

HOUSE BILL NO. 5357

November 14, 2023, Introduced by Reps. Martus and Skaggs and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 20101 (MCL 324.20101), as amended by 2018 PA 581.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 20101. (1) As used in this part:
- 2 (a) "Act of God" means an unanticipated grave natural disaster
- 3 or other natural phenomenon of an exceptional, inevitable, and
- 4 irresistible character, the effects of which could not have been

1 prevented or avoided by the exercise of due care or foresight.

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

11 (c) "All appropriate inquiry" means an evaluation of
 12 environmental conditions at a property at the time of purchase,
 13 occupancy, or foreclosure that reasonably defines the existing
 14 conditions and circumstances at the property in conformance with 40
 15 CFR **part** 312 (2014).

16 (d) "Attorney general" means the department of the attorney
 17 general.

18 (e) "Background concentration" means the concentration or
 19 level of a hazardous substance that exists in the environment at or
 20 regionally proximate to a facility that is not attributable to any
 21 release at or regionally proximate to the facility. A person may
 22 demonstrate that a hazardous substance is not present at a level
 23 that exceeds background concentration by any of the following
 24 methods:

25 (i) The hazardous substance complies with the statewide default
 26 background levels under table 2 as referenced in R 299.46 of the
 27 Michigan Administrative Code.

28 (ii) The hazardous substance is listed in table 2, 3, or 4 of
 29 the department's 2005 Michigan background soil survey, is present

1 in a soil type identified in 1 or more of those tables, and meets 1
2 of the following:

3 (A) If a glacial lobe area in table 2, 3, or 4 lists an
4 arithmetic or geometric mean for the hazardous substance that is
5 represented by 9 or more samples, the concentration of that
6 hazardous substance is the lesser of the following:

7 (I) Two standard deviations of that mean for the soil type and
8 glacial lobe area in which the hazardous substance is located.

9 (II) The uppermost value in the typical range of data for the
10 hazardous substance in table 1 of the department's 2005 Michigan
11 background soil survey.

12 (B) If a glacial lobe area in table 2, 3, or 4 lists a
13 nonparametric median for the hazardous substance that is
14 represented by 10 or more samples, the concentration of that
15 hazardous substance is the lesser of the following:

16 (I) The 97.5 quantile for the soil type and glacial lobe area
17 in which the hazardous substance is located.

18 (II) The uppermost value in the typical range of data for the
19 hazardous substance in table 1 of the department's 2005 Michigan
20 background soil survey.

21 (C) The concentration of the hazardous substance meets a level
22 established using the 2005 Michigan background soil survey in a
23 manner that is approved by the department.

24 (iii) The hazardous substance is listed in any other study or
25 survey conducted or approved by the department and is within the
26 concentrations or falls within the typical ranges published in that
27 study or survey.

28 (iv) A site-specific demonstration.

29 (f) "Baseline environmental assessment" means a written

1 document that describes the results of an all appropriate inquiry
2 and the sampling and analysis that confirm that the property is or
3 contains a facility. For purposes of a baseline environmental
4 assessment, the all appropriate inquiry may be conducted or updated
5 ~~prior to~~ **before** or within 45 days after the earlier of the date of
6 purchase, occupancy, or foreclosure.

7 (g) "Board" means the brownfield redevelopment board created
8 in section 20104a.

9 (h) "Certificate of completion" means a written response
10 provided by the department confirming that a response activity has
11 been completed in accordance with the applicable requirements of
12 this part and is approved by the department.

13 (i) "Cleanup criteria for unrestricted residential use" means
14 any of the following:

15 (i) Cleanup criteria that satisfy the requirements for the
16 residential category in section 20120a(1) (a).

17 (ii) Cleanup criteria for unrestricted residential use under
18 part 213.

19 (iii) Site-specific cleanup criteria approved by the department
20 for unrestricted residential use ~~pursuant to~~ **under** sections 20120a
21 and 20120b.

22 (j) "Department" means the director or ~~his or her~~ **the**
23 **director's** designee to whom the director delegates a power or duty
24 by written instrument.

25 (k) "Director" means the director of the department of
26 ~~environmental quality.~~ **environment, Great Lakes, and energy.**

27 (l) "Directors" means the directors or their designees of the
28 departments of ~~environmental quality, community health,~~
29 **environment, Great Lakes, and energy, health and human services,**

1 agriculture and rural development, and state police.

2 (m) "Disposal" means the discharge, deposit, injection,
3 dumping, spilling, leaking, or placing of any hazardous substance
4 into or on any land or water so that the hazardous substance or any
5 constituent of the hazardous substance may enter the environment or
6 be emitted into the air or discharged into any groundwater or
7 surface water.

8 (n) "Enforcement costs" means court expenses, reasonable
9 attorney fees of the attorney general, and other reasonable
10 expenses of an executive department that are incurred in relation
11 to enforcement under this part.

12 (o) "Environment" or "natural resources" means land, surface
13 water, groundwater, subsurface strata, air, fish, wildlife, or
14 biota within this state.

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

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

24 (r) "Exacerbation" means the occurrence of either of the
25 following caused by an activity undertaken by the person ~~who~~ **that**
26 owns or operates the property, with respect to contamination for
27 which the person is not liable:

28 (i) Migration of contamination beyond the boundaries of the
29 property that is the source of the release at levels above cleanup

1 criteria for unrestricted residential use unless a criterion is not
2 relevant because exposure is reliably restricted as otherwise
3 provided in this part.

4 (ii) A change in facility conditions that increases response
5 activity costs.

6 (s) "Facility" means any area, place, parcel or parcels of
7 property, or portion of a parcel of property where a hazardous
8 substance in excess of the concentrations that satisfy the cleanup
9 criteria for unrestricted residential use has been released,
10 deposited, disposed of, or otherwise comes to be located. Facility
11 does not include any area, place, parcel or parcels of property, or
12 portion of a parcel of property where any of the following
13 conditions are satisfied:

14 (i) Response activities have been completed under this part or
15 the comprehensive environmental response, compensation, and
16 liability act **of 1980**, 42 USC 9601 to 9675, that satisfy the
17 cleanup criteria for unrestricted residential use.

18 (ii) Corrective action has been completed under the resource
19 conservation and recovery act **of 1976**, 42 USC 6901 to ~~6992k~~, **6987**,
20 part 111, or part 213 that satisfies the cleanup criteria for
21 unrestricted residential use.

22 (iii) Site-specific criteria that have been approved by the
23 department for application at the area, place, parcel of property,
24 or portion of a parcel of property are met or satisfied and
25 hazardous substances at the area, place, or property that are not
26 addressed by site-specific criteria satisfy the cleanup criteria
27 for unrestricted residential use.

28 (iv) Hazardous substances in concentrations above unrestricted
29 residential cleanup criteria are present due only to the placement,

1 storage, or use of beneficial use by-products or inert materials at
2 the area, place, or property in compliance with part 115.

3 (v) The property has been lawfully split, subdivided, or
4 divided from a facility and does not contain hazardous substances
5 in excess of concentrations that satisfy the cleanup criteria for
6 unrestricted residential use.

7 (vi) Natural attenuation or other natural processes have
8 reduced concentrations of hazardous substances to levels at or
9 below the cleanup criteria for unrestricted residential use.

10 (t) "Feasibility study" means a process for developing,
11 evaluating, and selecting appropriate response activities.

12 (u) "Financial assurance" means a performance bond, escrow,
13 cash, certificate of deposit, irrevocable letter of credit,
14 corporate guarantee, or other equivalent security, or any
15 combination thereof.

16 (v) "Foreclosure" means possession by a lender of a property
17 on which it has foreclosed on a security interest or the expiration
18 of a lawful redemption period, whichever occurs first.

19 (w) "Fund" means the cleanup and redevelopment fund
20 established in section 20108.

21 (x) "Hazardous substance" means 1 or more of the following,
22 but does not include fruit, vegetable, or field crop residuals or
23 processing by-products, or aquatic plants, that are applied to the
24 land for an agricultural use or for use as an animal feed, if the
25 use is consistent with generally accepted agricultural management
26 practices at the time of the application or stamp sands:

27 (i) Any substance that the department demonstrates, on a case
28 by case basis, poses an unacceptable risk to the public health,
29 safety, or welfare, or the environment, considering the fate of the

1 material, dose-response, toxicity, or adverse impact on natural
2 resources.

3 (ii) Hazardous substance, as **that term is** defined in the
4 comprehensive environmental response, compensation, and liability
5 act **of 1980**, 42 USC 9601 to 9675.

6 (iii) Hazardous waste, as **that term is** defined in part 111.

7 (iv) Petroleum as described as a regulated substance in section
8 21303.

9 (y) "Interim response activity" means the cleanup or removal
10 of a released hazardous substance or the taking of other actions,
11 ~~prior to~~ **before** the implementation of a remedial action, as may be
12 necessary to prevent, minimize, or mitigate injury to the public
13 health, safety, or welfare, or ~~to~~ the environment. Interim response
14 activity also includes, but is not limited to, measures to limit
15 access, replacement of water supplies, and temporary relocation of
16 people as determined to be necessary by the department. In
17 addition, interim response activity means the taking of other
18 actions as may be necessary to prevent, minimize, or mitigate a
19 threatened release.

20 (z) "Lender" means any of the following:

21 (i) A state or nationally chartered bank.

22 (ii) A state or federally chartered savings and loan
23 association or savings bank.

24 (iii) A state or federally chartered credit union.

25 (iv) Any other state or federally chartered lending
26 institution.

27 (v) Any state or federally regulated affiliate or regulated
28 subsidiary of any entity listed in subparagraphs (i) to (iv).

29 (vi) An insurance company authorized to do business in this

1 state ~~pursuant to~~ **in accordance with** the insurance code of 1956,
2 1956 PA 218, MCL 500.100 to 500.8302.

3 (vii) A motor vehicle sales finance company subject to the
4 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101
5 to ~~492.141,~~ **492.137a**, with net assets in excess of \$50,000,000.00.

6 (viii) A foreign bank.

7 (ix) A retirement fund regulated ~~pursuant to~~ **in accordance with**
8 state law or a pension fund regulated ~~pursuant to~~ **in accordance**
9 **with** federal law with net assets in excess of \$50,000,000.00.

10 (x) A state or federal agency authorized by law to hold a
11 security interest in real property or a local unit of government
12 holding a reversionary interest in real property.

13 (xi) A nonprofit tax exempt organization created to promote
14 economic development in which a majority of the organization's
15 assets are held by a local unit of government.

16 (xii) Any other person that loans money for the purchase of or
17 improvement of real property.

18 (xiii) Any person that retains or receives a security interest
19 to service a debt or to secure a performance obligation.

20 (aa) "Local health department" means that term as defined in
21 section 1105 of the public health code, 1978 PA 368, MCL 333.1105.

22 (bb) "Local unit of government" means a county, city,
23 township, or village, an agency of a local unit of government, an
24 authority or any other public body or entity created by or ~~pursuant~~
25 ~~to~~ **in accordance with** state law. Local unit of government does not
26 include this state or the federal government or a state or federal
27 agency.

28 (cc) "Method detection limit" means the minimum concentration
29 of a hazardous substance that can be measured and reported with 99%

1 confidence that the analyte concentration is greater than zero and
2 is determined from analysis of a sample in a given matrix that
3 contains the analyte.

4 (dd) "Migrating NAPL" means that ~~terms-term~~ as ~~it-is~~ defined
5 in section 21302.

6 (ee) "Mobile NAPL" means that term as ~~it-is~~ defined in section
7 21302.

8 (ff) "NAPL" means that term as ~~it-is~~ defined in section 21303.

9 (gg) "No further action letter" means a written response
10 provided by the department under section 20114d confirming that a
11 no further action report has been approved after review by the
12 department.

13 (hh) "No further action report" means a report under section
14 20114d detailing the completion of remedial actions and including a
15 postclosure plan and a postclosure agreement, if appropriate.

16 (ii) "Nonresidential" means that category of land use for
17 parcels of property or portions of parcels of property that is not
18 residential. This category of land use may include, but is not
19 limited to, any of the following:

20 (i) Industrial, commercial, retail, office, and service uses.

21 (ii) Recreational properties that are not contiguous to
22 residential property.

23 (iii) Hotels, hospitals, and campgrounds.

24 (iv) Natural areas such as woodlands, brushlands, grasslands,
25 and wetlands.

26 (jj) "Operator" means a person ~~who-that~~ is in control of or
27 responsible for the operation of a facility. Operator does not
28 include either of the following:

29 (i) A person ~~who-that~~ holds indicia of ownership primarily to

1 protect the person's security interest in the facility, unless that
2 person participates in the management of the facility as described
3 in section 20101a.

4 (ii) A person ~~who~~**that** is acting as a fiduciary in compliance
5 with section 20101b.

6 (kk) "Owner" means a person ~~who~~**that** owns a facility. Owner
7 does not include either of the following:

8 (i) A person ~~who~~**that** holds indicia of ownership primarily to
9 protect the person's security interest in the facility, including,
10 but not limited to, a vendor's interest under a recorded land
11 contract, unless that person participates in the management of the
12 facility as described in section 20101a.

13 (ii) A person ~~who~~**that** is acting as a fiduciary in compliance
14 with section 20101b.

15 (ll) "Panel" means the response activity review panel
16 established under section 20114e.

17 (mm) "Permitted release" means 1 or more of the following:

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

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

22 (iii) A federally permitted release, as **that term is** defined in
23 the comprehensive environmental response, compensation, and
24 liability act **of 1980**, 42 USC 9601 to 9675.

25 (nn) "Postclosure agreement" means an agreement between the
26 department and a person ~~who~~**that** has submitted a no further action
27 report that prescribes, as appropriate, activities required to be
28 undertaken ~~upon~~**on** completion of remedial actions as provided for
29 in section 20114d.

1 (oo) "Postclosure plan" means a plan for land use or resource
2 use restrictions or permanent markers at a facility ~~upon~~**on**
3 completion of remedial actions as provided for in section 20114c.

4 (pp) "Release" includes, but is not limited to, any spilling,
5 leaking, pumping, pouring, emitting, emptying, discharging,
6 injecting, escaping, leaching, dumping, or disposing of a hazardous
7 substance into the environment, or the abandonment or discarding of
8 barrels, containers, and other closed receptacles containing a
9 hazardous substance. Release does not include any of the following:

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

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

15 (iii) A release of source, by-product, or special nuclear
16 material from a nuclear incident, as those terms are defined in the
17 atomic energy act of 1954, ~~42 USC 2011 to 2286i~~, **Public Law 83-703**,
18 if the release is subject to requirements with respect to financial
19 protection established by the ~~nuclear regulatory commission~~ **Nuclear**
20 **Regulatory Commission** under 42 USC 2210, or any release of source
21 by-product or special nuclear material from any processing site
22 designated under 42 USC 7912(a) (1) or 42 USC 7942(a).

23 (iv) If applied according to label directions and according to
24 generally accepted agricultural and management practices at the
25 time of the application, the application of a fertilizer, soil
26 conditioner, agronomically applied manure, or pesticide, or fruit,
27 vegetable, or field crop residuals or processing by-products,
28 aquatic plants, or a combination of these substances. As used in
29 this subparagraph, fertilizer and soil conditioner have the meaning

1 given to these terms in part 85, and pesticide has the meaning
2 given to that term in part 83.

3 (v) Application of fruits, vegetables, field crop processing
4 by-products, or aquatic plants to the land for an agricultural use
5 or for use as an animal feed, if the use is consistent with
6 generally accepted agricultural and management practices at the
7 time of the application.

8 (vi) The relocation of soil under section 20120c.

9 (vii) The placement, storage, or use of beneficial use by-
10 products or inert materials at the site of storage or use if in
11 compliance with part 115.

12 (qq) "Remedial action" includes, but is not limited to,
13 cleanup, removal, containment, isolation, destruction, or treatment
14 of a hazardous substance released or threatened to be released into
15 the environment, monitoring, maintenance, or the taking of other
16 actions that may be necessary to prevent, minimize, or mitigate
17 injury to the public health, safety, or welfare, or to the
18 environment.

19 (rr) "Remedial action plan" means a work plan for performing
20 remedial action under this part.

21 (ss) "Residential" means that category of land use for parcels
22 of property or portions of parcels of property where people live
23 and sleep for significant periods of time such that the frequency
24 of exposure is reasonably expected or foreseeable to meet the
25 exposure assumptions used by the department to develop generic
26 residential cleanup criteria as set forth in rules promulgated
27 under this part. This category of land use may include, but is not
28 limited to, homes and surrounding yards, condominiums, and
29 apartments.

1 (tt) "Residential closure" means a property at which the
2 contamination has been addressed in a no further action report that
3 satisfies the limited residential cleanup criteria under section
4 20120a(1)(c) or the site-specific residential cleanup criteria
5 under sections 20120a(2) and 20120b, that contains land use or
6 resource use restrictions, and that is approved by the department
7 or is considered approved by the department under section 20120d.

8 (uu) "Residual NAPL saturation" means that term as ~~it is~~
9 defined in part 213.

10 (vv) "Response activity" means evaluation, interim response
11 activity, remedial action, demolition, providing an alternative
12 water supply, or the taking of other actions necessary to protect
13 the public health, safety, or welfare, or the environment or the
14 natural resources. Response activity also includes health
15 assessments or health effect studies carried out under the
16 supervision, or with the approval of, the department of ~~community~~
17 health **and human services** and enforcement actions related to any
18 response activity.

19 (ww) "Response activity costs" or "costs of response activity"
20 means all costs incurred in taking or conducting a response
21 activity, including enforcement costs.

22 (xx) "Response activity plan" means a plan for undertaking
23 response activities. A response activity plan may include 1 or more
24 of the following:

25 (i) A plan to undertake interim response activities.

26 (ii) A plan for evaluation activities.

27 (iii) A feasibility study.

28 (iv) A remedial action plan.

29 (yy) "Security interest" means any interest, including a

1 reversionary interest, in real property created or established for
2 the purpose of securing a loan or other obligation. Security
3 interests include, but are not limited to, mortgages, deeds of
4 trusts, liens, and title ~~pursuant to~~ **in accordance with** lease
5 financing transactions. Security interests may also arise from
6 transactions such as sale and leasebacks, conditional sales,
7 installment sales, trust receipt transactions, certain assignments,
8 factoring agreements, accounts receivable financing arrangements,
9 consignments, or any other transaction in which evidence of title
10 is created if the transaction creates or establishes an interest in
11 real property for the purpose of securing a loan or other
12 obligation.

13 (zz) "Source" means any storage, handling, distribution, or
14 processing equipment from which the release originates and first
15 enters the environment.

16 (aaa) "Stamp sands" means finely grained crushed rock
17 resulting from mining, milling, or smelting of copper ore and
18 includes native substances contained within the crushed rock and
19 any ancillary material associated with the crushed rock.

20 (bbb) "Target detection limit" means the detection limit for a
21 hazardous substance in a given environmental medium that is
22 specified in a rule promulgated by the department. The department
23 shall identify 1 or more analytical methods, when a method is
24 available, that are judged to be capable of achieving the target
25 detection limit for a hazardous substance in a given environmental
26 medium. The target detection limit for a given hazardous substance
27 is greater than or equal to the method detection limit for that
28 hazardous substance. In establishing a target detection limit, the
29 department shall consider the following factors:

1 (i) The low level capabilities of methods published by
2 government agencies.

3 (ii) Reported method detection limits published by state
4 laboratories.

5 (iii) Reported method detection limits published by commercial
6 laboratories.

7 (iv) The need to be able to measure a hazardous substance at
8 concentrations at or below cleanup criteria.

9 (ccc) "Threatened release" or "threat of release" means any
10 circumstance that may reasonably be anticipated to cause a release.

11 (ddd) "Venting groundwater" means groundwater that is entering
12 a surface water of this state from a facility.

13 (2) As used in this part:

14 (a) The phrase "a person who is liable" includes a person who
15 is described as being subject to liability in section 20126. The
16 phrase "a person who is liable" does not presume that liability has
17 been adjudicated.

18 (b) The phrase "this part" includes "rules promulgated under
19 this part".

20 Enacting section 1. This amendatory act does not take effect
21 unless Senate Bill No. ____ or House Bill No. 5354 (request no.
22 03158'23) of the 102nd Legislature is enacted into law.