



SENATE BILL No. 157

January 31, 1995, Introduced by Senators SHUGARS and DUNASKISS and referred to the Committee on Natural Resources and Environmental Affairs.

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. 310 of the Public Acts of 1993, 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. 310 of the Public Acts of 1993, 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 any of the
15 following:

16 (i) A state or nationally chartered bank.

17 (ii) A state or federally chartered savings and loan associ-
18 ation or savings bank.

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

20 (iv) Any other state or federally chartered lending institu-
21 tion or regulated affiliate or regulated subsidiary of any entity
22 listed in this subparagraph or subparagraphs (i) to (iii).

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

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

5 (vii) A foreign bank.

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

9 (ix) A state or federal agency authorized by law to hold a
10 security interest in real property.

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

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

16 (f) "Director" means the director of the department of natu-
17 ral resources.

18 (g) "Directors" means the directors or their designees of
19 the departments of natural resources, public health, agriculture,
20 and state police.

21 (h) "Disposal" means the discharge, deposit, injection,
22 dumping, spilling, leaking, or placing of any hazardous substance
23 into or on any land or water so that the hazardous substance or
24 any constituent of the hazardous substance may enter the environ-
25 ment or be emitted into the air or discharged into any groundwa-
26 ter or surface water.

1 (i) "Enforcement costs" means court expenses, reasonable
2 attorney fees of the attorney general, and other reasonable
3 expenses of an executive department that are incurred in relation
4 to enforcement under this act or rules promulgated under this
5 act, or both.

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

10 (K) ~~(j)~~ "Environment" or "natural resources" means any
11 land, surface water, groundwater, subsurface ~~—~~ strata, air,
12 fish, wildlife, or biota within the state.

13 (L) ~~(k)~~ "Environmental contamination" means the release of
14 a hazardous substance, or the potential release of a discarded
15 hazardous substance, in a quantity, which is or may become inju-
16 rious to the environment, or to the public health, safety, or
17 welfare.

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

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

1 (O) ~~(n)~~ "Feasibility study" means a process for
2 developing, evaluating, and selecting appropriate response
3 activities.

4 (P) ~~(o)~~ "Fund" means the environmental response fund
5 established in section 9.

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

8 (i) A chemical or other material which is or may become
9 injurious to the public health, safety, or welfare or to the
10 environment.

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

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

17 (iv) "Petroleum" as described in section 4(5)(b) of the
18 leaking underground storage tank act, Act No. 478 of the Public
19 Acts of 1988, being section 299.834 of the Michigan Compiled
20 Laws.

21 (R) ~~(q)~~ "Interim response activity" means the cleanup or
22 removal of a released hazardous substance or the taking of other
23 actions, prior to the implementation of a remedial action, as may
24 be necessary to prevent, minimize, or mitigate injury to the
25 public health, safety, or welfare, or to the environment.
26 Interim response activity also includes, but is not limited to,
27 measures to limit access, replacement of water supplies, and

1 temporary relocation of people as determined to be necessary by
2 the department. In addition, interim response activity means the
3 taking of other actions as may be necessary to prevent, minimize,
4 or mitigate a threatened release.

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

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

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

17 (i) A person that holds indicia of ownership primarily to
18 protect the person's security interest in the facility, unless
19 that person participates in the management of the facility as
20 defined under section 3a.

21 (ii) The state or a local unit of government that acquired
22 ownership or control of the facility involuntarily through bank-
23 ruptcy, tax delinquency, abandonment, a transfer from a commer-
24 cial lending institution pursuant to section 12a(9), or other
25 circumstances in which the government involuntarily acquires
26 title or control by virtue of its governmental function or as
27 provided in this act, a local unit of government to which

1 ownership or control of the facility is transferred by the state,
2 or the state or a local unit of government that acquired owner-
3 ship or control of the facility by seizure, receivership, or for-
4 feiture pursuant to the operation of law or by court order. In
5 case of an acquisition described in this subparagraph by the
6 state or a local unit of government, operator means a person that
7 was in control of or responsible for operation of the facility
8 immediately before the state or local unit of government acquired
9 ownership or control. The exclusion provided in this subpara-
10 graph ~~shall~~ DOES not apply to the state or a local unit of gov-
11 ernment that caused or contributed to the release or threat of a
12 release from the facility.

13 (iii) The operator 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 operator reported the release or threat of release
19 to the department ~~of state police, fire marshal division,~~
20 within 24 hours after confirmation of the release or threat of
21 release.

22 (B) The release or threat of release at the facility is
23 solely the result of a release or threat of release of a regu-
24 lated substance as defined in Act No. 478 of the Public Acts of
25 1988 from an underground storage tank system.

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

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

3 (iv) 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~~ DOES not apply to the
9 state or a local unit of government that holds an easement or
10 dedication if the state or that local unit of government caused
11 or contributed to a release or threat of release, or if equipment
12 owned or operated by the state or that local unit of government
13 caused or contributed to the release or threat of release.

14 (v) 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~~
19 DOES not apply to a person that holds an easement if that person
20 caused or contributed to a release or threat of release, or if
21 equipment owned or operated by that person caused or contributed
22 to the release or threat of release.

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

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

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

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

7 (vii) A PERSON THAT OPERATES PROPERTY AFTER ITS DESIGNATION
8 AS PART OF AN ENTERPRISE ZONE. THE EXCLUSION PROVIDED IN THIS
9 SUBPARAGRAPH DOES NOT APPLY IF THE OPERATOR CAUSED OR CONTRIBUTED
10 TO THE RELEASE ON THE PROPERTY OR IF THE OPERATOR WAS OR IS
11 AFFILIATED WITH A PERSON THAT CAUSED OR CONTRIBUTED TO THE
12 RELEASE ON THE PROPERTY.

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

15 (i) A person that, without participating in the management
16 of the facility, holds indicia of ownership primarily to protect
17 the person's security interest in the facility, including, but
18 not limited to, a vendor's interest under a recorded land
19 contract.

20 (ii) The state or a local unit of government that acquired
21 ownership or control of the facility involuntarily through bank-
22 ruptcy, tax delinquency, abandonment, a transfer from a commer-
23 cial lending institution pursuant to section 12a(9), or other
24 circumstances in which the government involuntarily acquires
25 title or control by virtue of its governmental function or as
26 provided in this act, a local unit of government to which
27 ownership or control of the facility is transferred by the state,

1 or the state or a local unit of government that acquired
2 ownership or control of the facility by seizure, receivership, or
3 forfeiture pursuant to the operation of law or by court order.
4 In case of an acquisition described in this subparagraph by the
5 state or a local unit of government, owner means any person who
6 owned or controlled activities at the facility immediately before
7 the state or local unit of government acquired ownership or
8 control. The exclusion provided in this subparagraph ~~shall~~
9 DOES not apply to the state or a local unit of government that
10 caused or contributed to the release or threat of a release from
11 the facility.

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

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

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

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

21 (iv) The owner of an underground storage tank system or the
22 property on which an underground storage tank system is located,
23 as defined in the leaking underground storage tank act, Act
24 No. 478 of the Public Acts of 1988, being sections 299.831 to
25 299.850 of the Michigan Compiled Laws, from which there is a
26 release or threat of release if all of the following conditions
27 are met:

1 (A) The owner reported the release or threat of release to
2 the department ~~of state police, fire marshal division,~~ within
3 24 hours after confirmation of the release or threat of release.

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

8 (C) The owner is in compliance with the requirements of Act
9 No. 478 of the Public Acts of 1988, and any promulgated rules or
10 any order, agreement, or judgment issued or entered pursuant to
11 that act.

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

23 (vi) A person that holds an easement interest in a facility
24 for the purpose of conveying or providing goods or services,
25 including, but not limited to, utilities, sewers, roads, rail-
26 ways, and pipelines; or a person that acquires access through an
27 easement. The exclusion provided in this subparagraph ~~shall~~

1 DOES not apply to a person that holds an easement if that person
2 caused or contributed to a release or threat of release, or if
3 equipment owned or operated by that person caused or contributed
4 to the release or threat of release.

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

8 (viii) A PERSON THAT OWNS PROPERTY AFTER ITS DESIGNATION AS
9 PART OF AN ENTERPRISE ZONE. THE EXCLUSION PROVIDED IN THIS SUB-
10 PARAGRAPH DOES NOT APPLY IF THE OWNER CAUSED OR CONTRIBUTED TO
11 THE RELEASE ON THE PROPERTY OR IF THE OWNER WAS OR IS AFFILIATED
12 WITH A PERSON THAT CAUSED OR CONTRIBUTED TO THE RELEASE ON THE
13 PROPERTY.

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

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

18 (ii) A lawful and authorized discharge into a permitted
19 waste treatment facility.

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

23 (X) ~~(w)~~ "Person" means an individual, sole proprietorship,
24 partnership, joint venture, trust, firm, joint stock company,
25 corporation, including a government corporation, association,
26 local unit of government, commission, the state, a political
27 subdivision of the state, an interstate body, the federal

1 government, a political subdivision of the federal government, or
2 any other legal entity.

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

10 (i) A release that results in exposure to persons solely
11 within a workplace, with respect to a claim that these persons
12 may assert 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, if the
18 release is subject to requirements with respect to financial pro-
19 tection established by the nuclear regulatory commission under
20 section 170 of the atomic energy act of 1954, chapter 1073, 71
21 Stat. 576, 42 U.S.C. 2210, or, any release of source by-product,
22 or special nuclear material from any processing site designated
23 under section 102(a)(1) OF title I or 302(a) of title III of the
24 uranium mill tailings radiation control act of 1978, PUBLIC LAW
25 95-604, 42 U.S.C. 7912 and 7942.

26 (iv) If applied according to label directions and according
27 to generally accepted agricultural and management practices, the

1 application of a fertilizer, soil conditioner, agronomically
2 applied manure, or a pesticide, or a combination of these
3 substances. As used in this subparagraph, fertilizer and soil
4 conditioner have the meaning given to these terms in the fertil-
5 izer act of 1975, Act No. 198 of the Public Acts of 1975, being
6 sections 286.751 to 286.767, and pesticide has the meaning given
7 to that term in the pesticide control act, Act No. 171 of the
8 Public Acts of 1976, being sections 286.551 to 286.581 of the
9 Michigan Compiled Laws.

10 (Z) ~~(y)~~ "Remedial action" includes, but is not limited to,
11 cleanup, removal, containment, isolation, destruction, or treat-
12 ment of a hazardous substance released or threatened to be
13 released into the environment, monitoring, maintenance, or the
14 taking of other actions that may be necessary to prevent, mini-
15 mize, or mitigate injury to the public health, safety, or wel-
16 fare, or to the environment.

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

19 (BB) ~~(aa)~~ "Response activity" means evaluation, interim
20 response activity, remedial action, or the taking of other
21 actions necessary to protect the public health, safety, or wel-
22 fare, or the environment, or the natural resources. Response
23 activity also includes health assessments or health effect
24 studies carried out under the supervision, or with the approval
25 of, the department of public health, and enforcement actions
26 related to any response activity.

1 (CC) ~~(bb)~~ "Response activity costs" or "costs of response
2 activity" means all costs incurred in taking or conducting a
3 response activity, including enforcement costs.

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

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

10 (FF) ~~(ee)~~ "Site" means the location of environmental
11 contamination.

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