Act No. 71
Public Acts of 1995
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STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995

Introduced by Reps. Sikkema, Alley, Murphy, Bennane, Middaugh, McManus, Profit, Bodem, Hill, Freeman, Munsell, Wetters, Byl, Gnodtke, Brackenridge, Yokich, Weeks, Fitzgerald, Pitoniak, Geiger, Lowe, Gustafson, Johnson, Jellema, McBryde, Leland, Gilmer and Nye
Reps. Bobier, Bullard, Bush, Dalman, DeLange, Dobb, Galloway, Gernaat, Goschka, Green, Horton, Kaza, Kukuk, Law, London, Middleton, Owen, Oxender, Randall, Rhead, Ryan, Voorhees and Wallace named co-sponsors

ENROLLED HOUSE BILL No. 4596

AN ACT to amend sections 20101, 20101a, 20102, 20104, 20105, 20107, 20113, 20114, 20115, 20116, 20117, 20118, 20119, 20126, 20128, 20129, 20130, 20132, 20133, 20134, 20135, 20137, 20138, 20139, and 20140 of Act No. 451 of the Public Acts of 1994, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," being sections 324.20101, 324.20101a, 324.20102, 324.20104, 324.20105, 324.20107, 324.20113, 324.20114, 324.20115, 324.20116, 324.20117, 324.20118, 324.20119, 324.20126, 324.20128, 324.20129, 324.20130, 324.20132, 324.20133, 324.20134, 324.20135, 324.20137, 324.20138, 324.20139, and 324.20140 of the Michigan Compiled Laws; to add sections 20101b, 20102a, 20105a, 20107a, 20112a, 20114a, 20120a, 20120b, 20120c, 20120d, 20126a, 20129a, 20135a, and 20142; to amend the headings of certain parts; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 20101, 20101a, 20102, 20104, 20105, 20107, 20113, 20114, 20115, 20116, 20117, 20118, 20119, 20126, 20128, 20129, 20130, 20132, 20133, 20134, 20135, 20137, 20138, 20139, and 20140 of Act No. 451 of the Public Acts of 1994, being sections 324.20101, 324.20101a, 324.20102, 324.20104, 324.20105, 324.20107, 324.20113, 324.20114, 324.20115, 324.20116, 324.20117, 324.20118, 324.20119, 324.20126, 324.20128, 324.20129, 324.20130, 324.20132, 324.20133, 324.20134, 324.20135, 324.20137, 324.20138, 324.20139, and 324.20140 of the Michigan Compiled Laws, are amended and sections 20101b, 20102a, 20105a, 20107a, 20112a, 20114a, 20120a, 20120b, 20120c, 20120d, 20126a, 20129a, 20135a, and 20142 are added to read as follows:

PART 201 ENVIRONMENTAL REMEDIATION

Sec. 20101. (1) As used in this part:

(a) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

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

(c) "Attorney general" means the department of the attorney general.

(d) "Baseline environmental assessment" means an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstance at the facility so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination.

(e) "Directors" means the directors or their designees of the departments of natural resources, public health, agriculture, and state police.

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

(g) "Enforcement costs" means court expenses, reasonable attorney fees of the attorney general, and other reasonable expenses of an executive department that are incurred in relation to enforcement under this part or rules promulgated under this part, or both.

(h) "Environment" or "natural resources" means land, surface water, groundwater, subsurface, strata, air, fish, wildlife, or biota within the state.

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

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

(k) "Exacerbation" means the occurrence of either of the following caused by an activity undertaken by the person who owns or operates the property, with respect to existing contamination:

(*i*) Contamination that has migrated beyond the boundaries of the property which is the source of the release at levels above cleanup criteria specified in section 20120a(1)(a) unless a criterion is not relevant because exposure is reliably restricted pursuant to section 20120b.

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

(*l*) "Facility" means any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of section 20120a(1)(a) or (17) has been released, deposited, disposed of, or otherwise comes to be located. Facility does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in section 20120a(1)(a) and (17).

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

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

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

(p) "Fund" means the environmental response fund established in section 20108.

(q) "Hazardous substance" means 1 or more of the following:

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

(*ii*) Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

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

(*iv*) Petroleum as described in part 213.

(r) "Interim response activity" means the cleanup or removal of a released hazardous substance or the taking of other actions, prior to the implementation of a remedial action, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. Interim response activity also includes, but is not limited to, measures to limit access, replacement of water supplies, and temporary relocation of people as determined to be necessary by the department. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release.

(s) "Lender" means any of the following:

(*i*) A state or nationally chartered bank.

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

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

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

(*v*) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(*vi*) A motor vehicle finance company subject to the motor vehicle finance act, Act No. 27 of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws, with net assets in excess of $50,000,000.00.

(*vii*) A foreign bank.

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

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

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

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

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

(t) "Local health department" means that term as defined in section 1105 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.1105 of the Michigan Compiled Laws.

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

(v) "Operator" means a person who is in control of or responsible for the operation of a facility. Operator does not include either of the following:

(*i*) A person who holds indicia of ownership primarily to protect the person's security interest in the facility, unless that person participates in the management of the facility as described in section 20101a.

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

(w) "Owner" means a person who owns a facility. Owner does not include either of the following:

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

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

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

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

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

(*iii*) A federally permitted release as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

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

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

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

(*iii*) A release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of chapter 14 of title I of the atomic energy act of 1954, chapter 1073, 71 Stat. 576, 42 U.S.C. 2210, or any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) of title I or 302(a) of title III of the uranium mill tailings radiation control act of 1978, Public Law 95-604, 42 U.S.C. 7912 and 7942.

(*iv*) If applied according to label directions and according to generally accepted agricultural and management practices, the application of a fertilizer, soil conditioner, agronomically applied manure, or a pesticide, or a combination of these substances. As used in this subparagraph, fertilizer and soil conditioner have the meaning given to these terms in part 85, and pesticide has the meaning given to that term in part 83.

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

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

(bb) "Response activity" means evaluation, interim response activity, remedial action, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of public health and enforcement actions related to any response activity.

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

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

(ee) "Site" means the location of environmental contamination.

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

(2) As used in this part, the phrase "a person who is liable" includes a person who is described as being subject to liability in section 20126. The phrase "a person who is liable" does not presume that liability has been adjudicated.

Sec. 20101a. (1) For purposes of this part, a lender holding a security interest in a facility participates in the management of the facility if that lender engages in acts of facility management that constitute actual participation in the management or operational affairs of a facility and that exceed the mere capacity to influence, or ability to influence, or the unexercised right to control facility operations. A lender holding a security interest is participating in the management of a facility, while the borrower is still in possession of the facility encumbered by the security interest, if the lender holding a security interest does any of the following:

(a) Exercises decision making control over the borrower's environmental compliance.

(b) Undertakes responsibility for the borrower's hazardous substance handling or disposal practices.

(c) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to either or both of the following:

(*i*) Environmental compliance.

(*ii*) All, or substantially all, of the operational aspects of the enterprise other than environmental compliance. As used in this subparagraph, "operational aspects of the enterprise" includes functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise such as that of credit manager, accounts payable or receivable manager, personnel manager, controller, chief financial officer, or similar functions.

(2) For purposes of this part, the following do not constitute participation in the management of a facility by a lender holding a security interest in the facility:

(a) The mere capacity to influence, or ability to influence, or the unexercised right to control facility operations.

(b) An act or omission prior to the time that indicia of ownership are held primarily to protect a security interest.

(c) Undertaking or requiring an environmental inspection of the facility in which indicia of ownership are to be held, or requiring a prospective borrower to undertake response activities at a facility or to comply or come into compliance, whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest, with any applicable law, rule, or regulation.

(d) Actions that are consistent with holding ownership indicia primarily to protect a security interest. The authority of the lender holding a security interest to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions,

representations, or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents.

(e) Engaging in policing activities prior to foreclosure if the lender holding a security interest does not by such actions participate in the management of the facility as described in subsection (1)(a) to (c). Permissible actions include, but are not limited to, requiring the borrower to undertake response activities at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; and securing or exercising authority to monitor or inspect the facility in which indicia of ownership are maintained, including on-site inspections, or the borrower's business or financial condition, during the term of the security interest. A lender holding a security interest that engages in workout activities prior to foreclosure and its equivalents will remain within the exemption if the lender holding a security interest does not by such action participate in the management of the facility.

(3) As used in this section, "workout" refers to those actions by which a lender holding a security interest, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower or obligor or to preserve, or prevent the diminution of, the value of the security. Workout activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; and providing specific or general financial or other advice, suggestions, counseling, or guidance.

Sec. 20101b. (1) A lender or other person who has not participated in the management of a property as described in section 20101a prior to assuming ownership or control of the property as a fiduciary, as defined by section 5 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.5 of the Michigan Compiled Laws, or in a representative capacity for a disabled person under section 495 of Act No. 642 of the Public Acts of 1978, being section 700.495 of the Michigan Compiled Laws, and that is acting or has acted in a capacity permitted by the revised probate code, Act No. 642 of the Public Acts of 1978, being sections 700.1 to 700.993 of the Michigan Compiled Laws, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, or negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent claims against the assets that are part of or all of the estate or trust that contains the facility; any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender or other person; or any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such claims may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(2) A lender that has not participated in the management of a property as described in section 20101a prior to assuming ownership or control of the property in a fiduciary capacity, and under a fiduciary agreement entered into on or before August 1, 1990 owns or controls the property in a fiduciary capacity that is authorized by the banking code of 1969, Act No. 319 of the Public Acts of 1969, being sections 487.301 to 487.598 of the Michigan Compiled Laws, or the national bank act, chapter 106, 13 Stat. 99, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent claims against the assets that are part of or all of the estate or trust that contains the facility; any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is administered by the lender; or any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such claims may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

(3) A lender that has not participated in the management of a property as described in section 20101a prior to assuming ownership or control of the property in a fiduciary capacity, and pursuant to a fiduciary agreement entered into after August 1, 1990 owns or controls the property in a fiduciary capacity that is authorized by Act No. 319 of the Public Acts of 1969, or the national bank act, chapter 106, 13 Stat. 99, that has served only in an administrative, custodial, or financial capacity with respect to the property, and has not exercised sufficient involvement to control the owner's or operator's handling of a hazardous substance, is not personally liable as an owner or operator of the property under this part. This subsection does not do either of the following:

(a) Relieve the fiduciary from personal liability as the result of the fiduciary's assumption of personal liability, negligence, gross negligence, or reckless, willful, or intentional misconduct.

(b) Prevent claims against the assets that are part of or all of the estate or trust that contains the facility; any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility that is

administered by the lender; or any other estate or trust of the decedent, grantor, ward, or other person whose estate or trust contains the facility. Such claims may be asserted against the fiduciary in its representative capacity, whether or not the fiduciary is personally liable.

Sec. 20102. The legislature hereby finds and declares:

(a) That there exist in this state certain facilities containing hazardous substances that pose a danger to the public health, safety, or welfare, or to the environment of this state.

(b) That there is a need to provide for a method of eliminating the danger of environmental contamination caused by the existence of hazardous substances at facilities within the state.

(c) That it is the purpose of this part to provide for appropriate response activity to eliminate unacceptable risks to public health, safety, or welfare, or to the environment from environmental contamination at facilities within the state.

(d) That there is a need for additional administrative and judicial remedies to supplement existing statutory and common law remedies.

(e) That the responsibility for the cost of response activities pertaining to a release or threat of release and repairing injury, destruction, or loss to natural resources caused by a release or threat of release should not be placed upon the public except when funds cannot be collected from, or a response activity cannot be undertaken by, a person liable under this part.

(f) That liability for response activities to address environmental contamination should be imposed upon those persons who are responsible for the environmental contamination.

(g) That to the extent possible, consistent with requirements under this part and rules promulgated under this part, response activities shall be undertaken by persons liable under this part.

(h) That this part is intended to provide remedies for facilities posing any threat to the public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a hazardous substance occurred before or after October 13, 1982, the effective date of the former environmental response act, Act No. 307 of the Public Acts of 1982, and for this purpose this part shall be given retroactive application. However, criminal and civil penalties provided in this part shall apply to violations of this part that occur after July 1, 1991.

(i) That a facility that is owned by the federal government, the state, or a local unit of government, or a facility where a release or threat of release is caused by the federal government, the state, or a local unit of government, should not be treated differently in terms of the expenditure of money for response activities than any facility.

(j) That if a person who is liable under section 20126 is the state or a local unit of government, this part should be enforced by the attorney general and the department in the same manner as it would be for any other person who is liable under section 20126.

(k) That this part is not intended to impose penalties or exemplary damages upon parties conducting response activities pursuant to a decree or order to which the United States is a party.

(*l*) That this part is intended to foster the redevelopment and reuse of vacant manufacturing facilities and abandoned industrial sites that have economic development potential, if that redevelopment or reuse assures the protection of the public health, safety, welfare, and the environment.

(m) That it is the intent of the legislature that, in implementing this part, the department shall act reasonably in its exercise of professional judgment.

Sec. 20102a. (1) Notwithstanding any other provision of this part, the following actions shall be governed by the provisions of this part that were in effect on May 1, 1995:

(a) Any judicial action or claim in bankruptcy that was initiated by any person on or before May 1, 1995 under this part.

(b) An administrative order that was issued on or before May 1, 1995 pursuant to section 20119.

(c) An enforceable agreement with the state entered into on or before May 1, 1995 by any person under this part.

(2) For purposes of this section, the provisions of this part that were in effect on May 1, 1995 are hereby incorporated by reference.

(3) Notwithstanding subsection (1), upon request of a person implementing response activity, the department shall approve changes in a plan for response activity to be consistent with sections 20118 and 20120a.

Sec. 20104. (1) The department shall coordinate all activities required under this part and shall promulgate rules to provide for the performance of response activities, to provide for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release, and to implement the powers and duties of the department under this part, and as otherwise necessary to carry out the requirements of this part.

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

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

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

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

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

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

(c) Include in rules promulgated under this part the numerical risk assessment model or models if more than 1 is developed. The numerical risk assessment model or models shall be reviewed annually by the department to identify potential improvements.

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

(*i*) Includes all sites.

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

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

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

(e) Maintain and make available to the public upon request records regarding sites where remedial actions have been completed, including sites where land use restrictions have been imposed, if the records are not otherwise protected from disclosure by law.

(f) Submit the list for public hearings geographically dispersed throughout the state. These hearings shall be completed at least 30 days before the governor's annual budget recommendations to the legislature.

(g) Report to the legislature and the governor those sites that have been removed from the list pursuant to this section and rules promulgated under this part and the source of the funds used to undertake the response activity at each of the sites.

(h) Publish a notice each fourth year in the Michigan register of the availability of, and submit to the standing committees of the senate and the house of representatives that primarily consider issues pertaining to the protection of natural resources and the environment, a report describing the response activity that is undertaken at each site where response activity is or has occurred during the reporting period and the nature of the contamination that resulted in the necessity for that response activity.

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

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

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

(a) A description and history of the site.

(b) A description of the nature and extent of the environmental contamination that existed at the site at the time the site was included on the list.

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

(d) An analysis of the effectiveness of the response activity undertaken to remediate the release or threat of release. The analysis shall include site specific analytical data that documents the effectiveness of the response activity.

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

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

(6) Within 30 days after receipt of the petition, the department shall determine whether a petition submitted under subsection (4) is administratively complete. Within 60 days after a determination that a petition is administratively complete, the petitioner shall be notified by the department of the department's intent to remove the site from the list, or the petitioner shall be notified that the petition for removal of the site from the list does not meet the criteria for removal of the site from the list as determined by rule. Removal of sites from the list shall be accomplished as part of the process described in rules promulgated under this part. However, if the department concludes pursuant to subsection (3) that the circumstances warrant removal of the site from the list before or at the next regularly scheduled hearing to be held in accordance with rules promulgated under this part, the department shall prepare a notice of intent to remove the site from the list. A notice of intent shall include information considered appropriate by the department and shall be published in at least 1 newspaper of general circulation that serves the area of the site and the notice of intent shall be provided to the local health department and the municipality in which the site is located. Public comment on the notice of intent to remove the site from the site list shall be accepted for a period of not less than 30 days from the date of publication. The department may hold a public hearing on the proposed action.

(7) The department shall make a final determination whether to include the site on the next list. The department shall consider any comments received in response to the notice described in subsection (6).

(8) The department shall notify the person that requested that the site be removed from the list, the local health department, and the municipality in which the site is located of the decision within 45 days of the end of the public comment period provided for in the notice published pursuant to subsection (6).

(9) If the department provides the information required to be included on the list prepared under this section on a computer data base that is accessible through public access computer terminals in each county in the state, the department need not prepare a printed copy of the list.

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

Sec. 20105a. The department shall annually compile a list of sites that are receiving state funds to conduct response activities. This list shall be arranged in alphabetical order. The department shall annually submit this list to the legislature.

Sec. 20107. A person who willfully tears down, removes, or destroys any sign or notice warning of the presence of hazardous substances or marking boundaries of a facility subject to response activity under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.

Sec. 20107a. (1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation of the existing contamination.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(2) Notwithstanding any other provision of this part, a person who violates subsection (1) is liable for response activity costs and natural resource damages attributable to any exacerbation of existing contamination and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional response activities unless the person is otherwise liable under this part for performance of additional response activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(3) Compliance with this section does not satisfy a person's obligation to perform response activities as otherwise required under this part.

(4) Subsection (1) does not apply to the state or to a local unit of government that is not liable under section 20126(3)(a), (b), (c), or (e) or to a local unit of government that acquired property by purchase, gift, transfer, or condemnation prior to the effective date of this section or to a person who is exempt from liability under section 20126(4)(d).

(5) Subsection (1) does not apply to a person who is exempt from liability under section 20126(3)(c) or (d) except with regard to that person's activities at the facility.

Sec. 20112a. Within 2 years after the effective date of this section and biennially thereafter, the department shall report to the legislature on the effectiveness of the amendatory act that added this section in restoring the economic value of sites of environmental contamination. The report shall include but not be limited to an examination of the effectiveness of the categorical cleanup criteria and liability provisions in encouraging the redevelopment of sites of environmental contamination. In preparing this report, the department shall consult the chairpersons of the senate and house of representatives standing committees with jurisdiction over issues pertaining to natural resources and the environment.

Sec. 20113. (1) Money required to pay for response activities recommended under this part and to reimburse state departments and agencies for expenditures for those purposes shall be appropriated from the fund and any other source the legislature considers necessary to implement the requirements of this part.

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

(3) The fund may be used for match, operation, and maintenance purposes as required under the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767, and under subtitle I of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6991 to 6991i.

(4) The governor shall recommend an annual appropriation for the fund in his or her annual budget recommendations to the legislature.

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

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

(b) Report the release to the department within 24 hours after obtaining knowledge of the release. The requirements of this subdivision shall apply to reportable quantities of hazardous substances established pursuant to 40 C.F.R. 302.4 and 302.6 (1989), unless the department establishes through rules alternate or additional reportable quantities as necessary to protect the public health, safety, or welfare, or the environment.

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

(d) Immediately implement source control or removal measures to remove or contain hazardous substances that are released after the effective date of the 1995 amendments to this section if those measures are technically practical, cost effective, and provide protection to the environment. At a facility where hazardous substances are released after the effective date of the 1995 amendments to this section, and those hazardous substances have not affected groundwater but are likely to, groundwater contamination shall be prevented if it can be prevented by measures that are technically practical, cost effective, and provide protection to the environment.

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

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

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

(h) Upon written request by the department, take the following actions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20114a. A person who, after the effective date of this section, is responsible for an activity causing a release in excess of the concentrations that satisfy the criteria established pursuant to section 20120a(1)(a) through (e), as appropriate for the use of the property, is subject to a civil fine as provided in this part unless a fine or penalty has already been imposed for the release under another part of this act. However, a civil fine shall not be imposed under this section against a person who made a good faith effort to prevent the release and to comply with the provisions of this part.

Sec. 20115. (1) The department, upon confirmation of a release or threat of release of a substance that is regulated by the department of agriculture, shall notify the department of agriculture. The department shall consult with the department of agriculture in the development of response activities if a release or threat of a release of a substance regulated by the department of agriculture occurs. The department of agriculture shall provide to the department information necessary to identify substances regulated by the department of agriculture. This information shall include but is not limited to the list of state registered pesticides.

(2) As used in this section, "substance regulated by the department of agriculture" means a fertilizer or soil conditioner as defined in part 85, or a pesticide as defined in part 83.

Sec. 20116. (1) A person who has knowledge or information or is on notice through a recorded instrument that a parcel of his or her real property is a facility shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or other person to which the property is transferred that the real property is a facility and discloses the general nature and extent of the release.

(2) The owner of real property for which a notice required in subsection (1) has been recorded may, upon completion of all response activities for the facility as approved by the department, record with the register of deeds for the appropriate county a certification that all response activity required in an approved remedial action plan has been completed.

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of remedial action that has been or is being implemented in compliance with section 20120a.

Sec. 20117. (1) To determine the need for response activity or selecting or taking a response activity or otherwise enforcing this part or a rule promulgated under this part, the directors or their authorized representatives may upon reasonable notice require a person to furnish any information that the person may have relating to any of the following:

(a) The identification, nature, and quantity of materials that have been or are generated, treated, stored, handled, or disposed of at a facility or transported to a facility.

(b) The nature or extent of a release or threatened release at or from a facility.

(2) Upon reasonable notice, a person required to furnish information pursuant to subsection (1) shall either:

(a) Grant the directors or their authorized representatives access at all reasonable times to any place, property, or location to inspect and copy the related information.

(b) Copy and furnish to the directors or their authorized representatives the related information.

(3) If there is a reasonable basis to believe that there may be a release or threat of release, the directors or their authorized representatives have the right to enter at all reasonable times any public or private property for any of the following purposes:

(a) Identifying a facility.

(b) Investigating the existence, origin, nature, or extent of a release or threatened release.

(c) Inspecting, testing, taking photographs or videotapes, or sampling of any of the following: soils, air, surface water, groundwater, suspected hazardous substances, or any containers or labels of suspected hazardous substances.

(d) Determining the need for or selecting any response activity.

(e) Taking or monitoring implementation of any response activity.

(4) A person that enters public or private property pursuant to subsection (3) shall present credentials; make a reasonable effort to contact the person in charge of the facility or that person's designee; describe the nature of the activities authorized under subsection (3) to be undertaken; and inform the person that is in charge of the facility that he or she is entitled to participate in the collection of split samples, and is entitled to a copy of the results of any analysis of samples and a copy of any photograph or videotape taken. The person in charge or his or her agent may accompany the directors or their authorized representatives during the activities authorized under subsection (3) that take place and may participate in the collection of any split samples on the property. The absence or unavailability of the person in charge or that person's agent shall not delay or limit the authority of the directors or their authorized representatives to enter the property or proceed with the activities authorized under subsection (3).

(5) If the directors or their authorized representatives obtain any samples, before leaving the property they shall give to the person in charge of the property from which the samples were obtained a receipt describing the sample. A copy of the results of any analysis of the samples shall upon request be furnished promptly to the person in charge. A copy of any photograph or videotape taken pursuant to subsection (3)(c) shall upon request be furnished promptly to the person in charge.

(6) All inspections and investigations undertaken by the directors or their authorized representatives under this section shall be completed with reasonable promptness.

(7) If refused entry or information under subsections (1) to (4), for the purposes of enforcing the information gathering and entry authority provided in this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing access to property or information pursuant to this section.

(b) Commence a civil action to compel compliance with a request for information or entry pursuant to this section, to authorize information gathering and entry provided for in this section, and to enjoin interference with the exercise of the authority provided in this section.

(8) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court shall in the case of interference or noncompliance with information requests pursuant to subsection (1), or with entry or inspection requests pursuant to subsection (3), enjoin interference with and direct compliance with the requests unless the defendant establishes that, under the circumstances of the case, the request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

(9) In a civil action brought pursuant to subsection (7), if there is a reasonable basis to believe there may be a release or a threatened release, the court may assess a civil fine not to exceed $25,000.00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1), (2), or (3).

(10) Information obtained by the directors or their authorized representatives as authorized under subsection (1) or (2) shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. A person who provides information pursuant to subsection (1) or (2), or the person in charge of a facility at which photographs or videotapes are taken pursuant to subsection (3), may designate the information that the person believes to be entitled to protection as if the information was exempt from disclosure as being either trade secrets or information of a personal nature under section 13(1)(a) or (g) of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws, and submit that specifically designated information separately from other information required to be provided under this section.

(11) Notwithstanding subsection (10), the following information obtained by the directors or their authorized representatives as required by this section shall be available to the public:

(a) The trade name, common name, or generic class or category of the hazardous substance.

(b) The physical properties of a hazardous substance, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius.

(c) The hazards to the public health, safety, or welfare, or the environment posed by a hazardous substance, including physical hazards, such as explosion, and potential acute and chronic health hazards.

(d) The potential routes of human exposure to the hazardous substance at the facility being investigated, entered, or inspected under this section.

(e) The location of disposal of any waste stream released or threatened to be released from the facility.

(f) Monitoring data or analysis of monitoring data pertaining to disposal activities related to the facility.

(g) Hydrogeologic data.

(h) Groundwater monitoring data.

(12) To collect information for the purpose of identifying persons who are liable under section 20126 or to otherwise enforce this part or a rule promulgated under this part, the attorney general may by administrative subpoena require the attendance and testimony of witnesses and production of papers, reports, documents, answers to questions, and other information the attorney general considers necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of this state. If a person fails or refuses to obey the administrative subpoena, the circuit court for the county of Ingham or for the county in which that person resides has jurisdiction to order that person to comply with the subpoena. A failure to obey the order of the court is punishable by the court as contempt.

(13) As used in this section, "information" includes, but is not limited to, documents, materials, records, photographs, and videotapes.

Sec. 20118. (1) The department may take response activity or approve of response activity proposed by a person that is consistent with this part and the rules promulgated under this part relating to the selection and implementation of response activity that the department concludes is necessary and appropriate to protect the public health, safety, or welfare, or the environment.

(2) Remedial action undertaken under subsection (1) at a minimum shall accomplish all of the following:

(a) Assure the protection of the public health, safety, and welfare, and the environment.

(b) Except as otherwise provided in subsections (5) and (6), attain a degree of cleanup and control of hazardous substances that complies with all applicable or relevant and appropriate requirements, rules, criteria, limitations, and standards of state and federal environmental law.

(c) Except as otherwise provided in subsections (5) and (6), be consistent with any cleanup criteria incorporated in rules promulgated under this part.

(3) The cost effectiveness of alternative means of complying with this section shall be considered by the department only in selecting among alternatives that meet all of the criteria of subsection (2).

(4) Remedial actions that permanently and significantly reduce the volume, toxicity, or mobility of the hazardous substances are to be preferred.

(5) The department may select or approve of a remedial action plan meeting the criteria provided for in section 20120a that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.5705(5) or R 299.5705(6) of the Michigan administrative code, or both, if the department makes a finding that the remedial action is protective of the public health, safety, and welfare, and the environment. Notwithstanding any other provision of this subsection, the department shall not approve of a remedial action plan that does not attain a degree of control or cleanup of hazardous substances that complies with R 299.5705(5) or R 299.5705(6) of the Michigan administrative code if the remedial action plan is being implemented by a person who is liable under section 20126 and the release was grossly negligent or intentional, unless attaining that degree of control is technically infeasible, or the adverse environmental

impact of implementing a remedial action to satisfy the rule would exceed the environmental benefit of that remedial action.

(6) A remedial action plan may be selected or approved pursuant to subsection (5) with regard to R 299.5705(5) or R 299.5705(6), or both, of the Michigan administrative code, if the department determines, based on the administrative record, that 1 or more of the following conditions are satisfied:

(a) Compliance with R 299.5705(5) or R 299.5705(6), or both, of the Michigan administrative code is technically impractical.

(b) The remedial action selected or approved will, within a reasonable period of time, attain a standard of performance that is equivalent to that required under R 299.5705(5) or R 299.5705(6) of the Michigan administrative code.

(c) The adverse environmental impact of implementing a remedial action to satisfy R 299.5705(5) or R 299.5705(6), or both, of the Michigan administrative code would exceed the environmental benefit of the remedial action.

(d) The remedial action provides for the reduction of hazardous substance concentrations in the aquifer through a naturally occurring process that is documented to occur at the facility and both of the following conditions are met:

(*i*) It has been demonstrated that there will be no adverse impact on the environment as the result of migration of the hazardous substances during the remedial action, except for that part of the aquifer specified in and approved by the department in the remedial action plan.

(*ii*) The remedial action includes enforceable land use restrictions or other institutional controls necessary to prevent unacceptable risk from exposure to the hazardous substances, as defined by the cleanup criteria approved as part of the remedial action plan.

(7) If the department approves of a remedial action plan pursuant, in part, to subsections (5) and (6), the administrative record for the facility shall include a complete explanation of the basis of the department's decision under subsections (5) and (6). In addition, the intent of and the basis for the exercise of authority provided for in subsections (5) and (6) shall be part of an analysis of the recommended alternatives if 1 is required pursuant to R 299.5605(1)(a) of the Michigan administrative code.

(8) A remedial action plan approved by the department shall include an analysis of source control measures already implemented or proposed, or both. A remedial action plan may incorporate by reference an analysis of source control measures provided in a feasibility study.

(9) Any liability a person may have under this part shall be unaffected by a decision of the department pursuant to subsection (5), (6), or (7), including liability for natural resources damages pursuant to section 20126a(1)(c).

(10) An aquifer monitoring plan shall be part of all remedial action plans that address aquifer contamination. The aquifer monitoring plan shall include all of the following:

(a) Information addressed by R 299.5519(2)(a) to (*l*) of the Michigan administrative code.

(b) Identification of points of compliance for judging the effectiveness of the remedial action.

(c) Identification of points of compliance if standards based on section 20120a(1)(a) are required to be met as part of the remedial action.

(11) The department may determine that a monitoring plan is not required pursuant to subsection (10) if the person conducting the remedial action demonstrates that the horizontal and vertical extent of hazardous substance concentrations in the aquifer above those allowed by the criteria based on section 20120a(1)(a) will not significantly increase in the absence of active removal of those hazardous substances from the aquifer. The department's determination pursuant to this subsection shall be based on the administrative record and include an explanation of the basis for the determination.

(12) The department shall encourage the use of innovative cleanup technologies. Before July 1, 1995, the department shall undertake 3 pilot projects to demonstrate innovative cleanup technologies at facilities where money from the fund is used.

Sec. 20119. (1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release, the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat.

(2) The department may issue an administrative order to a person identified by the department as a person who is liable under section 20126 requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order and specify a reasonable time for compliance.

(3) Within 30 days after issuance of an administrative order under this section, a person to which the order was issued shall indicate in writing whether the person intends to comply with the order.

(4) A person who, without sufficient cause, violates or fails to properly comply with an administrative order issued under this section is liable for either or both of the following:

(a) A civil fine of not more than $25,000.00 for each day in which the violation occurs or the failure to comply continues. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the administrative order.

(b) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.

(5) A person, to which an administrative order was issued under this section and that complied with the terms of the order, who believes that the order was arbitrary and capricious or unlawful may petition the department, within 60 days after completion of the required action, for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section 20126a(3) and other necessary costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department either to grant or deny all or any part of a petition within 120 days of receipt constitutes a denial of that part of the petition, which denial is reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable under section 20126 or that the action ordered was arbitrary and capricious or unlawful, and in either instance that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order.

Sec. 20120a. (1) The department may establish cleanup criteria and approve of remedial actions in the categories listed in this subsection. The cleanup category proposed shall be the option of the person proposing the remedial action, subject to department approval, considering the appropriateness of the categorical criteria to the facility. The categories are as follows:

(a) Residential.

(b) Commercial.

(c) Recreational.

(d) Industrial.

(e) Other land use based categories established by the department.

(f) Limited residential.

(g) Limited commercial.

(h) Limited recreational.

(i) Limited industrial.

(j) Other limited categories established by the department.

(2) The department may approve a remedial action plan based on site specific criteria that satisfy the applicable requirements of this part and the rules promulgated under this part. The department shall utilize only reasonable and relevant exposure pathways in determining the adequacy of a site specific criterion. Additionally, the department may approve a remedial action plan for a designated area-wide zone encompassing more than 1 facility, and may consolidate remedial actions for more than 1 facility.

(3) The department shall develop cleanup criteria pursuant to subsection (1) based on generic human health risk assessment assumptions determined by the department to appropriately characterize patterns of human exposure associated with certain land uses. The department shall utilize only reasonable and relevant exposure pathways in determining these assumptions. The department may prescribe more than 1 generic set of exposure assumptions within each category described in subsection (1). If the department prescribes more than 1 generic set of exposure assumptions within a category, each set of exposure assumptions creates a subcategory within a category described in subsection (1). The department shall specify site characteristics that determine the applicability of criteria derived for these categories or subcategories.

(4) If a hazardous substance poses a carcinogenic risk to humans, the cleanup criteria derived for cancer risk under this section shall be the 95% upper bound on the calculated risk of 1 additional cancer above the background cancer rate per 100,000 individuals using the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. If the hazardous substance poses a risk of an adverse health effect other than cancer, cleanup criteria shall be derived using appropriate human health risk assessment methods for that adverse health effect and the generic set of exposure assumptions established under subsection (3) for the appropriate category or subcategory. A hazard quotient of 1.0 shall be used to derive noncancer cleanup criteria. For the noncarcinogenic effects of a hazardous substance present in soils, the intake shall be assumed to be 100% of the protective level, unless compound and site-specific data are available to demonstrate that a different source contribution is appropriate. If a hazardous substance poses a risk of both cancer and 1 or more adverse health effects other than cancer, cleanup criteria shall be derived under this section for the most sensitive effect.

(5) If a cleanup criterion derived under subsection (4) for groundwater in an aquifer differs from either: (a) the state drinking water standard established pursuant to section 5 of the safe drinking water act, Act No. 399 of the Public Acts of 1976, being section 325.1005 of the Michigan Compiled Laws, or (b) criteria for adverse aesthetic characteristics derived pursuant to R 299.5709 of the Michigan administrative code, the cleanup criterion shall be the more stringent of (a) or (b) unless the department determines that compliance with this rule is not necessary because the use of the aquifer is reliably restricted pursuant to section 20120b(4) or (5).

(6) The department shall not approve of a remedial action plan in categories set forth in subsection (1)(b) to (j), unless the person proposing the plan documents that the current zoning of the property is consistent with the categorical criteria being proposed, or that the governing zoning authority intends to change the zoning designation so that the proposed criteria are consistent with the new zoning designation, or the current property use is a legal nonconforming use. The department shall not grant final approval for a remedial action plan that relies on a change in zoning designation until a final determination of that zoning change has been made by the local unit of government. The department may approve of a remedial action that achieves categorical criteria that is based on greater exposure potential than the criteria applicable to current zoning. In addition, the remedial action plan shall include documentation that the current property use is consistent with the current zoning or is a legal nonconforming use. Abandoned or inactive property shall be considered on the basis of zoning classifications as described above.

(7) Cleanup criteria from 1 or more categories in subsection (1) may be applied at a facility, if all relevant requirements are satisfied for application of a pertinent criterion.

(8) Except as provided in subsection (4) and subsections (9) to (13), compliance with the residential category in subsection (1)(a) shall be based on R 299.5709 through R 299.5711(4), R 299.5711(6) through R 299.5715 and R 299.5727 of the Michigan administrative code. R 299.5711(5), R 299.5723, and R 299.5725 of the Michigan administrative code shall not apply for calculations of residential criteria under subsection (1)(a).

(9) The need for soil remediation to protect an aquifer from hazardous substances in soil shall be determined by R 299.5711(2) of the Michigan administrative code, considering the vulnerability of the aquifer or aquifers potentially affected if the soil remains at the facility. Migration of hazardous substances in soil to an aquifer is a pertinent pathway if appropriate based on consideration of site specific factors.

(10) The department may establish cleanup criteria for a hazardous substance using a biologically based model developed or identified as appropriate by the United States environmental protection agency if the department determines all of the following:

(a) That application of the model results in a criterion that more accurately reflects the risk posed.

(b) That data of sufficient quantity and quality are available for a specified hazardous substance to allow the scientifically valid application of the model.

(c) The United States environmental protection agency has determined that application of the model is appropriate for the hazardous substance in question.

(11) If the cleanup criterion for a hazardous substance determined by R 299.5707 of the Michigan administrative code is greater than a cleanup criterion developed for a category pursuant to subsection (1), the criterion determined pursuant to R 299.5707 of the Michigan administrative code shall be the cleanup criterion for that hazardous substance in that category.

(12) In determining the adequacy of a land-use based response activity to address sites contaminated by polychlorinated biphenyls, the department shall not require response activity in addition to that which is subject to and complies with applicable federal regulations and policies that implement the toxic substances control act, Public Law 94-469, 15 U.S.C. 2601 to 2629, 2641 to 2656, 2661 to 2671, and 2681 to 2692.

(13) Response activity to address the release of uncontaminated mineral oil satisfies R 299.5709 for groundwater or R 299.5711 for soil under the Michigan administrative code if all visible traces of mineral oil are removed from groundwater and soil.

(14) Approval by the department of a remedial action plan based on 1 or more categorical standard in subsection (1)(a) to (e) shall be granted only if the pertinent criteria are satisfied in the affected media. The department shall approve the use of probabilistic or statistical methods or other scientific methods of evaluating environmental data when determining compliance with a pertinent cleanup criterion if the methods are determined by the department to be reliable, scientifically valid, and best represent actual site conditions and exposure potential.

(15) If a remedial action allows for venting groundwater, the discharge shall comply with requirements of part 31, and the rules promulgated under that part or an alternative method established by rule. If the discharge of venting groundwater is provided for in a remedial action plan that is approved by the department, a permit for the discharge is not required. As used in this subsection, "venting groundwater" means groundwater that is entering a surface water of the state from a facility.

(16) A remedial action plan shall provide response activity to meet the residential categorical criteria, or provide for acceptable land use or resource use restrictions pursuant to section 20120b.

(17) A remedial action plan that relies on categorical cleanup criteria developed pursuant to subsection (1) shall also consider other factors necessary to protect the public health, safety, and welfare, and the environment as specified by the department, if the department determines based on data and existing information that such considerations are relevant to a specific facility. These factors include, but are not limited to, the protection of surface water quality and consideration of ecological risks if pertinent to the facility based on the requirements of R 299.5717 of the Michigan administrative code.

(18) The department shall annually evaluate and revise, if appropriate, the cleanup criteria derived under this section. The evaluation shall incorporate knowledge gained through research and studies in the areas of fate and transport and risk assessment. The department shall prepare and submit to the legislature a report detailing revisions made to cleanup criteria under this section.

Sec. 20120b. (1) If a remedial action plan is selected or approved by the department based on criteria for the residential category provided for in section 20120a(1)(a), land use restrictions or monitoring are not required once those standards have been achieved by the remedial action.

(2) If a remedial action plan is selected or approved by the department based on criteria in categories provided for in section 20120a(1)(b) to (e), a notice of approved environmental remediation shall be recorded with the register of deeds for the county in which the facility is located within 21 days after selection or approval by the department of the remedial action, or within 21 days after completion of construction of the remedial action as appropriate to the circumstances. A notice shall be filed pursuant to this section only by the property owner or by another person who has the express written permission of the property owner. The form and content of the notice are subject to approval by the state. Any restrictions contained in the notice shall be binding on the owner's successors, assigns, and lessees, and shall run with the land. A notice of environmental remediation recorded pursuant to this subsection shall state which of the categories of land use specified in section 20120a(1)(b) to (d) are consistent with the environmental conditions at the property to which the notice applies, and that a change from that land use or uses may necessitate further evaluation of potential risks to the public health, safety, or welfare, or the environment. The notice of approved environmental remediation shall include a survey and property description that define the areas addressed by the remedial action plan if land use or resource use restrictions apply to less than the entire parcel or if different restrictions apply to different areas of a parcel, and the scope of any land use or resource use limitations. Additional requirements for financial assurance, monitoring, or operation, and maintenance do not apply if a remedial action complies with criteria provided for in section 20120a(1)(b) to (e), unless monitoring or operation and maintenance are required to assure the compliance with criteria that apply outside the boundary of the property that is the source of the release.

(3) If a remedial action plan is selected or approved by the department based on criteria provided for in section 20120a(1)(f) to (j) or (2), provisions concerning subdivisions (a) through (e) shall be stipulated in a legally enforceable agreement with the department. If the department concurs with an analysis provided in a remedial action plan that 1 or more of the requirements specified in subdivisions (b) to (e) is not necessary to protect the public health, safety, or welfare, or the environment and to assure the effectiveness and integrity of the remedial action, that element may be omitted from the agreement. If provisions for any of the following, determined by the department to be applicable for a facility, lapse or are not complied with as provided in the agreement or remedial action plan, the department's approval of the remedial action plan is void from the time of the lapse or violation, unless the lapse or violation is corrected to the satisfaction of the department:

(a) Land use or resource use restrictions.

(b) Monitoring.

(c) Operation and maintenance.

(d) Permanent markers to describe restricted areas of the site and the nature of any restrictions.

(e) Financial assurance, in a mechanism acceptable to the department to pay for monitoring, operation and maintenance, oversight, and other costs determined by the department to be necessary to assure the effectiveness and integrity of the remedial action.

(4) If a remedial action plan relies in whole or in part on cleanup criteria approved pursuant to section 20120a(1)(f) to (j) or (2), land use or resource use restrictions to assure the effectiveness and integrity of any containment, exposure barrier, or other land use or resource use restrictions necessary to assure the effectiveness and integrity of the remedy shall be described in a restrictive covenant. The restrictive covenant shall be recorded with the register of deeds for the county in which the property is located within 21 days of the department's selection or approval of the remedial action plan, or within 21 days of the completion of construction of the containment or barrier, as appropriate to the circumstances. The restrictive covenant shall be filed by the property owner or with the express written permission of the property owner. The restrictions shall run with the land and be binding on the owner's successors, assigns, and lessees. Such restrictions shall apply until the department determines that hazardous substances that are controlled by the barrier or contained no longer present an unacceptable risk to the public health, safety, or welfare, or the environment as defined by the cleanup criteria and exposure control requirements set forth in the remedial action plan. The restrictive covenant shall include a survey and property description that define the areas addressed by the

remedial action plan and the scope of any land use or resource use limitations. The form and content of the restrictive covenant are subject to approval by the department and shall include provisions to accomplish all of the following:

(a) Restrict activities at the facility that may interfere with a remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial action.

(b) Restrict activities that may result in exposures above levels established in the remedial action plan.

(c) Require notice to the department of the owner's intent to convey any interest in the facility 14 days prior to consummating the conveyance. A conveyance of title, an easement, or other interest in the property shall not be consummated by the property owner without adequate and complete provision for compliance with the terms and conditions of the agreement described in subsection (3) and the prevention of releases and exposures described in subdivision (b).

(d) Grant to the department the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the remedial action plan, including the right to take samples, inspect the operation of the remedial action measures, and inspect records.

(e) Allow the state to enforce the restriction set forth in the covenant by legal action in a court of appropriate jurisdiction.

(f) Describe generally the uses of the property that are consistent with the categorical criteria and limitations approved as part of a remedial action plan.

(5) If the department determines that exposure to hazardous substances may be reliably restricted by an institutional control in lieu of a restrictive covenant, and that imposition of land use or resource use restrictions through restrictive covenants is impractical, the department may approve of a remedial action plan under section 20120a(1)(f) to (j) or (2) that relies on such institutional control. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater or an aquifer in a manner and to a degree that protects against unacceptable exposures as defined by the cleanup criteria approved as part of the remedial action plan. An ordinance that serves as an exposure control pursuant to this subsection shall be published and maintained in the same manner as zoning ordinances and shall include a requirement that the local unit of government notify the department at least 30 days prior to adopting a modification to the ordinance, or to the lapsing or revocation of the ordinance.

(6) Selection or approval by the department of a remedial action does not relieve a person who is liable under section 20126 of that person's responsibility to report and provide for response activity to address a subsequent release or threat of release at the facility.

(7) A remedial action shall not be considered approved by the department unless a remedial action plan is submitted to the department and the department approves the plan. Implementation by any person of response activity without department approval does not relieve that person of an obligation to undertake response activity or limit the ability of the department to take action to require response activity necessary to comply with this act by a person who is liable under section 20126.

(8) A person shall not file a notice of approved environmental remediation indicating approval or a determination of the department unless the department has approved of the filing of the notice.

(9) A person who implements a remedial action plan approved by the department pursuant to subsections (2) to (5) shall provide notice of the land use restrictions that are part of the remedial action plan to the zoning authority for the local unit of government in which the facility is located within 30 days of approval of the plan.

(10) The state, with the approval of the state administrative board, may place restrictive covenants related to land or resource use on deeds of state owned property.

Sec. 20120c. (1) An owner or operator shall not remove soil, or allow soil to be removed, from a facility to an off-site location unless that person determines that the soil can be lawfully relocated without posing a threat to the public health, safety, or welfare, or the environment. The determination shall consider whether the soil is subject to regulation pursuant to part 111.

(2) For the purposes of subsection (1), soil poses a threat to the public health, safety, or welfare, or the environment if concentrations of hazardous substances in the soil exceed the cleanup criterion determined pursuant to section 20120a(1) or (2) that apply to the location to which the soil will be moved or relocated, except that if the soil is to be removed from the facility for disposal or treatment, the soil shall satisfy the appropriate regulatory criteria for disposal or treatment. Any land use restrictions that would be required for the application of a criterion pursuant to section 20120a(1) or (2) shall be in place at the location to which the soil will be moved. Soil may be relocated only to another location that is similarly contaminated, considering the general nature, concentration, and mobility of hazardous substances present at the location to which contaminated soil will be moved. Contaminated soil shall not be moved to a location that is not a facility unless it is taken there for treatment or disposal in conformance with applicable laws and regulations.

(3) An owner or operator shall not relocate soil, or allow soil to be relocated, within a site of environmental contamination where a remedial action plan has been approved unless that person assures that the same degree of control required for application of the criteria of section 20120a(1) or (2) is provided for the contaminated soil.

(4) The prohibition in subsection (3) against relocation of contaminated soil within a site of environmental contamination does not apply to soils that are temporarily relocated for the purpose of implementing response activity or utility construction if the response activity or utility construction is completed in a timely fashion and the short-term hazards are appropriately controlled.

(5) If soil is being moved off-site from, moved to, or relocated on-site at a facility where a remedial action plan has been approved by the department based on a categorical cleanup criterion in section 20120a(1)(f) to (j) or (2), the soil shall not be moved without prior department approval.

(6) If soil is being relocated in a manner not addressed by subsection (5), the owner or operator of the facility from which soil is being moved must provide notice to the department within 14 days after the soil is moved. The notice shall include all of the following:

(a) The location from which soil will be removed.

(b) The location to which the soil will be taken.

(c) The volume of soil to be moved.

(d) A summary of information or data on which the owner or operator is basing the determination required in subsection (2) that the soil does not present a threat to the public health, safety, or welfare, or the environment.

(e) If land use restrictions would apply pursuant to section 20120a(1) to the soil when it is relocated, the notice shall include documentation that those restrictions are in place.

(7) The determination required by subsections (1) and (3) shall be based on knowledge of the person undertaking or approving of the removal or relocation of soil, or on characterization of the soil for the purpose of compliance with this section.

(8) This section does not apply to soil that is designated as an inert material pursuant to section 11507(3) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.11507 of the Michigan Compiled Laws.

Sec. 20120d. (1) At a facility where state funds will be spent to develop or implement a remedial action plan or where the department determines there is a significant public interest, within 30 days after the completion of a remedial investigation for the facility, the department shall provide the county and the township, city, or village in which the facility is located a notice of the completion of the remedial investigation, a summary of the remedial investigation, and notice of an opportunity for the people in the local unit of government to meet with the department regarding the remedial investigation and any proposed feasibility study for the facility. Upon a request for a public meeting by the governing body of the local unit of government or by 25 citizens of the local unit of government, the department shall, within 30 days of the request, meet with persons in the local unit of government. The person or persons requesting the public meeting shall publicize and provide accommodations for the meeting. The meeting shall be held in the local unit of government in which the facility is located. The department shall provide copies of the notices and summary required in this subsection to the governing body of the local unit of government, to the known persons who are liable under section 20126, and to the main public library of the local unit of government in which the facility is located. The department shall send representatives to the meeting who are familiar with the facility and who are involved with determining the appropriate remedial actions to be taken at the facility. Persons who are liable under section 20126 for the facility may send representatives to the meeting.

(2) The department shall maintain, and periodically publish, a list of remedial action plans submitted for approval that comply with the requirements of R 299.5515 of the Michigan administrative code.

(3) Before approval of a proposed remedial action plan which is to be implemented with money from the fund, or is based on categorical criteria provided for in section 20120a(1)(f) to (j) or (2), or if section 20120b(5) or (6) applies, or the department determines that there is significant public interest, the department shall do all of the following:

(a) Publish a notice and brief summary of the proposed remedial action plan.

(b) Provide for public review and comment pertinent to documents relating to the proposed remedial action plan, including, if applicable, the feasibility study that outlines alternative remedial action measures considered.

(c) Provide an opportunity for a public meeting at or near the facility when any of the following occur:

(*i*) The department determines that there is a significant public interest or that for any other reason a public meeting is appropriate.

(*ii*) A city, township, or village in which the facility is located, by a majority vote of its governing body, requests a public meeting.

(*iii*) A local health department with jurisdiction in the area in which the facility is located requests a public meeting.

(d) Provide a document that summarizes the major issues raised by the public and how they are to be addressed by the final approved remedial action plan.

(4) For purposes of this section, publication shall include, at a minimum, publication in a local newspaper or newspaper of general circulation in this state. In addition, the administrative record shall be made available by the department for inspection by members of the public at or near the facility and in Lansing.

(5) The department shall prepare a summary document that explains the reasons for the selection or approval of a remedial action plan. In addition, the department shall compile an administrative record of the decision process that results in the selection of a remedial action plan. The administrative record shall contain all of the following:

(a) Remedial investigation data regarding the facility.

(b) If applicable, a feasibility study and potential remedial actions.

(c) If applicable, a summary document that explains the reasons why a remedial investigation or feasibility study was not conducted.

(d) Applicable comments and information received from the public, if any.

(e) If applicable, a document that summarizes the significant concerns raised by the members of the public and how they are to be addressed.

(f) Other information appropriate to the facility.

(6) If comments or information are submitted for inclusion in the administrative record that are not included in the administrative record, a brief explanation of why the information was not considered relevant shall be sent to the party by the department and included in the record.

Sec. 20126. (1) Notwithstanding any other provision or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

(c) An owner or operator of a facility who becomes an owner or operator on or after the effective date of the 1995 amendments to this section, unless the owner or operator complies with both of the following:

(*i*) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, accessing property to conduct a baseline environmental assessment does not constitute occupancy.

(*ii*) The owner or operator discloses the results of a baseline environmental assessment to the department and subsequent purchaser or transferee if the baseline environmental assessment confirms that the property is a facility.

(d) A person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, by any other person, at a facility owned or operated by another person and containing the hazardous substance. This subdivision does not include either of the following:

(*i*) A person who arranges the sale or transport of a secondary material for use in producing a new product. As used in this subparagraph, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, which has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products which may otherwise be produced from a raw or virgin material.

(*ii*) A person who arranges the lawful transport or disposal of any product or container commonly used in a residential household, which is in a quantity commonly used in a residential household, and which was used in the person's residential household.

(e) A person who accepts or accepted any hazardous substance for transport to a facility selected by that person.

(f) The estate or trust of a person described in subdivisions (a) to (e).

(2) Subject to section 20107a, an owner or operator who complies with subsection (1)(c) is not liable for contamination existing at the facility at the earlier of the date of purchase, occupancy, or foreclosure, unless the person is responsible for an activity causing the contamination existing at the facility. Subsection (1)(c) does not alter a person's liability with regard to a subsequent release or threat of release at a facility if the person is responsible for an activity causing the subsequent release or threat of release.

(3) Notwithstanding subsection (1), the following persons are not liable under this part unless the person is responsible for an activity causing a release at the facility:

(a) The state or a local unit of government that acquired ownership or control of a facility involuntarily through bankruptcy, tax delinquency, abandonment, a transfer from a lender pursuant to subsection (7), or other circumstances in which the government involuntarily acquires title or control by virtue of its governmental function or as provided in this part, a local unit of government to which ownership or control of a facility is transferred by the state or by another local unit of government that is not liable under subsection (1), or the state or a local unit of government that acquired ownership or control of a facility by seizure, receivership, or forfeiture pursuant to the operation of law or by court order.

(b) A state or local unit of government that holds or acquires an easement interest in a facility, holds or acquires an interest in a facility by dedication in a plat, or by dedication pursuant to Act No. 283 of the Public Acts of 1909, being sections 220.1 to 239.6 of the Michigan Compiled Laws, or otherwise holds or acquires an interest in a facility for a transportation or utility corridor or public right of way.

(c) A person who holds an easement interest in a facility or holds a utility franchise to provide service, for the purpose of conveying or providing goods or services, including, but not limited to, utilities, sewers, roads, railways, and pipelines; or a person that acquires access through an easement.

(d) A person who owns severed subsurface mineral rights or severed subsurface formations or who leases subsurface mineral rights or formations.

(e) The state or a local unit of government that leases property to a person if the state or the local unit of government is not liable under this part for environmental contamination at the property.

(f) A person who owns or occupies residential real property if hazardous substance use at the property is consistent with residential use.

(g) A person who acquires a facility as a result of the death of the prior owner or operator of the facility, whether by inheritance, devise, or transfer from an inter vivos or testamentary trust.

(h) A person who did not know and had no reason to know that the property was a facility. To establish that the person did not know and did not have a reason to know that the property was a facility, the person shall have undertaken at the time of acquisition all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice. A determination of liability under this section shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated by a hazardous substance, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of a release or threat of release at the property, and the ability to detect a release or threat of release by appropriate inspection.

(i) A utility performing normal construction, maintenance, and repair activities in the normal course of its utility service business. This subsection does not apply to property owned by the utility.

(j) A lessee who uses property for a retail, office, or commercial purpose.

(4) Notwithstanding subsection (1), the following persons are not liable under this part:

(a) The owner or operator of an underground storage tank system or the property on which an underground storage tank system is located, as defined in part 213, from which there is a release or threat of release if the release or threat of release is solely from an underground storage tank system and is subject to corrective action under part 213. If the release at a facility is not solely the result of a release or threat of release from an underground storage tank system, the owner or operator of the underground storage tank system or the property on which the underground storage tank system is located may choose to conduct corrective actions of the release from the underground storage tank system pursuant to part 213.

(b) The owner or operator of a hazardous waste treatment, storage, or disposal facility regulated pursuant to part 111 from which there is a release or threat of release solely from the treatment, storage, or disposal facility, or a waste management unit at the facility and the release or threat of release is subject to corrective action under part 111.

(c) A lender that engages in or conducts a lawful marshalling or liquidation of personal property if the lender does not cause or contribute to the environmental contamination. This includes holding a sale of personal property on a portion of the facility.

(d) The owner or operator of property onto which contamination has migrated unless that person is responsible for an activity causing the release that is the source of the contamination.

(e) A person who owns or operates a facility in which the release or threat of release was caused solely by 1 or more of the following:

(*i*) An act of God.

(*ii*) An act of war.

(*iii*) An act or omission of a third party other than an employee or agent of the person or a person in a contractual relationship existing either directly or indirectly with a person who is liable under this section.

(5) Notwithstanding any other provision of this part, the state or a local unit of government or a lender who has not participated in the management of the facility is not liable under this part for costs or damages as a result of response activity taken in response to a release or threat of release. For a lender, this subsection applies only to response activity undertaken prior to foreclosure. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful, or wanton misconduct, or intentional misconduct by the state or local unit of government.

(6) In establishing liability under this section, the department bears the burden of proof. If the department proves a prima facie case against a person, the person shall bear the burden of showing by a preponderance of the evidence that he or she is not liable under this section.

(7) A lender that is not responsible for an activity causing a release at a facility that establishes that it has met the requirements of subsection (1)(c)(*i*) and (*ii*) with respect to that facility may immediately transfer to the state the property on which there has been a release or a threat of a release if the lender complies with all of the following:

(a) Within 9 months following foreclosure and for a period of at least 120 days, the lender either lists the facility with a broker, dealer, or agent who deals with the type of property in question, or advertises the facility as being for sale or disposition on at least a monthly basis in either a real estate publication, a trade or other publication suitable for the facility in question, or a newspaper of general circulation of over 10,000 covering the area where the property is located.

(b) The lender has taken reasonable care in maintaining and preserving the real estate and permanent fixtures.

(c) The lender provides to the department all environmental information related to the facility that is available to the lender.

(d) If the department has issued an order pursuant to section 20119, the lender has complied with the order to the department's satisfaction.

(e) If conditions on the property pose a threat of fire or explosion or present an imminent hazard through direct contact with hazardous substances, the lender has undertaken appropriate response activities to abate the threat or hazard.

(8) The department shall establish minimum technical standards for baseline environmental assessments conducted under this section in guidelines pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 20126a. (1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(b) Any other necessary costs of response activity incurred by any other person consistent with rules relating to the selection and implementation of response activity promulgated under this part.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(2) The costs of response activity recoverable under subsection (1) shall also include all of the following:

(a) All costs of response activity reasonably incurred by the state prior to the promulgation of rules relating to the selection and implementation of response activity under this part, excepting those cases where cost recovery actions have been filed before July 12, 1990. A person challenging the recovery of costs under this subdivision has the burden of establishing that the costs were not reasonably incurred under the circumstances that existed at the time the costs were incurred. Recoverable costs include costs incurred reasonably consistent with the rules relating to the selection and implementation of response activity in effect on July 12, 1990.

(b) Any other necessary costs of response activity reasonably incurred by any other person prior to the promulgation of rules relating to the selection and implementation of response activity under this part. A person seeking recovery of these costs has the burden of establishing that the costs were reasonably incurred under the circumstances that existed at the time the costs were incurred.

(3) The amounts recoverable in an action under this section shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified in section 6013(5) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.6013 of the Michigan Compiled Laws.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department, for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

(5) A person shall not be required under this part to undertake response activity for a permitted release. Recovery by any person for response activity costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a hazardous substance or for response activity or the costs of response activity.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment because of an actual or threatened release from a facility, the attorney general may bring an action against any person who is liable under section 20126 or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) The costs recoverable under this section may be recovered in an action brought by the state or any other person.

Sec. 20128. (1) Except as otherwise provided in this section, a person who is a response activity contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the response activity contractor that is negligent, grossly negligent, or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a response activity contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a response activity while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the response activity contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Response activity contract" means a written contract or agreement entered into by a response activity contractor with 1 or more of the following:

(*i*) The department.

(*ii*) The department of public health.

(*iii*) A person who is arranging for response activity under this part.

(b) "Response activity contractor" means 1 or both of the following:

(*i*) A person who enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract.

(*ii*) A person who is retained or hired by a person described in subparagraph (*i*) to provide any service relating to a response activity.

(6) Notwithstanding any other provision of law, a person is not liable for response activity costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

(a) A person who is liable under section 20126 who is a responsible party.

(b) An action with respect to personal injury or wrongful death.

(c) A person that is grossly negligent or engages in willful misconduct.

(7) A person who is liable under section 20126 who is a responsible party is liable for any response activity costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan, or the official designated by the lead agency to coordinate and direct response activity under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, chapter 758, 86 Stat. 862, 33 U.S.C. 1321.

(d) "Petroleum" means that term as it is defined in part 213.

(e) "Responsible party" means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990, Public Law 101-380, 33 U.S.C. 2701.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

Sec. 20129. (1) If 2 or more persons acting independently are liable under section 20126 and there is a reasonable basis for division of harm according to the contribution of each person, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit his or her liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability.

(2) If 2 or more persons are liable under section 20126 for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person who is liable under section 20126 during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating response activity costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the hazardous substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person who has resolved his or her liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 20126 unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person who is not liable under this part, including a person who is issued a written determination under section 20129a affirming that the person meets the criteria for an exemption from liability, and who is otherwise in compliance with section 20107a, shall be considered to have resolved his or her liability to the state in an administratively approved settlement under the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767 and shall by operation of law be granted contribution protection under section 113(f)(2) of title I of the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 42 U.S.C. 9613 and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person who has resolved his or her liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 20126 who has not resolved his or her liability.

(8) A person who has resolved his or her liability to the state for some or all of a response activity in an administrative or judicially approved consent order may seek contribution from any person who is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person who has resolved his or her liability to the state is subordinate to the rights of the state, if the state files an action under this part.

Sec. 20129a. (1) A person may petition the department within 6 months after completion of a baseline environmental assessment for a determination that that person meets the requirements for an exemption from liability under section 20126(1)(c) and, in conjunction with that exemption, a determination that the proposed use of the facility satisfies the person's obligations under section 20107a. This request may be made by a prospective purchaser or transferee prior to actual transfer of ownership or other interest to that person or by a lender prior to foreclosure. The request shall be submitted on a form provided by the department along with the fee provided in subsection (4). The person petitioning the department under this subsection shall attach the baseline environmental assessment, a detailed description of the proposed use of the facility, a plan for any response activities that are necessary to assure that the proposed use of the

facility satisfies the requirements of section 20107a, if a determination regarding compliance with that section is requested, and the qualifications of the environmental professionals who have made the recommendations.

(2) Within 15 business days after receipt of a petition under subsection (1), the department shall issue a written determination to the person submitting the petition which does either of the following:

(a) Affirms that the criteria for obtaining the exemption have been met and affirms that the proposed use of the facility would satisfy the person's obligations under section 20107a provided that the person complies with the plan for the proposed use of the facility submitted under subsection (1).

(b) Provides that the criteria for obtaining the exemption have not been met, or that the proposed use of the facility does not satisfy the person's obligation under section 20107a, the specific reasons for the denial, and how the applicant could meet the criteria and satisfy the person's obligations under section 20107a, if possible.

(3) A determination by the department under this section may be conditioned on completion of response activities described in the petition.

(4) Until 2 years after the effective date of this section, a petition submitted under subsection (1) shall be accompanied by a fee of $750.00. The department shall deposit all fees collected under this section into the fund. Not later than 18 months after the effective date of this section, the department shall submit a report to the legislature that details all of the following:

(a) The number of petitions received pursuant to this section.

(b) The average length of time which the department has taken to issue written determinations pursuant to this section.

(c) The number of times in which written determinations were not issued within the required time period.

(d) The approximate amount of department staff time necessary to issue a written determination under this section.

(5) A person who is provided an affirmative determination under this section is not liable for a claim for response activity costs, fines or penalties, natural resources damages, or equitable relief under part 17, part 31, or common law resulting from the contamination identified in the petition or from contamination existing on the property on the date in which ownership or control of the property was transferred to the person. The liability protection afforded in this subsection does not extend to a violation of any permit issued under state law. This subsection does not alter a person's liability for a violation of section 20107a for a use or activity of property that is inconsistent with the determination.

Sec. 20130. (1) An indemnification, hold harmless, or similar agreement or conveyance is not effective to transfer from a person who is liable under section 20126 to the state for evaluation or response activity costs or damages for a release or threat of release to any other person the liability imposed under this part. This section does not bar an agreement to insure, hold harmless, or indemnify a party to the agreement for liability under this part.

(2) This part does not bar a cause of action that a person subject to liability under this part, or a guarantor, has or would have by reason of subrogation or otherwise against any person.

Sec. 20132. (1) The state may provide a person with a covenant not to sue concerning any liability to the state under this part, including future liability, resulting from a release or threatened release addressed by response activities, whether that action is on a facility or off a facility, if each of the following is met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue would expedite response activity consistent with rules promulgated under this part.

(c) There is full compliance with a consent order under this part for response to the release or threatened release concerned.

(d) The response activity has been approved by the department.

(2) The state shall provide a person, to which the department is authorized under subsection (1) to issue a covenant not to sue for the portion of response activity described in subdivision (a) or (b), with a covenant not to sue with respect to future liability to the state under this part for a future release or threatened release, and a person provided the covenant not to sue is not liable to the state under section 20126 with respect to that release or threatened release at a future time. The portion of response activity to which the covenant not to sue pertains is either of the following:

(a) The transport and secure disposition off site of hazardous substances in a facility meeting the requirements of sections 3004(c), (d), (e), (f), (g), (m), (o), (p), (u), and (v) and 3005(c) of subtitle C of the solid waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6924 and 6925, if the department has required off-site disposition and has rejected proposed remedial action that is consistent with the rules promulgated under this part and that does not include off-site disposition.

(b) The treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of the substances, so that, in the judgment of the department, the substances no longer present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment; no

by-product of the treatment or destruction process presents any significant hazard to the public health, safety, or welfare, or the environment; and all by-products are themselves treated, destroyed, or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to the public health, safety, or welfare, or the environment.

(3) A covenant not to sue concerning future liability to the state shall not take effect until the department certifies that remedial action has been completed in accordance with the requirements of this part at the facility that is the subject of the covenant.

(4) In assessing the appropriateness of a covenant not to sue granted under subsection (1) and any condition to be included in a covenant not to sue under subsection (1) or (2), the state shall consider whether the covenant or condition is in the public interest on the basis of factors such as the following:

(a) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(b) The nature of the risks remaining at the facility.

(c) The extent to which performance standards are included in the consent order.

(d) The extent to which the response activity provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(e) The extent to which the technology used in the response activity is demonstrated to be effective.

(f) Whether the fund or other sources of funding would be available for any additional response activities that might eventually be necessary at the facility.

(g) Whether response activity will be carried out, in whole or in significant part, by persons who are liable under section 20126.

(5) A covenant not to sue under this section is subject to the satisfactory performance by a person of his or her obligations under the agreement concerned.

(6) Except for the portion of the remedial action that is subject to a covenant not to sue under subsection (2), a covenant not to sue a person concerning future liability to the state shall include an exception to the covenant that allows the state to sue that person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions that are unknown at the time the department certifies under subsection (3) that remedial action has been completed at the facility concerned.

(7) In extraordinary circumstances, the state may determine, after assessment of relevant factors such as those referred to in subsection (4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggravating factors, not to include the exception in subsection (6) if other terms, conditions, or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that the public health and the environment will be protected from any future releases at or from the facility.

(8) The state may include any provisions providing for future enforcement action under section 20119 or 20137 that in the discretion of the department are necessary and appropriate to assure protection of the public health, safety, welfare, and the environment.

Sec. 20133. (1) The state may provide a person who proposes to redevelop or reuse a facility, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 20126 and 20107a, if all of the following conditions are met:

(a) The covenant not to sue is in the public interest.

(b) The covenant not to sue will yield new resources to facilitate implementation of response activity.

(c) The covenant not to sue would, when appropriate, expedite response activity consistent with the rules promulgated under this part.

(d) Based upon available information, the department determines that the redevelopment or reuse of the facility is not likely to do any of the following:

(*i*) Exacerbate or contribute to the existing release or threat of release.

(*ii*) Interfere with the implementation of response activities.

(*iii*) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the facility.

(e) The proposal to redevelop or reuse the facility has economic development potential.

(2) A person who requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

(a) That the person is financially capable of redeveloping and reusing the facility in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person who is liable under section 20126 for a release or threat of release at the facility.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a facility and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the facility, including, but not limited to, those claims arising from any of the following:

(a) The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the facility to the extent such claims otherwise arise under this part.

(b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting response activities approved by the department.

(c) Failure to comply with section 20107a.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing response activity related to the release or threat of release addressed by the covenant not to sue for the purposes listed in section 20117(3)(a) through (e) and for monitoring compliance with the covenant not to sue.

Sec. 20134. (1) The department and the attorney general may enter into a consent order with a person who is liable under section 20126 or any group of persons who are liable under section 20126 to perform a response activity if the department and the attorney general determine that the persons who are liable under section 20126 will properly implement the response activity and that the consent order is in the public interest, will expedite effective response activity, and will minimize litigation. The consent order may, as determined appropriate by the department and the attorney general, provide for implementation by a person or any group of persons who are liable under section 20126 of any portion of response activity at the facility. A decision of the attorney general not to enter into a consent order under this part is not subject to judicial review.

(2) Whenever practical and in the public interest, as determined by the department, the department and the attorney general shall as promptly as possible reach a final settlement with a person in an administrative or civil action under this part if this settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department and the attorney general, the conditions in either of the following are met:

(a) Both of the following are minimal in comparison to other hazardous substances at the facility:

(*i*) The amount of the hazardous substances contributed by that person to the facility.

(*ii*) The toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) Except as provided in subsection (3), the person meets all of the following conditions:

(*i*) The person is the owner of the real property on or in which the facility is located.

(*ii*) The person did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility.

(*iii*) The person did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission.

(3) A settlement shall not be made under subsection (2)(b) if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of a hazardous substance.

(4) A settlement under subsection (2) may be set aside if information obtained after the settlement indicates that the person settling does not meet the conditions set forth in subsection (2)(a) or (b).

Sec. 20135. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility or threat of release from a facility, other than a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following:

(a) An owner or operator who is liable under section 20126 for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare, or the environment from a release or threatened release in relation to that facility.

(b) A person who is liable under section 20126 for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that facility.

(c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part.

(2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare, or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned.

(3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist:

(a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following:

(*i*) The department.

(*ii*) The attorney general.

(*iii*) The proposed defendants.

(b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part.

(4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested.

(5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that an award is appropriate.

(6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law.

(7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

Sec. 20135a. (1) A person who is liable under section 20126 or a lender that has a security interest in all or a portion of a facility may file a petition in the circuit court of the county in which the facility is located seeking access to the facility in order to conduct response activities approved by the department. If the court grants access to property under this section, the court may do any of the following:

(a) Provide compensation to the property owner or operator for damages related to the granting of access to the property, including compensation for loss of use of the property.

(b) Enjoin interference with the response activities.

(c) Grant any other appropriate relief as determined by the court.

(2) If a court grants access to property under this section, the owner or operator of the property to which access is granted is not liable for either of the following:

(a) A release caused by the response activities for which access is granted unless the owner or operator is otherwise liable under section 20126.

(b) For conditions associated with the response activity that may present a threat to public health or safety.

Sec. 20137. (1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to section 20126a.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response costs and damages.

(e) A civil fine of not more than $1,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with the request of the department.

(f) A civil fine of not more than $10,000.00 for each day of violation of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part.

(g) A civil fine of not more than $25,000.00 for each day of violation of a judicial order or an administrative order issued pursuant to section 20119, including exemplary damages pursuant to section 20119.

(h) Enforcement of an administrative order issued pursuant to section 20119.

(i) Enforcement of information gathering and entry authority pursuant to section 20117.

(j) Enforcement of the reporting requirements under section 20114(1), (3), and (6).

(k) Any other relief necessary for the enforcement of this part.

(2) If an action is brought under this part by a plaintiff other than the attorney general, the plaintiff shall, at the time of filing, provide a copy of the complaint to the attorney general.

(3) Except as otherwise provided in this part, an action brought under this part may be brought in the circuit court for the county of Ingham, in the county in which the defendant resides, has a place of business, or in which the registered office of a defendant corporation is located, or in the county where the release occurred.

(4) A state court does not have jurisdiction to review challenges to a response activity selected or approved by the department under this part or to review an administrative order issued under this part in any action except an action that is 1 of the following:

(a) An action to recover response costs, damages, or for contribution.

(b) An action by the state to enforce an administrative order under this part or by any other person under section 20135(1)(b) to enforce an administrative order or to recover a fine for violation of an order.

(c) An action pursuant to section 20119(5) for review of a decision by the department denying or limiting reimbursement.

(d) An action pursuant to section 20135 challenging a response activity selected or approved by the department, if the action is filed after the completion of the response activity.

(e) An action by the state pursuant to section 20126a(6) to compel response activity.

(5) In any judicial action under this part, judicial review of any issues concerning the selection or adequacy of a response activity taken, ordered, or agreed to by the state are limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.

(6) In an action commenced under this part, any person may intervene as a matter of right if that person claims an interest relating to the subject matter of the action and is situated so that the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest, unless the court finds the person's interest is adequately represented by an existing party.

Sec. 20138. (1) All unpaid costs and damages for which a person is liable under section 20126 constitute a lien in favor of the state upon a facility that has been the subject of response activity by the state and is owned by that person. A lien under this subsection has priority over all other liens and encumbrances except liens and encumbrances recorded before the date the lien under this subsection is recorded. A lien under this subsection arises when the state first incurs costs for response activity at the facility for which the person is responsible.

(2) If the attorney general determines that the lien provided in subsection (1) is insufficient to protect the interest of the state in recovering response costs at a facility, the attorney general may file a petition in the circuit court of the county in which the facility is located seeking either or both of the following:

(a) A lien upon the facility subject to response activity that takes priority over all other liens and encumbrances that are or have been recorded on the facility.

(b) A lien upon real or personal property or rights to real or personal property, other than the facility, owned by the person described in subsection (1), having priority over all other liens and encumbrances except liens and encumbrances recorded prior to the date the lien under this subsection is recorded. However, the following are not subject to the lien provided for in this subdivision:

(*i*) Assets of a qualified pension plan or individual retirement account under the internal revenue code.

(*ii*) Assets held expressly for the purpose of financing a dependent's college education.

(*iii*) Up to $500,000.00 in nonbusiness real or personal property or rights to nonbusiness real or personal property, except that not more than $25,000.00 of this amount may be cash or securities.

(3) A petition submitted pursuant to subsection (2) shall set forth with as much specificity as possible the type of lien sought, the property that would be affected, and the reasons the attorney general believes the lien is necessary. Upon receipt of a petition under subsection (2), the court shall promptly schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the attorney general, the property owner, and any persons holding liens or perfected security interests in the real property subject to response activity. A lien shall not be granted under subsection (2) against the owner of the facility if the owner is not liable under section 20126.

(4) In addition to the lien provided in subsections (1) and (2), if the state incurs costs for response activity that increases the market value of real property that is the location of a release or threatened release, the increase in value caused by the state funded response activity, to the extent the state incurred unpaid costs and damages, constitutes a lien in favor of the state upon the real property. This lien has priority over all other liens or encumbrances that are or have been recorded upon the property.

(5) A lien provided in subsection (1), (2), or (4) is perfected against real property when a notice of lien is filed by the department with the register of deeds in the county in which the real property is located. A lien upon personal property provided in subsection (2) is perfected when a notice of lien is filed by the department in accordance with applicable law and regulation for the perfection of a lien on that type of personal property. In addition, the department shall, at the time of the filing of the notice of lien, provide a copy of the notice of lien to the owner of that property by certified mail.

(6) A lien under this section continues until the liability for the costs and damages is satisfied or resolved or becomes unenforceable through the operation of the statute of limitations provided in section 20140.

(7) Upon satisfaction of the liability secured by the lien, the department shall file a notice of release of lien in the same manner as provided in subsection (5).

(8) If the department, at the time or prior to the time of filing the notice of release of lien pursuant to subsection (7), has made a determination that the person liable under section 20126 has completed all of the response activity at the real property pursuant to the approved remedial action plan, the department shall execute and file with the notice of release of lien a document stating that all response activities required in the approved remedial action plan have been completed.

Sec. 20139. (1) The penalties provided in this section only apply to a release that occurs after July 1, 1991.

(2) A person who does any of the following is guilty of a felony and shall be fined not less than $2,500.00 or more than $25,000.00 for each violation:

(a) Knowingly releases or causes a release contrary to applicable federal, state, or local requirements or contrary to any permit or license held by that person, if that person knew or should have known that the release could cause personal injury or property damage.

(b) Intentionally makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part and rules promulgated under this part.

(c) Intentionally renders inaccurate any monitoring device or record required to be maintained under this part or a rule promulgated under this part.

(d) Misrepresents his or her qualifications in a document prepared pursuant to section 20129a.

(3) In addition to a fine imposed under subsection (2), the court may impose an additional fine of not more than $25,000.00 for each day during which the release occurred. If the conviction is for a violation committed after a first conviction of the person under this subsection, the court shall impose a fine of not less than $25,000.00 and not more than $50,000.00 per day of violation. Upon conviction, in addition to a fine, the court in its discretion may sentence the defendant to imprisonment for not more than 2 years or impose probation upon a person for a violation of this part. With the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred has exclusive jurisdiction.

(4) Upon a finding by the court that the action of a criminal defendant prosecuted under this section poses or posed a substantial endangerment to public health, safety, or welfare, the court shall impose, in addition to the penalties set forth in subsections (2) and (3), a fine of not less than $1,000,000.00 and, in addition to a fine, a sentence of 5 years' imprisonment.

(5) To find a defendant criminally liable for substantial endangerment under subsection (4), the court shall determine that the defendant knowingly or recklessly acted in such a manner as to cause a danger of death or serious bodily injury and that either of the following has occurred:

(a) The defendant had an actual awareness, belief, or understanding that his or her conduct would cause a substantial danger of death or serious bodily injury.

(b) The defendant acted in gross disregard of the standard of care that any reasonable person would observe in similar circumstances.

(6) Knowledge possessed by a person other than the defendant under subsection (5) may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from the relevant information.

(7) The department may pay an award of up to $10,000.00 to an individual that provides information leading to the arrest and conviction of a person for a violation of this section. The department shall promulgate rules that prescribe criteria for granting awards under this section. An award shall not be made under this section until rules are promulgated prescribing the criteria for making awards. Awards under this subsection may be paid from the Michigan environmental assurance fund, if enabling legislation creating the fund is enacted into law.

(8) As used in this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Sec. 20140. (1) Except as provided in subsection (2), the limitation period for filing actions under this part is as follows:

(a) For the recovery of response activity costs and natural resources damages pursuant to section 20126a(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility, except as provided in subdivision (b).

(b) For 1 or more subsequent actions for recovery of response activity costs pursuant to section 20126, at any time during the response activity, if commenced not later than 3 years after the date of completion of all response activity at the facility.

(c) For civil fines under this part, within 3 years after discovery of the violation for which the civil fines are assessed.

(2) For recovery of response activity costs and natural resources damages that accrued prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.

Sec. 20142. (1) Except as provided in section 20126a(5), a person who has complied with the requirements of this part or is exempt from liability under this part is not subject to a claim in law or equity for performance of response activities under part 17, part 31, or common law.

(2) This section does not bar any of the following:

(a) Tort claims unrelated to performance of response activities.

(b) Tort claims for damages which result from response activities.

(c) Tort claims related to the exercise or failure to exercise responsibilities under section 20107a.

Section 2. Sections 20112, 20120, 20121, 20122, 20123, 20124, 20125, 20127, 20134a, 20136, and 20141 of Act No. 451 of the Public Acts of 1994, being sections 324.20112, 324.20120, 324.20121, 324.20122, 324.20123, 324.20124, 324.20125, 324.20127, 324.20134a, 324.20136, and 324.20141 of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved _______________________________________

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Governor.

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