

HOUSE BILL No. 4202

February 12, 2003, Introduced by Rep. Kolb 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 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
3 disaster or other natural phenomenon of an exceptional,
4 inevitable, and irresistible character, the effects of which
5 could not have been prevented or avoided by the exercise of due
6 care or foresight.

7 (b) "Agricultural property" means real property used for
8 farming in any of its branches, including cultivating of soil;
9 growing and harvesting of any agricultural, horticultural, or
10 floricultural commodity; dairying; raising of livestock, bees,

1 fish, fur-bearing animals, or poultry; turf and tree farming; and
2 performing any practices on a farm as an incident to, or in
3 conjunction with, these farming operations. Agricultural
4 property does not include property used for commercial storage,
5 processing, distribution, marketing, or shipping operations.

6 (c) "Attorney general" means the department of the attorney
7 general.

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

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

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

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

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

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

1 ~~environment or~~ be emitted into the air or discharged into any
2 groundwater or surface water **or otherwise enter the environment.**

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

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

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

16 (m) "Evaluation" means those activities including, but not
17 limited to, investigation, studies, sampling, analysis,
18 development of feasibility studies, and administrative efforts
19 that are needed to determine the nature, extent, and impact of a
20 release or threat 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
24 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 section 20120a(1)(a) unless a

1 criterion is not relevant because exposure is reliably restricted
2 pursuant to section 20120b.

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

5 (o) "Facility" means any area, place, or property where a
6 hazardous substance in excess of the concentrations which satisfy
7 the 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
10 located. Facility does not include any area, place, or property
11 at which response activities have been completed which satisfy
12 the cleanup criteria for the residential category provided for in
13 section 20120a(1)(a) and (17) or at which corrective action has
14 been completed under part 213 which satisfies the cleanup
15 criteria for unrestricted residential use.

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

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

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

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

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

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

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

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

19 (iv) Petroleum as described in ~~part 213~~ **section 21303.**

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

1 department. In addition, interim response activity means the
 2 taking of other actions as may be necessary to prevent, minimize,
 3 or mitigate a threatened release.

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

5 (i) A state or nationally chartered bank.

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

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

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

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

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

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

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

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

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

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

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

9 (xiii) ~~(xii)~~ Any person who retains or receives a security
10 interest to service a debt or to secure a performance
11 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~~
14 ~~Public Acts of 1978, being section 333.1105 of the Michigan~~
15 ~~Compiled Laws~~ **1978 PA 368, MCL 333.1105.**

16 (x) "Local unit of government" means a county, city,
17 township, or village, an agency of a local unit of government, an
18 authority or any other public body or entity created by or
19 pursuant to state law. Local unit of government does not include
20 the state or federal 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
26 that person participates in the management of the facility as
27 described 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
4 not 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,
7 including, but not limited to, a vendor's interest under a
8 recorded land contract, unless that person participates in the
9 management of the 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.

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

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

1 within a workplace, with respect to a claim that these persons
2 may assert 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, if the
8 release is subject to requirements with respect to financial
9 protection established by the nuclear regulatory commission under
10 section 170 of chapter 14 of title I of the atomic energy act of
11 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or any release
12 of source by-product or special nuclear material from any
13 processing site designated under section 102(a)(1) of title I or
14 302(a) of title III of the uranium mill tailings radiation
15 control act of 1978, Public Law 95-604, 42 U.S.C. 7912 and 7942.

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

1 the land for an agricultural use or for use as an animal feed, if
2 the 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,**
6 **MCL 286.471 to 286.474.**

7 (cc) "Remedial action" includes, but is not limited to,
8 cleanup, removal, containment, isolation, destruction, or
9 treatment of a hazardous substance released or threatened to be
10 released into the environment, monitoring, maintenance, or the
11 taking of other actions that may be necessary to prevent,
12 minimize, or mitigate injury to the public health, safety, or
13 welfare, or to the 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
19 welfare, or the environment or the natural resources. Response
20 activity also includes health assessments or health effect
21 studies carried out under the supervision, or with the approval
22 of, the department of public health and enforcement actions
23 related to any response activity.

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

27 (gg) **"School" means all buildings, playgrounds, athletic**

1 fields, and other real property owned or leased by a private or
2 public elementary or secondary institution of learning for any of
3 grades kindergarten through 12. School does not include a family
4 residence used as a home school.

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

18 (ii) ~~(hh)~~ "Site" means the location of environmental
19 contamination.

20 (jj) ~~(ii)~~ "Threatened release" or "threat of release" means
21 any circumstance that may reasonably be anticipated to cause a
22 release.

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

27 **Sec. 20121. Before beginning construction of a school, the**

1 owner or operator of the school shall conduct an environmental
2 assessment of the property to determine all of the following:

3 (a) Whether the property is a facility.

4 (b) The nature and extent of the owner's or operator's due
5 care obligations under section 20107a and the response activities
6 necessary to fulfill those obligations.

7 (c) The nature and extent of any response activities that
8 the owner or operator is required to conduct under sections 20114
9 and 20126.

10 Sec. 20122. (1) Except as provided in subsection (2) or
11 (3), a school shall not be constructed or operated on property
12 that is or was a facility.

13 (2) If response activities that satisfy the cleanup criteria
14 for limited residential use under section 20120a(1)(f) and (17),
15 or corrective action that satisfies the cleanup criteria for
16 restricted residential use under part 213, have been completed at
17 the property, a school may be constructed and operated on the
18 property if the owner or operator of the school monitors the
19 property, including, if applicable, soil, air, and indoor air, to
20 demonstrate that no unacceptable exposures to hazardous
21 substances exist. The monitoring shall be conducted in
22 conformity with a written monitoring plan that contains a
23 schedule for conducting the monitoring and is approved by the
24 department. The department shall not approve a monitoring plan
25 under this subsection unless the owner or operator of the school
26 has done both of the following:

27 (a) Provided public notice, in the manner required under

1 subsection (4), of the environmental contamination at the site,
2 the proposed monitoring plan, the results of any monitoring that
3 has already been conducted at the site, and the right to request
4 a hearing under subdivision (b).

5 (b) If requested by any person within 14 days after public
6 notice is provided under subdivision (a), conducted a public
7 hearing in the vicinity of the site. The owner or operator of
8 the school shall give public notice of the hearing in the manner
9 required under subsection (4).

10 (3) If response activities that satisfy the cleanup criteria
11 for residential use under section 20120a(1)(a) and (17), or
12 corrective action that satisfies the cleanup criteria for
13 unrestricted residential use under part 213, have been completed
14 at the property, a school may be constructed and operated on the
15 property if the owner or operator does all of the following:

16 (a) Provides public notice, in the manner required under
17 subsection (4), of the prior status of the property as a facility
18 and of testing results that demonstrate that the property
19 satisfies the cleanup criteria for residential use under
20 section 20120a(1)(a) and (17) or for unrestricted residential use
21 under part 213.

22 (b) Provides the public an opportunity to comment.

23 (c) If requested by the department based on new information
24 received by the department that the conditions at the school are
25 reasonably likely to fail to satisfy the cleanup criteria for
26 residential use under section 20120A(1)(a) and (17) or for
27 unrestricted residential use under part 213, conducts an

1 additional environmental assessment that meets the requirements
2 of section 20121(a) to (c). The environmental assessment shall
3 be conducted in conformity with a written assessment plan that
4 contains a schedule for conducting the environmental assessment
5 and is approved by the department. The department shall not
6 approve an assessment plan under this subsection unless the owner
7 or operator has done both of the following:

8 (i) Provided public notice, in the manner required under
9 subsection (4), of the environmental contamination at the site,
10 the proposed assessment plan, the results of any environmental
11 assessment that has already been conducted at the site, and the
12 right to request a hearing under subparagraph (ii).

13 (ii) If requested by any person within 14 days after public
14 notice is provided under subparagraph (i), conducted a public
15 hearing in the vicinity of the site. The owner or operator of
16 the school shall give public notice of the hearing in the manner
17 required under subsection (4).

18 (4) Notice under this section, including notice of a public
19 hearing, shall be published in a newspaper of general circulation
20 in the city, village, or township where the school is or will be
21 located and shall include information considered appropriate by
22 the department.