

HOUSE BILL No. 5401

March 11, 2014, Introduced by Reps. McBroom, Potvin, Graves, Schmidt, Goike, LaFontaine, Clemente, Jacobsen, Kivela, Zorn, Rendon, Dianda, Foster, MacGregor, Glardon, Victory, Kesto, Haveman, Poleski, Forlini, Haugh, Lane, Brunner, Durhal, Santana and Crawford and referred to the Committee on Natural Resources.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 20126 (MCL 324.20126), as amended by 2012 PA 446.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (a) The owner or operator of a facility if the owner or
6 operator is responsible for an activity causing a release or threat
7 of release.

8 (b) The owner or operator of a facility at the time of
9 disposal of a hazardous substance if the owner or operator is

1 responsible for an activity causing a release or threat of release.

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

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

10 (ii) The owner or operator provides a baseline environmental
11 assessment to the department and subsequent purchaser or transferee
12 within 6 months after the earlier of the date of purchase,
13 occupancy, or foreclosure.

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

20 (i) A person who, on or after June 5, 1995, arranges for the
21 sale or transport of a secondary material for use in producing a
22 new product. As used in this subparagraph, secondary material means
23 scrap metal, paper, plastic, glass, textiles, or rubber, ~~which~~ **THAT**
24 has demonstrated reuse or recycling potential and has been
25 separated or removed from the solid waste stream for reuse or
26 recycling, whether or not subsequent separation and processing is
27 required, if substantial amounts of the material are consistently

1 used in the manufacture of products ~~which~~**THAT** may otherwise be
2 produced from a raw or virgin material.

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

15 (iii) A person who arranges the lawful transport or disposal of
16 any product or container **THAT IS** commonly used in a residential
17 household, ~~which~~ is in a quantity commonly used in a residential
18 household, and ~~which~~ was used in the person's residential
19 household.

20 (iv) **A PERSON WHO STORES OR USES OR ARRANGES FOR THE STORAGE OR**
21 **USE OF A BENEFICIAL USE BY-PRODUCT OR INERT MATERIAL IN COMPLIANCE**
22 **WITH PART 115.**

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)(e)~~ **(1)(C)(i) AND (ii)** is not liable for
2 contamination existing at the facility at the earlier of the date
3 of purchase, occupancy, or foreclosure, unless the person is
4 responsible for an activity causing the contamination existing at
5 the facility. Subsection (1)(c) does not alter a person's liability
6 with regard to a subsequent release or threat of release at a
7 facility if the person is responsible for an activity causing the
8 subsequent 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 that release or
13 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 (5),~~ 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
20 of 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

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 public right of way.

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

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

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

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

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

24 (h) A person who did not know and had no reason to know that
25 the property was a facility. To establish that the person did not
26 know and did not have a reason to know that the property was a
27 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~~
4 **SUBDIVISION** shall take into account any specialized knowledge or
5 experience on the part of the person, the relationship of the
6 purchase price to the value of the property if uncontaminated by a
7 hazardous substance, commonly known or reasonable ascertainable
8 information about the property, the obviousness of the presence or
9 likely presence of a release or threat of release at the property,
10 and the ability to detect a release or threat of release by
11 appropriate inspection.

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

16 (j) A lessee who uses the leased property for a retail,
17 office, or commercial purpose regardless of the level of the
18 lessee's hazardous substance use.

19 (k) A person who holds a license, easement, or lease, or who
20 otherwise occupies or operates property, for the purpose of siting,
21 constructing, operating, or removing a wind energy conversion
22 system or any component of a wind energy conversion system. As used
23 in this subdivision, "wind energy conversion system" means that
24 term as defined in section 13 of the clean, renewable, and
25 efficient energy act, 2008 PA 295, MCL 460.1013.

26 (l) A person who owns or occupies a residential condominium
27 unit for both of the following:

1 (i) Contamination of the unit if hazardous substance use within
2 the unit is consistent with residential use.

3 (ii) Contamination of any general common element, limited
4 common element, or common area in which the person has an ownership
5 interest or right of occupation by reason of owning or occupying
6 the residential condominium unit.

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

9 (a) The owner or operator of a hazardous waste treatment,
10 storage, or disposal facility regulated pursuant to part 111 from
11 which there is a release or threat of release solely from the
12 treatment, storage, or disposal facility, or a waste management
13 unit at the facility and the release or threat of release is
14 subject to corrective action under part 111.

15 (b) A lender that engages in or conducts a lawful marshalling
16 or liquidation of personal property if the lender does not cause or
17 contribute to the environmental contamination. This includes
18 holding a sale of personal property on a portion of the facility.

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

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

25 (i) An act of God.

26 (ii) An act of war.

27 (iii) An act or omission of a third party other than an employee

1 or agent of the person or a person in a contractual relationship
2 existing either directly or indirectly with a person who is liable
3 under this section.

4 (e) Any person for environmental contamination addressed in a
5 no further action report that is approved by the department or is
6 considered approved under section 20114d. ~~Notwithstanding this~~
7 ~~subdivision,~~ **HOWEVER**, a person may be liable under this part for
8 the following:

9 (i) A subsequent release not addressed in the no further action
10 report if the person is otherwise liable under this part for that
11 release.

12 (ii) Environmental contamination that is not addressed in the
13 no further action report and for which the person is otherwise
14 liable under this part.

15 (iii) If the no further action report relies on land use or
16 resource use restrictions, an owner or operator who desires to
17 change those restrictions is responsible for any response
18 activities necessary to comply with this part for any land use or
19 resource use other than the land use or resource use that was the
20 basis for the no further action report.

21 (iv) If the no further action report relies on monitoring
22 necessary to ~~assure~~ **ENSURE** the effectiveness and integrity of the
23 remedial action, an owner or operator who is otherwise liable for
24 environmental contamination addressed in a no further action report
25 is liable under this part for additional response activities
26 necessary to address any potential exposure to the environmental
27 contamination demonstrated by the monitoring in excess of the

1 levels relied on in the no further action report.

2 (v) If the remedial actions that were the basis for the no
3 further action report fail to meet performance objectives that are
4 identified in the no further action report, an owner or operator
5 who is otherwise liable for environmental contamination addressed
6 in the no further action report is liable under this part for
7 response activities necessary to satisfy the performance objectives
8 or otherwise comply with this part.

9 (5) Notwithstanding any other provision of this part, the
10 state or a local unit of government or a lender who has not
11 participated in the management of the facility is not liable under
12 this part for costs or damages as a result of response activity
13 taken in response to a release or threat of release. For a lender,
14 this subsection applies only to response activity undertaken prior
15 to foreclosure. This subsection does not preclude liability for
16 costs or damages as a result of gross negligence, including
17 reckless, willful, or wanton misconduct, or intentional misconduct
18 by the state or local unit of government.

19 (6) In establishing liability under this section, the
20 department bears the burden of proof.

21 (7) 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.

1 (8) An owner or operator who was in compliance with subsection
2 ~~(1)(e)~~ **(1)(C)(i) AND (ii)** prior to December 14, 2010 is considered to
3 be in compliance with subsection ~~(1)(e)~~ **(1)(C)(i) AND (ii)**.

4 Enacting section 1. This amendatory act does not take effect
5 unless Senate Bill No. ____ or House Bill No. 5400 (request no.
6 00948'13 **) of the 97th Legislature is enacted into law.