

HOUSE BILL No. 5320

October 23, 2001, Introduced by Reps. Garza, Daniels, Stallworth, Clarke, Thomas, Reeves, Hardman and Lemmons and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20101 (MCL 324.20101), as amended by 1996
PA 383, and by adding section 20121.

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
3 disaster or other natural phenomenon of an exceptional, inevita-
4 ble, and irresistible character, the effects of which could not
5 have been prevented or avoided by the exercise of due care or
6 foresight.

7 (b) "Agricultural property" means real property used for
8 farming in any of its branches, including cultivating of soil;
9 growing and harvesting of any agricultural, horticultural, or
10 floricultural commodity; dairying; raising of livestock, bees,

1 fish, fur-bearing animals, or poultry; turf and tree farming; and
2 performing any practices on a farm as an incident to, or in con-
3 junction with, these farming operations. Agricultural property
4 does not include property used for commercial storage, process-
5 ing, distribution, marketing, or shipping operations.

6 (c) "Attorney general" means the department of the attorney
7 general.

8 (D) "BACKGROUND" MEANS THE CONCENTRATION OR LEVEL OF A HAZ-
9 ARDOUS SUBSTANCE THAT EXISTS IN THE ENVIRONMENT AT OR REGIONALLY
10 PROXIMATE TO A FACILITY THAT IS NOT ATTRIBUTABLE TO ANY RELEASE
11 AT OR REGIONALLY PROXIMATE TO THE FACILITY.

12 (E) ~~(d)~~ "Baseline environmental assessment" means an eval-
13 uation of environmental conditions which exist at a facility at
14 the time of purchase, occupancy, or foreclosure that reasonably
15 defines the existing conditions and circumstance at the facility
16 so that, in the event of a subsequent release, there is a means
17 of distinguishing the new release from existing contamination.

18 (F) ~~(e)~~ "Board" means the brownfield redevelopment board
19 created in section 20104a.

20 (G) ~~(f)~~ "Department" means the director of the department
21 of environmental quality or his or her designee to whom the
22 director delegates a power or duty by written instrument.

23 (H) ~~(g)~~ "Director" means the director of the department of
24 environmental quality.

25 (I) ~~(h)~~ "Directors" means the directors or their designees
26 of the departments of environmental quality, community health,
27 agriculture, and state police.

1 (J) ~~-(i)-~~ "Disposal" means the discharge, deposit,
2 injection, dumping, spilling, leaking, or placing of any hazard-
3 ous substance into or on any land or water so that the hazardous
4 substance or any constituent of the hazardous substance may
5 ~~enter the environment or~~ be emitted into the air or discharged
6 into any groundwater or surface water OR OTHERWISE ENTER THE
7 ENVIRONMENT.

8 (K) ~~-(j)-~~ "Enforcement costs" means court expenses, reason-
9 able attorney fees of the attorney general, and other reasonable
10 expenses of an executive department that are incurred in relation
11 to enforcement under this part or rules promulgated under this
12 part, or both.

13 (l) ~~-(k)-~~ "Environment" or "natural resources" means land,
14 surface water, groundwater, subsurface ~~—~~ strata, air, fish,
15 wildlife, or biota within the state.

16 (M) ~~-(l)-~~ "Environmental contamination" means the release of
17 a hazardous substance, or the potential release of a discarded
18 hazardous substance, in a quantity which is or may become injuri-
19 ous to the environment or to the public health, safety, or
20 welfare.

21 (N) ~~-(m)-~~ "Evaluation" means those activities including, but
22 not limited to, investigation, studies, sampling, analysis,
23 development of feasibility studies, and administrative efforts
24 that are needed to determine the nature, extent, and impact of a
25 release or threat of release and necessary response activities.

26 (O) ~~-(n)-~~ "Exacerbation" means the occurrence of either of
27 the following caused by an activity undertaken by the person who

1 owns or operates the property, with respect to existing
2 contamination:

3 (i) Contamination that has migrated beyond the boundaries of
4 the property which is the source of the release at levels above
5 cleanup criteria specified in section 20120a(1)(a) unless a cri-
6 terion is not relevant because exposure is reliably restricted
7 pursuant to section 20120b.

8 (ii) A change in facility conditions that increases response
9 activity costs.

10 (P) ~~(o)~~ "Facility," EXCEPT AS USED IN THE DEFINITION OF
11 "SCHOOL BUILDING", means any area, place, or property where a
12 hazardous substance in excess of the concentrations which satisfy
13 the requirements of section 20120a(1)(a) or (17) or the cleanup
14 criteria for unrestricted residential use under part 213 has been
15 released, deposited, disposed of, or otherwise comes to be
16 located. Facility does not include any area, place, or property
17 at which response activities have been completed which satisfy
18 the cleanup criteria for the residential category provided for in
19 section 20120a(1)(a) and (17) or at which corrective action has
20 been completed under part 213 which satisfies the cleanup cri-
21 teria for unrestricted residential use.

22 (Q) ~~(p)~~ "Feasibility study" means a process for develop-
23 ing, evaluating, and selecting appropriate response activities.

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

1 (S) ~~-(r)-~~ "Free product" means a hazardous substance in a
2 liquid phase equal to or greater than 1/8 inch of measurable
3 thickness that is not dissolved in water and that has been
4 released into the environment.

5 (T) ~~-(s)-~~ "Fund" means the cleanup and redevelopment fund
6 established in section 20108.

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

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

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

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

25 (iv) Petroleum as described in part 213.

26 (V) ~~-(u)-~~ "Interim response activity" means the cleanup or
27 removal of a released hazardous substance or the taking of other

1 actions, prior to the implementation of a remedial action, as may
2 be necessary to prevent, minimize, or mitigate injury to the
3 public health, safety, or welfare, or to the environment.

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

10 (W) ~~(v)~~ "Lender" means any of the following:

11 (i) A state or nationally chartered bank.

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

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

15 (iv) Any other state or federally chartered lending
16 institution. ~~or~~

17 (v) A regulated affiliate or regulated subsidiary of any
18 entity listed in ~~this subparagraph or~~ subparagraphs (i) to
19 ~~(iii)~~ (iv).

20 (vi) ~~(v)~~ An insurance company authorized to do business in
21 this state pursuant to the insurance code of 1956, ~~Act No. 218~~
22 ~~of the Public Acts of 1956, being sections 500.100 to 500.8302 of~~
23 ~~the Michigan Compiled Laws 1956 PA 218, MCL 500.100 TO~~
24 500.8302.

25 (vii) ~~(vi)~~ A motor vehicle finance company subject to the
26 motor vehicle finance act, ~~Act No. 27 of the Extra Session of~~
27 ~~1950, being sections 492.101 to 492.141 of the Michigan Compiled~~

1 ~~Laws~~ 1950 (EX SESS) PA 27, MCL 492.101 TO 492.141, with net
2 assets in excess of \$50,000,000.00.

3 (viii) ~~-(vii)-~~ A foreign bank.

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

7 (x) ~~-(ix)-~~ A state or federal agency authorized by law to
8 hold a security interest in real property or a local unit of gov-
9 ernment holding a reversionary interest in real property.

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

13 (xii) ~~-(xi)-~~ Any other person who loans money for the pur-
14 chase of or improvement of real property.

15 (xiii) ~~-(xii)-~~ Any person who retains or receives a security
16 interest to service a debt or to secure a performance
17 obligation.

18 (X) ~~-(w)-~~ "Local health department" means that term as
19 defined in section 1105 of the public health code, ~~Act No. 368~~
20 ~~of the Public Acts of 1978, being section 333.1105 of the~~
21 ~~Michigan Compiled Laws~~ 1978 PA 368, MCL 333.1105.

22 (Y) ~~-(x)-~~ "Local unit of government" means a county, city,
23 township, or village, an agency of a local unit of government, an
24 authority or any other public body or entity created by or pursu-
25 ant to state law. Local unit of government does not include the
26 state or federal government or a state or federal agency.

1 (Z) "METHOD DETECTION LIMIT" MEANS THE MINIMUM CONCENTRATION
2 OF A SUBSTANCE THAT CAN BE MEASURED AND REPORTED, WITH 99%
3 CONFIDENCE, THAT THE ANALYTE CONCENTRATION IS GREATER THAN ZERO,
4 AS DETERMINED FROM ANALYSIS OF A SAMPLE IN A GIVEN MATRIX THAT
5 CONTAINS THE ANALYTE.

6 (AA) ~~(y)~~ "Operator" means a person who is in control of or
7 responsible for the operation of a facility. Operator does not
8 include either of the following:

9 (i) A person who holds indicia of ownership primarily to
10 protect the person's security interest in the facility, unless
11 that person participates in the management of the facility as
12 described in section 20101a.

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

15 (BB) ~~(z)~~ "Owner" means a person who owns a facility.
16 Owner does not include either of the following:

17 (i) A person who holds indicia of ownership primarily to
18 protect the person's security interest in the facility, includ-
19 ing, but not limited to, a vendor's interest under a recorded
20 land contract, unless that person participates in the management
21 of the facility as described in section 20101a.

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

24 (CC) ~~(aa)~~ "Permitted release" means 1 or more of the
25 following:

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

1 (ii) A lawful and authorized discharge into a permitted
2 waste treatment facility.

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

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

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

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

18 (iii) A release of source, by-product, or special nuclear
19 material from a nuclear incident, as those terms are defined in
20 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the
21 release is subject to requirements with respect to financial pro-
22 tection established by the nuclear regulatory commission under
23 section 170 of chapter 14 of title I of the atomic energy act of
24 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or any release
25 of source by-product or special nuclear material from any pro-
26 cessing site designated under section 102(a)(1) of title I or

1 302(a) of title III of the uranium mill tailings radiation
2 control act of 1978, Public Law 95-604, 42 U.S.C. 7912 and 7942.

3 (iv) If applied according to label directions and according
4 to generally accepted agricultural and management practices, the
5 application of a fertilizer, soil conditioner, agronomically
6 applied manure, or pesticide, or fruit, vegetable, or field crop
7 residuals or processing by-products, aquatic plants, or a combi-
8 nation of these substances. As used in this subparagraph,
9 "fertilizer" and "soil conditioner" ~~have the meaning given to~~
10 ~~these terms~~ MEAN THOSE TERMS AS DEFINED in part 85, and
11 "pesticide" ~~has the meaning given to~~ MEANS that term AS DEFINED
12 in part 83.

13 (v) A release does not include fruits, vegetables, field
14 crop processing by-products, or aquatic plants, that are applied
15 to the land for an agricultural use or for use as an animal feed,
16 if the use is consistent with generally accepted agricultural and
17 management practices developed pursuant to the Michigan right to
18 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
19 ~~286.471 to 286.474 of the Michigan Compiled Laws~~ 1981 PA 93,
20 MCL 286.471 TO 286.474.

21 (EE) ~~(cc)~~ "Remedial action" includes, but is not limited
22 to, cleanup, removal, containment, isolation, destruction, or
23 treatment of a hazardous substance released or threatened to be
24 released into the environment, monitoring, maintenance, or the
25 taking of other actions that may be necessary to prevent, mini-
26 mize, or mitigate injury to the public health, safety, or
27 welfare, or to the environment.

1 (FF) ~~(dd)~~ "Remedial action plan" means a work plan for
2 performing remedial action under this part.

3 (GG) ~~(ee)~~ "Response activity" means evaluation, interim
4 response activity, remedial action, demolition, or the taking of
5 other actions necessary to protect the public health, safety, or
6 welfare, or the environment or the natural resources. Response
7 activity also includes health assessments or health effect
8 studies carried out under the supervision, or with the approval
9 of, the department of public health and enforcement actions
10 related to any response activity.

11 (HH) ~~(ff)~~ "Response activity costs" or "costs of response
12 activity" means all costs incurred in taking or conducting a
13 response activity, including enforcement costs.

14 (II) "SCHOOL" MEANS A PRIVATE OR PUBLIC ELEMENTARY OR SEC-
15 ONDARY INSTITUTION OF LEARNING INCLUDING ANY OF GRADES KINDERGAR-
16 TEN THROUGH 12.

17 (JJ) "SCHOOL BUILDING" MEANS 1 OR MORE OF THE FOLLOWING AT A
18 SCHOOL BUT DOES NOT INCLUDE A FAMILY RESIDENCE USED AS A HOME
19 SCHOOL:

20 (i) A STRUCTURE SUITABLE FOR USE AS A CLASSROOM, INCLUDING A
21 SCHOOL LABORATORY, LIBRARY, EATING FACILITY, OR FOOD PREPARATION
22 FACILITY.

23 (ii) A GYMNASIUM OR OTHER FACILITY THAT IS SPECIALLY
24 DESIGNED FOR ATHLETIC OR RECREATIONAL ACTIVITIES OR FOR AN ACA-
25 DEMIC COURSE IN PHYSICAL EDUCATION.

1 (iii) A FACILITY USED FOR THE INSTRUCTION OR HOUSING OF
2 STUDENTS FOR THE PURPOSE OF ADMINISTRATION OF EDUCATIONAL OR
3 RESEARCH PROGRAMS.

4 (KK) ~~(gg)~~ "Security interest" means any interest, includ-
5 ing a reversionary interest, in real property created or estab-
6 lished for the purpose of securing a loan or other obligation.
7 Security interests include, but are not limited to, mortgages,
8 deeds of trusts, liens, and title pursuant to lease financing
9 transactions. Security interests may also arise from transac-
10 tions such as sale and leasebacks, conditional sales, installment
11 sales, trust receipt transactions, certain assignments, factoring
12 agreements, accounts receivable financing arrangements, consign-
13 ments, or any other transaction in which evidence of title is
14 created if the transaction creates or establishes an interest in
15 real property for the purpose of securing a loan or other
16 obligation.

17 (ll) ~~(hh)~~ "Site" means the location of environmental
18 contamination.

19 (MM) ~~(ii)~~ "Threatened release" or "threat of release"
20 means any circumstance that may reasonably be anticipated to
21 cause a release.

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

1 SEC. 20121. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2), (3),
2 AND (4), A SCHOOL OR PLAYGROUND SHALL NOT BE CONSTRUCTED OR
3 OPERATED ON PROPERTY THAT IS OR WAS A FACILITY.

4 (2) IF RESPONSE ACTIVITIES THAT SATISFY THE CLEANUP CRITERIA
5 FOR LIMITED RESIDENTIAL USE UNDER SECTION 20120A(1)(F) AND (17),
6 OR CORRECTIVE ACTION THAT SATISFIES THE CLEANUP CRITERIA FOR
7 RESTRICTED RESIDENTIAL USE UNDER PART 213, HAVE BEEN COMPLETED AT
8 THE PROPERTY, A SCHOOL OR PLAYGROUND MAY BE CONSTRUCTED OR OPER-
9 ATED ON THE PROPERTY IF BOTH OF THE FOLLOWING REQUIREMENTS ARE
10 MET:

11 (A) CONSTRUCTION OF THE SCHOOL OR PLAYGROUND BEGAN BEFORE
12 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
13 SECTION.

14 (B) THE OWNER OF THE SCHOOL OR PLAYGROUND ANNUALLY MONITORS
15 THE SOIL AND AIR, INCLUDING, IF APPLICABLE, INDOOR AIR, TO DETER-
16 MINE THE ADEQUACY OF ISOLATION OF HAZARDOUS SUBSTANCES REQUIRED
17 BY THE REMEDIAL ACTION PLAN OR CORRECTIVE ACTION PLAN. THE MONI-
18 TORING SHALL BE CONDUCTED IN CONFORMITY WITH A WRITTEN MONITORING
19 PLAN APPROVED BY THE DEPARTMENT. BEFORE APPROVING THE MONITORING
20 PLAN, THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF THE ENVIRON-
21 MENTAL CONTAMINATION AND OF THE PROPOSED MONITORING PLAN AND, IF
22 REQUESTED WITHIN 14 DAYS AFTER PUBLICATION OF THE NOTICE, SHALL
23 CONDUCT A PUBLIC HEARING IN THE VICINITY OF THE SITE.

24 (3) IF RESPONSE ACTIVITIES THAT SATISFY THE CLEANUP CRITERIA
25 FOR RESIDENTIAL USE UNDER SECTION 20120A(1)(A) AND (17), OR COR-
26 RECTIVE ACTION THAT SATISFIES THE CLEANUP CRITERIA FOR
27 UNRESTRICTED RESIDENTIAL USE UNDER PART 213, HAVE BEEN COMPLETED

1 AT THE PROPERTY, A SCHOOL OR PLAYGROUND MAY BE CONSTRUCTED OR
2 OPERATED ON THE PROPERTY IF BOTH OF THE FOLLOWING REQUIREMENTS
3 ARE MET:

4 (A) CONSTRUCTION OF THE SCHOOL OR PLAYGROUND BEGAN BEFORE
5 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
6 SECTION.

7 (B) THE OWNER OF THE SCHOOL OR PLAYGROUND ANNUALLY MONITORS
8 THE SOIL AND AIR, INCLUDING, IF APPLICABLE, INDOOR AIR, TO DETER-
9 MINE THAT THE PROPERTY CONTINUES TO SATISFY THE CLEANUP CRITERIA
10 FOR RESIDENTIAL USE UNDER SECTION 20120A(1)(A) AND (17) OR THE
11 CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE UNDER PART
12 213. THE MONITORING SHALL BE CONDUCTED IN CONFORMITY WITH A
13 WRITTEN MONITORING PLAN APPROVED BY THE DEPARTMENT. BEFORE
14 APPROVING THE MONITORING PLAN, THE DEPARTMENT SHALL PROVIDE
15 PUBLIC NOTICE OF THE ENVIRONMENTAL CONTAMINATION AND OF THE PRO-
16 POSED MONITORING PLAN AND, IF REQUESTED WITHIN 14 DAYS AFTER PUB-
17 LICATION OF THE NOTICE, SHALL CONDUCT A PUBLIC HEARING IN THE
18 VICINITY OF THE SITE.

19 (4) IF RESPONSE ACTIVITIES, OR CORRECTIVE ACTION UNDER PART
20 213, HAVE BEEN COMPLETED AT THE PROPERTY SUCH THAT THE CONCENTRA-
21 TION OF ANY HAZARDOUS SUBSTANCE DOES NOT EXCEED BACKGROUND OR THE
22 METHOD DETECTION LIMIT FOR THAT HAZARDOUS SUBSTANCE, WHICHEVER IS
23 GREATER, A SCHOOL BUILDING OR PLAYGROUND MAY BE CONSTRUCTED AND
24 OPERATED ON THE PROPERTY.

25 (5) NOTICE UNDER THIS SECTION, INCLUDING NOTICE OF A PUBLIC
26 HEARING, SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION
27 IN THE CITY, VILLAGE, OR TOWNSHIP WHERE THE SCHOOL BUILDING OR

- 1 PLAYGROUND IS OR WILL BE LOCATED AND SHALL INCLUDE INFORMATION
- 2 CONSIDERED APPROPRIATE BY THE DEPARTMENT.