

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 872

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20101 (MCL 324.20101), as amended by 2013 PA
141, and by adding section 20101c.

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

6 (b) "Agricultural property" means real property used for
7 farming in any of its branches, including cultivating of soil;
8 growing and harvesting of any agricultural, horticultural, or

1 floricultural commodity; dairying; raising of livestock, bees,
2 fish, fur-bearing animals, or poultry; turf and tree farming; and
3 performing any practices on a farm as an incident to, or in
4 conjunction with, these farming operations. Agricultural property
5 does not include property used for commercial storage, processing,
6 distribution, marketing, or shipping operations.

7 (c) "All appropriate inquiry" means an evaluation of
8 environmental conditions at a property at the time of purchase,
9 occupancy, or foreclosure that reasonably defines the existing
10 conditions and circumstances at the property in conformance with 40
11 CFR 312.

12 (d) "Attorney general" means the department of the attorney
13 general.

14 (e) "Background concentration" means the concentration or
15 level of a hazardous substance that exists in the environment at or
16 regionally proximate to a facility that is not attributable to any
17 release at or regionally proximate to the facility. A person may
18 demonstrate ~~a~~ **THAT A HAZARDOUS SUBSTANCE IS NOT PRESENT AT A LEVEL**
19 **THAT EXCEEDS** background concentration ~~for a hazardous substance by~~
20 any of the following methods:

21 (i) The hazardous substance complies with the statewide default
22 background levels under ~~R-299.5746~~ **R 299.46** of the Michigan
23 administrative code.

24 (ii) The hazardous substance is listed in the department's 2005
25 Michigan background soil survey and falls within the typical ranges
26 published in that document.

27 (iii) The hazardous substance is listed in any other study or

1 survey conducted or approved by the department and is within the
2 concentrations or falls within the typical ranges published in that
3 study or survey.

4 (iv) A site-specific demonstration.

5 (f) "Baseline environmental assessment" means a written
6 document that describes the results of an all appropriate inquiry
7 and the sampling and analysis that confirm that the property is a
8 facility. However, for purposes of a baseline environmental
9 assessment, the all appropriate inquiry under 40 CFR 312.20(a) may
10 be conducted within 45 days after the date of acquisition of a
11 property and the components of an all appropriate inquiry under 40
12 CFR 312.20(b) and 40 CFR 312.20(c)(3) may be conducted or updated
13 within 45 days after the date of acquisition of a property.

14 (g) "Board" means the brownfield redevelopment board created
15 in section 20104a.

16 (h) "Certificate of completion" means a written response
17 provided by the department confirming that a response activity has
18 been completed in accordance with the applicable requirements of
19 this part and is approved by the department.

20 (i) "Cleanup criteria for unrestricted residential use" means
21 either of the following:

22 (i) Cleanup criteria that satisfy the requirements for the
23 residential category in section 20120a(1)(a) or (16).

24 (ii) Cleanup criteria for unrestricted residential use under
25 part 213.

26 (j) "Department" means the director ~~of the department of~~
27 ~~environmental quality~~ or his or her designee to whom the director

1 delegates a power or duty by written instrument.

2 (k) "Director" means the director of the department of
3 environmental quality.

4 (l) "Directors" means the directors or their designees of the
5 departments of environmental quality, community health, agriculture
6 and rural development, and state police.

7 (m) "Disposal" means the discharge, deposit, injection,
8 dumping, spilling, leaking, or placing of any hazardous substance
9 into or on any land or water so that the hazardous substance or any
10 constituent of the hazardous substance may enter the environment or
11 be emitted into the air or discharged into any groundwater or
12 surface water.

13 (n) "Enforcement costs" means court expenses, reasonable
14 attorney fees of the attorney general, and other reasonable
15 expenses of an executive department that are incurred in relation
16 to enforcement under this part.

17 (o) "Environment" or "natural resources" means land, surface
18 water, groundwater, subsurface strata, air, fish, wildlife, or
19 biota within the state.

20 (p) "Environmental contamination" means the release of a
21 hazardous substance, or the potential release of a discarded
22 hazardous substance, in a quantity which is or may become injurious
23 to the environment or to the public health, safety, or welfare.

24 (q) "Evaluation" means those activities including, but not
25 limited to, investigation, studies, sampling, analysis, development
26 of feasibility studies, and administrative efforts that are needed
27 to determine the nature, extent, and impact of a release or threat

1 of release and necessary response activities.

2 (r) "Exacerbation" means the occurrence of either of the
3 following caused by an activity undertaken by the person who owns
4 or operates the property, with respect to contamination for which
5 the person is not liable:

6 (i) ~~Contamination that has migrated~~ **MIGRATION OF CONTAMINATION**
7 beyond the boundaries of the property ~~which~~ **THAT** is the source of
8 the release at levels above cleanup criteria for unrestricted
9 residential use unless a criterion is not relevant because exposure
10 is reliably restricted as otherwise provided in this part.

11 (ii) A change in facility conditions that increases response
12 activity costs.

13 (s) "Facility" means any area, place, or property where a
14 hazardous substance in excess of the concentrations that satisfy
15 the cleanup criteria for unrestricted residential use has been
16 released, deposited, disposed of, or otherwise comes to be located.
17 Facility does not include any area, place, or property where any of
18 the following conditions are satisfied:

19 (i) Response activities have been completed under this part
20 that satisfy the cleanup criteria for unrestricted residential use.

21 (ii) Corrective action has been completed under part 213 that
22 satisfies the cleanup criteria for unrestricted residential use.

23 (iii) Site-specific criteria that have been approved by the
24 department for application at the area, place, or property are met
25 or satisfied and both of the following conditions are met:

26 (A) The site-specific criteria do not depend on any land use
27 or resource use restriction to ensure protection of the public

1 health, safety, or welfare or the environment.

2 (B) Hazardous substances at the area, place, or property that
3 are not addressed by site-specific criteria satisfy the cleanup
4 criteria for unrestricted residential use.

5 (iv) **HAZARDOUS SUBSTANCES IN CONCENTRATIONS ABOVE UNRESTRICTED**
6 **RESIDENTIAL CLEANUP CRITERIA ARE PRESENT DUE ONLY TO THE PLACEMENT,**
7 **STORAGE, OR USE OF BENEFICIAL USE BY-PRODUCTS OR INERT MATERIALS AT**
8 **THE AREA, PLACE, OR PROPERTY IN COMPLIANCE WITH PART 115.**

9 (t) "Feasibility study" means a process for developing,
10 evaluating, and selecting appropriate response activities.

11 (u) "Financial assurance" means a performance bond, escrow,
12 cash, certificate of deposit, irrevocable letter of credit,
13 corporate guarantee, or other equivalent security, or any
14 combination thereof.

15 (v) "Foreclosure" means possession of a property by a lender
16 on which it has foreclosed on a security interest or the expiration
17 of a lawful redemption period, whichever occurs first.

18 (w) "Free product" means a hazardous substance in a liquid
19 phase equal to or greater than 1/8 inch of measurable thickness
20 that is not dissolved in water and that has been released into the
21 environment.

22 (x) "Fund" means the cleanup and redevelopment fund
23 established in section 20108.

24 (y) "Hazardous substance" means 1 or more of the following,
25 but does not include fruit, vegetable, or field crop residuals or
26 processing by-products, or aquatic plants, that are applied to the
27 land for an agricultural use or for use as an animal feed, if the

1 use is consistent with generally accepted agricultural management
2 practices at the time of the application **OR STAMP SANDS:**

3 (i) Any substance that the department demonstrates, on a case
4 by case basis, poses an unacceptable risk to the public health,
5 safety, or welfare, or the environment, considering the fate of the
6 material, dose-response, toxicity, or adverse impact on natural
7 resources.

8 (ii) Hazardous substance as defined in the comprehensive
9 environmental response, compensation, and liability act, 42 USC
10 9601 to 9675.

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

12 (iv) Petroleum as described ~~in part 213.~~ **AS A REGULATED**
13 **SUBSTANCE IN SECTION 21303.**

14 (z) "Interim response activity" means the cleanup or removal
15 of a released hazardous substance or the taking of other actions,
16 prior to the implementation of a remedial action, as may be
17 necessary to prevent, minimize, or mitigate injury to the public
18 health, safety, or welfare, or to the environment. Interim response
19 activity also includes, but is not limited to, measures to limit
20 access, replacement of water supplies, and temporary relocation of
21 people as determined to be necessary by the department. In
22 addition, interim response activity means the taking of other
23 actions as may be necessary to prevent, minimize, or mitigate a
24 threatened release.

25 (aa) "Lender" means any of the following:

26 (i) A state or nationally chartered bank.

27 (ii) A state or federally chartered savings and loan

1 association or savings bank.

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

3 (iv) Any other state or federally chartered lending
4 institution. ~~or~~

5 (v) **ANY STATE OR FEDERALLY** regulated affiliate or regulated
6 subsidiary of any entity listed in ~~this subparagraph or~~
7 subparagraphs (i) to ~~(iii)~~ (iv) .

8 (vi) ~~(v)~~ An insurance company authorized to do business in this
9 state pursuant to the insurance code of 1956, 1956 PA 218, MCL
10 500.100 to 500.8302.

11 (vii) ~~(vi)~~ A motor vehicle **SALES** finance company subject to the
12 motor vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to
13 492.141, with net assets in excess of \$50,000,000.00.

14 (viii) ~~(vii)~~ A foreign bank.

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

18 (x) ~~(ix)~~ A state or federal agency authorized by law to hold a
19 security interest in real property or a local unit of government
20 holding a reversionary interest in real property.

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

24 (xii) ~~(xi)~~ Any other person who loans money for the purchase of
25 or improvement of real property.

26 (xiii) ~~(xii)~~ Any person who retains or receives a security
27 interest to service a debt or to secure a performance obligation.

1 (bb) "Local health department" means that term as defined in
2 section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

3 (cc) "Local unit of government" means a county, city,
4 township, or village, an agency of a local unit of government, an
5 authority or any other public body or entity created by or pursuant
6 to state law. Local unit of government does not include ~~the~~**THIS**
7 state or **THE** federal government or a state or federal agency.

8 (dd) "Method detection limit" means the minimum concentration
9 of a hazardous substance ~~which~~**THAT** can be measured and reported
10 with 99% confidence that the analyte concentration is greater than
11 zero and is determined from analysis of a sample in a given matrix
12 that contains the analyte.

13 (ee) "No further action letter" means a written response
14 provided by the department under section 20114d confirming that a
15 no further action report has been approved after review by the
16 department.

17 (ff) "No further action report" means a report under section
18 20114d detailing the completion of remedial actions and including a
19 postclosure plan and a postclosure agreement, if appropriate.

20 (gg) "Operator" means a person who is in control of or
21 responsible for the operation of a facility. Operator does not
22 include either of the following:

23 (i) A person who holds indicia of ownership primarily to
24 protect the person's security interest in the facility, unless that
25 person participates in the management of the facility as described
26 in section 20101a.

27 (ii) A person who is acting as a fiduciary in compliance with

1 section 20101b.

2 (hh) "Owner" means a person who owns a facility. Owner does
3 not include either of the following:

4 (i) A person who holds indicia of ownership primarily to
5 protect the person's security interest in the facility, including,
6 but not limited to, a vendor's interest under a recorded land
7 contract, unless that person participates in the management of the
8 facility as described in section 20101a.

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

11 (ii) "Panel" means the response activity review panel created
12 in section 20114e.

13 (jj) "Permitted release" means 1 or more of the following:

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

16 (ii) A lawful and authorized discharge into a permitted waste
17 treatment facility.

18 (iii) A federally permitted release as defined in the
19 comprehensive environmental response, compensation, and liability
20 act, 42 USC 9601 to 9675.

21 (kk) "Postclosure agreement" means an agreement between the
22 department and a person who has submitted a no further action
23 report that prescribes, as appropriate, activities required to be
24 undertaken upon completion of remedial actions as provided for in
25 section 20114d.

26 (ll) "Postclosure plan" means a plan for land use or resource
27 use restrictions or permanent markers at a facility upon completion

1 of remedial actions as ~~required under~~ **PROVIDED FOR IN** section
2 20114c.

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

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

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

14 (iii) A release of source, by-product, or special nuclear
15 material from a nuclear incident, as those terms are defined in the
16 atomic energy act of 1954, 42 USC 2011 to ~~2297h-13,~~ **2286I**, if the
17 release is subject to requirements with respect to financial
18 protection established by the nuclear regulatory commission under
19 42 USC 2210, or any release of source by-product or special nuclear
20 material from any processing site designated under 42 USC
21 7912(a)(1) or 42 USC 7942(a).

22 (iv) If applied according to label directions and according to
23 generally accepted agricultural and management practices at the
24 time of the application, the application of a fertilizer, soil
25 conditioner, agronomically applied manure, or pesticide, or fruit,
26 vegetable, or field crop residuals or processing by-products,
27 aquatic plants, or a combination of these substances. As used in

1 this subparagraph, fertilizer and soil conditioner have the meaning
2 given to these terms in part 85, and pesticide has the meaning
3 given to that term in part 83.

4 (v) ~~A release does not include~~ **APPLICATION OF** fruits,
5 vegetables, field crop processing by-products, or aquatic plants ~~7~~
6 ~~that are applied to~~ the land for an agricultural use or for use as
7 an animal feed, if the use is consistent with generally accepted
8 agricultural and management practices at the time of the
9 application.

10 (vi) The relocation of soil under section 20120c.

11 (vii) **THE PLACEMENT, STORAGE, OR USE OF BENEFICIAL USE BY-**
12 **PRODUCTS OR INERT MATERIALS AT THE SITE OF STORAGE OR USE IF IN**
13 **COMPLIANCE WITH PART 115.**

14 (nn) "Remedial action" includes, but is not limited to,
15 cleanup, removal, containment, isolation, destruction, or treatment
16 of a hazardous substance released or threatened to be released into
17 the environment, monitoring, maintenance, or the taking of other
18 actions that may be necessary to prevent, minimize, or mitigate
19 injury to the public health, safety, or welfare, or to the
20 environment.

21 (oo) "Remedial action plan" means a work plan for performing
22 remedial action under this part.

23 (pp) "Residential closure" means a property at which the
24 contamination has been addressed in a no further action report that
25 satisfies the limited residential cleanup criteria under section
26 20120a(1)(c) or the site-specific residential cleanup criteria
27 under sections 20120a(2) and 20120b, that contains land use or

1 resource use restrictions, and that is approved by the department
2 or is considered approved by the department under section 20120d.

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

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

14 (ss) "Response activity plan" means a plan for undertaking
15 response activities. A response activity plan may include 1 or more
16 of the following:

17 (i) A plan to undertake interim response activities.

18 (ii) A plan for evaluation activities.

19 (iii) A feasibility study.

20 (iv) A remedial action plan.

21 (tt) "Security interest" means any interest, including a
22 reversionary interest, in real property created or established for
23 the purpose of securing a loan or other obligation. Security
24 interests include, but are not limited to, mortgages, deeds of
25 trusts, liens, and title pursuant to lease financing transactions.
26 Security interests may also arise from transactions such as sale
27 and leasebacks, conditional sales, installment sales, trust receipt

1 transactions, certain assignments, factoring agreements, accounts
2 receivable financing arrangements, consignments, or any other
3 transaction in which evidence of title is created if the
4 transaction creates or establishes an interest in real property for
5 the purpose of securing a loan or other obligation.

6 (UU) "STAMP SANDS" MEANS FINELY GRAINED CRUSHED ROCK RESULTING
7 FROM MINING, MILLING, OR SMELTING OF COPPER ORE AND INCLUDES NATIVE
8 SUBSTANCES CONTAINED WITHIN THE CRUSHED ROCK AND ANY ANCILLARY
9 MATERIAL ASSOCIATED WITH THE CRUSHED ROCK.

10 (VV) ~~(uu)~~ "Target detection limit" means the detection limit
11 for a hazardous substance in a given environmental medium that is
12 specified by the department on a list that it publishes not more
13 than once a year. The department shall identify 1 or more
14 analytical methods, when a method is available, that are judged to
15 be capable of achieving the target detection limit for a hazardous
16 substance in a given environmental medium. The target detection
17 limit for a given hazardous substance is greater than or equal to
18 the method detection limit for that hazardous substance. In
19 establishing a target detection limit, the department shall
20 consider the following factors:

21 (i) The low level capabilities of methods published by
22 government agencies.

23 (ii) Reported method detection limits published by state
24 laboratories.

25 (iii) Reported method detection limits published by commercial
26 laboratories.

27 (iv) The need to be able to measure a hazardous substance at

1 concentrations at or below cleanup criteria.

2 (WW) ~~(vv)~~ "Threatened release" or "threat of release" means
3 any circumstance that may reasonably be anticipated to cause a
4 release.

5 (XX) ~~(ww)~~ "Venting groundwater" means groundwater that is
6 entering a surface water of ~~the~~ **THIS** state from a facility.

7 (2) As used in this part:

8 (a) The phrase "a person who is liable" includes a person who
9 is described as being subject to liability in section 20126. The
10 phrase "a person who is liable" does not presume that liability has
11 been adjudicated.

12 (b) The phrase "this part" includes "rules promulgated under
13 this part".

14 **SEC. 20101C. PROPERTY WHERE STAMP SANDS HAVE BEEN DEPOSITED IS**
15 **NOT SUBJECT TO REGULATION UNDER THIS PART UNLESS THE PROPERTY**
16 **OTHERWISE CONTAINS HAZARDOUS SUBSTANCES IN EXCESS OF THE**
17 **CONCENTRATIONS THAT SATISFY CLEANUP CRITERIA FOR UNRESTRICTED**
18 **RESIDENTIAL USE.**