

SENATE BILL No. 1280

May 23, 2006, Introduced by Senators GOSCHKA, STAMAS, GARCIA, TOY, KUIPERS, CROPSEY and BARCIA and referred to the Committee on Natural Resources and Environmental Affairs.

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.

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) "Attorney general" means the department of the attorney
8 general.

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

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

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

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

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

25 (i) "Disposal" means the discharge, deposit, injection,
26 dumping, spilling, leaking, or placing of any hazardous substance
27 into or on any land or water so that the hazardous substance or any

1 constituent of the hazardous substance may enter the environment or
2 be emitted into the air or discharged into any groundwater or
3 surface water.

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

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

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

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

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

24 (i) Contamination that has migrated beyond the boundaries of
25 the property which is the source of the release at levels above
26 cleanup criteria specified in section 20120a(1)(a) unless a
27 criterion is not relevant because exposure is reliably restricted

1 pursuant to section 20120b.

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

4 (o) "Facility" means ~~any area, place, or~~ **A PARCEL OF**
5 **property OR A PORTION OF A PARCEL OF PROPERTY** where a hazardous
6 substance in excess of the concentrations which satisfy the
7 requirements of section 20120a(1)(a) or (17) or the cleanup
8 criteria for unrestricted residential use under part 213 has been
9 released, deposited, disposed of, or otherwise comes to be located.

10 **HOWEVER, A PARCEL OR PORTION OF A PARCEL OF RESIDENTIAL PROPERTY**
11 **SHALL NOT BE CONSIDERED A FACILITY DUE TO SOIL CONTAMINATION UNLESS**
12 **THE DETERMINATION IS BASED UPON TESTING CONDUCTED ACCORDING TO**
13 **SCIENTIFICALLY ACCEPTED METHODS ON SOIL COLLECTED FROM THE PARCEL**
14 **OR PORTION OF THE PARCEL.** Facility does not include ~~any area,~~
15 ~~place, or~~ **A PARCEL OF PROPERTY OR A PORTION OF A PARCEL OF**
16 property at which response activities have been completed which
17 satisfy the cleanup criteria for the residential category provided
18 for in section 20120a(1)(a) and (17) or at which corrective action
19 has been completed under part 213 which satisfies the cleanup
20 criteria for unrestricted residential use.

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

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

26 (r) "Free product" means a hazardous substance in a liquid
27 phase equal to or greater than 1/8 inch of measurable thickness

1 that is not dissolved in water and that has been released into the
2 environment.

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

5 (t) "Hazardous substance" means 1 or more of the following,
6 but does not include fruit, vegetable, or field crop residuals or
7 processing by-products, or aquatic plants, that are applied to the
8 land for an agricultural use or for use as an animal feed, if the
9 use is consistent with generally accepted agricultural management
10 practices developed pursuant to the Michigan right to farm act,
11 ~~Act No. 93 of the Public Acts of 1981, being sections 286.471 to~~
12 ~~286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL 286.471 TO**
13 **286.474:**

14 (i) Any substance that the department demonstrates, on a case
15 by case basis, poses an unacceptable risk to the public health,
16 safety, or welfare, or the environment, considering the fate of the
17 material, dose-response, toxicity, or adverse impact on natural
18 resources.

19 (ii) Hazardous substance as defined in the comprehensive
20 environmental response, compensation, and liability act of 1980,
21 ~~Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601 TO 9675.**

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

23 (iv) Petroleum as described in part 213.

24 (u) "Interim response activity" means the cleanup or removal
25 of a released hazardous substance or the taking of other actions,
26 prior to the implementation of a remedial action, as may be
27 necessary to prevent, minimize, or mitigate injury to the public

1 health, safety, or welfare, or to the environment. Interim response
2 activity also includes, but is not limited to, measures to limit
3 access, replacement of water supplies, and temporary relocation of
4 people as determined to be necessary by the department. In
5 addition, interim response activity means the taking of other
6 actions as may be necessary to prevent, minimize, or mitigate a
7 threatened release.

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

9 (i) A state or nationally chartered bank.

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

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

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

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

20 (vi) A motor vehicle finance company subject to the motor
21 vehicle finance act, ~~Act No. 27 of the Extra Session of 1950,~~
22 ~~being sections 492.101 to 492.141 of the Michigan Compiled Laws~~
23 **1950 (EX SESS) PA 27, MCL 492.101 TO 492.141,** with net assets in
24 excess of \$50,000,000.00.

25 (vii) A foreign bank.

26 (viii) A retirement fund regulated pursuant to state law or a
27 pension fund regulated pursuant to federal law with net assets in

1 excess of \$50,000,000.00.

2 (ix) A state or federal agency authorized by law to hold a
3 security interest in real property or a local unit of government
4 holding a reversionary interest in real property.

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

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

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

12 (w) "Local health department" means that term as defined in
13 section 1105 of the public health code, ~~Act No. 368 of the Public~~
14 ~~Acts of 1978, being section 333.1105 of the Michigan Compiled Laws~~
15 **1978 PA 368, MCL 333.1105.**

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

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

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

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

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

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

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

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

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

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

17 (iii) A federally permitted release as defined in the
18 comprehensive environmental response, compensation, and liability
19 act of 1980, ~~Public Law 96-510, 94 Stat. 2767~~ **42 USC 9601 TO**
20 **9675.**

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

27 (i) A release that results in exposure to persons solely within

1 a workplace, with respect to a claim that these persons may assert
2 against their employers.

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

5 (iii) A release of source, by-product, or special nuclear
6 material from a nuclear incident, as those terms are defined in
7 ~~the atomic energy act of 1954, chapter 1073, 68 Stat. 919~~ **42 USC**
8 **2014**, if the release is subject to requirements with respect to
9 financial protection established by the nuclear regulatory
10 commission under ~~section 170 of chapter 14 of title I of the~~
11 ~~atomic energy act of 1954, chapter 1073, 71 Stat. 576,~~ 42 ~~U.S.C.~~
12 **USC 2210**, or any release of source by-product or special nuclear
13 material from any processing site designated under ~~section~~
14 ~~102(a)(1) of title I or 302(a) of title III of the uranium mill~~
15 ~~tailings radiation control act of 1978, Public Law 95-604,~~ 42
16 ~~U.S.C.~~ **USC 7912** ~~and~~ **OR 42 USC 7942**.

17 (iv) If applied according to label directions and according to
18 generally accepted agricultural and management practices, the
19 application of a fertilizer, soil conditioner, agronomically
20 applied manure, or pesticide, or fruit, vegetable, or field crop
21 residuals or processing by-products, aquatic plants, or a
22 combination of these substances. As used in this subparagraph,
23 fertilizer and soil conditioner have the meaning given to these
24 terms in part 85, and pesticide has the meaning given to that term
25 in part 83.

26 (v) A release does not include fruits, vegetables, field crop
27 processing by-products, or aquatic plants, that are applied to the

1 land for an agricultural use or for use as an animal feed, if the
2 use is consistent with generally accepted agricultural and
3 management practices developed pursuant to the Michigan right to
4 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
5 ~~286.471 to 286.474 of the Michigan Compiled Laws~~ **1981 PA 93, MCL**
6 **286.471 TO 286.474.**

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

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

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

24 (ff) "Response activity costs" or "costs of response activity"
25 means all costs incurred in taking or conducting a response
26 activity, including enforcement costs.

27 (gg) "Security interest" means any interest, including a

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

12 (hh) "Site" means the location of environmental contamination.

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

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