



**House
Legislative
Analysis
Section**

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LUST LIABILITY

House Bills 5380 and 5381
Sponsor: Rep. Ken Sikkema
Committee: Conservation,
Environment and Great Lakes

Complete to 11-22-95

A SUMMARY OF HOUSE BILLS 5380 AND 5381 AS INTRODUCED 11-7-95

House Bills 5380 and 5381 (MCL 34.20101 et. al.) would amend the Natural Resources and Environmental Protection Act (NREPA) to specify, among other things, that the response activities executed on a release from an underground storage tank system would be conducted according to the corrective actions specified in Part 213 of the act, which pertains to leaking underground storage tanks (LUSTs), and not under those specified in Part 201 of the act, which pertains to general environmental response provisions, and which includes the requirement that a Baseline Environmental Assessment (BEA) be conducted at the time of purchase or occupancy of a facility to define the existing environmental conditions. The bills are tie-barred to each other.

LUST Liability. Currently, NREPA specifies that the owner or operator of an underground storage tank system is exempt from liability for cleanup costs if the release is solely from an underground storage tank system and is subject to the corrective actions required under Part 213 of NREPA, which relates to leaking underground storage tanks. The act further specifies that, in a "mixed" site where the release is not solely from a LUST, then the owner or operator may or may not choose to conduct the corrective actions required under Part 213. House Bill 5380 would amend the act to clarify these provisions, as follows:

****In situations where a release or threat of release at a facility is caused solely by a leaking underground storage tank system, then the corrective actions performed would have to be those specified in Part 213 of NREPA, and the response activities required under Part 201 of the act would not have to be undertaken.**

****A person who became the owner or operator of a facility that contained an underground storage tank prior to June 5, 1995 would be liable for response activities only if he or she were responsible for the release.**

In addition, the bills would specify that, if a release was not solely from a LUST, the owner or operator could choose to perform either the response activities required under Part 201 or those required under Part 213.

Civil Liability. The act specifies that after June 5, 1995, a person who is responsible for an activity causing a release is subject to a civil fine if the release exceeds the concentrations allowed under the act for residential, commercial, recreational, or industrial use, unless the person makes a good faith effort to prevent the release. House Bill 5380 would amend the act

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to specify that this provision does not apply in situations involving leaking underground storage tanks (LUSTs). House Bill 5381 would, in addition, delete the current provision which excludes from liability a lender who does not participate in the management of an underground storage tank system, and would specify that this change in liability be given retroactive application.

Definitions. Currently, under NREPA, a "facility" is defined to mean any place where a hazardous substance exists that exceeds the standards established for a residential property site. A "facility" does not include an area that satisfies the cleanup criteria for the residential category after cleanup activities have been completed. Under House Bill 5380, a "facility" could also include a place where a hazardous substance existed that exceeded the cleanup criteria for unrestricted residential use, as defined under Part 213, or an area at which corrective action had been completed that satisfied the cleanup criteria for unrestricted residential use, as defined under Part 213. Under the act, a "hazardous substance" may be defined to include "petroleum," as described in Part 213. House Bill 5380 would clarify that this refers, instead, to a "regulated substance," which may include petroleum. In addition, House Bill 5381 would redefine "owner" or "operator" to include a person who is liable for the environmental response activities required under Part 201 of the act.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.