

HOUSE BILL No. 4621

April 14, 2005, Introduced by Reps. Kolb, Tobocman, Anderson, Plakas, Alma Smith and Lipsey and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 20101 (MCL 324.20101), as amended by 1996 PA
383, and by adding sections 20121 and 20122.

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;

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

8 (c) "Attorney general" means the department of the attorney
9 general.

10 (d) "Baseline environmental assessment" means an evaluation of
11 environmental conditions which exist at a facility at the time of
12 purchase, occupancy, or foreclosure that reasonably defines the
13 existing conditions and circumstance at the facility so that, in
14 the event of a subsequent release, there is a means of
15 distinguishing the new release from existing contamination.

16 (e) "Board" means the brownfield redevelopment board created
17 in section 20104a.

18 (f) "Department" means the director of the department of
19 environmental quality or his or her designee to whom the director
20 delegates a power or duty by written instrument.

21 (g) "Director" means the director of the department of
22 environmental quality.

23 (h) "Directors" means the directors or their designees of the
24 departments of environmental quality, community health,
25 agriculture, and state police.

26 (i) "Disposal" means the discharge, deposit, injection,
27 dumping, spilling, leaking, or placing of any hazardous substance

1 into or on any land or water so that the hazardous substance or any
2 constituent of the hazardous substance may ~~enter the environment~~
3 ~~or~~ be emitted into the air or discharged into any groundwater or
4 surface water **OR OTHERWISE ENTER THE ENVIRONMENT.**

5 (j) "Enforcement costs" means court expenses, reasonable
6 attorney fees of the attorney general, and other reasonable
7 expenses of an executive department that are incurred in relation
8 to enforcement under this part or rules promulgated under this
9 part, or both.

10 (k) "Environment" or "natural resources" means land, surface
11 water, groundwater, subsurface ~~—~~ strata, air, fish, wildlife, or
12 biota within the state.

13 (l) "Environmental contamination" means the release of a
14 hazardous substance, or the potential release of a discarded
15 hazardous substance, in a quantity which is or may become injurious
16 to the environment or to the public health, safety, or welfare.

17 (m) "Evaluation" means those activities including, but not
18 limited to, investigation, studies, sampling, analysis, development
19 of feasibility studies, and administrative efforts that are needed
20 to determine the nature, extent, and impact of a release or threat
21 of release and necessary response activities.

22 (n) "Exacerbation" means the occurrence of either of the
23 following caused by an activity undertaken by the person who owns
24 or operates the property, with respect to existing contamination:

25 (i) Contamination that has migrated beyond the boundaries of
26 the property which is the source of the release at levels above
27 cleanup criteria ~~specified in~~ **ESTABLISHED UNDER** section

20120a(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to section 20120b.

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

(o) "Facility" means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements ~~of~~ **ESTABLISHED UNDER** section 20120a(1)(a) or (17) or the cleanup criteria for unrestricted residential use under part 213 has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category ~~provided for in~~ **ESTABLISHED UNDER** section 20120a(1)(a) and (17) or at which corrective action has been completed under part 213 which satisfies the cleanup criteria for unrestricted residential use.

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

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

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

(s) "Fund" means the cleanup and redevelopment fund established in section 20108.

(t) "Hazardous substance" means 1 or more of the following,

1 but does not include fruit, vegetable, or field crop residuals or
2 processing by-products, or aquatic plants, that are applied to the
3 land for an agricultural use or for use as an animal feed, if the
4 use is consistent with generally accepted agricultural management
5 practices developed pursuant to the Michigan right to farm act,
6 ~~Act No. 93 of the Public Acts of 1981, being sections 286.471 to~~
7 ~~286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL 286.471 TO**
8 **286.474:**

9 (i) Any substance that the department demonstrates, on a case
10 by case basis, poses an unacceptable risk to the public health,
11 safety, or welfare, or the environment, considering the fate of the
12 material, dose-response, toxicity, or adverse impact on natural
13 resources.

14 (ii) Hazardous substance as defined in ~~the comprehensive~~
15 ~~environmental response, compensation, and liability act of 1980,~~
16 ~~Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601.**

17 (iii) Hazardous waste as defined in ~~part 111~~ **SECTION 11103.**

18 (iv) Petroleum as described in ~~part 213~~ **SECTION 21303.**

19 (u) "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
22 necessary to prevent, minimize, or mitigate injury to the public
23 health, safety, or welfare, or to the environment. Interim response
24 activity also includes, but is not limited to, measures to limit
25 access, replacement of water supplies, and temporary relocation of
26 people as determined to be necessary by the department. In
27 addition, interim response activity means the taking of other

actions as may be necessary to prevent, minimize, or mitigate a threatened release.

(v) "Lender" means any of the following:

(i) A state or nationally chartered bank.

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

(iii) A state or federally chartered credit union.

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

(v) A regulated affiliate or regulated subsidiary of any entity listed in ~~this subparagraph or~~ subparagraphs (i) to ~~(iii)~~ (iv).

(vi) ~~-(v)-~~ An insurance company authorized to do business in this state pursuant to the insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws~~ **1956 PA 218, MCL 500.100 TO 500.8302.**

(vii) ~~-(vi)-~~ A motor vehicle finance company subject to the motor vehicle **SALES** finance act, ~~Act No. 27 of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws~~ **1950 (EX SESS) PA 27, MCL 492.101 TO 492.141**, with net assets in excess of \$50,000,000.00.

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

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

(x) ~~-(ix)-~~ A state or federal agency authorized by law to hold a security interest in real property or a local unit of government

1 holding a reversionary interest in real property.

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

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

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

9 (w) "Local health department" means that term as defined in
10 section 1105 of the public health code, ~~Act No. 368 of the Public~~
11 ~~Acts of 1978, being section 333.1105 of the Michigan Compiled Laws~~
12 **1978 PA 368, MCL 333.1105.**

13 (x) "Local unit of government" means a county, city, township,
14 or village, an agency of a local unit of government, an authority,
15 or any other public body or entity created by or pursuant to state
16 law. Local unit of government does not include the state or federal
17 government or a state or federal agency.

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

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

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

27 (z) "Owner" means a person who owns a facility. Owner does not

1 include either of the following:

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

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

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

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

12 (ii) A lawful and authorized discharge into a permitted waste
13 treatment facility.

14 (iii) A federally permitted release as defined in ~~the~~
15 ~~comprehensive environmental response, compensation, and liability~~
16 ~~act of 1980, Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601.**

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

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

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

(iii) A release of source **MATERIAL**, by-product **MATERIAL**, or special nuclear material from a nuclear incident, as those terms are defined in ~~the atomic energy act of 1954, chapter 1073, 68 Stat. 919~~ **42 USC 2014**, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under ~~section 170 of chapter 14 of title I of the atomic energy act of 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210~~ **42 USC 2210**, or any release of source **MATERIAL**, by-product **MATERIAL**, or special nuclear material from any processing site designated under ~~section 102(a)(1) of title I or 302(a) of title III of the uranium mill tailings radiation control act of 1978, Public Law 95-604, 42 U.S.C. 7912 and~~ **42 USC 7912 OR 7942**.

(iv) If applied according to label directions and according to generally accepted agricultural and management practices, the application of a fertilizer, soil conditioner, agronomically applied manure, or pesticide, or fruit, vegetable, or field crop residuals or processing by-products, aquatic plants, or a combination of these substances. As used in this subparagraph, "fertilizer" and "soil conditioner" ~~have the meaning given to these terms in part 85~~ **MEAN THOSE TERMS AS DEFINED IN SECTION 8501**, and "pesticide" ~~has the meaning given to~~ **MEANS** that term **AS DEFINED** in ~~part 83~~ **SECTION 8305**.

(v) A release does not include fruits, vegetables, field crop processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural and management practices developed pursuant to the Michigan right to

1 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
2 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
3 **286.471 TO 286.474.**

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

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

13 (ee) "Response activity" means evaluation, interim response
14 activity, remedial action, demolition, or the taking of other
15 actions necessary to protect the public health, safety, or welfare,
16 or the environment or the natural resources. Response activity also
17 includes health assessments or health effect studies carried out
18 under the supervision, or with the approval of, the department of
19 public health and enforcement actions related to any response
20 activity.

21 (ff) "Response activity costs" or "costs of response activity"
22 means all costs incurred in taking or conducting a response
23 activity, including enforcement costs.

24 (GG) "SCHOOL" MEANS ALL BUILDINGS, PLAYGROUNDS, ATHLETIC
25 FIELDS, AND OTHER REAL PROPERTY OWNED OR LEASED BY A PRIVATE OR
26 PUBLIC ELEMENTARY OR SECONDARY INSTITUTION OF LEARNING FOR ANY OF
27 GRADES KINDERGARTEN THROUGH 12. SCHOOL DOES NOT INCLUDE A FAMILY

1 **RESIDENCE USED AS A HOME SCHOOL.**

2 **(HH)** ~~-(gg)-~~ "Security interest" means any interest, including
3 a reversionary interest, in real property created or established
4 for the purpose of securing a loan or other obligation. Security
5 interests include, but are not limited to, mortgages, deeds of
6 trusts, liens, and title pursuant to lease financing transactions.
7 Security interests may also arise from transactions such as sale
8 and leasebacks, conditional sales, installment sales, trust receipt
9 transactions, certain assignments, factoring agreements, accounts
10 receivable financing arrangements, consignments, or any other
11 transaction in which evidence of title is created if the
12 transaction creates or establishes an interest in real property for
13 the purpose of securing a loan or other obligation.

14 **(II)** ~~-(hh)-~~ "Site" means the location of environmental
15 contamination.

16 **(JJ)** ~~-(ii)-~~ "Threatened release" or "threat of release" means
17 any circumstance that may reasonably be anticipated to cause a
18 release.

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

23 **SEC. 20121. BEFORE BEGINNING CONSTRUCTION OF A SCHOOL, THE**
24 **OWNER OR OPERATOR OF THE SCHOOL SHALL CONDUCT AN ENVIRONMENTAL**
25 **ASSESSMENT OF THE PROPERTY TO DETERMINE ALL OF THE FOLLOWING:**

26 **(A) WHETHER THE PROPERTY IS A FACILITY.**

27 **(B) THE NATURE AND EXTENT OF THE OWNER'S OR OPERATOR'S DUE**

1 CARE OBLIGATIONS UNDER SECTION 20107A AND THE RESPONSE ACTIVITIES
2 NECESSARY TO FULFILL THOSE OBLIGATIONS.

3 (C) THE NATURE AND EXTENT OF ANY RESPONSE ACTIVITIES THAT THE
4 OWNER OR OPERATOR IS REQUIRED TO CONDUCT.

5 SEC. 20122. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OR (3), A
6 SCHOOL SHALL NOT BE CONSTRUCTED OR OPERATED ON PROPERTY THAT IS OR
7 WAS A FACILITY.

8 (2) IF RESPONSE ACTIVITIES THAT SATISFY THE CLEANUP CRITERIA
9 FOR LIMITED RESIDENTIAL USE ESTABLISHED UNDER SECTION 20120A(1)(F)
10 AND (17), OR CORRECTIVE ACTION THAT SATISFIES THE CLEANUP CRITERIA
11 FOR RESTRICTED RESIDENTIAL USE ESTABLISHED UNDER PART 213, HAVE
12 BEEN COMPLETED AT THE PROPERTY, A SCHOOL MAY BE CONSTRUCTED AND
13 OPERATED ON THE PROPERTY IF THE OWNER OR OPERATOR OF THE SCHOOL
14 MONITORS THE PROPERTY, INCLUDING, IF APPLICABLE, SOIL, AIR, AND
15 INDOOR AIR, TO DEMONSTRATE THAT NO UNACCEPTABLE EXPOSURES TO
16 HAZARDOUS SUBSTANCES EXIST. THE MONITORING SHALL BE CONDUCTED IN
17 CONFORMITY WITH A WRITTEN MONITORING PLAN THAT CONTAINS A SCHEDULE
18 FOR CONDUCTING THE MONITORING AND IS APPROVED BY THE DEPARTMENT.
19 THE DEPARTMENT SHALL NOT APPROVE A MONITORING PLAN UNDER THIS
20 SUBSECTION UNLESS THE OWNER OR OPERATOR OF THE SCHOOL HAS DONE BOTH
21 OF THE FOLLOWING:

22 (A) PROVIDED PUBLIC NOTICE, IN THE MANNER REQUIRED UNDER
23 SUBSECTION (4), OF THE ENVIRONMENTAL CONTAMINATION AT THE SITE, THE
24 PROPOSED MONITORING PLAN, THE RESULTS OF ANY MONITORING THAT HAS
25 ALREADY BEEN CONDUCTED AT THE SITE, AND THE RIGHT TO REQUEST A
26 HEARING UNDER SUBDIVISION (B).

27 (B) IF REQUESTED BY ANY PERSON WITHIN 14 DAYS AFTER PUBLIC

1 NOTICE IS PROVIDED UNDER SUBDIVISION (A), CONDUCTED A PUBLIC
2 HEARING IN THE VICINITY OF THE SITE. THE OWNER OR OPERATOR OF THE
3 SCHOOL SHALL GIVE PUBLIC NOTICE OF THE HEARING IN THE MANNER
4 REQUIRED UNDER SUBSECTION (4).

5 (3) IF RESPONSE ACTIVITIES THAT SATISFY THE CLEANUP CRITERIA
6 FOR RESIDENTIAL USE ESTABLISHED UNDER SECTION 20120A(1)(A) AND
7 (17), OR CORRECTIVE ACTION THAT SATISFIES THE CLEANUP CRITERIA FOR
8 UNRESTRICTED RESIDENTIAL USE ESTABLISHED UNDER PART 213, HAVE BEEN
9 COMPLETED AT THE PROPERTY, A SCHOOL MAY BE CONSTRUCTED AND OPERATED
10 ON THE PROPERTY IF THE OWNER OR OPERATOR DOES ALL OF THE FOLLOWING:

11 (A) PROVIDES PUBLIC NOTICE, IN THE MANNER REQUIRED UNDER
12 SUBSECTION (4), OF THE PRIOR STATUS OF THE PROPERTY AS A FACILITY
13 AND OF TESTING RESULTS THAT DEMONSTRATE THAT THE PROPERTY SATISFIES
14 THE CLEANUP CRITERIA FOR RESIDENTIAL USE ESTABLISHED UNDER SECTION
15 20120A(1)(A) AND (17) OR FOR UNRESTRICTED RESIDENTIAL USE UNDER
16 PART 213.

17 (B) PROVIDES THE PUBLIC AN OPPORTUNITY TO COMMENT.

18 (C) IF REQUESTED BY THE DEPARTMENT BASED ON NEW INFORMATION
19 RECEIVED BY THE DEPARTMENT THAT THE CONDITIONS AT THE SCHOOL ARE
20 REASONABLY LIKELY TO FAIL TO SATISFY THE CLEANUP CRITERIA FOR
21 RESIDENTIAL USE ESTABLISHED UNDER SECTION 20120A(1)(A) AND (17) OR
22 FOR UNRESTRICTED RESIDENTIAL USE UNDER PART 213, CONDUCTS AN
23 ADDITIONAL ENVIRONMENTAL ASSESSMENT THAT MEETS THE REQUIREMENTS OF
24 SECTION 20121. THE ENVIRONMENTAL ASSESSMENT SHALL BE CONDUCTED IN
25 CONFORMITY WITH A WRITTEN ASSESSMENT PLAN THAT CONTAINS A SCHEDULE
26 FOR CONDUCTING THE ENVIRONMENTAL ASSESSMENT AND IS APPROVED BY THE
27 DEPARTMENT. THE DEPARTMENT SHALL NOT APPROVE AN ASSESSMENT PLAN

1 UNDER THIS SUBSECTION UNLESS THE OWNER OR OPERATOR HAS DONE BOTH OF
2 THE FOLLOWING:

3 (i) PROVIDED PUBLIC NOTICE, IN THE MANNER REQUIRED UNDER
4 SUBSECTION (4), OF THE ENVIRONMENTAL CONTAMINATION AT THE SITE, THE
5 PROPOSED ASSESSMENT PLAN, THE RESULTS OF ANY ENVIRONMENTAL
6 ASSESSMENT THAT HAS ALREADY BEEN CONDUCTED AT THE SITE, AND THE
7 RIGHT TO REQUEST A HEARING UNDER SUBPARAGRAPH (ii).

8 (ii) IF REQUESTED BY ANY PERSON WITHIN 14 DAYS AFTER PUBLIC
9 NOTICE IS PROVIDED UNDER SUBPARAGRAPH (i), CONDUCTED A PUBLIC
10 HEARING IN THE VICINITY OF THE SITE. THE OWNER OR OPERATOR OF THE
11 SCHOOL SHALL GIVE PUBLIC NOTICE OF THE HEARING IN THE MANNER
12 REQUIRED UNDER SUBSECTION (4).

13 (4) NOTICE UNDER THIS SECTION, INCLUDING NOTICE OF A PUBLIC
14 HEARING, SHALL BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION
15 IN THE CITY, VILLAGE, OR TOWNSHIP WHERE THE SCHOOL IS OR WILL BE
16 LOCATED AND SHALL INCLUDE INFORMATION CONSIDERED APPROPRIATE BY THE
17 DEPARTMENT.