



HOUSE BILL No. 4297

February 2, 1995, Introduced by Reps. Gnodtke, Gernaat, Randall, Alley, Middaugh, McManus, Lowe, McBryde, Dalman, Hill and Anthony and referred to the Committee on Agriculture and Forestry.

A bill to amend section 3 of Act No. 307 of the Public Acts of 1982, entitled as amended "The environmental response act," as amended by Act No. 310 of the Public Acts of 1993, being section 299.603 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3 of Act No. 307 of the Public Acts of
2 1982, as amended by Act No. 310 of the Public Acts of 1993, being
3 section 299.603 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 3. As used in this act:

6 (a) "Act of God" means an unanticipated grave natural
7 disaster or other natural phenomenon of an exceptional,
8 inevitable, and irresistible character, the effects of which

1 could not have been prevented or avoided by the exercise of due
2 care or foresight.

3 (b) "Agricultural property" means real property used for
4 farming in any of its branches, including cultivating of soil;
5 growing and harvesting of any agricultural, horticultural, or
6 floricultural commodity; dairying; raising of livestock, bees,
7 fish, fur-bearing animals, or poultry; turf and tree farming; and
8 performing any practices on a farm as an incident to, or in con-
9 junction with, these farming operations. Agricultural property
10 does not include property used for commercial storage, process-
11 ing, distribution, marketing, or shipping operations.

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

14 (d) "Commercial lending institution" means any of the
15 following:

16 (i) A state or nationally chartered bank.

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

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

20 (iv) Any other state or federally chartered lending institu-
21 tion or regulated affiliate or regulated subsidiary of any entity
22 listed in this subparagraph or subparagraphs (i) to (iii).

23 (v) An insurance company authorized to do business in this
24 state pursuant to the insurance code of 1956, Act No. 218 of the
25 Public Acts of 1956, being sections 500.100 to 500.8302 of the
26 Michigan Compiled Laws.

1 (vi) A motor vehicle finance company subject to the motor
2 vehicle finance act, Act No. 27 of the Extra Session of 1950,
3 being sections 492.101 to 492.141 of the Michigan Compiled Laws,
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
7 a pension fund regulated pursuant to federal law with net assets
8 in 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.

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

14 (e) "Department" means the director of the department of
15 natural resources or his or her designee.

16 (f) "Director" means the director of the department of natu-
17 ral resources.

18 (g) "Directors" means the directors or their designees of
19 the departments of natural resources, public health, agriculture,
20 and state police.

21 (h) "Disposal" means the discharge, deposit, injection,
22 dumping, spilling, leaking, or placing of any hazardous substance
23 into or on any land or water so that the hazardous substance or
24 any constituent of the hazardous substance may enter the environ-
25 ment or be emitted into the air or discharged into any groundwa-
26 ter or surface water.

1 (i) "Enforcement costs" means court expenses, reasonable
2 attorney fees of the attorney general, and other reasonable
3 expenses of an executive department that are incurred in relation
4 to enforcement under this act or rules promulgated under this
5 act, or both.

6 (j) "Environment" or "natural resources" means any land,
7 surface water, groundwater, subsurface, strata, air, fish, wild-
8 life, or biota within the state.

9 (k) "Environmental contamination" means the release of a
10 hazardous substance, or the potential release of a discarded haz-
11 ardous substance, in a quantity, which is or may become injurious
12 to the environment, or to the public health, safety, or welfare.

13 (l) "Evaluation" means those activities including, but not
14 limited to, investigation, studies, sampling, analysis, develop-
15 ment of feasibility studies, and administrative efforts, that are
16 needed to determine the nature, extent, and impact of a release
17 or threat of release and necessary response activities.

18 (m) "Facility" means any area, place, or property where a
19 hazardous substance has been released, deposited, stored, dis-
20 posed of, or otherwise comes to be located.

21 (n) "Feasibility study" means a process for developing,
22 evaluating, and selecting appropriate response activities.

23 (o) "Fund" means the environmental response fund established
24 in section 9.

25 (p) "Hazardous substance" means 1 or more of the following,
26 BUT IS NOT FRUIT OR VEGETABLE PROCESSING BY-PRODUCTS THAT ARE
27 APPLIED TO THE LAND FOR AN AGRICULTURAL USE OR FOR USE AS ANIMAL

1 FEED, IF THE USE IS CONSISTENT WITH GENERALLY ACCEPTED
2 AGRICULTURAL MANAGEMENT PRACTICES PROVIDED PURSUANT TO THE
3 MICHIGAN RIGHT TO FARM ACT, ACT NO. 93 OF THE PUBLIC ACTS OF
4 1981, BEING SECTIONS 286.471 TO 286.474 OF THE MICHIGAN COMPILED
5 LAWS:

6 (i) A chemical or other material which is or may become
7 injurious to the public health, safety, or welfare or to the
8 environment.

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

12 (iii) "Hazardous waste" as defined in the hazardous waste
13 management act, Act No. 64 of the Public Acts of 1979, being
14 sections 299.501 to 299.551 of the Michigan Compiled Laws.

15 (iv) "Petroleum" as described in section 4(5)(b) of the
16 leaking underground storage tank act, Act No. 478 of the Public
17 Acts of 1988, being section 299.834 of the Michigan Compiled
18 Laws.

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

1 taking of other actions as may be necessary to prevent, minimize,
2 or mitigate a threatened release.

3 (r) "Local health department" means that term as defined in
4 section 1105 of the public health code, Act No. 368 of the Public
5 Acts of 1978, being section 333.1105 of the Michigan Compiled
6 Laws.

7 (s) "Local unit of government" means a county, city, town-
8 ship, or village, an agency of a local unit of government, an
9 authority or any other public body or entity created by or pursu-
10 ant to state law. Local unit of government does not include the
11 state or federal government or a state or federal agency.

12 (t) "Operator" means a person that is in control of or
13 responsible for the operation of a facility. Operator does not
14 include any of the following:

15 (i) A person that holds indicia of ownership primarily to
16 protect the person's security interest in the facility, unless
17 that person participates in the management of the facility as
18 defined under section 3a.

19 (ii) The state or a local unit of government that acquired
20 ownership or control of the facility involuntarily through bank-
21 ruptcy, tax delinquency, abandonment, a transfer from a commer-
22 cial lending institution pursuant to section 12a(9), or other
23 circumstances in which the government involuntarily acquires
24 title or control by virtue of its governmental function or as
25 provided in this act, a local unit of government to which owner-
26 ship or control of the facility is transferred by the state, or
27 the state or a local unit of government that acquired ownership

1 or control of the facility by seizure, receivership, or
2 forfeiture pursuant to the operation of law or by court order.
3 In case of an acquisition described in this subparagraph by the
4 state or a local unit of government, operator means a person that
5 was in control of or responsible for operation of the facility
6 immediately before the state or local unit of government acquired
7 ownership or control. The exclusion provided in this subpara-
8 graph shall not apply to the state or a local unit of government
9 that caused or contributed to the release or threat of a release
10 from the facility.

11 (iii) The operator of an underground storage tank system, as
12 defined in the leaking underground storage tank act, Act No. 478
13 of the Public Acts of 1988, being sections 299.831 to 299.850 of
14 the Michigan Compiled Laws, from which there is a release or
15 threat of release if all of the following conditions are met:

16 (A) The operator reported the release or threat of release
17 to the department of state police, fire marshal division, within
18 24 hours after confirmation of the release or threat of release.

19 (B) The release or threat of release at the facility is
20 solely the result of a release or threat of release of a regu-
21 lated substance as defined in Act No. 478 of the Public Acts of
22 1988 from an underground storage tank system.

23 (C) The operator is in compliance with the requirements of
24 Act No. 478 of the Public Acts of 1988, and any promulgated rules
25 or any order, agreement, or judgment issued or entered into pur-
26 suant to that act.

1 (i ν) A state or local unit of government that holds or
2 acquires an easement interest in a facility, holds or acquires an
3 interest in a facility by dedication in a plat, or by dedication
4 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
5 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
6 sion provided in this subparagraph shall not apply to the state
7 or a local unit of government that holds an easement or dedica-
8 tion if the state or that local unit of government caused or con-
9 tributed to a release or threat of release, or if equipment owned
10 or operated by the state or that local unit of government caused
11 or contributed to the release or threat of release.

12 (v) A person that holds an easement interest in a facility
13 for the purpose of conveying or providing goods or services,
14 including, but not limited to, utilities, sewers, roads, rail-
15 ways, and pipelines; or a person that acquires access through an
16 easement. The exclusion provided in this subparagraph shall not
17 apply to a person that holds an easement if that person caused or
18 contributed to a release or threat of release, or if equipment
19 owned or operated by that person caused or contributed to the
20 release or threat of release.

21 (vi) A person that satisfies all of the following:

22 (A) The release was caused solely by a third party who is
23 not an employee or agent of the person, or whose action was not
24 associated with a contractual relationship with the person.

25 (B) The hazardous substance was not deposited, stored, or
26 disposed of on the property upon which the person operates.

1 (C) The person at the time of transfer of the right to
2 operate on the property discloses any knowledge or information
3 concerning the general nature and extent of the release as
4 required in section 10c.

5 (u) "Owner" means a person that owns a facility. Owner does
6 not include any of the following:

7 (i) A person that, without participating in the management
8 of the facility, holds indicia of ownership primarily to protect
9 the person's security interest in the facility, including, but
10 not limited to, a vendor's interest under a recorded land
11 contract.

12 (ii) The state or a local unit of government that acquired
13 ownership or control of the facility involuntarily through bank-
14 ruptcy, tax delinquency, abandonment, a transfer from a commer-
15 cial lending institution pursuant to section 12a(9), or other
16 circumstances in which the government involuntarily acquires
17 title or control by virtue of its governmental function or as
18 provided in this act, a local unit of government to which owner-
19 ship or control of the facility is transferred by the state, or
20 the state or a local unit of government that acquired ownership
21 or control of the facility by seizure, receivership, or forfei-
22 ture pursuant to the operation of law or by court order. In case
23 of an acquisition described in this subparagraph by the state or
24 a local unit of government, owner means any person who owned or
25 controlled activities at the facility immediately before the
26 state or local unit of government acquired ownership or control.
27 The exclusion provided in this subparagraph shall not apply to

1 the state or a local unit of government that caused or
2 contributed to the release or threat of a release from the
3 facility.

4 (iii) A person that satisfies all of the following:

5 (A) The release was caused solely by a third party, who is
6 not an employee or agent of the person, or whose action was not
7 associated with a contractual relationship with the person.

8 (B) The hazardous substance was not deposited, stored, or
9 disposed of on that person's property.

10 (C) The person at the time of transfer of the property dis-
11 closes any knowledge or information concerning the general nature
12 and extent of the release as required in section 10c.

13 (iv) The owner of an underground storage tank system or the
14 property on which an underground storage tank system is located,
15 as defined in the leaking underground storage tank act, Act
16 No. 478 of the Public Acts of 1988, being sections 299.831 to
17 299.850 of the Michigan Compiled Laws, from which there is a
18 release or threat of release if all of the following conditions
19 are met:

20 (A) The owner reported the release or threat of release to
21 the department of state police, fire marshal division, within 24
22 hours after confirmation of the release or threat of release.

23 (B) The release or threat of release at the facility is
24 solely the result of a release or threat of release of a regu-
25 lated substance as defined in Act No. 478 of the Public Acts of
26 1988 from an underground storage tank system.

1 (C) The owner is in compliance with the requirements of Act
2 No. 478 of the Public Acts of 1988, and any promulgated rules or
3 any order, agreement, or judgment issued or entered pursuant to
4 that act.

5 (v) A state or local unit of government that holds or
6 acquires an easement interest in a facility, holds or acquires an
7 interest in a facility by dedication in a plat, or by dedication
8 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
9 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
10 sion provided in this subparagraph shall not apply to the state
11 or a local unit of government that holds an easement or dedica-
12 tion if that state or local unit of government caused or contrib-
13 uted to a release or threat of release, or if equipment owned or
14 operated by the state or that local unit of government caused or
15 contributed to the release or threat of release.

16 (vi) A person that holds an easement interest in a facility
17 for the purpose of conveying or providing goods or services,
18 including, but not limited to, utilities, sewers, roads, rail-
19 ways, and pipelines; or a person that acquires access through an
20 easement. The exclusion provided in this subparagraph shall not
21 apply to a person that holds an easement if that person caused or
22 contributed to a release or threat of release, or if equipment
23 owned or operated by that person caused or contributed to the
24 release or threat of release.

25 (vii) A person that holds only subsurface mineral rights to
26 the property and has not caused or contributed to a release on
27 the property.

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

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

4 (ii) A lawful and authorized discharge into a permitted
5 waste treatment facility.

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

9 (w) "Person" means an individual, sole proprietorship, part-
10 nership, joint venture, trust, firm, joint stock company, corpo-
11 ration, including a government corporation, association, local
12 unit of government, commission, the state, a political subdivi-
13 sion of the state, an interstate body, the federal government, a
14 political subdivision of the federal government, or any other
15 legal entity.

16 (x) "Release" includes, but is not limited to, any spilling,
17 leaking, pumping, pouring, emitting, emptying, discharging,
18 injecting, escaping, leaching, dumping, or disposing of a hazard-
19 ous substance into the environment, or the abandonment or dis-
20 carding of barrels, containers, and other closed receptacles con-
21 taining a hazardous substance. Release does not include any of
22 the following:

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

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

1 (iii) A release of source, by-product, or special nuclear
2 material from a nuclear incident, as those terms are defined in
3 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if
4 the release is subject to requirements with respect to financial
5 protection established by the nuclear regulatory commission under
6 section 170 of CHAPTER 14 OF TITLE I OF the atomic energy act of
7 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or, any
8 release of source, by-product, or special nuclear material from
9 any processing site designated under section 102(a)(1) title I or
10 302(a) of title III of the uranium mill tailings radiation con-
11 trol act of 1978, PUBLIC LAW 95-604, 42 U.S.C. 7912 and 7942.

12 (iv) If applied according to label directions and according
13 to generally accepted agricultural and management practices, the
14 application of a fertilizer, soil conditioner, agronomically
15 applied manure, or a pesticide, or a combination of these
16 substances. As used in this subparagraph, fertilizer and soil
17 conditioner have the meaning given to these terms in the fertil-
18 izer act of 1975, Act No. 198 of the Public Acts of 1975, being
19 sections 286.751 to 286.767, and pesticide has the meaning given
20 to that term in the pesticide control act, Act No. 171 of the
21 Public Acts of 1976, being sections 286.551 to 286.581 of the
22 Michigan Compiled Laws.

23 (y) "Remedial action" includes, but is not limited to,
24 cleanup, removal, containment, isolation, destruction, or treat-
25 ment of a hazardous substance released or threatened to be
26 released into the environment, monitoring, maintenance, or the
27 taking of other actions that may be necessary to prevent,

1 minimize, or mitigate injury to the public health, safety, or
2 welfare, or to the environment.

3 (z) "Remedial action plan" means a work plan for performing
4 remedial action under this act.

5 (aa) "Response activity" means evaluation, interim response
6 activity, remedial action, or the taking of other actions neces-
7 sary to protect the public health, safety, or welfare, or the
8 environment, or the natural resources. Response activity also
9 includes health assessments or health effect studies carried out
10 under the supervision, or with the approval of, the department of
11 public health, and enforcement actions related to any response
12 activity.

13 (bb) "Response activity costs" or "costs of response
14 activity" means all costs incurred in taking or conducting a
15 response activity, including enforcement costs.

16 (cc) "Rule" means a rule promulgated pursuant to the admin-
17 istrative procedures act of 1969, Act No. 306 of the Public Acts
18 of 1969, being sections 24.201 to 24.328 of the Michigan Compiled
19 Laws.

20 (dd) "Science advisory council" means the science advisory
21 council created in section 11d.

22 (ee) "Site" means the location of environmental
23 contamination.

24 (ff) "Threatened release" or "threat of release" means any
25 circumstance that may reasonably be anticipated to cause a
26 release.