

HOUSE BILL No. 5010

June 29, 2005, Introduced by Reps. Lemmons, III and Lemmons, Jr. and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20105a and 20120b (MCL 324.20105a and
324.20120b), as added by 1995 PA 71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20105a. (1) The department shall annually compile a list
2 of sites that are receiving state funds to conduct response
3 activities. This list shall be arranged in alphabetical order. The
4 department shall annually submit this list to the legislature.

5 (2) IF THE DEPARTMENT EXPENDS MORE THAN \$500,000.00 IN STATE
6 FUNDS FOR RESPONSE ACTIVITIES AT A FACILITY AND THE FACILITY HAS
7 NOT ATTAINED COMPLIANCE WITH THE CLEANUP CRITERIA FOR THE
8 RESIDENTIAL CATEGORY PROVIDED FOR IN SECTION 20120A(1)(A), THE

1 DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF THE STATUS OF THE
2 RESPONSE ACTIVITIES AT THE FACILITY. THE DEPARTMENT'S PUBLIC NOTICE
3 UNDER THIS SUBSECTION SHALL INCLUDE 1 OR MORE ADVERTISEMENTS IN
4 ETHNIC-MINORITY-OWNED MEDIA.

5 Sec. 20120b. (1) If a remedial action plan is selected or
6 approved by the department based on criteria for the residential
7 category provided for in section 20120a(1)(a), land use
8 restrictions or monitoring are not required once those standards
9 have been achieved by the remedial action.

10 (2) If a remedial action plan is selected or approved by the
11 department based on criteria in categories provided for in section
12 20120a(1)(b) to (e), a notice of approved environmental remediation
13 shall be recorded with the register of deeds for the county in
14 which the facility is located within 21 days after selection or
15 approval by the department of the remedial action, or within 21
16 days after completion of construction of the remedial action as
17 appropriate to the circumstances. A notice shall be filed pursuant
18 to this section only by the property owner or by another person who
19 has the express written permission of the property owner. The form
20 and content of the notice are subject to approval by the state. Any
21 restrictions contained in the notice shall be binding on the
22 owner's successors, assigns, and lessees, and shall run with the
23 land. A notice of environmental remediation recorded pursuant to
24 this subsection shall state which of the categories of land use
25 specified in section 20120a(1)(b) to (d) are consistent with the
26 environmental conditions at the property to which the notice
27 applies, and that a change from that land use or uses may

1 necessitate further evaluation of potential risks to the public
2 health, safety, or welfare, or the environment. The notice of
3 approved environmental remediation shall include a survey and
4 property description that define the areas addressed by the
5 remedial action plan if land use or resource use restrictions apply
6 to less than the entire parcel or if different restrictions apply
7 to different areas of a parcel, and the scope of any land use or
8 resource use limitations. Additional requirements for financial
9 assurance, monitoring, or operation, and maintenance do not apply
10 if a remedial action complies with criteria provided for in section
11 20120a(1)(b) to (e), unless monitoring or operation and maintenance
12 are required to assure the compliance with criteria that apply
13 outside the boundary of the property that is the source of the
14 release.

15 (3) If a remedial action plan is selected or approved by the
16 department based on criteria provided for in section 20120a(1)(f)
17 to (j) or (2), provisions concerning subdivisions (a) through (e)
18 shall be stipulated in a legally enforceable agreement with the
19 department. If the department concurs with an analysis provided in
20 a remedial action plan that 1 or more of the requirements specified
21 in subdivisions (b) to (e) is not necessary to protect the public
22 health, safety, or welfare, or the environment and to assure the
23 effectiveness and integrity of the remedial action, that element
24 may be omitted from the agreement. If provisions for any of the
25 following, determined by the department to be applicable for a
26 facility, lapse or are not complied with as provided in the
27 agreement or remedial action plan, the department's approval of the

1 remedial action plan is void from the time of the lapse or
2 violation, unless the lapse or violation is corrected to the
3 satisfaction of the department:

4 (a) Land use or resource use restrictions.

5 (b) Monitoring.

6 (c) Operation and maintenance.

7 (d) Permanent markers to describe restricted areas of the site
8 and the nature of any restrictions.

9 (e) Financial assurance, in a mechanism acceptable to the
10 department to pay for monitoring, operation and maintenance,
11 oversight, and other costs determined by the department to be
12 necessary to assure the effectiveness and integrity of the remedial
13 action.

14 (4) If a remedial action plan relies in whole or in part on
15 cleanup criteria approved pursuant to section 20120a(1)(f) to (j)
16 or (2), land use or resource use restrictions to assure the
17 effectiveness and integrity of any containment, exposure barrier,
18 or other land use or resource use restrictions necessary to assure
19 the effectiveness and integrity of the remedy shall be described in
20 a restrictive covenant. The restrictive covenant shall be recorded
21 with the register of deeds for the county in which the property is
22 located within 21 days of the department's selection or approval of
23 the remedial action plan, or within 21 days of the completion of
24 construction of the containment or barrier, as appropriate to the
25 circumstances. The restrictive covenant shall be filed by the
26 property owner or with the express written permission of the
27 property owner. The restrictions shall run with the land and be

1 binding on the owner's successors, assigns, and lessees. Such
2 restrictions shall apply until the department determines that
3 hazardous substances that are controlled by the barrier or
4 contained no longer present an unacceptable risk to the public
5 health, safety, or welfare, or the environment as defined by the
6 cleanup criteria and exposure control requirements set forth in the
7 remedial action plan. The restrictive covenant shall include a
8 survey and property description that define the areas addressed by
9 the remedial action plan and the scope of any land use or resource
10 use limitations. The form and content of the restrictive covenant
11 are subject to approval by the department and shall include
12 provisions to accomplish all of the following:

13 (a) Restrict activities at the facility that may interfere
14 with a remedial action, operation and maintenance, monitoring, or
15 other measures necessary to assure the effectiveness and integrity
16 of the remedial action.

17 (b) Restrict activities that may result in exposures above
18 levels established in the remedial action plan.

19 (c) Require notice to the department of the owner's intent to
20 convey any interest in the facility 14 days prior to consummating
21 the conveyance. A conveyance of title, an easement, or other
22 interest in the property shall not be consummated by the property
23 owner without adequate and complete provision for compliance with
24 the terms and conditions of the agreement described in subsection
25 (3) and the prevention of releases and exposures described in
26 subdivision (b).

27 (d) Grant to the department the right to enter the property at

1 reasonable times for the purpose of determining and monitoring
2 compliance with the remedial action plan, including the right to
3 take samples, inspect the operation of the remedial action
4 measures, and inspect records.

5 (e) Allow the state to enforce the restriction set forth in
6 the covenant by legal action in a court of appropriate
7 jurisdiction.

8 (f) Describe generally the uses of the property that are
9 consistent with the categorical criteria and limitations approved
10 as part of a remedial action plan.

11 **(5) A REMEDIAL ACTION PLAN THAT RELIES IN WHOLE OR IN PART ON**
12 **CLEANUP CRITERIA APPROVED PURSUANT TO SECTION 20120A(1)(F) TO (J)**
13 **OR (2) IS NOT VALID OR APPROVABLE UNLESS THE DEPARTMENT DETERMINES**
14 **THAT THE REMEDIAL ACTION PLAN IS IN COMPLIANCE WITH THIS PART AND**
15 **IS PROTECTIVE OF PUBLIC HEALTH AND THE ENVIRONMENT AND, PRIOR TO**
16 **APPROVAL, THE DEPARTMENT HOLDS A PUBLIC HEARING TO ARTICULATE ITS**
17 **DETERMINATION AND TAKE PUBLIC TESTIMONY. THE DEPARTMENT'S PUBLIC**
18 **NOTICE OF THE PUBLIC HEARING REQUIRED UNDER THIS SUBSECTION SHALL**
19 **INCLUDE 1 OR MORE ADVERTISEMENTS IN ETHNIC-MINORITY-OWNED MEDIA.**

20 **(6) —(5)—** If the department determines that exposure to
21 hazardous substances may be reliably restricted by an institutional
22 control in lieu of a restrictive covenant, and that imposition of
23 land use or resource use restrictions through restrictive covenants
24 is impractical, the department may approve of a remedial action
25 plan under section 20120a(1)(f) to (j) or (2) that relies on such
26 institutional control. Mechanisms that may be considered under this
27 subsection include, but are not limited to, an ordinance that

1 prohibits the use of groundwater or an aquifer in a manner and to a
2 degree that protects against unacceptable exposures as defined by
3 the cleanup criteria approved as part of the remedial action plan.

4 An ordinance that serves as an exposure control pursuant to this
5 subsection shall be published and maintained in the same manner as
6 zoning ordinances and shall include a requirement that the local
7 unit of government notify the department at least 30 days prior to
8 adopting a modification to the ordinance, or to the lapsing or
9 revocation of the ordinance.

10 (7) ~~-(6)-~~ Selection or approval by the department of a
11 remedial action does not relieve a person who is liable under
12 section 20126 of that person's responsibility to report and provide
13 for response activity to address a subsequent release or threat of
14 release at the facility.

15 (8) ~~-(7)-~~ A remedial action shall not be considered approved
16 by the department unless a remedial action plan is submitted to the
17 department and the department approves the plan. Implementation by
18 any person of response activity without department approval does
19 not relieve that person of an obligation to undertake response
20 activity or limit the ability of the department to take action to
21 require response activity necessary to comply with this act by a
22 person who is liable under section 20126.

23 (9) ~~-(8)-~~ A person shall not file a notice of approved
24 environmental remediation indicating approval or a determination of
25 the department unless the department has approved of the filing of
26 the notice.

27 (10) ~~-(9)-~~ A person who implements a remedial action plan

1 approved by the department pursuant to subsections (2) to ~~-(5)-~~ (6)
2 shall provide notice of the land use restrictions that are part of
3 the remedial action plan to the zoning authority for the local unit
4 of government in which the facility is located within 30 days of
5 approval of the plan.

6 (11) ~~-(10)-~~ The state, with the approval of the state
7 administrative board, may place restrictive covenants related to
8 land or resource use on deeds of state owned property.