURALLY RELATED CHLORINATED DIBENZODIOXIN AND CHLORINATED**
21 **DIBENZOFURAN CHEMICALS.**