

# HOUSE BILL No. 5171

December 4, 2013, Introduced by Reps. Irwin, Tlaib, Rutledge, Driskell, Zemke, Switalski, Geiss, LaVoy and Singh and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled

"Natural resources and environmental protection act,"

by amending section 20120a (MCL 324.20120a), as amended by 2012 PA 446; and to repeal acts and parts of acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 20120a. (1) The department may establish cleanup criteria  
2 and approve of remedial actions in the categories listed in this  
3 subsection. The cleanup category proposed shall be the option of  
4 the person proposing the remedial action, subject to department  
5 approval if required, considering the appropriateness of the  
6 categorical criteria to the facility. The categories are as  
7 follows:

8           (a) Residential.

9           (b) Nonresidential. The nonresidential cleanup criteria shall

1 be the former industrial categorical cleanup criteria developed by  
2 the department pursuant to this section until new nonresidential  
3 cleanup criteria are developed and published by the department  
4 pursuant to subsection (17).

5 (c) Limited residential.

6 (d) Limited nonresidential.

7 (2) As an alternative to the categorical criteria under  
8 subsection (1), the department may approve a response activity plan  
9 or a no further action report containing site-specific criteria  
10 that satisfy the requirements of section 20120b and other  
11 applicable requirements of this part. The department shall utilize  
12 only reasonable and relevant exposure pathways in determining the  
13 adequacy of a site-specific criterion. Additionally, the department  
14 may approve a remedial action plan for a designated area-wide zone  
15 encompassing more than 1 facility, and may consolidate remedial  
16 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 facility 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, 1976 PA 399, MCL 325.1005, or (b) the

1 national secondary drinking water regulations established pursuant  
2 to 42 USC 300g-1, or (c) if there is not national secondary  
3 drinking water regulation for a contaminant, the concentration  
4 determined by the department according to methods approved by the  
5 United States environmental protection agency below which taste,  
6 odor, appearance, or other aesthetic characteristics are not  
7 adversely affected, the cleanup criterion shall be the more  
8 stringent of (a), (b), or (c) unless the department determines that  
9 compliance with this subsection is not necessary because the use of  
10 the aquifer is reliably restricted under provisions of a  
11 postclosure plan or a postclosure agreement.

12 (6) The department shall not approve a remedial action plan or  
13 no further action report in categories set forth in subsection  
14 (1)(b) to (d), unless the person documents that the current zoning  
15 of the property is consistent with the categorical criteria being  
16 proposed, or that the governing zoning authority intends to change  
17 the zoning designation so that the proposed criteria are consistent  
18 with the new zoning designation, or the current property use is a  
19 legal nonconforming use. The department shall not grant final  
20 approval for a remedial action plan or no further action report  
21 that relies on a change in zoning designation until a final  
22 determination of that zoning change has been made by the local unit  
23 of government. The department may approve of a remedial action plan  
24 or no further action report that achieves categorical criteria that  
25 are based on greater exposure potential than the criteria  
26 applicable to current zoning. In addition, the remedial action plan  
27 or no further action report shall include documentation that the

1 current property use is consistent with the current zoning or is a  
2 legal nonconforming use. Abandoned or inactive property shall be  
3 considered on the basis of zoning classifications as described  
4 above.

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

8 (8) The need for soil remediation to protect an aquifer from  
9 hazardous substances in soil shall consider the vulnerability of  
10 the aquifer or aquifers potentially affected if the soil remains at  
11 the facility. Migration of hazardous substances in soil to an  
12 aquifer is a pertinent pathway if appropriate based on  
13 consideration of site specific factors.

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

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

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

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

27 (10) If the target detection limit or the background

1 concentration for a hazardous substance is greater than a cleanup  
2 criterion developed for a category pursuant to subsection (1), the  
3 criterion shall be the target detection limit or background  
4 concentration, whichever is larger, for that hazardous substance in  
5 that category.

6 (11) The department may also approve cleanup criteria if  
7 necessary to address conditions that prevent a hazardous substance  
8 from being reliably measured at levels that are consistently  
9 achievable in samples from the facility in order to allow for  
10 comparison with generic cleanup criteria. A person seeking approval  
11 of a criterion under this subsection shall document the basis for  
12 determining that the relevant published target detection limit  
13 cannot be achieved in samples from the facility.

14 (12) In determining the adequacy of a land-use based response  
15 activity to address sites contaminated by polychlorinated  
16 biphenyls, the department shall not require response activity in  
17 addition to that which is subject to and complies with applicable  
18 federal regulations and policies that implement the toxic  
19 substances control act, 15 USC 2601 to 2692.

20 (13) Remedial action to address the release of uncontaminated  
21 mineral oil satisfies cleanup criteria under this part for  
22 groundwater or for soil if all visible traces of mineral oil are  
23 removed from groundwater and soil.

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

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

6 (15) If a discharge of venting groundwater complies with this  
7 part, a permit for the discharge is not required.

8 (16) Remedial actions shall meet the cleanup criteria for  
9 unrestricted residential use or shall provide for acceptable land  
10 use or resource use restrictions in a postclosure plan or a  
11 postclosure agreement.

12 (17) Remedial actions that rely on categorical cleanup  
13 criteria developed pursuant to subsection (1) shall also consider  
14 other factors necessary to protect the public health, safety, and  
15 welfare, and the environment as specified by the department, if the  
16 department determines based on data and existing information that  
17 such considerations are relevant to a specific facility. These  
18 factors include, but are not limited to, the protection of surface  
19 water quality and consideration of ecological risks if pertinent to  
20 the facility based on the requirements of this part.

21 (18) THE DEPARTMENT SHALL DEVELOP CLEANUP CRITERIA PURSUANT TO  
22 SUBSECTION (1) BASED UPON THE UNITED STATES ENVIRONMENTAL  
23 PROTECTION AGENCY - IRIS HAZARDOUS SUBSTANCE CARCINOGENIC SLOPE  
24 FACTOR AND NONCARCINOGENIC REFERENCE DOSE AND REFERENCE  
25 CONCENTRATION FOR THE CALCULATION OF THE CLEANUP CRITERIA. IF A  
26 HAZARDOUS SUBSTANCE DOES NOT HAVE AN ESTABLISHED UNITED STATES  
27 ENVIRONMENTAL PROTECTION AGENCY - IRIS CARCINOGENIC SLOPE FACTOR OR

1 NONCARCINOGENIC REFERENCE DOSE AND REFERENCE CONCENTRATION, THE  
2 DEPARTMENT SHALL WORK WITH THE UNITED STATES ENVIRONMENTAL  
3 PROTECTION AGENCY TO GENERATE SUCH A VALUE FOLLOWING THE UNITED  
4 STATES ENVIRONMENTAL PROTECTION AGENCY METHODOLOGY.

5 (19) ~~(18)~~ Not later than December 31, ~~2013,~~ 2014, the  
6 department shall evaluate and revise the cleanup criteria derived  
7 under this section. ~~The evaluation and any revisions~~ **THIS REVISION**  
8 shall incorporate knowledge gained through research and studies in  
9 the areas of fate and transport and risk assessment and shall take  
10 into account best practices from other states, reasonable and  
11 realistic conditions, and sound science. Following this revision,  
12 the department shall periodically evaluate whether new information  
13 is available regarding the cleanup criteria and shall make  
14 revisions as appropriate. **NOT LATER THAN MARCH 31, 2014 AND EVERY 6**  
15 **MONTHS THEREAFTER, THE DEPARTMENT SHALL REVISE THE CLEANUP CRITERIA**  
16 **DERIVED UNDER THIS SECTION WITH THE CURRENT UNITED STATES**  
17 **ENVIRONMENTAL PROTECTION AGENCY - IRIS CARCINOGENIC SLOPE FACTOR**  
18 **AND NONCARCINOGENIC REFERENCE DOSE AND REFERENCE CONCENTRATION**  
19 **VALUES.** The department shall prepare and submit to the legislature  
20 a report detailing any revisions made to cleanup criteria under  
21 this section.

22 (20) ~~(19)~~ A person demonstrates compliance with indoor air  
23 inhalation criteria for a hazardous substance at a facility under  
24 this part if all of the following conditions are met:

25 (a) The facility is an establishment covered by the  
26 classifications provided by sector 31-33 - manufacturing, of the  
27 North American industry classification system, United States, 2012,

1 published by the office of management and budget.

2 (b) The person complies with the Michigan occupational safety  
3 and health act, 1974 PA 154, MCL 408.1001 to 408.1094, and the  
4 rules promulgated under that act applicable to the exposure to the  
5 hazardous substance, including, but not limited to, the  
6 occupational health standards for air contaminants, R 325.51101 to  
7 R 325.51108 of the Michigan administrative code.

8 (c) The hazardous substance is included in the facility's  
9 hazard communication program under section 14a of the Michigan  
10 occupational safety and health act, 1974 PA 154, MCL 408.1014a, and  
11 the hazard communication rules, R 325.77001 to R 325.77003 of the  
12 Michigan administrative code, except that unless the hazardous  
13 substance is in use in the facility, the requirement to have a  
14 material safety data sheet in the workplace requires only a generic  
15 material safety data sheet for the hazardous substance and the  
16 labeling requirements do not apply.

17 **(21) AS USED IN THIS SECTION, "UNITED STATES ENVIRONMENTAL**  
18 **PROTECTION AGENCY - IRIS" MEANS THE UNITED STATES ENVIRONMENTAL**  
19 **PROTECTION AGENCY INTEGRATED RISK INFORMATION SYSTEM.**

20 Enacting section 1. Enacting section 2 of 2012 PA 446 is  
21 repealed.

22 Enacting section 2. R 299.5101, R 299.5103, R 299.5115, R  
23 299.5520, R 299.5522, R 299.5524, R 299.5526, R 299.5528, R  
24 299.5542, R 299.5701, R 299.5703, R 299.5705, R 299.5706, R  
25 299.5706a, R 299.5707, R 299.5708 to R 299.5726, R 299.5728, R  
26 299.5730, R 299.5734, R 299.5736, R 299.5738, R 299.5740, and R  
27 299.5744 to R 299.5752 of the Michigan administrative code are

1 rescinded effective December 31, 2014.