

HOUSE BILL No. 4903

May 7, 2009, Introduced by Reps. Agema, Meltzer, Amash, Haines, Horn, Kowall, Marleau, Knollenberg, Walsh, Hansen, Denby, Tyler, Pearce, Meekhof, Green, Rick Jones, Paul Scott, McMillin, Calley, DeShazor and Stamas and referred to the Committee on Great Lakes and Environment.

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 property where a
5 hazardous substance in excess of the concentrations which satisfy
6 the requirements of section 20120a(1)(a) or (17) or the cleanup
7 criteria for unrestricted residential use under part 213 has been
8 released, deposited, disposed of, or otherwise comes to be located.
9 Facility does not include any area, place, or property ~~at which~~
10 ~~response~~ **WHERE ANY OF THE FOLLOWING CONDITIONS ARE MET:**

11 (i) **RESPONSE** activities have been completed ~~which~~ **THAT** satisfy
12 the cleanup criteria for the residential category provided for in
13 section 20120a(1)(a) and (17). ~~or at which corrective~~

14 (ii) **SITE-SPECIFIC CRITERIA APPLICABLE TO THE AREA, PLACE, OR**
15 **PROPERTY THAT HAVE BEEN APPROVED BY THE DEPARTMENT ARE SATISFIED**
16 **AND HAZARDOUS SUBSTANCES THAT ARE NOT ADDRESSED BY THE SITE-**
17 **SPECIFIC CRITERIA SATISFY THE CLEANUP CRITERIA FOR THE RESIDENTIAL**
18 **CATEGORY PROVIDED FOR IN SECTION 20120A(1)(A) AND (17).**

19 (iii) **CORRECTIVE** action has been completed under part 213 ~~which~~
20 **THAT** satisfies the cleanup criteria for unrestricted residential
21 use.

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

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

27 (r) "Free product" means a hazardous substance in a liquid

1 phase equal to or greater than 1/8 inch of measurable thickness
2 that is not dissolved in water and that has been released into the
3 environment.

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

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

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

20 (ii) Hazardous substance as defined in the comprehensive
21 environmental response, compensation, and liability act of 1980,
22 Public Law 96-510. ~~, 94 Stat. 2767.~~

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

24 (iv) Petroleum as described in part 213.

25 (u) "Interim response activity" means the cleanup or removal
26 of a released hazardous substance or the taking of other actions,
27 prior to the implementation of a remedial action, as may be

1 necessary to prevent, minimize, or mitigate injury to the public
2 health, safety, or welfare, or to the environment. Interim response
3 activity also includes, but is not limited to, measures to limit
4 access, replacement of water supplies, and temporary relocation of
5 people as determined to be necessary by the department. In
6 addition, interim response activity means the taking of other
7 actions as may be necessary to prevent, minimize, or mitigate a
8 threatened release.

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

10 (i) A state or nationally chartered bank.

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

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

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

17 (v) An insurance company authorized to do business in this
18 state pursuant to the insurance code of 1956, ~~Act No. 218 of the~~
19 ~~Public Acts of 1956, being sections 1956 PA 218, MCL 500.100 to~~
20 ~~500.8302. of the Michigan Compiled Laws.~~

21 (vi) A motor vehicle finance company subject to the motor
22 vehicle **SALES** finance act, ~~Act No. 27 of the Extra Session of 1950~~
23 ~~, being sections 492.101 to 492.141 of the Michigan Compiled Laws~~
24 **1950 (EX SESS) PA 27, MCL 492.101 TO 492.141**, with net assets in
25 excess of \$50,000,000.00.

26 (vii) A foreign bank.

27 (viii) A retirement fund regulated pursuant to state law or a

1 pension fund regulated pursuant to federal law with net assets in
2 excess of \$50,000,000.00.

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

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

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

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

13 (w) "Local health department" means that term as defined in
14 section 1105 of the public health code, ~~Act No. 368 of the Public~~
15 ~~Acts of 1978, being section 1978 PA 368, MCL 333.1105. of the~~
16 ~~Michigan Compiled Laws.~~

17 (x) "Local unit of government" means a county, city, township,
18 or village, an agency of a local unit of government, an authority
19 or any other public body or entity created by or pursuant to state
20 law. Local unit of government does not include the state or federal
21 government or a state or federal agency.

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

25 (i) A person who holds indicia of ownership primarily to
26 protect the person's security interest in the facility, unless that
27 person participates in the management of the facility as described

1 in section 20101a.

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

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

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

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

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

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

16 (ii) A lawful and authorized discharge into a permitted waste
17 treatment facility.

18 (iii) A federally permitted release as defined in the
19 comprehensive environmental response, compensation, and liability
20 act of 1980, Public Law 96-510. ~~94 Stat. 2767.~~

21 (bb) "Release" includes, but is not limited to, any spilling,
22 leaking, pumping, pouring, emitting, emptying, discharging,
23 injecting, escaping, leaching, dumping, or disposing of a hazardous
24 substance into the environment, or the abandonment or discarding of
25 barrels, containers, and other closed receptacles containing a
26 hazardous substance. Release does not include any of the following:

27 (i) A release that results in exposure to persons solely within

1 a workplace, with respect to a claim that these persons may assert
2 against their employers.

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

5 (iii) A release of source, by-product, or special nuclear
6 material from a nuclear incident, as those terms are defined in the
7 atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the
8 release is subject to requirements with respect to financial
9 protection established by the nuclear regulatory commission under
10 section 170 of ~~chapter 14 of title I of the atomic energy act of~~
11 ~~1954, chapter 1073, 71 Stat. 576, 42 U.S.C. USC 2210, or any~~
12 release of source by-product or special nuclear material from any
13 processing site designated under section 102(a)(1) ~~of title I or~~
14 ~~302(a) of title III of the uranium mill tailings radiation control~~
15 ~~act of 1978, Public Law 95-604, 42 U.S.C. 7912 and 7942-USC~~
16 **7912 (A) (1) AND 7942 (A) .**

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

26 (v) A release does not include fruits, vegetables, field crop
27 processing by-products, or aquatic plants, that are applied to the

1 land for an agricultural use or for use as an animal feed, if the
2 use is consistent with generally accepted agricultural and
3 management practices developed pursuant to the Michigan right to
4 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
5 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
6 **286.471 TO 286.474.**

7 (cc) "Remedial action" includes, but is not limited to,
8 cleanup, removal, containment, isolation, destruction, or treatment
9 of a hazardous substance released or threatened to be released into
10 the environment, monitoring, maintenance, or the taking of other
11 actions that may be necessary to prevent, minimize, or mitigate
12 injury to the public health, safety, or welfare, or to the
13 environment.

14 (dd) "Remedial action plan" means a work plan for performing
15 remedial action under this part.

16 (ee) "Response activity" means evaluation, interim response
17 activity, remedial action, demolition, or the taking of other
18 actions necessary to protect the public health, safety, or welfare,
19 or the environment or the natural resources. Response activity also
20 includes health assessments or health effect studies carried out
21 under the supervision, or with the approval of, the department of
22 public health and enforcement actions related to any response
23 activity.

24 (ff) "Response activity costs" or "costs of response activity"
25 means all costs incurred in taking or conducting a response
26 activity, including enforcement costs.

27 (gg) "Security interest" means any interest, including a

1 reversionary interest, in real property created or established for
2 the purpose of securing a loan or other obligation. Security
3 interests include, but are not limited to, mortgages, deeds of
4 trusts, liens, and title pursuant to lease financing transactions.
5 Security interests may also arise from transactions such as sale
6 and leasebacks, conditional sales, installment sales, trust receipt
7 transactions, certain assignments, factoring agreements, accounts
8 receivable financing arrangements, consignments, or any other
9 transaction in which evidence of title is created if the
10 transaction creates or establishes an interest in real property for
11 the purpose of securing a loan or other obligation.

12 (hh) "Site" means the location of environmental contamination.

13 (ii) "Threatened release" or "threat of release" means any
14 circumstance that may reasonably be anticipated to cause a release.

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

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

25 (a) Residential.

26 (b) Commercial.

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

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

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

1 (1). The department shall specify site characteristics that
2 determine the applicability of criteria derived for these
3 categories or subcategories.

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

24 (5) If a cleanup criterion derived under subsection (4) for
25 groundwater in an aquifer differs from either: (a) the state
26 drinking water standard established pursuant to section 5 of the
27 safe drinking water act, ~~Act No. 399 of the Public Acts of 1976,~~

1 ~~being section 1976 PA 399, MCL 325.1005, of the Michigan Compiled~~
2 ~~Laws,~~ or (b) criteria for adverse aesthetic characteristics derived
3 pursuant to R 299.5709 of the Michigan administrative code, the
4 cleanup criterion shall be the more stringent of (a) or (b) unless
5 the department determines that compliance with this rule is not
6 necessary because the use of the aquifer is reliably restricted
7 pursuant to section 20120b(4) or (5).

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

27 (7) Cleanup criteria from 1 or more categories in subsection

1 (1) may be applied at a facility, if all relevant requirements are
2 satisfied for application of a pertinent criterion.

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

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

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

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

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

27 (c) The United States environmental protection agency has

1 determined that application of the model is appropriate for the
2 hazardous substance in question.

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

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

16 (13) Response activity to address the release of
17 uncontaminated mineral oil satisfies R 299.5709 for groundwater or
18 R 299.5711 for soil under the Michigan administrative code if all
19 visible traces of mineral oil are removed from groundwater and
20 soil.

21 (14) Approval by the department of a remedial action plan
22 based on 1 or more categorical standard in subsection (1)(a) to (e)
23 shall be granted only if the pertinent criteria are satisfied in
24 the affected media. The department shall approve the use of
25 probabilistic or statistical methods or other scientific methods of
26 evaluating environmental data when determining compliance with a
27 pertinent cleanup criterion if the methods are determined by the

1 department to be reliable, scientifically valid, and best represent
2 actual site conditions and exposure potential.

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

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

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

25 (18) The department shall annually evaluate and revise, if
26 appropriate, the cleanup criteria derived under this section. The
27 evaluation shall incorporate knowledge gained through research and

1 studies in the areas of fate and transport and risk assessment. The
2 department shall prepare and submit to the legislature a report
3 detailing revisions made to cleanup criteria under this section.

4 (19) NOTWITHSTANDING ANY OTHER PROVISION IN THIS PART, THE
5 DEPARTMENT SHALL NOT ESTABLISH, BY RULE OR OTHERWISE, OR ENFORCE
6 CLEANUP CRITERIA FOR A HAZARDOUS SUBSTANCE THAT ARE MORE STRINGENT
7 THAN COMPARABLE CRITERIA ESTABLISHED OR PUBLISHED BY THE UNITED
8 STATES ENVIRONMENTAL PROTECTION AGENCY FOR THAT HAZARDOUS
9 SUBSTANCE. FURTHERMORE, CLEANUP CRITERIA FOR A HAZARDOUS SUBSTANCE
10 ESTABLISHED BY THE DEPARTMENT PRIOR TO THE EFFECTIVE DATE OF THE
11 AMENDATORY ACT THAT ADDED THIS SUBSECTION THAT ARE MORE STRINGENT
12 THAN COMPARABLE CRITERIA ESTABLISHED OR PUBLISHED BY THE UNITED
13 STATES ENVIRONMENTAL PROTECTION AGENCY FOR THAT HAZARDOUS SUBSTANCE
14 ARE SUBJECT TO BOTH OF THE FOLLOWING:

15 (A) THE CLEANUP CRITERIA ARE NOT APPLICABLE, RELEVANT, OR
16 APPROPRIATE WITHIN THE MEANING OF 42 USC 9621 OR 40 CFR PART 300,
17 AND SHALL NOT BE IDENTIFIED BY THE STATE AS SUCH TO THE UNITED
18 STATES ENVIRONMENTAL PROTECTION AGENCY.

19 (B) THE CLEANUP CRITERIA SHALL NOT OTHERWISE APPLY AT ANY
20 AREA, PLACE, OR PROPERTY WHERE A RESPONSE ACTION UNDER THE
21 OVERSIGHT OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
22 PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,
23 AND LIABILITY ACT OF 1980, PUBLIC LAW 96-510, IS UNDERWAY OR IS
24 COMPLETE.