

SENATE BILL No. 351

May 7, 2013, Introduced by Senator MEEKHOF and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20101 (MCL 324.20101), as amended by 2012 PA
446.

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
9 floricultural commodity; dairying; raising of livestock, bees,
10 fish, fur-bearing animals, or poultry; turf and tree farming; and

1 performing any practices on a farm as an incident to, or in
2 conjunction with, these farming operations. Agricultural property
3 does not include property used for commercial storage, processing,
4 distribution, marketing, or shipping operations.

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

10 (d) "Attorney general" means the department of the attorney
11 general.

12 (e) "Background concentration" means the concentration or
13 level of a hazardous substance that exists in the environment at or
14 regionally proximate to a facility that is not attributable to any
15 release at or regionally proximate to the facility. A person may
16 demonstrate a background concentration for a hazardous substance by
17 any of the following methods:

18 (i) The hazardous substance complies with the statewide default
19 background levels under R 299.5746 of the Michigan administrative
20 code.

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

24 (iii) The hazardous substance is listed in any other study or
25 survey conducted or approved by the department and is within the
26 concentrations or falls within the typical ranges published in that
27 study or survey.

1 (iv) A site-specific demonstration.

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

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

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

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

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

21 (ii) Cleanup criteria for unrestricted residential use under
22 part 213.

23 (j) "Department" means the director of the department of
24 environmental quality or his or her designee to whom the director
25 delegates a power or duty by written instrument.

26 (k) "Director" means the director of the department of
27 environmental quality.

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

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

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

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

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

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

26 (r) "Exacerbation" means the occurrence of either of the
27 following caused by an activity undertaken by the person who owns

1 or operates the property, with respect to contamination for which
2 the person is not liable:

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 for unrestricted residential use unless a
6 criterion is not relevant because exposure is reliably restricted
7 as otherwise provided in this part.

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

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

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

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

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

23 (A) The site-specific criteria do not depend on any land use
24 or resource use restriction to ensure protection of the public
25 health, safety, or welfare or the environment.

26 (B) Hazardous substances at the area, place, or property that
27 are not addressed by site-specific criteria satisfy the cleanup

1 criteria for unrestricted residential use.

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

4 (u) "Financial assurance" means a performance bond, escrow,
5 cash, certificate of deposit, irrevocable letter of credit,
6 corporate guarantee, or other equivalent security, or any
7 combination thereof.

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

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

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

17 (y) "Hazardous substance" means 1 or more of the following,
18 but does not include fruit, vegetable, or field crop residuals or
19 processing by-products, or aquatic plants, that are applied to the
20 land for an agricultural use or for use as an animal feed, if the
21 use is consistent with generally accepted agricultural management
22 practices developed pursuant to the Michigan right to farm act,

23 ~~1981 PA 93, MCL 286.471 to 286.474~~: **AT THE TIME OF THE APPLICATION:**

24 (i) Any substance that the department demonstrates, on a case
25 by case basis, poses an unacceptable risk to the public health,
26 safety, or welfare, or the environment, considering the fate of the
27 material, dose-response, toxicity, or adverse impact on natural

1 resources.

2 (ii) Hazardous substance as defined in the comprehensive
3 environmental response, compensation, and liability act, 42 USC
4 9601 to 9675.

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

6 (iv) Petroleum as described in part 213.

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

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

19 (i) A state or nationally chartered bank.

20 (ii) A state or federally chartered savings and loan
21 association or savings bank.

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

23 (iv) Any other state or federally chartered lending institution
24 or regulated affiliate or regulated subsidiary of any entity listed
25 in this subparagraph or subparagraphs (i) to (iii).

26 (v) An insurance company authorized to do business in this
27 state pursuant to the insurance code of 1956, 1956 PA 218, MCL

1 500.100 to 500.8302.

2 (vi) A motor vehicle finance company subject to the motor
3 vehicle finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141,
4 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 a
7 pension fund regulated pursuant to federal law with net assets in
8 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 or a local unit of government
11 holding a reversionary interest in real property.

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

15 (xi) Any other person who loans money for the purchase of or
16 improvement of real property.

17 (xii) Any person who retains or receives a security interest to
18 service a debt or to secure a performance obligation.

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

21 (cc) "Local unit of government" means a county, city,
22 township, or village, an agency of a local unit of government, an
23 authority or any other public body or entity created by or pursuant
24 to state law. Local unit of government does not include the state
25 or federal government or a state or federal agency.

26 (dd) "Method detection limit" means the minimum concentration
27 of a hazardous substance which can be measured and reported with

1 99% confidence that the analyte concentration is greater than zero
2 and is determined from analysis of a sample in a given matrix that
3 contains the analyte.

4 (ee) "No further action letter" means a written response
5 provided by the department under section 20114d confirming that a
6 no further action report has been approved after review by the
7 department.

8 (ff) "No further action report" means a report under section
9 20114d detailing the completion of remedial actions and including a
10 postclosure plan and a postclosure agreement, if appropriate.

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

14 (i) A person who holds indicia of ownership primarily to
15 protect the person's security interest in the facility, unless that
16 person participates in the management of the facility as described
17 in section 20101a.

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

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

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

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

1 section 20101b.

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

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

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

7 (ii) A lawful and authorized discharge into a permitted waste
8 treatment facility.

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

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

17 (ll) "Postclosure plan" means a plan for land use or resource
18 use restrictions or permanent markers at a facility upon completion
19 of remedial actions as required under section 20114c.

20 (mm) "Release" includes, but is not limited to, any spilling,
21 leaking, pumping, pouring, emitting, emptying, discharging,
22 injecting, escaping, leaching, dumping, or disposing of a hazardous
23 substance into the environment, or the abandonment or discarding of
24 barrels, containers, and other closed receptacles containing a
25 hazardous substance. Release does not include any of the following:

26 (i) A release that results in exposure to persons solely within
27 a workplace, with respect to a claim that these persons may assert

1 against their employers.

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

4 (iii) A release of source, by-product, or special nuclear
5 material from a nuclear incident, as those terms are defined in the
6 atomic energy act of 1954, 42 USC 2011 to 2297h-13, if the release
7 is subject to requirements with respect to financial protection
8 established by the nuclear regulatory commission under 42 USC 2210,
9 or any release of source by-product or special nuclear material
10 from any processing site designated under 42 USC 7912(a)(1) or 42
11 USC 7942(a).

12 (iv) If applied according to label directions and according to
13 generally accepted agricultural and management practices developed
14 ~~pursuant to the Michigan right to farm act, 1981 PA 93, MCL 286.471~~
15 ~~to 286.474, AT THE TIME OF THE APPLICATION,~~ the application of a
16 fertilizer, soil conditioner, agronomically applied manure, or
17 pesticide, or fruit, vegetable, or field crop residuals or
18 processing by-products, aquatic plants, or a combination of these
19 substances. As used in this subparagraph, fertilizer and soil
20 conditioner have the meaning given to these terms in part 85, and
21 pesticide has the meaning given to that term in part 83.

22 (v) A release does not include fruits, vegetables, field crop
23 processing by-products, or aquatic plants, that are applied to the
24 land for an agricultural use or for use as an animal feed, if the
25 use is consistent with generally accepted agricultural and
26 management practices ~~developed pursuant to the Michigan right to~~
27 ~~farm act, 1981 PA 93, MCL 286.471 to 286.474. AT THE TIME OF THE~~

1 **APPLICATION.**

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

3 (nn) "Remedial action" includes, but is not limited to,
4 cleanup, removal, containment, isolation, destruction, or treatment
5 of a hazardous substance released or threatened to be released into
6 the environment, monitoring, maintenance, or the taking of other
7 actions that may be necessary to prevent, minimize, or mitigate
8 injury to the public health, safety, or welfare, or to the
9 environment.

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

12 (pp) "Residential closure" means a property at which the
13 contamination has been addressed in a no further action report that
14 satisfies the limited residential cleanup criteria under section
15 20120a(1)(c) or the site-specific residential cleanup criteria
16 under sections 20120a(2) and 20120b, that contains land use or
17 resource use restrictions, and that is approved by the department
18 or is considered approved by the department under section 20120d.

19 (qq) "Response activity" means evaluation, interim response
20 activity, remedial action, demolition, providing an alternative
21 water supply, or the taking of other actions necessary to protect
22 the public health, safety, or welfare, or the environment or the
23 natural resources. Response activity also includes health
24 assessments or health effect studies carried out under the
25 supervision, or with the approval of, the department of community
26 health and enforcement actions related to any response activity.

27 (rr) "Response activity costs" or "costs of response activity"

1 means all costs incurred in taking or conducting a response
2 activity, including enforcement costs.

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

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

7 (ii) A plan for evaluation activities.

8 (iii) A feasibility study.

9 (iv) A remedial action plan.

10 (tt) "Security interest" means any interest, including a
11 reversionary interest, in real property created or established for
12 the purpose of securing a loan or other obligation. Security
13 interests include, but are not limited to, mortgages, deeds of
14 trusts, liens, and title pursuant to lease financing transactions.
15 Security interests may also arise from transactions such as sale
16 and leasebacks, conditional sales, installment sales, trust receipt
17 transactions, certain assignments, factoring agreements, accounts
18 receivable financing arrangements, consignments, or any other
19 transaction in which evidence of title is created if the
20 transaction creates or establishes an interest in real property for
21 the purpose of securing a loan or other obligation.

22 (uu) "Target detection limit" means the detection limit for a
23 hazardous substance in a given environmental medium that is
24 specified by the department on a list that it publishes not more
25 than once a year. The department shall identify 1 or more
26 analytical methods, when a method is available, that are judged to
27 be capable of achieving the target detection limit for a hazardous

1 substance in a given environmental medium. The target detection
2 limit for a given hazardous substance is greater than or equal to
3 the method detection limit for that hazardous substance. In
4 establishing a target detection limit, the department shall
5 consider the following factors:

6 (i) The low level capabilities of methods published by
7 government agencies.

8 (ii) Reported method detection limits published by state
9 laboratories.

10 (iii) Reported method detection limits published by commercial
11 laboratories.

12 (iv) The need to be able to measure a hazardous substance at
13 concentrations at or below cleanup criteria.

14 (vv) "Threatened release" or "threat of release" means any
15 circumstance that may reasonably be anticipated to cause a release.

16 (ww) "Venting groundwater" means groundwater that is entering
17 a surface water of the state from a facility.

18 (2) As used in this part:

19 (a) The phrase "a person who is liable" includes a person who
20 is described as being subject to liability in section 20126. The
21 phrase "a person who is liable" does not presume that liability has
22 been adjudicated.

23 (b) The phrase "this part" includes "rules promulgated under
24 this part".