

SUBSTITUTE FOR
SENATE BILL NO. 437

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 20126 and 20126a (MCL 324.20126 and
324.20126a), section 20126 as amended by 1999 PA 196 and section
20126a as added by 1995 PA 71, and by adding section 20114e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 20114E. (1) THE DIRECTOR SHALL ESTABLISH A RESPONSE
2 ACTIVITY REVIEW PANEL TO ADVISE HIM OR HER ON TECHNICAL OR
3 SCIENTIFIC DISPUTES, INCLUDING DISPUTES REGARDING ASSESSMENT OF
4 RISK, CONCERNING RESPONSE ACTIVITY PLANS AND NO FURTHER ACTION
5 REPORTS.

6 (2) THE PANEL SHALL CONSIST OF 15 INDIVIDUALS, APPOINTED BY
7 THE DIRECTOR. EACH MEMBER OF THE PANEL SHALL MEET ALL OF THE
8 FOLLOWING MINIMUM REQUIREMENTS:

1 (A) MEET 1 OR MORE OF THE FOLLOWING:

2 (i) HOLD A CURRENT PROFESSIONAL ENGINEER'S OR PROFESSIONAL
3 GEOLOGIST'S LICENSE OR REGISTRATION FROM A STATE, TRIBE, OR UNITED
4 STATES TERRITORY, OR THE COMMONWEALTH OF PUERTO RICO, AND HAVE THE
5 EQUIVALENT OF 6 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

6 (ii) HAVE A BACCALAUREATE DEGREE FROM AN ACCREDITED INSTITUTION
7 OF HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND
8 THE EQUIVALENT OF 10 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

9 (iii) HAVE A MASTER'S DEGREE FROM AN ACCREDITED INSTITUTION OF
10 HIGHER EDUCATION IN A DISCIPLINE OF ENGINEERING OR SCIENCE AND THE
11 EQUIVALENT OF 8 YEARS OF FULL-TIME RELEVANT EXPERIENCE.

12 (B) REMAIN CURRENT IN HIS OR HER FIELD THROUGH PARTICIPATION
13 IN CONTINUING EDUCATION OR OTHER ACTIVITIES.

14 (3) AN INDIVIDUAL IS NOT ELIGIBLE TO BE A MEMBER OF THE PANEL
15 IF ANY 1 OF THE FOLLOWING IS TRUE:

16 (A) THE INDIVIDUAL IS A CURRENT EMPLOYEE OF ANY OFFICE,
17 DEPARTMENT, OR AGENCY OF THE STATE.

18 (B) THE INDIVIDUAL IS A PARTY TO 1 OR MORE CONTRACTS WITH THE
19 DEPARTMENT AND THE COMPENSATION PAID UNDER THOSE CONTRACTS
20 REPRESENTED MORE THAN 5% OF THE INDIVIDUAL'S ANNUAL GROSS REVENUE
21 IN ANY OF THE PRECEDING 3 YEARS.

22 (C) THE INDIVIDUAL IS EMPLOYED BY AN ENTITY THAT IS A PARTY TO
23 1 OR MORE CONTRACTS WITH THE DEPARTMENT AND THE COMPENSATION PAID
24 TO THE INDIVIDUAL'S EMPLOYER UNDER THESE CONTRACTS REPRESENTED MORE
25 THAN 5% OF THE EMPLOYER'S ANNUAL GROSS REVENUE IN ANY OF THE
26 PRECEDING 3 YEARS.

27 (D) THE INDIVIDUAL WAS EMPLOYED BY THE DEPARTMENT WITHIN THE

PRECEDING 3 YEARS.

(4) AN INDIVIDUAL APPOINTED TO THE PANEL SHALL SERVE FOR A TERM OF 3 YEARS AND MAY BE REAPPOINTED FOR 1 ADDITIONAL 3-YEAR TERM. AFTER SERVING 2 CONSECUTIVE TERMS, THE INDIVIDUAL MAY NOT BE A MEMBER OF THE PANEL FOR A PERIOD OF AT LEAST 2 YEARS BEFORE BEING ELIGIBLE TO BE APPOINTED TO THE PANEL AGAIN. THE TERMS FOR MEMBERS FIRST APPOINTED SHALL BE STAGGERED SO THAT NOT MORE THAN 5 VACANCIES ARE SCHEDULED TO OCCUR IN A SINGLE YEAR. INDIVIDUALS APPOINTED TO THE PANEL SHALL SERVE WITHOUT COMPENSATION. HOWEVER, MEMBERS OF THE PANEL MAY BE REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE PANEL.

(5) A VACANCY ON THE PANEL SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

(6) THE BUSINESS THAT THE PANEL MAY PERFORM SHALL BE CONDUCTED AT A PUBLIC MEETING OF THE PANEL HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

(7) A PERSON WHO SUBMITTED A RESPONSE ACTIVITY PLAN OR A NO FURTHER ACTION REPORT MAY APPEAL A DECISION MADE BY THE DEPARTMENT REGARDING A TECHNICAL OR SCIENTIFIC DISPUTE, INCLUDING A DISPUTE REGARDING ASSESSMENT OF RISK, CONCERNING THE RESPONSE ACTIVITY PLAN OR NO FURTHER ACTION REPORT BY SUBMITTING A PETITION TO THE DIRECTOR. THE PETITION SHALL INCLUDE THE ISSUES IN DISPUTE, THE RELEVANT FACTS UPON WHICH THE DISPUTE IS BASED, FACTUAL DATA, ANALYSIS, OPINION, AND SUPPORTING DOCUMENTATION FOR THE PETITIONER'S POSITION. THE PETITIONER SHALL ALSO SUBMIT A FEE OF \$3,500.00. IF THE DIRECTOR BELIEVES THAT THE DISPUTE MAY BE ABLE TO

1 BE RESOLVED WITHOUT CONVENING THE PANEL, THE DIRECTOR MAY CONTACT
2 THE PETITIONER REGARDING THE ISSUES IN DISPUTE AND MAY NEGOTIATE A
3 RESOLUTION OF THE DISPUTE. THIS NEGOTIATION PERIOD SHALL NOT EXCEED
4 45 DAYS. IF THE DISPUTE IS RESOLVED WITHOUT CONVENING THE PANEL,
5 ANY FEE THAT IS SUBMITTED WITH THE PETITION SHALL BE RETURNED.

6 (8) IF A DISPUTE IS NOT RESOLVED PURSUANT TO SUBSECTION (7),
7 THE DIRECTOR SHALL SCHEDULE A MEETING OF 5 MEMBERS OF THE PANEL,
8 SELECTED ON THE BASIS OF THEIR RELEVANT EXPERTISE, WITHIN 45 DAYS
9 AFTER RECEIVING THE ORIGINAL PETITION. A MEMBER SELECTED FOR THE
10 DISPUTE RESOLUTION PROCESS SHALL AGREE NOT TO ACCEPT EMPLOYMENT BY
11 THE PERSON BRINGING THE DISPUTE BEFORE THE PANEL, OR TO UNDERTAKE
12 ANY EMPLOYMENT CONCERNING THE FACILITY IN QUESTION FOR A PERIOD OF
13 1 YEAR AFTER THE DECISION HAS BEEN RENDERED ON THE MATTER IF THAT
14 EMPLOYMENT WOULD REPRESENT MORE THAN 5% OF THE MEMBER'S GROSS
15 REVENUE IN ANY OF THE PRECEDING 3 YEARS. THE DIRECTOR SHALL PROVIDE
16 A COPY OF ALL SUPPORTING DOCUMENTATION TO MEMBERS OF THE PANEL WHO
17 WILL HEAR THE DISPUTE. AN ALTERNATIVE MEMBER MAY BE SELECTED BY THE
18 DIRECTOR TO REPLACE A MEMBER WHO IS UNABLE TO PARTICIPATE IN THE
19 DISPUTE RESOLUTION PROCESS. ANY ACTION BY THE MEMBERS SELECTED TO
20 HEAR THE DISPUTE SHALL REQUIRE A MAJORITY OF THE VOTES CAST. THE
21 MEMBERS SELECTED FOR THE DISPUTE RESOLUTION PROCESS SHALL ELECT A
22 CHAIRPERSON OF THE DISPUTE RESOLUTION PROCESS. AT A MEETING
23 SCHEDULED TO HEAR THE DISPUTE, REPRESENTATIVES OF THE PETITIONER
24 AND THE DEPARTMENT SHALL EACH BE AFFORDED AN OPPORTUNITY TO PRESENT
25 THEIR POSITIONS TO THE PANEL. THE FEE THAT IS RECEIVED BY THE
26 DIRECTOR ALONG WITH THE PETITION SHALL BE FORWARDED TO THE STATE
27 TREASURER FOR DEPOSIT INTO THE FUND.

1 (9) WITHIN 45 DAYS AFTER HEARING THE DISPUTE, THE MEMBERS OF
2 THE PANEL WHO WERE SELECTED FOR AND PARTICIPATED IN THE DISPUTE
3 RESOLUTION PROCESS SHALL MAKE A RECOMMENDATION REGARDING THE
4 PETITION AND PROVIDE WRITTEN NOTICE OF THE RECOMMENDATION TO THE
5 DIRECTOR OF THE DEPARTMENT AND THE PETITIONER. THE WRITTEN
6 RECOMMENDATION SHALL INCLUDE THE SPECIFIC SCIENTIFIC OR TECHNICAL
7 RATIONALE FOR THE RECOMMENDATION. THE PANEL'S RECOMMENDATION
8 REGARDING THE PETITION MAY BE TO ADOPT, MODIFY, OR REVERSE, IN
9 WHOLE OR IN PART, THE DEPARTMENT'S DECISION THAT IS THE SUBJECT OF
10 THE PETITION. IF THE PANEL DOES NOT MAKE ITS RECOMMENDATION WITHIN
11 THIS 45-DAY TIME PERIOD, THE DECISION OF THE DEPARTMENT IS THE
12 FINAL DECISION OF THE DIRECTOR.

13 (10) WITHIN 60 DAYS AFTER RECEIVING WRITTEN NOTICE OF THE
14 PANEL'S RECOMMENDATION, THE DIRECTOR SHALL ISSUE A FINAL DECISION,
15 IN WRITING, REGARDING THE PETITION. HOWEVER, THIS TIME PERIOD MAY
16 BE EXTENDED BY WRITTEN AGREEMENT BETWEEN THE DIRECTOR AND THE
17 PETITIONER. IF THE DIRECTOR AGREES WITH THE RECOMMENDATION OF THE
18 PANEL, THE DEPARTMENT SHALL INCORPORATE THE RECOMMENDATION INTO ITS
19 RESPONSE TO THE RESPONSE ACTIVITY PLAN OR THE NO FURTHER ACTION
20 REPORT. IF THE DIRECTOR REJECTS THE RECOMMENDATION OF THE PANEL,
21 THE DIRECTOR SHALL ISSUE A WRITTEN DECISION TO THE PETITIONER WITH
22 A SPECIFIC RATIONALE FOR REJECTING THE RECOMMENDATION OF THE PANEL.
23 IF THE DIRECTOR FAILS TO ISSUE A FINAL DECISION WITHIN THE TIME
24 PERIOD PROVIDED FOR IN THIS SUBSECTION, THE RECOMMENDATION OF THE
25 PANEL SHALL BE CONSIDERED THE FINAL DECISION OF THE DIRECTOR. THE
26 FINAL DECISION OF THE DIRECTOR UNDER THIS SUBSECTION IS SUBJECT TO
27 REVIEW PURSUANT TO SECTION 631 OF THE REVISED JUDICATURE ACT OF

1 1961, 1961 PA 236, MCL 600.631.

2 (11) UPON REQUEST OF THE DIRECTOR, THE PANEL SHALL MAKE A
3 RECOMMENDATION TO THE DEPARTMENT ON WHETHER A MEMBER SHOULD BE
4 REMOVED FROM THE PANEL. PRIOR TO MAKING THIS RECOMMENDATION, THE
5 PANEL MAY CONVENE A PEER REVIEW PANEL TO EVALUATE THE CONDUCT OF
6 THE MEMBER WITH REGARD TO COMPLIANCE WITH THIS PART.

7 (12) A MEMBER OF THE PANEL SHALL NOT PARTICIPATE IN THE
8 DISPUTE RESOLUTION PROCESS FOR ANY APPEAL IN WHICH THAT MEMBER HAS
9 A CONFLICT OF INTEREST. THE DIRECTOR SHALL SELECT A MEMBER OF THE
10 PANEL TO REPLACE A MEMBER WHO HAS A CONFLICT OF INTEREST UNDER THIS
11 SUBSECTION. FOR PURPOSES OF THIS SUBSECTION, A MEMBER HAS A
12 CONFLICT OF INTEREST IF A PETITIONER HAS HIRED THAT MEMBER OR THE
13 MEMBER'S EMPLOYER ON ANY ENVIRONMENTAL MATTER WITHIN THE PRECEDING
14 3 YEARS.

15 (13) AS USED IN THIS SECTION, "RELEVANT EXPERIENCE" MEANS
16 ACTIVE PARTICIPATION IN THE PREPARATION, DESIGN, IMPLEMENTATION,
17 AND ASSESSMENT OF REMEDIAL INVESTIGATIONS, FEASIBILITY STUDIES,
18 INTERIM RESPONSE ACTIVITIES, AND REMEDIAL ACTIONS UNDER THIS PART.
19 THIS EXPERIENCE MUST DEMONSTRATE THE EXERCISE OF SOUND PROFESSIONAL
20 JUDGMENT AND KNOWLEDGE OF THE REQUIREMENTS OF THIS PART.

21 Sec. 20126. (1) Notwithstanding any other provision or rule of
22 law and except as provided in subsections (2), (3), (4), and (5)
23 and section 20128, the following persons are liable under this
24 part:

25 (a) The owner or operator of a facility if the owner or
26 operator is responsible for an activity causing a release or threat
27 of release.

1 (b) The owner or operator of a facility at the time of
2 disposal of a hazardous substance if the owner or operator is
3 responsible for an activity causing a release or threat of release.

4 (c) An owner or operator of a facility who becomes an owner or
5 operator on or after June 5, 1995, unless the owner or operator
6 complies with both of the following:

7 (i) A baseline environmental assessment is conducted prior to
8 or within 45 days after the earlier of the date of purchase,
9 occupancy, or foreclosure. For purposes of this section, assessing
10 property to conduct a baseline environmental assessment does not
11 constitute occupancy.

12 (ii) The owner or operator ~~discloses the results of~~ **PROVIDES** a
13 baseline environmental assessment to the department and subsequent
14 purchaser or transferee ~~if the baseline environmental assessment~~
15 ~~confirms that the property is a facility.~~ **WITHIN 6 MONTHS AFTER THE**
16 **EARLIER OF THE DATE OF PURCHASE, OCCUPANCY, OR FORECLOSURE.**

17 (d) A person who by contract, agreement, or otherwise arranged
18 for disposal or treatment, or arranged with a transporter for
19 transport for disposal or treatment, of a hazardous substance owned
20 or possessed by the person, by any other person, at a facility
21 owned or operated by another person and containing the hazardous
22 substance. This subdivision does not include any of the following:

23 (i) A person who, on or after June 5, 1995, arranges for the
24 sale or transport of a secondary material for use in producing a
25 new product. As used in this subparagraph, secondary material means
26 scrap metal, paper, plastic, glass, textiles, or rubber, which has
27 demonstrated reuse or recycling potential and has been separated or

1 removed from the solid waste stream for reuse or recycling, whether
2 or not subsequent separation and processing is required, if
3 substantial amounts of the material are consistently used in the
4 manufacture of products which may otherwise be produced from a raw
5 or virgin material.

6 (ii) A person who, prior to June 5, 1995, arranges for the sale
7 or transport of a secondary material for use in producing a new
8 product unless the state has incurred response activity costs
9 associated with these secondary materials prior to ~~the effective~~
10 ~~date of the 1999 amendments to this section~~ **DECEMBER 17, 1999**. As
11 used in this subparagraph, secondary material means scrap metal,
12 paper, plastic, glass, textiles, or rubber, which has demonstrated
13 reuse or recycling potential and has been separated or removed from
14 the solid waste stream for reuse or recycling, whether or not
15 subsequent separation and processing is required, if substantial
16 amounts of the material are consistently used in the manufacture of
17 products which may otherwise be produced from a raw or virgin
18 material.

19 (iii) A person who arranges the lawful transport or disposal of
20 any product or container commonly used in a residential household,
21 which is in a quantity commonly used in a residential household,
22 and which was used in the person's residential household.

23 (e) A person who accepts or accepted any hazardous substance
24 for transport to a facility selected by that person.

25 (f) The estate or trust of a person described in subdivisions
26 (a) to (e).

27 (2) Subject to section 20107a, an owner or operator who

1 complies with subsection (1)(c) is not liable for contamination
2 existing at the facility at the earlier of the date of purchase,
3 occupancy, or foreclosure, unless the person is responsible for an
4 activity causing the contamination existing at the facility.

5 Subsection (1)(c) does not alter a person's liability with regard
6 to a subsequent release or threat of release at a facility if the
7 person is responsible for an activity causing the subsequent
8 release or threat of release.

9 (3) Notwithstanding subsection (1), the following persons are
10 not liable under this part **WITH RESPECT TO CONTAMINATION AT A**
11 **FACILITY RESULTING FROM A RELEASE OR THREAT OF RELEASE** unless the
12 person is responsible for an activity causing a ~~THAT~~ release at the
13 ~~facility~~ **OR THREAT OF RELEASE:**

14 (a) The state or a local unit of government that acquired
15 ownership or control of a facility involuntarily through
16 bankruptcy, tax delinquency, abandonment, a transfer from a lender
17 pursuant to subsection (7), or other circumstances in which the
18 government involuntarily acquires title or control by virtue of its
19 governmental function or as provided in this part, a local unit of
20 government to which ownership or control of a facility is
21 transferred by the state or by another local unit of government
22 that is not liable under subsection (1), or the state or a local
23 unit of government that acquired ownership or control of a facility
24 by seizure, receivership, or forfeiture pursuant to the operation
25 of law or by court order.

26 (b) A state or local unit of government that holds or acquires
27 an easement interest in a facility, holds or acquires an interest

Senate Bill No. 437 as amended July 28, 2010

1 in a facility by dedication in a plat, or by dedication pursuant to
2 1909 PA 283, MCL 220.1 to 239.6, or otherwise holds or acquires an
3 interest in a facility for a transportation or utility corridor<<
4 **INCLUDING SEWERS, PIPES, AND PIPELINES,>>** or
5 public right of way.

6 (c) A person who holds an easement interest in a facility or
7 holds a utility franchise to provide service, for the purpose of
8 conveying or providing goods or services, including, but not
9 limited to, utilities, sewers, roads, railways, and pipelines; or a
10 person that acquires access through an easement.

11 (d) A person who owns severed subsurface mineral rights or
12 severed subsurface formations or who leases subsurface mineral
13 rights or formations.

14 (e) The state or a local unit of government that leases
15 property to a person if the state or the local unit of government
16 is not liable under this part for environmental contamination at
17 the property.

18 (f) A person who owns or occupies residential real property if
19 hazardous substance use at the property is consistent with
20 residential use.

21 (g) A person who acquires a facility as a result of the death
22 of the prior owner or operator of the facility, whether by
23 inheritance, devise, or transfer from an inter vivos or
24 testamentary trust.

25 (h) A person who did not know and had no reason to know that
26 the property was a facility. To establish that the person did not
27 know and did not have a reason to know that the property was a
facility, the person shall have undertaken at the time of

1 acquisition all appropriate inquiry into the previous ownership and
2 uses of the property consistent with good commercial or customary
3 practice. A determination of liability under this section shall
4 take into account any specialized knowledge or experience on the
5 part of the person, the relationship of the purchase price to the
6 value of the property if uncontaminated by a hazardous substance,
7 commonly known or reasonable ascertainable information about the
8 property, the obviousness of the presence or likely presence of a
9 release or threat of release at the property, and the ability to
10 detect a release or threat of release by appropriate inspection.

11 (i) A utility performing normal construction, maintenance, and
12 repair activities in the normal course of its utility service
13 business. This subsection does not apply to property owned by the
14 utility.

15 (j) A lessee who uses **THE LEASED** property for **A** retail,
16 office, or commercial purpose **REGARDLESS OF THE LEVEL OF THE**
17 **LESSEE'S HAZARDOUS SUBSTANCE USE.**

18 (4) Notwithstanding subsection (1), the following persons are
19 not liable under this part:

20 (a) The owner or operator of a hazardous waste treatment,
21 storage, or disposal facility regulated pursuant to part 111 from
22 which there is a release or threat of release solely from the
23 treatment, storage, or disposal facility, or a waste management
24 unit at the facility and the release or threat of release is
25 subject to corrective action under part 111.

26 (b) A lender that engages in or conducts a lawful marshalling
27 or liquidation of personal property if the lender does not cause or

1 contribute to the environmental contamination. This includes
2 holding a sale of personal property on a portion of the facility.

3 (c) The owner or operator of property onto which contamination
4 has migrated unless that person is responsible for an activity
5 causing the release that is the source of the contamination.

6 (d) A person who owns or operates a facility in which the
7 release or threat of release was caused solely by 1 or more of the
8 following:

9 (i) An act of God.

10 (ii) An act of war.

11 (iii) An act or omission of a third party other than an employee
12 or agent of the person or a person in a contractual relationship
13 existing either directly or indirectly with a person who is liable
14 under this section.

15 (E) ANY PERSON FOR ENVIRONMENTAL CONTAMINATION ADDRESSED IN A
16 NO FURTHER ACTION REPORT THAT IS APPROVED BY THE DEPARTMENT OR IS
17 CONSIDERED APPROVED UNDER SECTION 20114D. NOTWITHSTANDING THIS
18 SUBDIVISION, A PERSON MAY BE LIABLE UNDER THIS PART FOR THE
19 FOLLOWING:

20 (i) A SUBSEQUENT RELEASE NOT ADDRESSED IN THE NO FURTHER ACTION
21 REPORT IF THE PERSON IS OTHERWISE LIABLE UNDER THIS PART FOR THAT
22 RELEASE.

23 (ii) ENVIRONMENTAL CONTAMINATION THAT IS NOT ADDRESSED IN THE
24 NO FURTHER ACTION REPORT AND FOR WHICH THE PERSON IS OTHERWISE
25 LIABLE UNDER THIS PART.

26 (iii) IF THE NO FURTHER ACTION REPORT RELIES ON LAND USE OR
27 RESOURCE USE RESTRICTIONS, AN OWNER OR OPERATOR WHO DESIRES TO

1 CHANGE THOSE RESTRICTIONS IS RESPONSIBLE FOR ANY RESPONSE
2 ACTIVITIES NECESSARY TO COMPLY WITH THIS PART FOR ANY LAND USE OR
3 RESOURCE USE OTHER THAN THE LAND USE OR RESOURCE USE THAT WAS THE
4 BASIS FOR THE NO FURTHER ACTION REPORT.

5 (iv) IF THE NO FURTHER ACTION REPORT RELIES ON MONITORING
6 NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL
7 ACTION, AN OWNER OR OPERATOR WHO IS OTHERWISE LIABLE FOR
8 ENVIRONMENTAL CONTAMINATION ADDRESSED IN A NO FURTHER ACTION REPORT
9 IS LIABLE UNDER THIS PART FOR ADDITIONAL RESPONSE ACTIVITIES
10 NECESSARY TO ADDRESS ANY POTENTIAL EXPOSURE TO THE ENVIRONMENTAL
11 CONTAMINATION DEMONSTRATED BY THE MONITORING IN EXCESS OF THE
12 LEVELS RELIED ON IN THE NO FURTHER ACTION REPORT.

13 (v) IF THE REMEDIAL ACTIONS THAT WERE THE BASIS FOR THE NO
14 FURTHER ACTION REPORT FAIL TO MEET PERFORMANCE OBJECTIVES THAT ARE
15 IDENTIFIED IN THE NO FURTHER ACTION REPORT, AN OWNER OR OPERATOR
16 WHO IS OTHERWISE LIABLE FOR ENVIRONMENTAL CONTAMINATION ADDRESSED
17 IN THE NO FURTHER ACTION REPORT IS LIABLE UNDER THIS PART FOR
18 RESPONSE ACTIVITIES NECESSARY TO SATISFY THE PERFORMANCE OBJECTIVES
19 OR OTHERWISE COMPLY WITH THIS PART.

20 (5) Notwithstanding any other provision of this part, the
21 state or a local unit of government or a lender who has not
22 participated in the management of the facility is not liable under
23 this part for costs or damages as a result of response activity
24 taken in response to a release or threat of release. For a lender,
25 this subsection applies only to response activity undertaken prior
26 to foreclosure. This subsection does not preclude liability for
27 costs or damages as a result of gross negligence, including

reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof. ~~If the department proves a prima facie case against a person, the person shall bear the burden of showing by a preponderance of the evidence that he or she is not liable under this section.~~

~~—— (7) A lender that is not responsible for an activity causing a release at a facility and that establishes that it has met the requirements of subsection (1)(c) with respect to that facility may immediately transfer to the state the property on which there has been a release or a threat of a release if the lender complies with all of the following:~~

~~—— (a) Within 9 months following foreclosure and for a period of at least 120 days, the lender either lists the facility with a broker, dealer, or agent who deals with the type of property in question, or advertises the facility as being for sale or disposition on at least a monthly basis in either a real estate publication, a trade or other publication suitable for the facility in question, or a newspaper of general circulation of over 10,000 covering the area where the property is located.~~

~~—— (b) The lender has taken reasonable care in maintaining and preserving the real estate and permanent fixtures.~~

~~—— (c) The lender provides to the department all environmental information related to the facility that is available to the lender.~~

~~—— (d) If the department has issued an order pursuant to section~~

1 ~~20119, the lender has complied with the order to the department's~~
2 ~~satisfaction.~~

3 ~~—— (c) If conditions on the property pose a threat of fire or~~
4 ~~explosion or present an imminent hazard through direct contact with~~
5 ~~hazardous substances, the lender has undertaken appropriate~~
6 ~~response activities to abate the threat or hazard.~~

7 (7) ~~(8) The department shall establish minimum technical~~
8 ~~standards for baseline environmental assessments conducted under~~
9 ~~this section in guidelines pursuant to the administrative~~
10 ~~procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.~~

11 BEGINNING ON THE EFFECTIVE DATE OF THE 2010 AMENDATORY ACT THAT
12 AMENDED THIS SECTION, THE DEPARTMENT SHALL NOT IMPLEMENT OR ENFORCE
13 R 299.5901 TO R 299.5919 OF THE MICHIGAN ADMINISTRATIVE CODE,
14 EXCEPT THE DEPARTMENT MAY IMPLEMENT AND ENFORCE THE FOLLOWING
15 RULES:

16 (A) SUBRULES (2), (6), (8), AND (9) OF RULE 903, R 299.5903 OF
17 THE MICHIGAN ADMINISTRATIVE CODE.

18 (B) SUBRULES (2) THROUGH (6) OF RULE 905, R 299.5905 OF THE
19 MICHIGAN ADMINISTRATIVE CODE.

20 (C) RULE 919, R 299.5919 OF THE MICHIGAN ADMINISTRATIVE CODE.

21 (8) ~~(9)~~ Notwithstanding subsection (1)(c), if the owner or
22 operator of the facility became the owner or operator of the
23 facility on or after June 5, 1995 and prior to March 6, 1996, and
24 the facility contains an underground storage tank system as defined
25 in part 213, that owner or operator is liable under this part only
26 if the owner or operator is responsible for an activity causing a
27 release or threat of release.

(9) AN OWNER OR OPERATOR WHO WAS IN COMPLIANCE WITH SUBSECTION (1) (C) PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, IS CONSIDERED TO BE IN COMPLIANCE WITH SUBSECTION (1) (C) .

Sec. 20126a. (1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(b) Any other ~~necessary~~ costs of response activity **REASONABLY** incurred **UNDER THE CIRCUMSTANCES** by any other person. ~~consistent with rules relating to the selection and implementation of response activity promulgated under this part.~~

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of response activity recoverable under subsection (1) shall also include all ~~of the following:~~

~~——(a) All costs of response activity reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of response activity under this part, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the~~

1 time the costs were incurred. ~~Recoverable costs include costs~~
2 ~~incurred reasonably consistent with the rules relating to the~~
3 ~~selection and implementation of response activity in effect on July~~
4 ~~12, 1990.~~

5 ~~—— (b) Any other necessary costs of response activity reasonably~~
6 ~~incurred by any other person prior to the promulgation of rules~~
7 ~~relating to the selection and implementation of response activity~~
8 ~~under this part. A person seeking recovery of these costs has the~~
9 ~~burden of establishing that the costs were reasonably incurred~~
10 ~~under the circumstances that existed at the time the costs were~~
11 ~~incurred.~~

12 (3) The amounts recoverable in an action under this section
13 shall include interest. This interest shall accrue from the date
14 payment is demanded in writing, or the date of the expenditure or
15 damage, whichever is later. The rate of interest on the outstanding
16 unpaid balance of the amounts recoverable under this section shall
17 be the same rate as is specified in section ~~6013(5)~~ **6013(8)** of the
18 revised judicature act of 1961, Act No. 236 of the Public Acts of
19 ~~1961, being section 600.6013 of the Michigan Compiled Laws 1961 PA~~
20 **236, MCL 600.6013.**

21 (4) In the case of injury to, destruction of, or loss of
22 natural resources under subsection (1)(c), liability shall be to
23 the state for natural resources belonging to, managed by,
24 controlled by, appertaining to, or held in trust by the state or a
25 local unit of government. Sums recovered by the state under this
26 part for natural resource damages shall be retained by the
27 department, for use only to restore, repair, replace, or acquire

1 the equivalent of the natural resources injured or acquire
2 substitute or alternative resources. There shall be no double
3 recovery under this part for natural resource damages, including
4 the costs of damage assessment or restoration, rehabilitation,
5 replacement, or acquisition, for the same release and natural
6 resource.

7 (5) A person shall not be required under this part to
8 undertake response activity for a permitted release. Recovery by
9 any person for response activity costs or damages resulting from a
10 permitted release shall be pursuant to other applicable law, in
11 lieu of this part. With respect to a permitted release, this
12 subsection does not affect or modify the obligations or liability
13 of any person under any other state law, including common law, for
14 damages, injury, or loss resulting from a release of a hazardous
15 substance or for response activity or the costs of response
16 activity.

17 (6) If the department determines that there may be an imminent
18 and substantial endangerment to the public health, safety, or
19 welfare, or to the environment because of an actual or threatened
20 release from a facility, the attorney general may bring an action
21 against any person who is liable under section 20126 or any other
22 appropriate person to secure the relief that may be necessary to
23 abate the danger or threat. The court has jurisdiction to grant
24 such relief as the public interest and the equities of the case may
25 require.

26 (7) The costs recoverable under this section may be recovered
27 in an action brought by the state or any other person.

1 Enacting section 1. This amendatory act does not take effect
2 unless all of the following bills of the 95th Legislature are
3 enacted into law:

4 (a) Senate Bill No. 1345.

5 (b) Senate Bill No. 1346.

6 (c) Senate Bill No. 1348.

7 (d) House Bill No. ____ (request no. H06270'10 *).

8 (e) House Bill No. ____ (request no. H06271'10 *).