

HOUSE BILL No. 4399

March 6, 2001, Introduced by Reps. Lemmons, Williams, Lipsey, Reeves, Clark, Garza, Kolb and DeWeese and referred to the Committee on 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
2 list of sites that are receiving state funds to conduct response
3 activities. This list shall be arranged in alphabetical order.
4 The department shall annually submit this list to the
5 legislature.

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

1 RESPONSE ACTIVITIES AT THE FACILITY. THE DEPARTMENT'S PUBLIC
2 NOTICE UNDER THIS SUBSECTION SHALL INCLUDE 1 OR MORE ADVERTISE-
3 MENTS IN ETHNIC-MINORITY-OWNED MEDIA.

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

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

1 evaluation of potential risks to the public health, safety, or
2 welfare, or the environment. The notice of approved environmen-
3 tal remediation shall include a survey and property description
4 that define the areas addressed by the remedial action plan if
5 land use or resource use restrictions apply to less than the
6 entire parcel or if different restrictions apply to different
7 areas of a parcel, and the scope of any land use or resource use
8 limitations. Additional requirements for financial assurance,
9 monitoring, or operation, and maintenance do not apply if a reme-
10 dial action complies with criteria provided for in
11 section 20120a(1)(b) to (e), unless monitoring or operation and
12 maintenance are required to assure the compliance with criteria
13 that apply outside the boundary of the property that is the
14 source of the 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
20 in a remedial action plan that 1 or more of the requirements
21 specified in subdivisions (b) to (e) is not necessary to protect
22 the public health, safety, or welfare, or the environment and to
23 assure the effectiveness and integrity of the remedial action,
24 that element may be omitted from the agreement. If provisions
25 for any of the following, determined by the department to be
26 applicable for a facility, lapse or are not complied with as
27 provided in the agreement or remedial action plan, the

1 department's approval of the remedial action plan is void from
2 the time of the lapse or violation, unless the lapse or violation
3 is corrected to the 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
8 site 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 reme-
13 dial 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
19 assure the effectiveness and integrity of the remedy shall be
20 described in a restrictive covenant. The restrictive covenant
21 shall be recorded with the register of deeds for the county in
22 which the property is located within 21 days of the department's
23 selection or approval of the remedial action plan, or within 21
24 days of the completion of construction of the containment or bar-
25 rier, as appropriate to the circumstances. The restrictive cove-
26 nant shall be filed by the property owner or with the express
27 written permission of the property owner. The restrictions shall

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

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

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

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

1 (d) Grant to the department the right to enter the property
2 at reasonable times for the purpose of determining and monitoring
3 compliance with the remedial action plan, including the right to
4 take samples, inspect the operation of the remedial action mea-
5 sures, and inspect records.

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

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

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

21 (6) ~~-(5)-~~ If the department determines that exposure to haz-
22 ardous substances may be reliably restricted by an institutional
23 control in lieu of a restrictive covenant, and that imposition of
24 land use or resource use restrictions through restrictive cove-
25 nants is impractical, the department may approve of a remedial
26 action plan under section 20120a(1)(f) to (j) or (2) that relies
27 on such institutional control. Mechanisms that may be considered

1 under this subsection include, but are not limited to, an
2 ordinance that prohibits the use of groundwater or an aquifer in
3 a manner and to a degree that protects against unacceptable expo-
4 sures as defined by the cleanup criteria approved as part of the
5 remedial action plan. An ordinance that serves as an exposure
6 control pursuant to this subsection shall be published and main-
7 tained in the same manner as zoning ordinances and shall include
8 a requirement that the local unit of government notify the
9 department at least 30 days prior to adopting a modification to
10 the ordinance, or to the lapsing or revocation of the ordinance.

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

16 (8) ~~-(7)-~~ A remedial action shall not be considered approved
17 by the department unless a remedial action plan is submitted to
18 the department and the department approves the plan.

19 Implementation by any person of response activity without depart-
20 ment approval does not relieve that person of an obligation to
21 undertake response activity or limit the ability of the depart-
22 ment to take action to require response activity necessary to
23 comply with this act by a person who is liable under
24 section 20126.

25 (9) ~~-(8)-~~ A person shall not file a notice of approved envi-
26 ronmental remediation indicating approval or a determination of

1 the department unless the department has approved of the filing
2 of the notice.

3 (10) ~~-(9)-~~ A person who implements a remedial action plan
4 approved by the department pursuant to subsections (2) to ~~-(5)-~~
5 (6) shall provide notice of the land use restrictions that are
6 part of the remedial action plan to the zoning authority for the
7 local unit of government in which the facility is located within
8 30 days of approval of the plan.

9 (11) ~~-(10)-~~ The state, with the approval of the state admin-
10 istrative board, may place restrictive covenants related to land
11 or resource use on deeds of state owned property.