

HOUSE BILL No. 4956

June 12, 1991, Introduced by Reps. Alley, Middaugh, DeMars, Hickner, Gnodtke, Sikkema and Dolan and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend section 3 of Act No. 307 of the Public Acts of 1982, entitled as amended

"The environmental response act,"

as amended by Act No. 234 of the Public Acts of 1990, being section 299.603 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3 of Act No. 307 of the Public Acts of
2 1982, as amended by Act No. 234 of the Public Acts of 1990, being
3 section 299.603 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 3. As used in this act:

6 (a) "Act of God" means an unanticipated grave natural
7 disaster or other natural phenomenon of an exceptional,
8 inevitable, and irresistible character, the effects of which

1 could not have been prevented or avoided by the exercise of due
2 care or foresight.

3 (b) "Agricultural property" means real property used for
4 farming in any of its branches, including cultivating of soil;
5 growing and harvesting of any agricultural, horticultural, or
6 floricultural commodity; dairying; raising of livestock, bees,
7 fish, fur-bearing animals, or poultry; turf and tree farming; and
8 performing any practices on a farm as an incident to, or in con-
9 junction with, these farming operations. Agricultural property
10 does not include property used for commercial storage, process-
11 ing, distribution, marketing, or shipping operations.

12 (c) "Attorney general" means the department of the attorney
13 general.

14 (d) "Commercial lending institution" means a state or
15 nationally chartered bank, a state or federally chartered savings
16 and loan association or savings bank, or a state or federally
17 chartered credit union, or other state or federally chartered
18 lending institution or a regulated affiliate or a regulated sub-
19 sidiary of any of these entities.

20 (e) "Department" means the director of the department of
21 natural resources or his or her designee.

22 (f) "Director" means the director of the department of natu-
23 ral resources.

24 (g) "Directors" means the directors or their designees of
25 the departments of natural resources, public health, agriculture,
26 and state police.

1 (h) "Disposal" means the discharge, deposit, injection,
2 dumping, spilling, leaking, or placing of any hazardous substance
3 into or on any land or water so that the hazardous substance or
4 any constituent of the hazardous substance may enter the environ-
5 ment or be emitted into the air or discharged into any groundwa-
6 ter or surface water.

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

12 (j) "Environment" or "natural resources" means any land,
13 surface water, groundwater, subsurface, strata, air, fish, wild-
14 life, or biota within the state.

15 (k) "Environmental contamination" means the release of a
16 hazardous substance, or the potential release of a discarded haz-
17 ardous substance, in a quantity, which is or may become injurious
18 to the environment, or to the public health, safety, or welfare.

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

24 (m) "Facility" means any area, place, or property where a
25 hazardous substance has been released, deposited, stored, dis-
26 posed of, or otherwise comes to be located.

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

3 (o) "Fund" means the environmental response fund established
4 in section 9, except as otherwise provided in section 11f.

5 (p) "Hazardous substance" means 1 or more of the following:

6 (i) A chemical or other material ~~which~~ THAT THE DEPARTMENT
7 DEMONSTRATES ON A SITE SPECIFIC BASIS OR DESIGNATES IN RULES is
8 or may become injurious to the public health, safety, or welfare
9 or to the environment.

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

13 (iii) "Hazardous waste" as defined in the hazardous waste
14 management act, Act No. 64 of the Public Acts of 1979, being
15 sections 299.501 to 299.551 of the Michigan Compiled Laws.

16 (iv) "Petroleum" as defined in the leaking underground stor-
17 age tank act, Act No. 478 of the Public Acts of 1988, being sec-
18 tions 299.831 to 299.850 of the Michigan Compiled Laws.

19 (q) "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 nec-
22 essary to prevent, minimize, or mitigate injury to the public
23 health, safety, or welfare, or to the environment. Interim
24 response activity ~~also~~ includes, but is not limited to, mea-
25 sures to limit access, replacement of water supplies, and tempo-
26 rary relocation of people as determined to be necessary by the
27 department. In addition, interim response activity means the

1 taking of other actions as may be necessary to prevent, minimize,
2 or mitigate a threatened release.

3 (r) "Local health department" means that term as defined in
4 section 1105 of the public health code, Act No. 368 of the Public
5 Acts of 1978, being section 333.1105 of the Michigan Compiled
6 Laws.

7 (s) "Local unit of government" means a county, city, town-
8 ship, or village, an agency of a local unit of government, an
9 authority or any other public body or entity created by or pursu-
10 ant to state law. Local unit of government does not include the
11 state or federal government or a state or federal agency.

12 (t) "Operator" means a person that is in control of or
13 responsible for the operation of a facility. Operator does not
14 include any of the following:

15 (i) A person that, without participating in the management
16 of the facility, holds indicia of ownership primarily to protect
17 the person's security interest in the facility, including, but
18 not limited to, a vendor's interest under a recorded land
19 contract. For the purposes of this act, a commercial lending
20 institution shall not be construed to be participating in the
21 management of a facility by extending credit, providing financial
22 services, providing financial advice, or supervising a plan to
23 resolve financial difficulties for an operator, or conducting or
24 causing to be conducted a prudent or legally required review or
25 investigation of environmental matters related to the facility or
26 the operator of the facility, if the actions of the commercial
27 lending institution do not suggest, condone, or encourage the

1 treatment or handling of a hazardous substance by the operator in
2 a manner that results in a release.

3 (ii) The state or a local unit of government that acquired
4 ownership or control of the facility involuntarily through bank-
5 ruptcy, tax delinquency, abandonment, or other circumstances in
6 which the government involuntarily acquires title or control by
7 virtue of its governmental function, a local unit of government
8 to which ownership or control of the facility is transferred by
9 the state, or the state or a local unit of government that
10 acquired ownership or control of the facility by seizure, receiv-
11 ership, or forfeiture pursuant to the operation of law or by
12 court order. ~~In case of an acquisition described in this sub-~~
13 ~~paragraph by~~ IF the state or a local unit of government ACQUIRES
14 A FACILITY IN A MANNER DESCRIBED IN THIS SUBPARAGRAPH, operator
15 means a person that was in control of or responsible for opera-
16 tion of the facility immediately before the state or local unit
17 of government acquired ownership or control. The exclusion pro-
18 vided in this subparagraph ~~shall~~ DOES not apply to the state or
19 a local unit of government that caused or contributed to the
20 release or threat of a release from the facility.

21 (iii) The operator of an underground storage tank system, as
22 defined in the leaking underground storage tank act, Act No. 478
23 of the Public Acts of 1988, being sections 299.831 to 299.850 of
24 the Michigan Compiled Laws, from which there is a release or
25 threat of release if all of the following conditions are met:

1 (A) The operator reported the release or threat of release
2 to the department of state police, fire marshal division, within
3 24 hours after confirmation of the release or threat of release.

4 (B) The release or threat of release at the facility is
5 solely the result of a release or threat of release of a regu-
6 lated substance as defined in Act No. 478 of the Public Acts of
7 1988 from an underground storage tank system.

8 (C) The operator is in compliance with the requirements of
9 Act No. 478 of the Public Acts of 1988, and any promulgated rules
10 or any order, agreement, or judgment issued or entered into pur-
11 suant to that act.

12 (iv) A state or local unit of government that holds or
13 acquires an easement interest in a facility, holds or acquires an
14 interest in a facility by dedication in a plat, or by dedication
15 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
16 tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-
17 sion provided in this subparagraph ~~shall~~ DOES not apply to the
18 state or a local unit of government that holds an easement or
19 dedication if the state or that local unit of government caused
20 or contributed to a release or threat of release, or if equipment
21 owned or operated by the state or that local unit of government
22 caused or contributed to the release or threat of release.

23 (v) A person that holds an easement interest in a facility
24 for the purpose of conveying or providing goods or services,
25 including, but not limited to, utilities, sewers, roads, rail-
26 ways, and pipelines; or a person that acquires access through an
27 easement. The exclusion provided in this subparagraph ~~shall~~

1 DOES not apply to a person that holds an easement if that person
2 caused or contributed to a release or threat of release, or if
3 equipment owned or operated by that person caused or contributed
4 to the release or threat of release.

5 (vi) A person that satisfies all of the following:

6 (A) The release was caused solely by a third party who is
7 not an employee or agent of the person, or whose action was not
8 associated with a contractual relationship with the person.

9 (B) The hazardous substance was not deposited, stored, or
10 disposed of on the property upon which the person operates.

11 (C) The person at the time of transfer of the right to oper-
12 ate on the property discloses any knowledge or information con-
13 cerning the general nature and extent of the release as required
14 in section 10c.

15 (u) "Owner" means a person that owns a facility. Owner does
16 not include any of the following:

17 (i) A person that, without participating in the management
18 of the facility, holds indicia of ownership primarily to protect
19 the person's security interest in the facility, including, but
20 not limited to, a vendor's interest under a recorded land
21 contract. For the purposes of this act, a commercial lending
22 institution shall not be construed to be participating in the
23 management of a facility by extending credit, providing financial
24 services, providing financial advice, or supervising a plan to
25 resolve financial difficulties for an owner, or conducting or
26 causing to be conducted a prudent or legally required review or
27 investigation of environmental matters related to the facility or

1 the owner of the facility, if the actions of the commercial
2 lending institution do not suggest, condone, or encourage the
3 treatment or handling of a hazardous substance by the owner in a
4 manner that results in a release.

5 (ii) The state or a local unit of government that acquired
6 ownership or control of the facility involuntarily through bank-
7 ruptcy, tax delinquency, abandonment, or other circumstances in
8 which the government involuntarily acquires title or control by
9 virtue of its governmental function, a local unit of government
10 to which ownership or control of the facility is transferred by
11 the state, or the state or a local unit of government that
12 acquired ownership or control of the facility by seizure, receiv-
13 ership, or forfeiture pursuant to the operation of law or by
14 court order. ~~In case of an acquisition described in this sub-~~
15 ~~paragraph by~~ IF the state or a local unit of government ACQUIRES
16 A FACILITY IN A MANNER DESCRIBED IN THIS SUBPARAGRAPH, owner
17 means any person who owned or controlled activities at the facil-
18 ity immediately before the state or local unit of government
19 acquired ownership or control. The exclusion provided in this
20 subparagraph ~~shall~~ DOES not apply to the state or a local unit
21 of government that caused or contributed to the release or threat
22 of a release from the facility.

23 (iii) A person that satisfies all of the following:

24 (A) The release was caused solely by a third party, who is
25 not an employee or agent of the person, or whose action was not
26 associated with a contractual relationship with the person.

1 (B) The hazardous substance was not deposited, stored, or
2 disposed of on that person's property.

3 (C) The person at the time of transfer of the property dis-
4 closes any knowledge or information concerning the general nature
5 and extent of the release as required in section 10c.

6 (iv) The owner of an underground storage tank system, as
7 defined in the leaking underground storage tank act, Act No. 478
8 of the Public Acts of 1988, being sections 299.831 to 299.850 of
9 the Michigan Compiled Laws, from which there is a release or
10 threat of release if all of the following conditions are met:

11 (A) The owner reported the release or threat of release to
12 the department of state police, fire marshal division, within 24
13 hours after confirmation of the release or threat of release.

14 (B) The release or threat of release at the facility is
15 solely the result of a release or threat of release of a regu-
16 lated substance as defined in Act No. 478 of the Public Acts of
17 1988 from an underground storage tank system.

18 (C) The owner is in compliance with the requirements of Act
19 No. 478 of the Public Acts of 1988, and any promulgated rules or
20 any order, agreement, or judgment issued or entered pursuant to
21 that act.

22 (v) A state or local unit of government that holds or
23 acquires an easement interest in a facility, holds or acquires an
24 interest in a facility by dedication in a plat, or by dedication
25 pursuant to Act No. 283 of the Public Acts of 1909, being sec-
26 tions 220.1 to 239.6 of the Michigan Compiled Laws. The
27 exclusion provided in this subparagraph ~~shall~~ DOES not apply to

1 the state or a local unit of government that holds an easement or
2 dedication if that state or local unit of government caused or
3 contributed to a release or threat of release, or if equipment
4 owned or operated by the state or that local unit of government
5 caused or contributed to the release or threat of release.

6 (vi) A person that holds an easement interest in a facility
7 for the purpose of conveying or providing goods or services,
8 including, but not limited to, utilities, sewers, roads, rail-
9 ways, and pipelines; or a person that acquires access through an
10 easement. The exclusion provided in this subparagraph ~~shall~~
11 DOES not apply to a person that holds an easement if that person
12 caused or contributed to a release or threat of release, or if
13 equipment owned or operated by that person caused or contributed
14 to the release or threat of release.

15 (vii) A person that holds only subsurface mineral rights to
16 the property and has not caused or contributed to a release on
17 the property.

18 (v) "Permitted release" means 1 or more of the following:

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

21 (ii) A lawful and authorized discharge into a permitted
22 waste treatment facility.

23 (iii) A federally permitted release as defined in the com-
24 prehensive environmental response, compensation, and liability
25 act of 1980, Public Law 96-510, 94 Stat. 2767.

26 (w) "Person" means an individual, sole proprietorship,
27 partnership, joint venture, trust, firm, joint stock company,

1 corporation, including a government corporation, association,
2 local unit of government, commission, the state, a political sub-
3 division of the state, an interstate body, the federal govern-
4 ment, a political subdivision of the federal government, or any
5 other legal entity.

6 (x) "Release" includes, but is not limited to, any spilling,
7 leaking, pumping, pouring, emitting, emptying, discharging,
8 injecting, escaping, leaching, dumping, or disposing of a hazard-
9 ous substance into the environment, or the abandonment or dis-
10 carding of barrels, containers, and other closed receptacles con-
11 taining a hazardous substance. Release does not include any of
12 the following:

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

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

18 (iii) A release of source, by-product, or special nuclear
19 material from a nuclear incident, as those terms are defined in
20 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if
21 the release is subject to requirements with respect to financial
22 protection established by the nuclear regulatory commission under
23 section 170 of the atomic energy act of 1954, chapter 1073, 71
24 Stat. 576, 42 U.S.C. 2210, or, any release of source by-product,
25 or special nuclear material from any processing site designated
26 under section 102(a)(1) title I or 302(a) of title III of the

1 uranium mill tailings radiation control act of 1978, 42 U.S.C.
2 7912 and 7942.

3 (iv) If applied according to label directions and according
4 to generally accepted agricultural and management practices, the
5 application of a fertilizer, soil conditioner, agronomically
6 applied manure, or a pesticide, or a combination of these
7 substances. As used in this subparagraph, fertilizer and soil
8 conditioner have the meaning given to these terms in the fertil-
9 izer act of 1975, Act No. 198 of the Public Acts of 1975, being
10 sections 286.751 to 286.767, and pesticide has the meaning given
11 to that term in the pesticide control act, Act No. 171 of the
12 Public Acts of 1976, being sections 286.551 to 286.581 of the
13 Michigan Compiled Laws.

14 (y) "Remedial action" includes, but is not limited to,
15 cleanup, removal, containment, isolation, destruction, or treat-
16 ment of a hazardous substance released or threatened to be
17 released into the environment, monitoring, maintenance, or the
18 taking of other actions that may be necessary to prevent, mini-
19 mize, or mitigate injury to the public health, safety, or wel-
20 fare, or to the environment.

21 (z) "Remedial action plan" means a work plan for performing
22 remedial action under this act.

23 (aa) "Response activity" means evaluation, interim response
24 activity, remedial action, or the taking of other actions neces-
25 sary to protect the public health, safety, or welfare, or the
26 environment, or the natural resources. Response activity also
27 includes health assessments or health effect studies carried out

1 under the supervision, or with the approval of, the department of
2 public health, and enforcement actions related to any response
3 activity.

4 (bb) "Response activity costs" or "costs of response
5 activity" means all costs incurred in taking or conducting a
6 response activity, including enforcement costs.

7 (cc) "Rule" means a rule promulgated pursuant to the admin-
8 istrative procedures act of 1969, Act No. 306 of the Public Acts
9 of 1969, being sections 24.201 to 24.328 of the Michigan Compiled
10 Laws.

11 (dd) "Science advisory council" means the science advisory
12 council created in section 11d.

13 (ee) "Site" means the location of environmental
14 contamination.

15 (ff) "Threatened release" or "threat of release" means any
16 circumstance that may reasonably be anticipated to cause a
17 release.