

HOUSE BILL No. 6363

July 28, 2010, Introduced by Rep. Knollenberg and referred to the Committee on New Economy and Quality of Life.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20112a, 20113, and 20114 (MCL 324.20112a, 324.20113, and 324.20114), section 20112a as added and section 20114 as amended by 1995 PA 71 and section 20113 as amended by 1996 PA 383.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ~~Sec. 20112a. Within 2 years after the effective date of this~~
2 ~~section and biennially thereafter, the department shall report to~~
3 ~~the legislature on the effectiveness of the amendatory act that~~
4 ~~added this section in restoring the economic value of sites of~~
5 ~~environmental contamination. The report shall include but not be~~
6 ~~limited to an examination of the effectiveness of the categorical~~
7 ~~cleanup criteria and liability provisions in encouraging the~~
8 ~~redevelopment of sites of environmental contamination. In preparing~~

1 ~~this report, the department shall consult the chairpersons of the~~
2 ~~senate and house of representatives standing committees with~~
3 ~~jurisdiction over issues pertaining to natural resources and the~~
4 ~~environment.~~

5 (1) SUBJECT TO SUBSECTION (3), THE DEPARTMENT SHALL CREATE,
6 AND UPDATE ON AN ONGOING BASIS, AN INVENTORY OF RESIDENTIAL
7 CLOSURES AND A SEPARATE INVENTORY OF OTHER KNOWN FACILITIES. EACH
8 INVENTORY SHALL CONTAIN, IF APPLICABLE, AT LEAST THE FOLLOWING
9 INFORMATION FOR EACH FACILITY:

10 (A) LOCATION.

11 (B) WHETHER 1 OR MORE RESPONSE ACTIVITY PLANS WERE SUBMITTED
12 UNDER SECTION 20114B AND THE STATUS OF DEPARTMENT APPROVAL.

13 (C) WHETHER A NOTICE OF LAND USE OR RESOURCE USE RESTRICTIONS
14 UNDER SECTION 20114C WAS SUBMITTED TO THE DEPARTMENT.

15 (D) WHETHER A NO FURTHER ACTION REPORT UNDER SECTION 20114D
16 WAS SUBMITTED TO THE DEPARTMENT AND WHETHER THE REPORT INCLUDED A
17 POSTCLOSURE PLAN OR PROPOSED POSTCLOSURE AGREEMENT AND THE STATUS
18 OF DEPARTMENT APPROVAL.

19 (2) THE DEPARTMENT MAY CATEGORIZE FACILITIES ON THE INVENTORY
20 CREATED UNDER SUBSECTION (1) IN A MANNER THAT THE DEPARTMENT
21 BELIEVES IS USEFUL FOR THE GENERAL PUBLIC.

22 (3) THE DEPARTMENT SHALL CREATE AND UPDATE ON AN ONGOING BASIS
23 A SEPARATE INVENTORY OF RESIDENTIAL CLOSURES.

24 (4) THE DEPARTMENT SHALL POST THE INVENTORIES CREATED UNDER
25 SUBSECTIONS (1) AND (2) ON THE DEPARTMENT'S WEBSITE.

26 (5) THE DEPARTMENT SHALL COMPILE THE FOLLOWING DATA ON A
27 QUARTERLY BASIS AND POST THE DATA ON ITS WEBSITE:

1 (A) THE NUMBER OF RESPONSE ACTIVITY PLANS RECEIVED BY THE
2 DEPARTMENT AND ITEMIZED AS FOLLOWS:

3 (i) APPROVED BY THE DEPARTMENT.

4 (ii) DISAPPROVED BY THE DEPARTMENT.

5 (iii) RECOMMENDED FOR APPROVAL BY THE PANEL.

6 (iv) RECOMMENDED FOR DISAPPROVAL BY THE PANEL.

7 (v) APPROVED BY OPERATION OF LAW UNDER SECTION 20114B.

8 (B) THE NUMBER OF NO FURTHER ACTION REPORTS RECEIVED BY THE
9 DEPARTMENT AND ITEMIZED AS FOLLOWS:

10 (i) APPROVED BY THE DEPARTMENT.

11 (ii) DISAPPROVED BY THE DEPARTMENT.

12 (iii) RECOMMENDED FOR APPROVAL BY THE PANEL.

13 (iv) RECOMMENDED FOR DISAPPROVAL BY THE PANEL.

14 (v) APPROVED BY OPERATION OF LAW.

15 (C) THE NUMBER OF BASELINE ENVIRONMENTAL ASSESSMENTS RECEIVED
16 BY THE DEPARTMENT.

17 (6) THE DEPARTMENT SHALL ANNUALLY DETERMINE THE PERCENTAGE OF
18 NO FURTHER ACTION REPORTS APPROVED BY OPERATION OF LAW UNDER
19 SECTION 20114D. IF THE PERCENTAGE IN ANY YEAR IS IN EXCESS OF 10%,
20 THE DEPARTMENT SHALL NOTIFY THE STANDING COMMITTEES OF THE SENATE
21 AND THE HOUSE OF REPRESENTATIVES WITH JURISDICTION OVER ISSUES
22 RELATED TO NATURAL RESOURCES AND THE ENVIRONMENT OF THIS
23 OCCURRENCE.

24 Sec. 20113. (1) Money required to implement the programs
25 described under this part and to pay for response activities
26 recommended under this part shall be appropriated from the fund and
27 any other source the legislature considers necessary to implement

1 the requirements of this part.

2 ~~—— (2) Money from the fund shall be appropriated only for~~
 3 ~~response activities at sites that have been subjected to the risk~~
 4 ~~assessment process described in section 20105.~~

5 (2) ~~(3)~~—The department shall annually submit to the governor a
 6 request for appropriation from the fund. The request will include a
 7 ~~lump sum amount for the purposes of subsection (4) (a) and a lump~~
 8 ~~sum amount for the purposes of subsection (4) (f) — (3) (E).~~ For the
 9 purposes set forth in subsection ~~(4) (b), (c), (d), and (e),~~ **(3) (A),**
 10 **(B), (C), AND (D),** the request shall include a list of ~~sites~~
 11 **FACILITIES** where the department is proposing to expend funds. The
 12 list shall include the following information for each ~~site~~
 13 **FACILITY**: the common name of the ~~site~~ **FACILITY**, the response
 14 activities that are planned to be conducted, and the estimated
 15 amount of money that is needed to conduct the response activities.
 16 The legislature shall approve by law the list of ~~sites~~ **FACILITIES**
 17 to be addressed and shall provide a lump sum appropriation for
 18 these sites based on the total estimated amount needed for the
 19 approved ~~sites~~ **FACILITIES**.

20 (3) ~~(4)~~—Money from the fund may be used, upon appropriation,
 21 for the following as determined by the department:

22 ~~—— (a) National priority list municipal landfill cost share~~
 23 ~~grants to be approved by the board pursuant to section 20109a.~~

24 **(A)** ~~(b)~~—Superfund match, which includes funding for any
 25 response activity that is required to match federal dollars at a
 26 superfund site as required under the comprehensive environmental
 27 response, compensation, and liability act, ~~of 1980, Public Law 96-~~

1 ~~510, 94 Stat. 2767~~ **42 USC 9601 TO 9675.**

2 (B) ~~(e)~~—Response activities to address actual or potential
3 public health or environmental problems.

4 (C) ~~(d)~~—Completion of response activities initiated by the
5 state using environmental protection bond funds or completion of
6 response activities at facilities initiated by a person who was
7 liable under this part prior to ~~Public Act 71 of 1995~~ **1995 PA 71**
8 but is not liable under section 20126 of this part, where such
9 response activities have ceased.

10 (D) ~~(e)~~—Response activities at ~~sites~~ **FACILITIES** that will
11 facilitate redevelopment.

12 (E) ~~(f)~~—Emergency response actions for ~~sites~~ **FACILITIES** to be
13 determined by the department.

14 (4) ~~(5)~~—Money in the fund shall be expended first for the
15 purposes described in subsection ~~(4)(b)~~ and ~~(f)~~ **(3)(A) AND (E)** and
16 health or environmental problems under subsection ~~(4)(e)~~ **(3)(B)**
17 that are related to acute health or environmental problems.
18 Following these expenditures, not less than 50% of the remaining
19 money expended under this section shall be expended for response
20 activities that facilitate redevelopment of urbanized areas. All
21 additional expenditures under this section shall be expended
22 following the expenditures described in this subsection. As used in
23 this subsection, "urbanized area" means an urbanized area as
24 determined by the economics and statistics administration, United
25 States bureau of census, according to the ~~1990~~ **2000** census.

26 ~~—(6) The total amount of funds expended by the department for~~
27 ~~national priority list municipal landfill cost share grants shall~~

1 ~~not exceed the lesser of 12% of the funds appropriated from the~~
 2 ~~fund in a fiscal year or \$6,000,000.00 in a fiscal year.~~

3 (5) ~~(7)~~ Not later than ~~December 31~~ **APRIL 1** of each year, the
 4 department shall provide to the governor, the senate and house of
 5 representatives standing committees with jurisdiction over issues
 6 pertaining to natural resources and the environment, and the senate
 7 and house of representatives appropriations committees a list of
 8 all projects financed under this part through the preceding fiscal
 9 year. The list shall include the project site and location, the
 10 nature of the project, the total amount of money authorized, the
 11 total amount of money expended, and project status.

12 Sec. 20114. (1) Except as provided in subsection (4), an owner
 13 or operator of property who has knowledge that the property is a
 14 facility and who is liable under section 20126 shall do all of the
 15 following:

16 (a) Determine the nature and extent of a release at the
 17 facility.

18 (b) ~~Report~~ **MAKE THE FOLLOWING NOTIFICATIONS:**

19 (i) **IF THE RELEASE IS OF A REPORTABLE QUANTITY OF A HAZARDOUS**
 20 **SUBSTANCE UNDER 40 CFR 302.4 AND 302.6 (1989), REPORT** the release
 21 to the department within 24 hours after obtaining knowledge of the
 22 release. ~~The requirements of this subdivision shall apply to~~
 23 ~~reportable quantities of hazardous substances established pursuant~~
 24 ~~to 40 C.F.R. 302.4 and 302.6 (1989), unless the department~~
 25 ~~establishes through rules alternate or additional reportable~~
 26 ~~quantities as necessary to protect the public health, safety, or~~
 27 ~~welfare, or the environment.~~

1 (ii) IF THE OWNER OR OPERATOR HAS REASON TO BELIEVE THAT 1 OR
2 MORE HAZARDOUS SUBSTANCES ARE EMANATING FROM OR HAVE EMANATED FROM
3 AND ARE PRESENT BEYOND THE BOUNDARY OF HIS OR HER PROPERTY AT A
4 CONCENTRATION IN EXCESS OF CLEANUP CRITERIA FOR UNRESTRICTED
5 RESIDENTIAL USE, NOTIFY THE DEPARTMENT AND THE OWNERS OF PROPERTY
6 WHERE THE HAZARDOUS SUBSTANCES ARE PRESENT WITHIN 30 DAYS AFTER
7 OBTAINING KNOWLEDGE THAT THE RELEASE HAS MIGRATED.

8 (iii) IF THE RELEASE IS A RESULT OF AN ACTIVITY THAT IS SUBJECT
9 TO PERMITTING UNDER PART 615 AND THE OWNER OR OPERATOR IS NOT THE
10 OWNER OF THE SURFACE PROPERTY AND THE RELEASE RESULTS IN HAZARDOUS
11 SUBSTANCE CONCENTRATIONS IN EXCESS OF CLEANUP CRITERIA FOR
12 UNRESTRICTED RESIDENTIAL USE, NOTIFY THE DEPARTMENT AND THE SURFACE
13 OWNER WITHIN 30 DAYS AFTER OBTAINING KNOWLEDGE OF THE RELEASE.

14 (c) Immediately stop or prevent the release at the source.

15 (d) Immediately implement source control or removal measures
16 to remove or contain hazardous substances that are released after
17 ~~the effective date of the 1995 amendments to this section~~ JUNE 5,
18 1995 if those measures are technically practical, cost effective,
19 and provide protection to the environment. At a facility where
20 hazardous substances are released after ~~the effective date of the~~
21 ~~1995 amendments to this section~~ JUNE 5, 1995, and those hazardous
22 substances have not affected groundwater but are likely to,
23 groundwater contamination shall be prevented if it can be prevented
24 by measures that are technically practical, cost effective, and
25 provide protection to the environment.

26 (e) Immediately identify and eliminate any threat of fire or
27 explosion or any direct contact hazards.

1 (f) Immediately initiate removal of a hazardous substance that
2 is in a liquid phase, that is not dissolved in water, and that has
3 been released.

4 (g) Diligently pursue response activities necessary to achieve
5 the cleanup criteria ~~specified in~~ **ESTABLISHED UNDER** this part. ~~and~~
6 ~~the rules promulgated under this part. For a period of 2 years~~
7 ~~after the effective date of the 1995 amendments to this section,~~
8 ~~finances and penalties shall not be imposed under this part for a~~
9 ~~violation of this subdivision.~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS**
10 **PART, IN PURSUING RESPONSE ACTIVITIES UNDER THIS SUBDIVISION, THE**
11 **OWNER OR OPERATOR MAY DO EITHER OF THE FOLLOWING:**

12 (i) **PROCEED UNDER SECTION 20114A TO CONDUCT SELF-IMPLEMENTED**
13 **RESPONSE ACTIVITIES.**

14 (ii) **PROCEED UNDER SECTION 20114B IF THE OWNER OR OPERATOR**
15 **WISHES TO, OR IS REQUIRED TO, OBTAIN DEPARTMENTAL APPROVAL OF 1 OR**
16 **MORE ASPECTS OF PLANNING RESPONSE ACTIVITIES.**

17 (h) Upon written request by the department, take **1 OR MORE OF**
18 the following actions:

19 (i) Provide a **RESPONSE ACTIVITY PLAN CONTAINING A** plan for
20 **UNDERTAKING INTERIM RESPONSE ACTIVITIES** and undertake interim
21 response activities **CONSISTENT WITH THAT PLAN.**

22 (ii) Provide a **RESPONSE ACTIVITY PLAN CONTAINING A** plan for
23 **UNDERTAKING EVALUATION ACTIVITIES** and undertake evaluation
24 activities **CONSISTENT WITH THAT PLAN.**

25 (iii) **PURSUUE REMEDIAL ACTIONS UNDER SECTION 20114A AND, UPON**
26 **COMPLETION, SUBMIT A NO FURTHER ACTION REPORT UNDER SECTION 20114D.**

27 (iv) ~~(iii)~~ Take any other response activity determined by the

1 department to be technically sound and necessary to protect the
2 public health, safety, welfare, or the environment.

3 (v) ~~(iv)~~—Submit to the department for approval a **RESPONSE**
4 **ACTIVITY PLAN CONTAINING A** remedial action plan that, when
5 implemented, will achieve the cleanup criteria ~~specified in~~
6 **ESTABLISHED UNDER** this part. ~~and the rules promulgated under this~~
7 ~~part.~~

8 (vi) ~~(v)~~—Implement an approved ~~remedial action~~ **RESPONSE**
9 **ACTIVITY** plan in accordance with a schedule approved by the
10 department pursuant to this part.

11 (vii) **SUBMIT A NO FURTHER ACTION REPORT UNDER SECTION 20114D**
12 **AFTER COMPLETION OF REMEDIAL ACTION.**

13 ~~—— (2) A person may undertake response activity without prior~~
14 ~~approval by the department unless that response activity is being~~
15 ~~done pursuant to an administrative order or agreement or judicial~~
16 ~~decree which requires prior department approval. Any such action~~
17 ~~shall not relieve any person of liability for further response~~
18 ~~activity as may be required by the department.~~

19 (2) **SUBSECTION (1) DOES NOT PRECLUDE A PERSON FROM**
20 **SIMULTANEOUSLY UNDERTAKING 1 OR MORE ASPECTS OF PLANNING OR**
21 **IMPLEMENTING RESPONSE ACTIVITIES AT A FACILITY UNDER SECTION 20114A**
22 **WITHOUT THE PRIOR APPROVAL OF THE DEPARTMENT, UNLESS 1 OR MORE**
23 **RESPONSE ACTIVITIES ARE BEING CONDUCTED PURSUANT TO AN**
24 **ADMINISTRATIVE ORDER OR AGREEMENT OR JUDICIAL DECREE THAT REQUIRES**
25 **PRIOR DEPARTMENT APPROVAL, AND SUBMITTING A RESPONSE ACTIVITY PLAN**
26 **TO THE DEPARTMENT UNDER SECTION 20114B.**

27 (3) Except as provided in subsection (4), a person who holds

1 an easement interest in a portion of a property who has knowledge
2 that there may be a release within that easement shall report the
3 release to the department within 24 hours after obtaining knowledge
4 of the release. ~~Unless the department establishes through rules~~
5 ~~alternate or additional reportable quantities as necessary to~~
6 ~~protect the public health, safety, or welfare, or the environment,~~
7 ~~this~~ **THIS** subsection shall apply **APPLIES** to reportable quantities
8 of hazardous substances established pursuant to 40 C.F.R. ~~CFR~~ 302.4
9 and 302.6 (1989).

10 (4) The requirements of subsections (1) and (3) do not apply
11 to a permitted release or a release in compliance with applicable
12 federal, state, and local air pollution control laws.

13 ~~—— (5) Upon a determination by the department that a person has~~
14 ~~completed all response activity at a facility pursuant to an~~
15 ~~approved remedial action plan prepared and implemented in~~
16 ~~compliance with this part and the rules promulgated under this~~
17 ~~part, the department, upon request of a person, shall execute and~~
18 ~~present a document stating that all response activities required in~~
19 ~~the approved remedial action plan have been completed.~~

20 ~~—— (6) An owner or operator of a facility from which a hazardous~~
21 ~~substance is released that is determined to be reportable under~~
22 ~~subsection (1) (b), other than a permitted release, who fails to~~
23 ~~notify the department within 24 hours after obtaining knowledge of~~
24 ~~the release or who submits in such notification any information~~
25 ~~that the person knows to be false or misleading, is subject to a~~
26 ~~civil fine of not more than \$25,000.00 for each day in which the~~
27 ~~violation occurs or the failure to comply continues. A fine imposed~~

1 ~~under this subsection shall be based upon the seriousness of the~~
2 ~~violation and any good faith efforts by the violator to comply with~~
3 ~~this subsection.~~

4 (5) ~~(7)~~ This section does not do either of the following:

5 (a) Limit the authority of the department to take or conduct
6 response activities pursuant to this part.

7 (b) Limit the liability of a person who is liable under
8 section 20126.

9 ~~(8) Any request for approval of a plan shall be granted or~~
10 ~~denied within 6 months of submittal of the information necessary or~~
11 ~~required for the department to make its decision. If the department~~
12 ~~does not approve the plan, the reasons for the denial shall be~~
13 ~~provided by the department in writing with a complete and specific~~
14 ~~statement of the conditions or requirements necessary to obtain~~
15 ~~approval. The department may not add additional items to this~~
16 ~~statement after it has been issued. Failure of the department to~~
17 ~~act within the specified time period shall result in the request~~
18 ~~being considered approved. The time frame for decision may be~~
19 ~~extended by the mutual consent of the department and the person~~
20 ~~submitting the plan.~~

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

24 (a) Senate Bill No. 1345.

25 (b) Senate Bill No. 1346.

26 (c) Senate Bill No. 1348.

27 (d) House Bill No. 6360 (request no. H06270'10 *).

1 (e) Senate Bill No. ____ or House Bill No. 6359 (request no.
2 07378'10).