

HOUSE BILL No. 6361

July 28, 2010, Introduced by Rep. Tyler 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 20101, 20104, and 20104a (MCL 324.20101, 324.20104, and 324.20104a), section 20101 as amended and section 20104a as added by 1996 PA 383 and section 20104 as amended by 1995 PA 71.

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

6 (b) "Agricultural property" means real property used for
7 farming in any of its branches, including cultivating of soil;

1 growing and harvesting of any agricultural, horticultural, or
2 floricultural commodity; dairying; raising of livestock, bees,
3 fish, fur-bearing animals, or poultry; turf and tree farming; and
4 performing any practices on a farm as an incident to, or in
5 conjunction with, these farming operations. Agricultural property
6 does not include property used for commercial storage, processing,
7 distribution, marketing, or shipping operations.

8 (C) "ALL APPROPRIATE INQUIRY" MEANS AN EVALUATION OF
9 ENVIRONMENTAL CONDITIONS AT A PROPERTY AT THE TIME OF PURCHASE,
10 OCCUPANCY, OR FORECLOSURE THAT REASONABLY DEFINES THE EXISTING
11 CONDITIONS AND CIRCUMSTANCES AT THE PROPERTY IN CONFORMANCE WITH 40
12 CFR 312.

13 (D) ~~(e)~~ "Attorney general" means the department of the
14 attorney general.

15 (E) "BACKGROUND CONCENTRATION" MEANS THE CONCENTRATION OR
16 LEVEL OF A HAZARDOUS SUBSTANCE THAT EXISTS IN THE ENVIRONMENT AT OR
17 REGIONALLY PROXIMATE TO A FACILITY THAT IS NOT ATTRIBUTABLE TO ANY
18 RELEASE AT OR REGIONALLY PROXIMATE TO THE FACILITY.

19 (F) ~~(d)~~ "Baseline environmental assessment" means an
20 ~~evaluation of environmental conditions which exist at a facility at~~
21 ~~the time of purchase, occupancy, or foreclosure that reasonably~~
22 ~~defines the existing conditions and circumstance at the facility so~~
23 ~~that, in the event of a subsequent release, there is a means of~~
24 ~~distinguishing the new release from existing contamination. A~~
25 WRITTEN DOCUMENT THAT DESCRIBES THE RESULTS OF AN ALL APPROPRIATE
26 INQUIRY AND THE SAMPLING AND ANALYSIS THAT CONFIRM THAT THE
27 PROPERTY IS A FACILITY. HOWEVER, FOR PURPOSES OF A BASELINE

1 ENVIRONMENTAL ASSESSMENT, THE ALL APPROPRIATE INQUIRY UNDER 40 CFR
2 312.20(A) MAY BE CONDUCTED WITHIN 45 DAYS AFTER THE DATE OF
3 ACQUISITION OF A PROPERTY AND THE COMPONENTS OF AN ALL APPROPRIATE
4 INQUIRY UNDER 40 CFR 312.20(B) AND 40 CFR 312.20(C)(3) MAY BE
5 CONDUCTED OR UPDATED WITHIN 45 DAYS AFTER THE DATE OF ACQUISITION
6 OF A PROPERTY.

7 (G) ~~(e)~~—"Board" means the brownfield redevelopment board
8 created in section 20104a.

9 (H) "CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE" MEANS
10 EITHER OF THE FOLLOWING:

11 (i) CLEANUP CRITERIA THAT SATISFY THE REQUIREMENTS FOR THE
12 RESIDENTIAL CATEGORY IN SECTION 20120A(1)(A) OR (16).

13 (ii) CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE UNDER
14 PART 213.

15 (I) ~~(f)~~—"Department" means the director of the department of
16 ~~environmental quality~~ **NATURAL RESOURCES AND ENVIRONMENT** or his or
17 her designee to whom the director delegates a power or duty by
18 written instrument.

19 (J) ~~(g)~~—"Director" means the director of the department of
20 ~~environmental quality~~ **NATURAL RESOURCES AND ENVIRONMENT**.

21 (K) ~~(h)~~—"Directors" means the directors or their designees of
22 the departments of ~~environmental quality~~ **NATURAL RESOURCES AND**
23 **ENVIRONMENT**, community health, agriculture, and state police.

24 (L) ~~(i)~~—"Disposal" means the discharge, deposit, injection,
25 dumping, spilling, leaking, or placing of any hazardous substance
26 into or on any land or water so that the hazardous substance or any
27 constituent of the hazardous substance may enter the environment or

1 be emitted into the air or discharged into any groundwater or
2 surface water.

3 (M) ~~(j)~~—"Enforcement costs" means court expenses, reasonable
4 attorney fees of the attorney general, and other reasonable
5 expenses of an executive department that are incurred in relation
6 to enforcement under this part. ~~or rules promulgated under this~~
7 ~~part, or both.~~

8 (N) ~~(k)~~—"Environment" or "natural resources" means land,
9 surface water, groundwater, subsurface, strata, air, fish,
10 wildlife, or biota within the state.

11 (O) ~~(l)~~—"Environmental contamination" means the release of a
12 hazardous substance, or the potential release of a discarded
13 hazardous substance, in a quantity which is or may become injurious
14 to the environment or to the public health, safety, or welfare.

15 (P) ~~(m)~~—"Evaluation" means those activities including, but not
16 limited to, investigation, studies, sampling, analysis, development
17 of feasibility studies, and administrative efforts that are needed
18 to determine the nature, extent, and impact of a release or threat
19 of release and necessary response activities.

20 (Q) ~~(n)~~—"Exacerbation" means the occurrence of either of the
21 following caused by an activity undertaken by the person who owns
22 or operates the property, with respect to ~~existing~~ contamination
23 **FOR WHICH THE PERSON IS NOT LIABLE:**

24 (i) Contamination that has migrated beyond the boundaries of
25 the property which is the source of the release at levels above
26 cleanup criteria ~~specified in section 20120a(1)(a)~~ **FOR UNRESTRICTED**
27 **RESIDENTIAL USE** unless a criterion is not relevant because exposure

1 is reliably restricted pursuant to section 20120b AS OTHERWISE
2 PROVIDED IN THIS PART.

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

5 ~~—— (o) "Facility" means any area, place, or property where a
6 hazardous substance in excess of the concentrations which satisfy
7 the requirements of section 20120a(1)(a) or (17) or the cleanup
8 criteria for unrestricted residential use under part 213 has been
9 released, deposited, disposed of, or otherwise comes to be located.
10 Facility does not include any area, place, or property at which
11 response activities have been completed which satisfy the cleanup
12 criteria for the residential category provided for in section
13 20120a(1)(a) and (17) or at which corrective action has been
14 completed under part 213 which satisfies the cleanup criteria for
15 unrestricted residential use.~~

16 (R) "FACILITY" MEANS ANY AREA, PLACE, OR PROPERTY WHERE A
17 HAZARDOUS SUBSTANCE IN EXCESS OF THE CONCENTRATIONS THAT SATISFY
18 THE CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE HAS BEEN
19 RELEASED, DEPOSITED, DISPOSED OF, OR OTHERWISE COMES TO BE LOCATED.
20 FACILITY DOES NOT INCLUDE ANY AREA, PLACE, OR PROPERTY WHERE ANY OF
21 THE FOLLOWING CONDITIONS ARE SATISFIED:

22 (i) RESPONSE ACTIVITIES HAVE BEEN COMPLETED UNDER THIS PART
23 THAT SATISFY THE CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE.

24 (ii) CORRECTIVE ACTION HAS BEEN COMPLETED UNDER PART 213 THAT
25 SATISFIES THE CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE.

26 (iii) SITE-SPECIFIC CRITERIA THAT HAVE BEEN APPROVED BY THE
27 DEPARTMENT FOR APPLICATION AT THE AREA, PLACE, OR PROPERTY ARE MET

1 OR SATISFIED AND BOTH OF THE FOLLOWING CONDITIONS ARE MET:

2 (A) THE SITE-SPECIFIC CRITERIA DO NOT DEPEND ON ANY LAND USE
3 OR RESOURCE USE RESTRICTION TO ENSURE PROTECTION OF THE PUBLIC
4 HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT.

5 (B) HAZARDOUS SUBSTANCES AT THE AREA, PLACE, OR PROPERTY THAT
6 ARE NOT ADDRESSED BY SITE-SPECIFIC CRITERIA SATISFY THE CLEANUP
7 CRITERIA FOR UNRESTRICTED RESIDENTIAL USE.

8 (S) ~~(p)~~ "Feasibility study" means a process for developing,
9 evaluating, and selecting appropriate response activities.

10 (T) "FINANCIAL ASSURANCE" MEANS A PERFORMANCE BOND, ESCROW,
11 CASH, CERTIFICATE OF DEPOSIT, IRREVOCABLE LETTER OF CREDIT,
12 CORPORATE GUARANTEE, OR OTHER EQUIVALENT SECURITY, OR ANY
13 COMBINATION THEREOF.

14 (U) ~~(q)~~ "Foreclosure" means possession of a property by a
15 lender on which it has foreclosed on a security interest or the
16 expiration of a lawful redemption period, whichever occurs first.

17 (V) ~~(r)~~ "Free product" means a hazardous substance in a liquid
18 phase equal to or greater than 1/8 inch of measurable thickness
19 that is not dissolved in water and that has been released into the
20 environment.

21 (W) ~~(s)~~ "Fund" means the cleanup and redevelopment fund
22 established in section 20108.

23 (X) ~~(t)~~ "Hazardous substance" means 1 or more of the
24 following, but does not include fruit, vegetable, or field crop
25 residuals or processing by-products, or aquatic plants, that are
26 applied to the land for an agricultural use or for use as an animal
27 feed, if the use is consistent with generally accepted agricultural

1 management practices developed pursuant to the Michigan right to
2 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
3 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
4 **286.471 TO 286.474:**

5 (i) Any substance that the department demonstrates, on a case
6 by case basis, poses an unacceptable risk to the public health,
7 safety, or welfare, or the environment, considering the fate of the
8 material, dose-response, toxicity, or adverse impact on natural
9 resources.

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~~ **42 USC 9601 TO 9675.**

13 (iii) Hazardous waste as defined in part 111.

14 (iv) Petroleum as described in part 213.

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

26 **(Z)** ~~(v)~~—"Lender" means any of the following:

27 (i) A state or nationally chartered bank.

1 (ii) A state or federally chartered savings and loan
2 association or savings bank.

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

4 (iv) Any other state or federally chartered lending institution
5 or regulated affiliate or regulated subsidiary of any entity listed
6 in this subparagraph or subparagraphs (i) to (iii).

7 (v) An insurance company authorized to do business in this
8 state pursuant to the insurance code of 1956, ~~Act No. 218 of the~~
9 ~~Public Acts of 1956, being sections 500.100 to 500.8302 of the~~
10 ~~Michigan Compiled Laws 1956 PA 218, MCL 500.100 TO 500.8302.~~

11 (vi) A motor vehicle finance company subject to the motor
12 vehicle finance act, ~~Act No. 27 of the Extra Session of 1950,~~
13 ~~being sections 492.101 to 492.141 of the Michigan Compiled Laws~~
14 ~~1950 (EX SESS) PA 27, MCL 492.101 TO 492.141,~~ with net assets in
15 excess of \$50,000,000.00.

16 (vii) A foreign bank.

17 (viii) A retirement fund regulated pursuant to state law or a
18 pension fund regulated pursuant to federal law with net assets in
19 excess of \$50,000,000.00.

20 (ix) A state or federal agency authorized by law to hold a
21 security interest in real property or a local unit of government
22 holding a reversionary interest in real property.

23 (x) A nonprofit tax exempt organization created to promote
24 economic development in which a majority of the organization's
25 assets are held by a local unit of government.

26 (xi) Any other person who loans money for the purchase of or
27 improvement of real property.

1 (xii) Any person who retains or receives a security interest to
2 service a debt or to secure a performance obligation.

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

7 (BB) ~~(x)~~ "Local unit of government" means a county, city,
8 township, or village, an agency of a local unit of government, an
9 authority or any other public body or entity created by or pursuant
10 to state law. Local unit of government does not include the state
11 or federal government or a state or federal agency.

12 (CC) "METHOD DETECTION LIMIT" MEANS THE MINIMUM CONCENTRATION
13 OF A HAZARDOUS SUBSTANCE WHICH CAN BE MEASURED AND REPORTED WITH
14 99% CONFIDENCE THAT THE ANALYTE CONCENTRATION IS GREATER THAN ZERO
15 AND IS DETERMINED FROM ANALYSIS OF A SAMPLE IN A GIVEN MATRIX THAT
16 CONTAINS THE ANALYTE.

17 (DD) "NO FURTHER ACTION LETTER" MEANS A WRITTEN RESPONSE
18 PROVIDED BY THE DEPARTMENT UNDER SECTION 20114D CONFIRMING THAT A
19 NO FURTHER ACTION REPORT HAS BEEN APPROVED AFTER REVIEW BY THE
20 DEPARTMENT.

21 (EE) "NO FURTHER ACTION REPORT" MEANS A REPORT UNDER SECTION
22 20114D DETAILING THE COMPLETION OF REMEDIAL ACTIONS AND INCLUDING A
23 POSTCLOSURE PLAN AND A POSTCLOSURE AGREEMENT, IF APPROPRIATE.

24 (FF) ~~(y)~~ "Operator" means a person who is in control of or
25 responsible for the operation of a facility. Operator does not
26 include either of the following:

27 (i) A person who 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 is acting as a fiduciary in compliance with
5 section 20101b.

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

8 (i) A person who 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 is acting as a fiduciary in compliance with
14 section 20101b.

15 **(HH) "PANEL" MEANS THE RESPONSE ACTIVITY REVIEW PANEL CREATED**
16 **IN SECTION 20114E.**

17 **(II)** ~~(aa)~~—"Permitted release" means 1 or more of the
18 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 waste
22 treatment facility.

23 (iii) A federally permitted release as defined in the
24 comprehensive environmental response, compensation, and liability
25 act, of 1980, Public Law 96-510, 94 Stat. 2767-42 USC 9601 TO 9675.

26 **(JJ) "POSTCLOSURE AGREEMENT" MEANS AN AGREEMENT BETWEEN THE**
27 **DEPARTMENT AND A PERSON WHO HAS SUBMITTED A NO FURTHER ACTION**

1 REPORT THAT PRESCRIBES, AS APPROPRIATE, ACTIVITIES REQUIRED TO BE
2 UNDERTAKEN UPON COMPLETION OF REMEDIAL ACTIONS AS PROVIDED FOR IN
3 SECTION 20114D.

4 (KK) "POSTCLOSURE PLAN" MEANS A PLAN FOR LAND USE OR RESOURCE
5 USE RESTRICTIONS OR PERMANENT MARKERS AT A FACILITY UPON COMPLETION
6 OF REMEDIAL ACTIONS AS REQUIRED UNDER SECTION 20114C.

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

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

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

19 (iii) A release of source, by-product, or special nuclear
20 material from a nuclear incident, as those terms are defined in the
21 atomic energy act of 1954, ~~chapter 1073, 68 Stat. 919,~~ **42 USC 2011**
22 **TO 2297H-13**, if the release is subject to requirements with respect
23 to financial protection established by the nuclear regulatory
24 commission under ~~section 170 of chapter 14 of title I of the atomic~~
25 ~~energy act of 1954, chapter 1073, 71 Stat. 576,~~ **42 U.S.C. USC 2210**,
26 or any release of source by-product or special nuclear material
27 from any processing site designated under ~~section 102(a)(1) of~~

1 ~~title I or 302(a) of title III of the uranium mill tailings~~
2 ~~radiation control act of 1978, Public Law 95-604, 42 U.S.C. 7912~~
3 ~~and 7942-**USC 7912(A) (1) OR 42 USC 7942(A)**.~~

4 (iv) If applied according to label directions and according to
5 generally accepted agricultural and management practices, the
6 application of a fertilizer, soil conditioner, agronomically
7 applied manure, or pesticide, or fruit, vegetable, or field crop
8 residuals or processing by-products, aquatic plants, or a
9 combination of these substances. As used in this subparagraph,
10 fertilizer and soil conditioner have the meaning given to these
11 terms in part 85, and pesticide has the meaning given to that term
12 in part 83.

13 (v) A release does not include fruits, vegetables, field crop
14 processing by-products, or aquatic plants, that are applied to the
15 land for an agricultural use or for use as an animal feed, if the
16 use is consistent with generally accepted agricultural and
17 management practices developed pursuant to the Michigan right to
18 farm act, ~~Act No. 93 of the Public Acts of 1981, being sections~~
19 ~~286.471 to 286.474 of the Michigan Compiled Laws 1981 PA 93, MCL~~
20 ~~286.471 TO 286.474.~~

21 **(MM)** ~~(ee)~~-"Remedial action" includes, but is not limited to,
22 cleanup, removal, containment, isolation, destruction, or treatment
23 of a hazardous substance released or threatened to be released into
24 the environment, monitoring, maintenance, or the taking of other
25 actions that may be necessary to prevent, minimize, or mitigate
26 injury to the public health, safety, or welfare, or to the
27 environment.

1 (NN) ~~(dd)~~—"Remedial action plan" means a work plan for
2 performing remedial action under this part.

3 (OO) "RESIDENTIAL CLOSURE" MEANS A FACILITY AT WHICH THE
4 CONTAMINATION HAS BEEN ADDRESSED IN A NO FURTHER ACTION REPORT THAT
5 SATISFIES THE LIMITED RESIDENTIAL CLEANUP CRITERIA UNDER SECTION
6 20120A(1)(C) OR THE SITE-SPECIFIC RESIDENTIAL CLEANUP CRITERIA
7 UNDER SECTIONS 20120A(2) AND 20120B, THAT CONTAINS LAND USE OR
8 RESOURCE USE RESTRICTIONS, AND THAT IS APPROVED BY THE DEPARTMENT
9 OR IS CONSIDERED APPROVED BY THE DEPARTMENT UNDER SECTION 20120D.

10 (PP) ~~(ee)~~—"Response activity" means evaluation, interim
11 response activity, remedial action, demolition, or the taking of
12 other actions necessary to protect the public health, safety, or
13 welfare, or the environment or the natural resources. Response
14 activity also includes health assessments or health effect studies
15 carried out under the supervision, or with the approval of, the
16 department of ~~public~~ COMMUNITY health and enforcement actions
17 related to any response activity.

18 (QQ) ~~(ff)~~—"Response activity costs" or "costs of response
19 activity" means all costs incurred in taking or conducting a
20 response activity, including enforcement costs.

21 (RR) "RESPONSE ACTIVITY PLAN" MEANS A PLAN FOR UNDERTAKING
22 RESPONSE ACTIVITIES. A RESPONSE ACTIVITY PLAN MAY INCLUDE 1 OR MORE
23 OF THE FOLLOWING:

24 (i) A PLAN TO UNDERTAKE INTERIM RESPONSE ACTIVITIES.

25 (ii) A PLAN FOR EVALUATION ACTIVITIES.

26 (iii) A FEASIBILITY STUDY.

27 (iv) A REMEDIAL ACTION PLAN.

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

13 ~~—— (hh) "Site" means the location of environmental contamination.~~

14 **(TT) "TARGET DETECTION LIMIT" MEANS THE DETECTION LIMIT FOR A**
15 **HAZARDOUS SUBSTANCE IN A GIVEN ENVIRONMENTAL MEDIUM THAT IS**
16 **SPECIFIED BY THE DEPARTMENT ON A LIST THAT IT PUBLISHES NOT MORE**
17 **THAN ONCE A YEAR. THE DEPARTMENT SHALL IDENTIFY 1 OR MORE**
18 **ANALYTICAL METHODS, WHEN A METHOD IS AVAILABLE, THAT ARE JUDGED TO**
19 **BE CAPABLE OF ACHIEVING THE TARGET DETECTION LIMIT FOR A HAZARDOUS**
20 **SUBSTANCE IN A GIVEN ENVIRONMENTAL MEDIUM. THE TARGET DETECTION**
21 **LIMIT FOR A GIVEN HAZARDOUS SUBSTANCE IS GREATER THAN OR EQUAL TO**
22 **THE METHOD DETECTION LIMIT FOR THAT HAZARDOUS SUBSTANCE. IN**
23 **ESTABLISHING A TARGET DETECTION LIMIT, THE DEPARTMENT SHALL**
24 **CONSIDER THE FOLLOWING FACTORS:**

25 **(i) THE LOW LEVEL CAPABILITIES OF METHODS PUBLISHED BY**
26 **GOVERNMENT AGENCIES.**

27 **(ii) REPORTED METHOD DETECTION LIMITS PUBLISHED BY STATE**

1 LABORATORIES.

2 (iii) REPORTED METHOD DETECTION LIMITS PUBLISHED BY COMMERCIAL
3 LABORATORIES.

4 (iv) THE NEED TO BE ABLE TO MEASURE A HAZARDOUS SUBSTANCE AT
5 CONCENTRATIONS AT OR BELOW CLEANUP CRITERIA.

6 (UU) ~~(ii)~~—"Threatened release" or "threat of release" means
7 any circumstance that may reasonably be anticipated to cause a
8 release.

9 (VV) "VENTING GROUNDWATER" MEANS GROUNDWATER THAT IS ENTERING
10 A SURFACE WATER OF THE STATE FROM A FACILITY.

11 (2) As used in this part: ~~the~~

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

16 (B) THE PHRASE "THIS PART" INCLUDES "RULES PROMULGATED UNDER
17 THIS PART".

18 Sec. 20104. (1) The department shall coordinate all activities
19 required under this part and shall ~~MAY~~ promulgate rules ~~to provide~~
20 ~~for the performance of response activities, to provide for the~~
21 ~~assessment of damages for injury to, destruction of, or loss of~~
22 ~~natural resources resulting from a release, and to implement the~~
23 ~~powers and duties of the department under this part, and as~~
24 ~~otherwise necessary to carry out the requirements of this part~~
25 NECESSARY TO IMPLEMENT THIS PART.

26 (2) A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT, OR
27 OPERATIONAL MEMORANDUM UNDER THIS PART SHALL NOT BE GIVEN THE FORCE

1 AND EFFECT OF LAW. A GUIDELINE, BULLETIN, INTERPRETIVE STATEMENT,
2 OR OPERATIONAL MEMORANDUM UNDER THIS PART IS NOT LEGALLY BINDING ON
3 ANY PERSON.

4 (3) ~~(2)~~—Claims for natural resource damages may be pursued
5 ~~prior to promulgation of rules but only~~ in accordance with
6 principles of scientific and economic validity and reliability.
7 Contingent nonuse valuation methods or similar nonuse valuation
8 methods shall not be utilized and damages shall not be recovered
9 for nonuse values unless and until rules are promulgated that
10 establish an appropriate means of determining such damages.

11 (4) ~~(3)~~—A contingent nonuse valuation method or similar nonuse
12 valuation method shall not be utilized for natural resource damage
13 calculations unless a determination is made by the department that
14 such a method satisfies principles of scientific and economic
15 validity and reliability and rules for utilizing a contingent
16 nonuse valuation method or a similar nonuse valuation method are
17 subsequently promulgated.

18 (5) ~~(4)~~—The provisions in this section related to natural
19 resource damages as added by ~~the 1995 amendatory act that amended~~
20 ~~this section PA 71~~ do not apply to any judicial or administrative
21 action or claim in bankruptcy initiated on or before March 1, 1995.

22 Sec. 20104a. (1) The brownfield redevelopment board is created
23 within the department. ~~of environmental quality.~~

24 (2) The board shall consist of the following members:

25 (a) The director ~~of the department of environmental quality~~ or
26 his or her designee.

27 (b) The director of the department of **TECHNOLOGY**, management,

1 and budget or his or her designee.

2 (c) The chief executive officer of the ~~jobs commission~~
3 **MICHIGAN ECONOMIC DEVELOPMENT CORPORATION** or his or her designee.

4 (3) A majority of the members of the board constitute a quorum
5 for the transaction of business at a meeting of the board.

6 (4) The business which the board may perform shall be
7 conducted at a public meeting of the board held in compliance with
8 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
9 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws 1976~~
10 **PA 267, MCL 15.261 TO 15.275.**

11 (5) A writing prepared, owned, used, in the possession of, or
12 retained by the board in the performance of an official function is
13 subject to the freedom of information act, ~~Act No. 442 of the~~
14 ~~Public Acts of 1976, being sections 15.231 to 15.246 of the~~
15 ~~Michigan Compiled Laws 1976~~ **PA 442, MCL 15.231 TO 15.246.**

16 (6) The board shall implement the duties and responsibilities
17 as provided in this part and as otherwise provided by law.

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

21 (a) Senate Bill No. 1345.

22 (b) Senate Bill No. 1348.

23 (c) House Bill No. 6360 (request no. H06270'10 *).

24 (d) House Bill No. 6363 (request no. H06271'10 *).

25 (e) Senate Bill No. ____ or House Bill No. 6359 (request no.
26 07378'10).