

HOUSE BILL No. 5205

September 12, 2007, Introduced by Rep. Lemmons and referred to the Committee on
Tourism, Outdoor Recreation and Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20114 (MCL 324.20114), as amended by 1995 PA
71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20114. (1) Except as provided in subsection (4), an owner
2 or operator of property who has knowledge that the property is a
3 facility and who is liable under section 20126 shall do all of the
4 following:

5 (a) Determine the nature and extent of a release at the
6 facility.

7 (b) Report the release to the department within 24 hours after

1 obtaining knowledge of the release. The requirements of this
2 subdivision ~~shall~~ apply to reportable quantities of hazardous
3 substances established pursuant to 40 C.F.R. ~~CFR~~ 302.4 and 302.6
4 (1989), unless the department establishes through rules alternate
5 or additional reportable quantities as necessary to protect the
6 public health, safety, or welfare, or the environment.

7 (c) Immediately stop or prevent the release at the source.

8 (d) Immediately implement source control or removal measures
9 to remove or contain hazardous substances that are released after
10 ~~the effective date of the 1995 amendments to this section JUNE 5,~~
11 **1995**, if those measures are technically practical, cost effective,
12 and provide protection to the environment. At a facility where
13 hazardous substances are released after ~~the effective date of the~~
14 ~~1995 amendments to this section JUNE 5, 1995~~, and those hazardous
15 substances have not affected groundwater but are likely to,
16 groundwater contamination shall be prevented if it can be prevented
17 by measures that are technically practical, cost effective, and
18 provide protection to the environment.

19 (e) Immediately identify and eliminate any threat of fire or
20 explosion or any direct contact hazards.

21 (f) Immediately initiate removal of a hazardous substance that
22 is in a liquid phase, that is not dissolved in water, and that has
23 been released.

24 (g) Diligently pursue response activities necessary to achieve
25 the cleanup criteria specified in this part and the rules
26 promulgated under this part. ~~For a period of 2 years after the~~
27 ~~effective date of the 1995 amendments to this section, fines and~~

1 ~~penalties shall not be imposed under this part for a violation of~~
2 ~~this subdivision.~~

3 (h) Upon written request by the department, take the following
4 actions:

5 (i) Provide a plan for and undertake interim response
6 activities.

7 (ii) Provide a plan for and undertake evaluation activities.

8 (iii) Take any other response activity determined by the
9 department to be technically sound and necessary to protect the
10 public health, safety, welfare, or the environment.

11 (iv) Submit to the department for approval a remedial action
12 plan that, when implemented, will achieve the cleanup criteria
13 specified in this part and the rules promulgated under this part.

14 (v) Implement an approved remedial action plan in accordance
15 with a schedule approved by the department pursuant to this part.

16 (2) A person may undertake response activity without prior
17 approval by the department unless that response activity is being
18 done pursuant to an administrative order or agreement or judicial
19 decree ~~which~~ **THAT** requires prior department approval. Any such
20 action ~~shall~~ **DOES** not relieve any person of liability for further
21 response activity as may be required by the department.

22 (3) Except as provided in subsection (4), a person who holds
23 an easement interest in a portion of a property who has knowledge
24 that there may be a release within that easement shall report the
25 release to the department within 24 hours after obtaining knowledge
26 of the release. Unless the department establishes through rules
27 alternate or additional reportable quantities as necessary to

1 protect the public health, safety, or welfare, or the environment,
2 this subsection ~~shall apply~~ **APPLIES** to reportable quantities of
3 hazardous substances established pursuant to 40 C.F.R. ~~CFR~~ 302.4
4 and 302.6 (1989).

5 (4) The requirements of subsections (1) and (3) do not apply
6 to a permitted release or a release in compliance with applicable
7 federal, state, and local air pollution control laws.

8 (5) Upon a determination by the department that a person has
9 completed all response activity at a facility pursuant to an
10 approved remedial action plan prepared and implemented in
11 compliance with this part and the rules promulgated under this
12 part, the department, upon request of a person, shall execute and
13 present a document stating that all response activities required in
14 the approved remedial action plan have been completed.

15 (6) An owner or operator of a facility from which a hazardous
16 substance is released that is determined to be reportable under
17 subsection (1)(b), other than a permitted release, who fails to
18 notify the department within 24 hours after obtaining knowledge of
19 the release or who submits in such notification any information
20 that the person knows to be false or misleading, is subject to a
21 civil fine of not more than \$25,000.00 for each day in which the
22 violation occurs or the failure to comply continues. A fine imposed
23 under this subsection shall be based upon the seriousness of the
24 violation and any good faith efforts by the violator to comply with
25 this subsection.

26 (7) This section does not do either of the following:

27 (a) Limit the authority of the department to take or conduct

1 response activities pursuant to this part.

2 (b) Limit the liability of a person who is liable under
3 section 20126.

4 (8) Any request for approval of a plan shall be granted or
5 denied within 6 months of submittal of the information necessary or
6 required for the department to make its decision. If the department
7 does not approve the plan, the reasons for the denial shall be
8 provided by the department in writing with a complete and specific
9 statement of the conditions or requirements necessary to obtain
10 approval. The department ~~may~~**SHALL** not add additional items to this
11 statement after it has been issued. ~~Failure~~**HOWEVER, FAILURE** of the
12 department to act within the specified time period ~~shall~~**DOES NOT**
13 result in the request being considered approved. The time frame for
14 decision may be extended by the mutual consent of the department
15 and the person submitting the plan.