

DEFINITION OF "HAZARDOUS SUBSTANCE" AND "RELEASE" UNDER PART 201 OF NREPA

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Senate Bill 351 as reported without amendment

Sponsor: Sen. Arlan Meekhof

House Committee: Natural Resources

Senate Committee: Agriculture

(Enacted as Public Act 141 of 2013)

Complete to 10-1-13

A SUMMARY OF SENATE BILL 351 AS REPORTED FROM COMMITTEE 9-24-13

Generally speaking, the bill would exclude from the remediation requirements and liability of Part 201, land owners that currently own land containing a hazardous substance that was applied prior to the enactment of the Right to Farm Act (1981) and that at the time of application was applied in accordance with the appropriate generally accepted agricultural management practices (GAAMPS).

The bill would do this by amending Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act to modify what constitutes a "release" and a "hazardous substance." The bill would exclude certain substances that were applied according to or consistent with generally accepted agricultural management practices (GAAMPS) **at the time of application**, rather than according to practices later developed in accordance with Michigan's Right to Farm Act.

Currently, Part 201 prescribes clean-up responsibilities and provides for penalties against certain individuals for the release of and/or failure to properly remediate hazardous substances. Under Part 201, "hazardous substance" generally refers to certain substances that pose environmental and health dangers, but does not include fruit, vegetables, field crop residuals or processing by-products, or aquatic plants that are applied to the land for an agricultural use or for use as animal feed, provided the use is consistent with GAAMPS that are developed in accordance with the Michigan Right to Farm Act.

"Release" generally refers to the escape or disposition of hazardous substances into the environment, but does not include, among other things, (1) the application of fertilizers, soil conditioners, and pesticides, or (2) the land application of certain crop processing by-products for agricultural use that are applied according to label requirements and GAAMPS developed in accordance with the Michigan Right to Farm Act.

In both of these instances, the bill would eliminate references to the Michigan Right to Farm Act and instead reference GAAMPS **at the time of the application**. As noted, this change would exclude under the definition of hazardous waste and release, certain agricultural products that were applied to land according to the appropriate GAAMPS prior to 1981.

FISCAL IMPACT:

The bill would not appear to have any fiscal impact on state or local government. The fiscal impact statement will be updated as information becomes available.

BACKGROUND INFORMATION AND DISCUSSION:

Part 201 prescribes clean-up responsibilities and provides for penalties against certain individuals for the release of and/or failure to properly remediate hazardous substances.

Historically, the agricultural application of certain substances has been exempt from Part 201, meaning land owners were generally not required to clean up certain hazardous substances if they were applied to the land according to the generally accepted agricultural management practices (GAAMPS) at the time of application. According to testimony, Public Act 446 of 2012 inadvertently eliminated the historical exemption for agricultural applications, and instead, only exempted applications that were properly made in accordance with the Right to Farm Act.

Under current law, as a result, applications that were made in accordance with the appropriate GAAMPS but took place prior to the enactment of the Right to Farm Act in 1981 are no longer exempt under Part 201. The bill would reinstate the historical exemption for agricultural applications that existed prior to the enactment of Public Act 446 of 2012.

According to testimony, the current language in Part 201 could adversely affect certain pieces of land that once contained apple orchards and other fruit growing operations where hazardous substances were applied prior to 1981. These sites are apparently now under consideration for redevelopment and current law would require the land owner to comply with the cleanup requirements of Part 201.

The Commission of Agriculture and Rural Development is authorized under the Right to Farm Act to develop GAAMPS. In developing GAAMPS, the Commission is required *"to give due consideration to available Michigan Department of Agriculture information and written recommendations from the Michigan State University College of Agriculture and Natural Resources Extension and the Agricultural Experiment Station in cooperation with the United States Department of Agriculture Natural Resources Conservation Service and the consolidated Farm Service Agency, the Michigan Department of Natural Resources, and other professional and industry organizations"* (MCL 286.472).

According to MDARD, GAAMPS are scientifically based and updated annually to "utilize current technology promoting sound environmental stewardship on Michigan farms." For more information, see: http://www.michigan.gov/mdard/0,4610,7-125-1599_1605---,00.html

POSITIONS:

Michigan Department of Environmental Quality supports the bill. (9-24-13)

Michigan Farm Bureau supports the bill. (9-24-13)

Legislative Analyst: Jeff Stoutenburg

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.