



HOUSE BILL No. 6153

September 25, 1996, Introduced by Reps. DeHart, Kelly, Brater, LaForge, Cherry and Tesanovich and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 20105, 20114, and 20115a of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," sections 20105 and 20114 as amended by Act No. 71 of the Public Acts of 1995 and section 20115a as added by Act No. 115 of the Public Acts of 1996, being sections 324.20105, 324.20114, and 324.20115a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 20105, 20114, and 20115a of Act No. 451
2 of the Public Acts of 1994, sections 20105 and 20114 as amended
3 by Act No. 71 of the Public Acts of 1995 and section 20115a as
4 added by Act No. 115 of the Public Acts of 1996, being sections
5 324.20105, 324.20114, and 324.20115a of the Michigan Compiled
6 Laws, are amended to read as follows:

1 Sec. 20105. (1) The department shall do all of the
2 following:

3 (a) Upon discovery of a site, identify and evaluate the site
4 for the purpose of assigning to the site a priority score for
5 response activities. Upon assignment to the site of a priority
6 score for response activity, the site shall retain the same score
7 assignment unless a substantial body of data is provided to or
8 available to the department indicating to the department that a
9 substantial change in the score is warranted, and a person
10 requests rescoring for a site during the annual public comment
11 period following the publication of the list, or the department
12 determines that rescoring is appropriate.

13 (B) UPON DETERMINING THAT GROUNDWATER IS CONTAMINATED AT A
14 SITE, NOTIFY EACH PERSON THAT OWNS PROPERTY WITHIN 1 MILE OF THE
15 SITE OF THE EXISTENCE AND POTENTIAL MIGRATION OF CONTAMINATED
16 GROUNDWATER.

17 (C) ~~(b)~~ Develop 1 or more numerical risk assessment models
18 for assessing the relative present and potential hazards posed to
19 the public health, safety, or welfare, or to the environment by
20 each site identified pursuant to subdivision (a). The model, or
21 models if more than 1 is developed, shall provide a fair and
22 objective site specific numerical score designating the relative
23 risk posed to the public health, safety, or welfare, or to the
24 environment of each site.

25 (D) ~~(c)~~ Include in rules promulgated under this part the
26 numerical risk assessment model or models if more than 1 is
27 developed. The numerical risk assessment model or models shall

1 be reviewed annually by the department to identify potential
2 improvements.

3 (E) ~~(d)~~ Except as provided in subsection (9), submit to
4 the legislature in November of each fourth year a list strictly
5 derived from the numerical risk assessment model or models pro-
6 vided for in this section that does all of the following:

7 (i) Includes all sites.

8 (ii) Categorizes sites according to the response activity at
9 the site at the time of listing and according to categories
10 established by rules.

11 (iii) Indicates whether the owner of a site is the federal
12 government, the state, or a local unit of government.

13 (iv) Indicates a change in the status of a site since the
14 last previously prepared list.

15 (F) ~~(e)~~ Maintain and make available to the public upon
16 request records regarding sites where remedial actions have been
17 completed, including sites where land use restrictions have been
18 imposed, if the records are not otherwise protected from disclo-
19 sure by law.

20 (G) ~~(f)~~ Submit the list for public hearings geographically
21 dispersed throughout the state. These hearings shall be com-
22 pleted at least 30 days before the governor's annual budget rec-
23 ommendations to the legislature.

24 (H) ~~(g)~~ Report to the legislature and the governor those
25 sites that have been removed from the list pursuant to this sec-
26 tion and rules promulgated under this part and the source of the

1 funds used to undertake the response activity at each of the
2 sites.

3 (1) ~~(h)~~ Publish a notice each fourth year in the Michigan
4 register of the availability of, and submit to the standing com-
5 mittees of the senate and the house of representatives that pri-
6 marily consider issues pertaining to the protection of natural
7 resources and the environment, a report describing the response
8 activity that is undertaken at each site where response activity
9 ~~is or~~ has occurred during the reporting period and the nature
10 of the contamination that resulted in the necessity for that
11 response activity.

12 (2) Following July 1, 1991, if the department has informa-
13 tion identifying the owner of property that may be listed as a
14 site, the department shall make reasonable efforts to notify in
15 writing the owner of the property and the local health department
16 and the municipality in which the site is located prior to
17 including the site on the list. This subsection does not provide
18 a defense to liability.

19 (3) A site shall be removed from the list when the
20 department's review of a site shows that the site does not meet
21 the criteria specified in rules promulgated under this part. A
22 site shall not be removed from this list until any necessary
23 response activity that meets the standards specified in rules
24 promulgated under this part is complete.

25 (4) A person may request that a site be removed from the
26 list by submitting a petition to the department. A petition
27 shall include all of the following information:

1 (a) A description and history of the site.

2 (b) A description of the nature and extent of the environ-
3 mental contamination that existed at the site ~~at the time~~ WHEN
4 the site was included on the list.

5 (c) A description of the response activity undertaken to
6 remedy the release or threat of a release, consistent with rules
7 promulgated under this part, or a description of the investiga-
8 tion conducted that supports the person's petition that the site
9 should be removed from the list without further response
10 activity.

11 (d) An analysis of the effectiveness of the response activ-
12 ity undertaken to remediate the release or threat of release.
13 The analysis shall include site specific analytical data that
14 documents the effectiveness of the response activity.

15 (e) Other site-specific information required by the
16 department.

17 (5) A person seeking the removal of a site from the list
18 shall prepare and submit to the department the documentation
19 required by subsection (4). If response activities have been
20 conducted by the department at the site, the department shall
21 prepare the documentation required by subsection (4).

22 (6) Within 30 days after receipt of the petition, the
23 department shall determine whether a petition submitted under
24 subsection (4) is administratively complete. Within 60 days
25 after a determination that a petition is administratively com-
26 plete, the petitioner shall be notified by the department of the
27 department's intent to remove the site from the list, or the

1 petitioner shall be notified that the petition for removal of the
2 site from the list does not meet the criteria for removal of the
3 site from the list as determined by rule. Removal of sites from
4 the list shall be accomplished as part of the process described
5 in rules promulgated under this part. However, if the department
6 concludes pursuant to subsection (3) that the circumstances war-
7 rant removal of the site from the list before or at the next reg-
8 ularly scheduled hearing to be held in accordance with rules
9 promulgated under this part, the department shall prepare a
10 notice of intent to remove the site from the list. A notice of
11 intent shall include information considered appropriate by the
12 department and shall be published in at least 1 newspaper of gen-
13 eral circulation that serves the area of the site. ~~and the~~ THE
14 notice of intent shall be provided to the local health department
15 and the municipality in which the site is located. Public com-
16 ment on the notice of intent to remove the site from the site
17 list shall be accepted for a period of not less than 30 days from
18 the date of publication. The department may hold a public hear-
19 ing on the proposed action.

20 (7) The department shall make a final determination whether
21 to include the site on the next list. The department shall con-
22 sider any comments received in response to the notice described
23 in subsection (6).

24 (8) The department shall notify the person that requested
25 that the site be removed from the list, the local health depart-
26 ment, and the municipality in which the site is located of the

1 decision within 45 days of the end of the public comment period
2 provided for in the notice published pursuant to subsection (6).

3 (9) If the department provides the information required to
4 be included on the list prepared under this section on a computer
5 data base that is accessible through public access computer ter-
6 minals in each county in the state, the department need not pre-
7 pare a printed copy of the list.

8 (10) As used in this section, "list" means the list
9 described in subsection ~~(1)(d)~~ (1)(E).

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

14 (a) Determine the nature and extent of a release at the
15 facility.

16 (b) Report the release to the department within 24 hours
17 after obtaining knowledge of the release. The requirements of
18 this subdivision shall apply to reportable quantities of hazard-
19 ous substances established pursuant to 40 C.F.R. 302.4 and 302.6,
20 ~~(1989)~~, unless the department establishes through rules alter-
21 nate or additional reportable quantities as necessary to protect
22 the public health, safety, or welfare, or the environment.

23 (C) IF A RELEASE TO THE SOIL OR GROUNDWATER MIGRATES TO
24 ANOTHER PERSON'S PROPERTY, REPORT THE RELEASE TO EACH PERSON THAT
25 OWNS OR OCCUPIES THAT PROPERTY WITHIN 24 HOURS AFTER OBTAINING
26 KNOWLEDGE OF THE MIGRATION OF THE RELEASE OR AS SOON THEREAFTER
27 AS THE OWNER OR OPERATOR IN THE EXERCISE OF DUE DILIGENCE IS ABLE

1 TO IDENTIFY THE PERSON AND DETERMINE HOW THE PERSON CAN BE
2 NOTIFIED.

3 (D) ~~(c)~~ Immediately stop or prevent the release at the
4 source.

5 (E) ~~(d)~~ Immediately implement source control or removal
6 measures to remove or contain hazardous substances that are
7 released after ~~the effective date of the 1995 amendments to this~~
8 ~~section~~ JUNE 5, 1995 if those measures are technically practi-
9 cal, cost effective, and provide protection to the environment.
10 At a facility where hazardous substances are released after ~~the~~
11 ~~effective date of the 1995 amendments to this section~~ JUNE 5,
12 1995, and those hazardous substances have not affected groundwa-
13 ter but are likely to, groundwater contamination shall be pre-
14 vented if it can be prevented by measures that are technically
15 practical, cost effective, and provide protection to the
16 environment.

17 (F) ~~(e)~~ Immediately identify and eliminate any threat of
18 fire or explosion or any direct contact hazards.

19 (G) ~~(f)~~ Immediately initiate removal of a hazardous sub-
20 stance that is in a liquid phase, that is not dissolved in water,
21 and that has been released.

22 (H) ~~(g)~~ Diligently pursue response activities necessary to
23 achieve the cleanup criteria specified in this part and the rules
24 promulgated under this part. For a period of 2 years after ~~the~~
25 ~~effective date of the 1995 amendments to this section~~ JUNE 5,
26 1995, fines and penalties shall not be imposed under this part
27 for a violation of this subdivision.

1 (I) ~~(h)~~ Upon written request by the department, take the
2 following actions:

3 (i) Provide a plan for and undertake interim response
4 activities.

5 (ii) Provide a plan for and undertake evaluation
6 activities.

7 (iii) Take any other response activity determined by the
8 department to be technically sound and necessary to protect the
9 public health, safety, welfare, or the environment.

10 (iv) Submit to the department for approval a remedial action
11 plan that, when implemented, will achieve the cleanup criteria
12 specified in this part and the rules promulgated under this
13 part.

14 (v) Implement an approved remedial action plan in accordance
15 with a schedule approved by the department pursuant to this
16 part.

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

23 (3) Except as provided in subsection (4), a person who holds
24 an easement interest in a portion of a property who has knowledge
25 that there may be a release within that easement shall report the
26 release to the department within 24 hours after obtaining
27 knowledge of the release. Unless the department establishes

1 through rules alternate or additional reportable quantities as
2 necessary to protect the public health, safety, or welfare, or
3 the environment, this subsection shall apply to reportable quan-
4 tities of hazardous substances established pursuant to 40
5 C.F.R. 302.4 and 302.6. ~~(1989)~~

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

9 (5) Upon a determination by the department that a person has
10 completed all response activity at a facility pursuant to an
11 approved remedial action plan prepared and implemented in compli-
12 ance with this part and the rules promulgated under this part,
13 the department, upon request of a person, shall execute and
14 present a document stating that all response activities required
15 in the approved remedial action plan have been completed.

16 (6) An owner or operator of a facility from which a hazard-
17 ous substance is released that is determined to be reportable
18 under subsection (1)(b), other than a permitted release, who
19 fails to notify the department within 24 hours after obtaining
20 knowledge of the release or who submits in such notification any
21 information that the person knows to be false or misleading, is
22 subject to a civil fine of not more than \$25,000.00 for each day
23 in which the violation occurs or the failure to comply
24 continues. A fine imposed under this subsection shall be based
25 upon the seriousness of the violation and any good faith efforts
26 by the violator to comply with this subsection.

1 (7) This section does not do either of the following:

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

4 (b) Limit the liability of a person who is liable under sec-
5 tion 20126.

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

18 Sec. 20115a. (1) Notwithstanding any other provision of
19 this part, if a release or threat of release at a facility is
20 solely the result of a release or threat of release from an
21 underground storage tank system regulated under part 213, the
22 response activities implemented at the facility shall be the cor-
23 rective actions required under part 213, and the requirements of
24 section 20114 ~~shall~~ DO not apply to that release.

25 (2) Notwithstanding any other provision of this part, if a
26 release or threat of release at a facility is not solely the
27 result of a release or threat of release from an underground

1 storage tank system, the owner or operator of the underground
2 storage tank system as defined in part 213 ~~may choose to~~
3 ~~conduct~~ SHALL TAKE corrective actions ~~of~~ FOR the release from
4 the underground storage tank system pursuant to part 213, and the
5 requirements of section 20114 ~~shall~~ DO not apply to that
6 release.