



# HOUSE BILL No. 4770

May 11, 1993, Introduced by Reps. Shugars, Dalman, Brackenridge, McNutt, Jaye, Bodem, Stille and Gernaat and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend section 3 of Act No. 307 of the Public Acts of 1982, entitled as amended

"The environmental response act,"

as amended by Act No. 234 of the Public Acts of 1990, being section 299.603 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 3 of Act No. 307 of the Public Acts of  
2 1982, as amended by Act No. 234 of the Public Acts of 1990, being  
3 section 299.603 of the Michigan Compiled Laws, is amended to read  
4 as follows:

5 Sec. 3. As used in this act:

6 (a) "Act of God" means an unanticipated grave natural  
7 disaster or other natural phenomenon of an exceptional,  
8 inevitable, and irresistible character, the effects of which

1 could not have been prevented or avoided by the exercise of due  
2 care or foresight.

3 (b) "Agricultural property" means real property used for  
4 farming in any of its branches, including cultivating of soil;  
5 growing and harvesting of any agricultural, horticultural, or  
6 floricultural commodity; dairying; raising of livestock, bees,  
7 fish, fur-bearing animals, or poultry; turf and tree farming; and  
8 performing any practices on a farm as an incident to, or in con-  
9 junction with, these farming operations. Agricultural property  
10 does not include property used for commercial storage, process-  
11 ing, distribution, marketing, or shipping operations.

12 (c) "Attorney general" means the department of the attorney  
13 general.

14 (d) "Commercial lending institution" means a state or  
15 nationally chartered bank, a state or federally chartered savings  
16 and loan association or savings bank, or a state or federally  
17 chartered credit union, or other state or federally chartered  
18 lending institution or a regulated affiliate or a regulated sub-  
19 sidiary of any of these entities.

20 (e) "Department" means the director of the department of  
21 natural resources or his or her designee.

22 (f) "Director" means the director of the department of natu-  
23 ral resources.

24 (g) "Directors" means the directors or their designees of  
25 the departments of natural resources, public health, agriculture,  
26 and state police.

1 (h) "Disposal" means the discharge, deposit, injection,  
2 dumping, spilling, leaking, or placing of any hazardous substance  
3 into or on any land or water so that the hazardous substance or  
4 any constituent of the hazardous substance may enter the environ-  
5 ment or be emitted into the air or discharged into any groundwa-  
6 ter or surface water.

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

12 (J) "ENTERPRISE ZONE" MEANS AN AREA APPROVED AS AN ENTER-  
13 PRISE ZONE PURSUANT TO THE ENTERPRISE ZONE ACT, ACT NO. 224 OF  
14 THE PUBLIC ACTS OF 1985, BEING SECTIONS 125.2101 TO 125.2122 OF  
15 THE MICHIGAN COMPILED LAWS.

16 (K) ~~(j)~~ "Environment" or "natural resources" means any  
17 land, surface water, groundwater, subsurface, strata, air, fish,  
18 wildlife, or biota within the state.

19 (L) ~~(k)~~ "Environmental contamination" means the release of  
20 a hazardous substance, or the potential release of a discarded  
21 hazardous substance, in a quantity, which is or may become inju-  
22 rious to the environment, or to the public health, safety, or  
23 welfare.

24 (M) ~~(l)~~ "Evaluation" means those activities including but  
25 not limited to investigation, studies, sampling, analysis, devel-  
26 opment of feasibility studies, and administrative efforts, that

1 are needed to determine the nature, extent, and impact of a  
2 release or threat of release and necessary response activities.

3 (N) ~~(m)~~ "Facility" means any area, place, or property  
4 where a hazardous substance has been released, deposited, stored,  
5 disposed of, or otherwise comes to be located.

6 (O) ~~(n)~~ "Feasibility study" means a process for develop-  
7 ing, evaluating, and selecting appropriate response activities.

8 (P) ~~(o)~~ "Fund" means the environmental response fund  
9 established in section 9, except as otherwise provided in  
10 section 11f.

11 (Q) ~~(p)~~ "Hazardous substance" means 1 or more of the  
12 following:

13 (i) A chemical or other material which is or may become  
14 injurious to the public health, safety, or welfare or to the  
15 environment.

16 (ii) "Hazardous substance" as defined in the comprehensive  
17 environmental response, compensation, and liability act of 1980,  
18 Public Law 96-510, 94 Stat. 2767.

19 (iii) "Hazardous waste" as defined in the hazardous waste  
20 management act, Act No. 64 of the Public Acts of 1979, being  
21 sections 299.501 to 299.551 of the Michigan Compiled Laws.

22 (iv) "Petroleum" as defined in the leaking underground stor-  
23 age tank act, Act No. 478 of the Public Acts of 1988, being sec-  
24 tions 299.831 to 299.850 of the Michigan Compiled Laws.

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

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

9 (S) ~~(r)~~ "Local health department" means that term as  
10 defined in section 1105 of the public health code, Act No. 368 of  
11 the Public Acts of 1978, being section 333.1105 of the Michigan  
12 Compiled Laws.

13 (T) ~~(s)~~ "Local unit of government" means a county, city,  
14 township, or village, an agency of a local unit of government, an  
15 authority or any other public body or entity created by or pursu-  
16 ant to state law. Local unit of government does not include the  
17 state or federal government or a state or federal agency.

18 (U) ~~(t)~~ "Operator" means a person that is in control of or  
19 responsible for the operation of a facility. Operator does not  
20 include any of the following:

21 (i) A person that, without participating in the management  
22 of the facility, holds indicia of ownership primarily to protect  
23 the person's security interest in the facility, including, but  
24 not limited to, a vendor's interest under a recorded land  
25 contract. For the purposes of this act, a commercial lending  
26 institution shall not be construed to be participating in the  
27 management of a facility by extending credit, providing financial

1 services, providing financial advice, or supervising a plan to  
2 resolve financial difficulties for an operator, or conducting or  
3 causing to be conducted a prudent or legally required review or  
4 investigation of environmental matters related to the facility or  
5 the operator of the facility, if the actions of the commercial  
6 lending institution do not suggest, condone, or encourage the  
7 treatment or handling of a hazardous substance by the operator in  
8 a manner that results in a release.

9       (ii) The state or a local unit of government that acquired  
10 ownership or control of the facility involuntarily through bank-  
11 ruptcy, tax delinquency, abandonment, or other circumstances in  
12 which the government involuntarily acquires title or control by  
13 virtue of its governmental function, a local unit of government  
14 to which ownership or control of the facility is transferred by  
15 the state, or the state or a local unit of government that  
16 acquired ownership or control of the facility by seizure, receiv-  
17 ership, or forfeiture pursuant to the operation of law or by  
18 court order. In case of an acquisition described in this sub-  
19 paragraph by the state or a local unit of government, operator  
20 means a person that was in control of or responsible for opera-  
21 tion of the facility immediately before the state or local unit  
22 of government acquired ownership or control. The exclusion pro-  
23 vided in this subparagraph shall not apply to the state or a  
24 local unit of government that caused or contributed to the  
25 release or threat of a release from the facility.

26       (iii) The operator of an underground storage tank system, as  
27 defined in the leaking underground storage tank act, Act No. 478

1 of the Public Acts of 1988, being sections 299.831 to 299.850 of  
2 the Michigan Compiled Laws, from which there is a release or  
3 threat of release if all of the following conditions are met:

4 (A) The operator reported the release or threat of release  
5 to the department of state police, fire marshal division, within  
6 24 hours after confirmation of the release or threat of release.

7 (B) The release or threat of release at the facility is  
8 solely the result of a release or threat of release of a regu-  
9 lated substance as defined in Act No. 478 of the Public Acts of  
10 1988 from an underground storage tank system.

11 (C) The operator is in compliance with the requirements of  
12 Act No. 478 of the Public Acts of 1988, and any promulgated rules  
13 or any order, agreement, or judgment issued or entered into pur-  
14 suant to that act.

15 (iv) A state or local unit of government that holds or  
16 acquires an easement interest in a facility, holds or acquires an  
17 interest in a facility by dedication in a plat, or by dedication  
18 pursuant to Act No. 283 of the Public Acts of 1909, being sec-  
19 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-  
20 sion provided in this subparagraph shall not apply to the state  
21 or a local unit of government that holds an easement or dedica-  
22 tion if the state or that local unit of government caused or con-  
23 tributed to a release or threat of release, or if equipment owned  
24 or operated by the state or that local unit of government caused  
25 or contributed to the release or threat of release.

26 (v) A person that holds an easement interest in a facility  
27 for the purpose of conveying or providing goods or services,

1 including, but not limited to, utilities, sewers, roads,  
2 railways, and pipelines; or a person that acquires access through  
3 an easement. The exclusion provided in this subparagraph shall  
4 not apply to a person that holds an easement if that person  
5 caused or contributed to a release or threat of release, or if  
6 equipment owned or operated by that person caused or contributed  
7 to the release or threat of release.

8 (vi) A person that satisfies all of the following:

9 (A) The release was caused solely by a third party who is  
10 not an employee or agent of the person, or whose action was not  
11 associated with a contractual relationship with the person.

12 (B) The hazardous substance was not deposited, stored, or  
13 disposed of on the property upon which the person operates.

14 (C) The person at the time of transfer of the right to oper-  
15 ate on the property discloses any knowledge or information con-  
16 cerning the general nature and extent of the release as required  
17 in section 10c.

18 (vii) A PERSON THAT OPERATES PROPERTY AFTER ITS DESIGNATION  
19 AS PART OF AN ENTERPRISE ZONE. THE EXCLUSION PROVIDED IN THIS  
20 SUBPARAGRAPH DOES NOT APPLY IF THE OPERATOR CAUSED OR CONTRIBUTED  
21 TO THE RELEASE ON THE PROPERTY OR IF THE OPERATOR WAS OR IS  
22 AFFILIATED WITH A PERSON THAT CAUSED OR CONTRIBUTED TO THE  
23 RELEASE ON THE PROPERTY.

24 (V) ~~(u)~~ "Owner" means a person that owns a facility.  
25 Owner does not include any of the following:

26 (i) A person that, without participating in the management  
27 of the facility, holds indicia of ownership primarily to protect

1 the person's security interest in the facility, including, but  
2 not limited to, a vendor's interest under a recorded land  
3 contract. For the purposes of this act, a commercial lending  
4 institution shall not be construed to be participating in the  
5 management of a facility by extending credit, providing financial  
6 services, providing financial advice, or supervising a plan to  
7 resolve financial difficulties for an owner, or conducting or  
8 causing to be conducted a prudent or legally required review or  
9 investigation of environmental matters related to the facility or  
10 the owner of the facility, if the actions of the commercial lend-  
11 ing institution do not suggest, condone, or encourage the treat-  
12 ment or handling of a hazardous substance by the owner in a  
13 manner that results in a release.

14 (ii) The state or a local unit of government that acquired  
15 ownership or control of the facility involuntarily through bank-  
16 ruptcy, tax delinquency, abandonment, or other circumstances in  
17 which the government involuntarily acquires title or control by  
18 virtue of its governmental function, a local unit of government  
19 to which ownership or control of the facility is transferred by  
20 the state, or the state or a local unit of government that  
21 acquired ownership or control of the facility by seizure, receiv-  
22 ership, or forfeiture pursuant to the operation of law or by  
23 court order. In case of an acquisition described in this sub-  
24 paragraph by the state or a local unit of government, owner means  
25 any person who owned or controlled activities at the facility  
26 immediately before the state or local unit of government acquired  
27 ownership or control. The exclusion provided in this

1 subparagraph shall not apply to the state or a local unit of  
2 government that caused or contributed to the release or threat of  
3 a release from the facility.

4 (iii) A person that satisfies all of the following:

5 (A) The release was caused solely by a third party, who is  
6 not an employee or agent of the person, or whose action was not  
7 associated with a contractual relationship with the person.

8 (B) The hazardous substance was not deposited, stored, or  
9 disposed of on that person's property.

10 (C) The person at the time of transfer of the property dis-  
11 closes any knowledge or information concerning the general nature  
12 and extent of the release as required in section 10c.

13 (iv) The owner of an underground storage tank system, as  
14 defined in the leaking underground storage tank act, Act No: 478  
15 of the Public Acts of 1988, being sections 299.831 to 299.850 of  
16 the Michigan Compiled Laws, from which there is a release or  
17 threat of release if all of the following conditions are met:

18 (A) The owner reported the release or threat of release to  
19 the department of state police, fire marshal division, within 24  
20 hours after confirmation of the release or threat of release.

21 (B) The release or threat of release at the facility is  
22 solely the result of a release or threat of release of a regu-  
23 lated substance as defined in Act No. 478 of the Public Acts of  
24 1988 from an underground storage tank system.

25 (C) The owner is in compliance with the requirements of Act  
26 No. 478 of the Public Acts of 1988, and any promulgated rules or

1 any order, agreement, or judgment issued or entered pursuant to  
2 that act.

3 (v) A state or local unit of government that holds or  
4 acquires an easement interest in a facility, holds or acquires an  
5 interest in a facility by dedication in a plat, or by dedication  
6 pursuant to Act No. 283 of the Public Acts of 1909, being sec-  
7 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-  
8 sion provided in this subparagraph shall not apply to the state  
9 or a local unit of government that holds an easement or dedica-  
10 tion if that state or local unit of government caused or contrib-  
11 uted to a release or threat of release, or if equipment owned or  
12 operated by the state or that local unit of government caused or  
13 contributed to the release or threat of release.

14 (vi) A person that holds an easement interest in a facility  
15 for the purpose of conveying or providing goods or services,  
16 including, but not limited to, utilities, sewers, roads, rail-  
17 ways, and pipelines; or a person that acquires access through an  
18 easement. The exclusion provided in this subparagraph shall not  
19 apply to a person that holds an easement if that person caused or  
20 contributed to a release or threat of release, or if equipment  
21 owned or operated by that person caused or contributed to the  
22 release or threat of release.

23 (vii) A person that holds only subsurface mineral rights to  
24 the property and has not caused or contributed to a release on  
25 the property.

26 (viii) A PERSON THAT OWNS PROPERTY AFTER ITS DESIGNATION AS  
27 PART OF AN ENTERPRISE ZONE. THE EXCLUSION PROVIDED IN THIS

1 SUBPARAGRAPH DOES NOT APPLY IF THE OWNER CAUSED OR CONTRIBUTED TO  
2 THE RELEASE ON THE PROPERTY OR IF THE OWNER WAS OR IS AFFILIATED  
3 WITH A PERSON THAT CAUSED OR CONTRIBUTED TO THE RELEASE ON THE  
4 PROPERTY.

5 (W) ~~(v)~~ "Permitted release" means 1 or more of the  
6 following:

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

9 (ii) A lawful and authorized discharge into a permitted  
10 waste treatment facility.

11 (iii) A federally permitted release as defined in the com-  
12 prehensive environmental response, compensation, and liability  
13 act of 1980, Public Law 96-510, 94 Stat. 2767.

14 (X) ~~(w)~~ "Person" means an individual, sole proprietorship,  
15 partnership, joint venture, trust, firm, joint stock company,  
16 corporation, including a government corporation, association,  
17 local unit of government, commission, the state, a political sub-  
18 division of the state, an interstate body, the federal govern-  
19 ment, a political subdivision of the federal government, or any  
20 other legal entity.

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

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

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

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

17 (iv) If applied according to label directions and according  
18 to generally accepted agricultural and management practices, the  
19 application of a fertilizer, soil conditioner, agronomically  
20 applied manure, or a pesticide, or a combination of these  
21 substances. As used in this subparagraph, fertilizer and soil  
22 conditioner have the meaning given to these terms in the fertil-  
23 izer act of 1975, Act No. 198 of the Public Acts of 1975, being  
24 sections 286.751 to 286.767, and pesticide has the meaning given  
25 to that term in the pesticide control act, Act No. 171 of the  
26 Public Acts of 1976, being sections 286.551 to 286.581 of the  
27 Michigan Compiled Laws.

1 (Z) ~~(y)~~ "Remedial action" includes, but is not limited to,  
2 cleanup, removal, containment, isolation, destruction, or treat-  
3 ment of a hazardous substance released or threatened to be  
4 released into the environment, monitoring, maintenance, or the  
5 taking of other actions that may be necessary to prevent, mini-  
6 mize, or mitigate injury to the public health, safety, or wel-  
7 fare, or to the environment.

8 (AA) ~~(z)~~ "Remedial action plan" means a work plan for per-  
9 forming remedial action under this act.

10 (BB) ~~(aa)~~ "Response activity" means evaluation, interim  
11 response activity, remedial action, or the taking of other  
12 actions necessary to protect the public health, safety, or wel-  
13 fare, or the environment, or the natural resources. Response  
14 activity also includes health assessments or health effect  
15 studies carried out under the supervision, or with the approval  
16 of, the department of public health, and enforcement actions  
17 related to any response activity.

18 (CC) ~~(bb)~~ "Response activity costs" or "costs of response  
19 activity" means all costs incurred in taking or conducting a  
20 response activity, including enforcement costs.

21 (DD) ~~(cc)~~ "Rule" means a rule promulgated pursuant to the  
22 administrative procedures act of 1969, Act No. 306 of the Public  
23 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
24 Compiled Laws.

25 (EE) ~~(dd)~~ "Science advisory council" means the science  
26 advisory council created in section 11d.

1 (FF) ~~(ee)~~ "Site" means the location of environmental  
2 contamination.

3 (GG) ~~(ff)~~ "Threatened release" or "threat of release"  
4 means any circumstance that may reasonably be anticipated to  
5 cause a release.