



HOUSE BILL No. 4596

March 14, 1995, Introduced by Reps. Sikkema, Alley, Murphy, Bennane, Middaugh, McManus, Profit, Bodem, Hill, DeHart, Freeman, Munsell, Wetters, LaForge, Byl, Gnodtke, Brackenridge, Yokich, Weeks, Fitzgerald, Pitoniak, Geiger, Lowe, Gustafson, Johnson, Jellema, McBryde, Leland, Gilmer and Nye and referred to the Committee on Conservation, Environment and Great Lakes.

A bill to amend sections 20101, 20101a, 20102, 20104, 20107, 20113, 20114, 20115, 20116, 20117, 20118, 20119, 20126, 20128, 20129, 20130, 20132, 20135, 20137, 20138, 20139, and 20140 of Act No. 451 of the Public Acts of 1994, entitled "Natural resources and environmental protection act," being sections 324.20101, 324.20101a, 324.20102, 324.20104, 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, 324.20135, 324.20137, 324.20138, 324.20139, and 324.20140 of the Michigan Compiled Laws; to add sections 20101b, 20102a, 20105a, 20107a, 20112a, 20120a, 20120b, 20120c, 20120d, 20120e, 20126a, 20129a, and 20135a; to amend the headings of certain parts; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 20101, 20101a, 20102, 20104, 20107,
2 20113, 20114, 20115, 20116, 20117, 20118, 20119, 20126, 20128,
3 20129, 20130, 20132, 20135, 20137, 20138, 20139, and 20140 of Act
4 No. 451 of the Public Acts of 1994, being sections 324.20101,
5 324.20101a, 324.20102, 324.20104, 324.20107, 324.20113,
6 324.20114, 324.20115, 324.20116, 324.20117, 324.20118, 324.20119,
7 324.20126, 324.20128, 324.20129, 324.20130, 324.20132, 324.20135,
8 324.20137, 324.20138, 324.20139, and 324.20140 of the Michigan
9 Compiled Laws, are amended and sections 20101b, 20102a, 20105a,
10 20107a, 20112a, 20120a, 20120b, 20120c, 20120d, 20120e, 20126a,
11 20129a, and 20135a are added to read as follows:

12 PART 201 ENVIRONMENTAL ~~RESPONSE~~ REMEDIATION

13 Sec. 20101. As used in this part:

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

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

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

3 ~~(d) "Commercial lending institution" means any of the~~
4 ~~following:~~

5 ~~(i) A state or nationally chartered bank.~~

6 ~~(ii) A state or federally chartered savings and loan associ-~~
7 ~~ation or savings bank.~~

8 ~~(iii) A state or federally chartered credit union.~~

9 ~~(iv) Any other state or federally chartered lending institu-~~
10 ~~tion or regulated affiliate or regulated subsidiary of any entity~~
11 ~~listed in this subparagraph or subparagraphs (i) to (iii).~~

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

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

20 ~~(vii) A foreign bank.~~

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

24 ~~(ix) A state or federal agency authorized by law to hold a~~
25 ~~security interest in real property.~~

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

4 (D) ~~(e)~~ "Directors" means the directors or their designees
5 of the departments of natural resources, public health, agricul-
6 ture, and state police.

7 (E) ~~(f)~~ "Disposal" means the discharge, deposit, injec-
8 tion, dumping, spilling, leaking, or placing of any hazardous
9 substance into or on any land or water so that the hazardous sub-
10 stance or any constituent of the hazardous substance may enter
11 the environment or be emitted into the air or discharged into any
12 groundwater or surface water.

13 (F) ~~(g)~~ "Enforcement costs" means court expenses, reason-
14 able attorney fees of the attorney general, and other reasonable
15 expenses of an executive department that are incurred in relation
16 to enforcement under this part or rules promulgated under this
17 part, or both.

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

21 (H) ~~(i)~~ "Environmental contamination" means the release of
22 a hazardous substance, or the potential release of a discarded
23 hazardous substance, in a quantity, which is or may become inju-
24 rious to the environment or to the public health, safety, or
25 welfare.

26 (I) ~~(j)~~ "Evaluation" means those activities including, but
27 not limited to, investigation, studies, sampling, analysis,

1 development of feasibility studies, and administrative efforts
2 that are needed to determine the nature, extent, and impact of a
3 release or threat of release and necessary response activities.

4 (J) ~~(k)~~ "Facility" means any area, place, or property
5 where a hazardous substance IN EXCESS OF THE CRITERIA ESTABLISHED
6 UNDER SECTION 20120A(1)(A) has been released, deposited, stored,
7 disposed of, or otherwise comes to be located.

8 (K) ~~(l)~~ "Feasibility study" means a process for develop-
9 ing, evaluating, and selecting appropriate response activities.

10 (L) "FREE PRODUCT" MEANS A HAZARDOUS SUBSTANCE IN A LIQUID
11 PHASE EQUAL TO OR GREATER THAN 1/8 INCH OF MEASURABLE THICKNESS
12 THAT IS NOT DISSOLVED IN WATER AND THAT HAS BEEN RELEASED INTO
13 THE ENVIRONMENT.

14 (m) "Fund" means the environmental response fund established
15 in section 20108.

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

17 (i) ~~A chemical or other material which is or may become~~
18 ~~injurious to the public health, safety, or welfare or to the~~
19 ~~environment.~~ ANY SUBSTANCE THAT THE DEPARTMENT DEMONSTRATES, ON
20 A CASE BY CASE BASIS, POSES AN UNACCEPTABLE RISK TO THE PUBLIC
21 HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT, CONSIDERING THE
22 FATE OF THE MATERIAL, DOSE-RESPONSE, TOXICITY, OR ADVERSE IMPACT
23 ON NATURAL RESOURCES.

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

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

2 (iv) Petroleum as described in part 213.

3 (o) "Interim response activity" means the cleanup or removal
4 of a released hazardous substance or the taking of other actions,
5 prior to the implementation of a remedial action, as may be nec-
6 essary to prevent, minimize, or mitigate injury to the public
7 health, safety, or welfare, or to the environment. Interim
8 response activity also includes, but is not limited to, measures
9 to limit access, replacement of water supplies, and temporary
10 relocation of people as determined to be necessary by the
11 department. In addition, interim response activity means the
12 taking of other actions as may be necessary to prevent, minimize,
13 or mitigate a threatened release.

14 (P) "LENDER" MEANS ANY OF THE FOLLOWING:

15 (i) A STATE OR NATIONALLY CHARTERED BANK.

16 (ii) A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCI-
17 ATION OR SAVINGS BANK.

18 (iii) A STATE OR FEDERALLY CHARTERED CREDIT UNION.

19 (iv) ANY OTHER STATE OR FEDERALLY CHARTERED LENDING INSTITU-
20 TION OR REGULATED AFFILIATE OR REGULATED SUBSIDIARY OF ANY ENTITY
21 LISTED IN THIS SUBPARAGRAPH OR SUBPARAGRAPHS (i) TO (iii).

22 (v) AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS
23 STATE PURSUANT TO THE INSURANCE CODE OF 1956, ACT NO. 218 OF THE
24 PUBLIC ACTS OF 1956, BEING SECTIONS 500.100 TO 500.8302 OF THE
25 MICHIGAN COMPILED LAWS.

26 (vi) A MOTOR VEHICLE FINANCE COMPANY SUBJECT TO THE MOTOR
27 VEHICLE FINANCE ACT, ACT NO. 27 OF THE EXTRA SESSION OF 1950,

1 BEING SECTIONS 492.101 TO 492.141 OF THE MICHIGAN COMPILED LAWS,
2 WITH NET ASSETS IN EXCESS OF \$50,000,000.00.

3 (vii) A FOREIGN BANK.

4 (viii) A RETIREMENT FUND REGULATED PURSUANT TO STATE LAW OR
5 A PENSION FUND REGULATED PURSUANT TO FEDERAL LAW WITH NET ASSETS
6 IN EXCESS OF \$50,000,000.00.

7 (ix) A STATE OR FEDERAL AGENCY AUTHORIZED BY LAW TO HOLD A
8 SECURITY INTEREST IN REAL PROPERTY.

9 (x) A NONPROFIT TAX EXEMPT ORGANIZATION CREATED TO PROMOTE
10 ECONOMIC DEVELOPMENT IN WHICH A MAJORITY OF THE ORGANIZATION'S
11 ASSETS ARE HELD BY A LOCAL UNIT OF GOVERNMENT.

12 (xi) ANY OTHER PERSON WHO LOANS MONEY FOR THE PURCHASE OF OR
13 IMPROVEMENT OF REAL PROPERTY.

14 (Q) ~~(p)~~ "Local health department" means that term as
15 defined in section 1105 of the public health code, Act No. 368 of
16 the Public Acts of 1978, being section 333.1105 of the Michigan
17 Compiled Laws.

18 (R) ~~(q)~~ "Local unit of government" means a county, city,
19 township, or village, an agency of a local unit of government, an
20 authority or any other public body or entity created by or pursu-
21 ant to state law. Local unit of government does not include the
22 state or federal government or a state or federal agency.

23 (S) ~~(r)~~ "Operator" means a person ~~that~~ WHO is in control
24 of or responsible for the operation of a facility. Operator does
25 not include ~~any~~ EITHER of the following:

26 (i) A person ~~that~~ WHO holds indicia of ownership primarily
27 to protect the person's security interest in the facility, unless

1 that person participates in the management of the facility as
2 ~~defined under~~ DESCRIBED IN section 20101a.

3 (ii) ~~The state or a local unit of government that acquired~~
4 ~~ownership or control of the facility involuntarily through bank~~
5 ~~ruptcy, tax delinquency, abandonment, a transfer from a commer-~~
6 ~~cial lending institution pursuant to section 20127(9), or other~~
7 ~~circumstances in which the government involuntarily acquires~~
8 ~~title or control by virtue of its governmental function or as~~
9 ~~provided in this part, a local unit of government to which owner-~~
10 ~~ship or control of the facility is transferred by the state, or~~
11 ~~the state or a local unit of government that acquired ownership~~
12 ~~or control of the facility by seizure, receivership, or forfei-~~
13 ~~ture pursuant to the operation of law or by court order. In case~~
14 ~~of an acquisition described in this subparagraph by the state or~~
15 ~~a local unit of government, operator means a person that was in~~
16 ~~control of or responsible for operation of the facility immedi-~~
17 ~~ately before the state or local unit of government acquired~~
18 ~~ownership or control. The exclusion provided in this subpara-~~
19 ~~graph shall not apply to the state or a local unit of government~~
20 ~~that caused or contributed to the release or threat of a release~~
21 ~~from the facility. A PERSON WHO IS ACTING AS A FIDUCIARY IN COM-~~
22 ~~PLIANCE WITH SECTION 20101B.~~

23 (iii) ~~The operator of an underground storage tank system,~~
24 ~~as defined in part 213, from which there is a release or threat~~
25 ~~of release if all of the following conditions are met:~~

1 ~~(A) The operator reported the release or threat of release~~
2 ~~to the department of state police, fire marshal division, within~~
3 ~~24 hours after confirmation of the release or threat of release.~~

4 ~~(B) The release or threat of release at the facility is~~
5 ~~solely the result of a release or threat of release of a regu-~~
6 ~~lated substance as defined in part 213 from an underground stor-~~
7 ~~age tank system.~~

8 ~~(C) The operator is in compliance with the requirements of~~
9 ~~part 213, and any promulgated rules or any order, agreement, or~~
10 ~~judgment issued or entered into pursuant to that part.~~

11 ~~(iv) A state or local unit of government that holds or~~
12 ~~acquires an easement interest in a facility, holds or acquires an~~
13 ~~interest in a facility by dedication in a plat, or by dedication~~
14 ~~pursuant to Act No. 283 of the Public Acts of 1909, being sec-~~
15 ~~tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-~~
16 ~~sion provided in this subparagraph shall not apply to the state~~
17 ~~or a local unit of government that holds an easement or dedica-~~
18 ~~tion if the state or that local unit of government caused or con-~~
19 ~~tributed to a release or threat of release or if equipment owned~~
20 ~~or operated by the state or that local unit of government caused~~
21 ~~or contributed to the release or threat of release.~~

22 ~~(v) A person that holds an easement interest in a facility~~
23 ~~for the purpose of conveying or providing goods or services,~~
24 ~~including, but not limited to, utilities, sewers, roads, rail-~~
25 ~~ways, and pipelines or a person that acquires access through an~~
26 ~~easement. The exclusion provided in this subparagraph shall not~~
27 ~~apply to a person that holds an easement if that person caused or~~

1 ~~contributed to a release or threat of release, or if equipment~~
2 ~~owned or operated by that person caused or contributed to the~~
3 ~~release or threat of release.~~

4 ~~(vi) A person that satisfies all of the following:~~

5 ~~(A) The release was caused solely by a third party that is~~
6 ~~not an employee or agent of the person or whose action was not~~
7 ~~associated with a contractual relationship with the person.~~

8 ~~(B) The hazardous substance was not deposited, stored, or~~
9 ~~disposed of on the property upon which the person operates.~~

10 ~~(C) The person at the time of transfer of the right to oper-~~
11 ~~ate on the property discloses any knowledge or information con-~~
12 ~~cerning the general nature and extent of the release as required~~
13 ~~in section 20116.~~

14 (T) ~~(s)~~ "Owner" means a person ~~that~~ WHO owns a
15 facility. Owner does not include ~~any~~ EITHER of the following:

16 (i) A person ~~that, without participating in the management~~
17 ~~of the facility,~~ WHO holds indicia of ownership primarily to
18 protect the person's security interest in the facility, includ-
19 ing, but not limited to, a vendor's interest under a recorded
20 land contract, UNLESS THAT PERSON PARTICIPATES IN THE MANAGEMENT
21 OF THE FACILITY AS DESCRIBED IN SECTION 20101A.

22 (ii) ~~The state or a local unit of government that acquired~~
23 ~~ownership or control of the facility involuntarily through bank~~
24 ~~ruptcy, tax delinquency, abandonment, a transfer from a commer-~~
25 ~~cial lending institution pursuant to section 20127(9), or other~~
26 ~~circumstances in which the government involuntarily acquires~~
27 ~~title or control by virtue of its governmental function or as~~

1 provided in this part, a local unit of government to which
2 ownership or control of the facility is transferred by the state,
3 or the state or a local unit of government that acquired owner-
4 ship or control of the facility by seizure, receivership, or for-
5 feiture pursuant to the operation of law or by court order. In
6 case of an acquisition described in this subparagraph by the
7 state or a local unit of government, owner means any person that
8 owned or controlled activities at the facility immediately before
9 the state or local unit of government acquired ownership or
10 control. The exclusion provided in this subparagraph shall not
11 apply to the state or a local unit of government that caused or
12 contributed to the release or threat of a release from the
13 facility. A PERSON WHO IS ACTING AS A FIDUCIARY IN COMPLIANCE
14 WITH SECTION 20101B.

15 ~~(iii) A person that satisfies all of the following:~~

16 ~~(A) The release was caused solely by a third party that is~~
17 ~~not an employee or agent of the person or whose action was not~~
18 ~~associated with a contractual relationship with the person.~~

19 ~~(B) The hazardous substance was not deposited, stored, or~~
20 ~~disposed of on that person's property.~~

21 ~~(C) The person at the time of transfer of the property dis-~~
22 ~~closes any knowledge or information concerning the general nature~~
23 ~~and extent of the release as required in section 20116.~~

24 ~~(iv) The owner of an underground storage tank system or the~~
25 ~~property on which an underground storage tank system is located,~~
26 ~~as defined in part 213, from which there is a release or threat~~
27 ~~of release if all of the following conditions are met:~~

1 ~~(A) The owner reported the release or threat of release to~~
2 ~~the department of state police, fire marshal division, within 24~~
3 ~~hours after confirmation of the release or threat of release.~~

4 ~~(B) The release or threat of release at the facility is~~
5 ~~solely the result of a release or threat of release of a regu-~~
6 ~~lated substance as defined in part 213.~~

7 ~~(C) The owner is in compliance with the requirements of~~
8 ~~part 213, and any promulgated rules or any order, agreement, or~~
9 ~~judgment issued or entered pursuant to that part.~~

10 ~~(v) A state or local unit of government that holds or~~
11 ~~acquires an easement interest in a facility, holds or acquires an~~
12 ~~interest in a facility by dedication in a plat, or by dedication~~
13 ~~pursuant to Act No. 283 of the Public Acts of 1909, being sec-~~
14 ~~tions 220.1 to 239.6 of the Michigan Compiled Laws. The exclu-~~
15 ~~sion provided in this subparagraph shall not apply to the state~~
16 ~~or a local unit of government that holds an easement or dedica-~~
17 ~~tion if that state or local unit of government caused or contrib-~~
18 ~~uted to a release or threat of release, or if equipment owned or~~
19 ~~operated by the state or that local unit of government caused or~~
20 ~~contributed to the release or threat of release.~~

21 ~~(vi) A person that holds an easement interest in a facility~~
22 ~~for the purpose of conveying or providing goods or services,~~
23 ~~including, but not limited to, utilities, sewers, roads, rail-~~
24 ~~ways, and pipelines, or a person that acquires access through an~~
25 ~~easement. The exclusion provided in this subparagraph shall not~~
26 ~~apply to a person that holds an easement if that person caused or~~
27 ~~contributed to a release or threat of release, or if equipment~~

1 ~~owned or operated by that person caused or contributed to the~~
2 ~~release or threat of release.~~

3 ~~(vii) A person that holds only subsurface mineral rights to~~
4 ~~the property and has not caused or contributed to a release on~~
5 ~~the property.~~

6 (U) ~~(t)~~ "Permitted release" means 1 or more of the
7 following:

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

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

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

15 (V) ~~(u)~~ "Release" includes, but is not limited to, any
16 spilling, leaking, pumping, pouring, emitting, emptying, dis-
17 charging, injecting, escaping, leaching, dumping, or disposing of
18 a hazardous substance into the environment, or the abandonment or
19 discarding of barrels, containers, and other closed receptacles
20 containing a hazardous substance. Release does not include any
21 of the following:

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

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

1 (iii) A release of source, by-product, or special nuclear
2 material from a nuclear incident, as those terms are defined in
3 the atomic energy act of 1954, chapter 1073, 68 Stat. 919, if the
4 release is subject to requirements with respect to financial pro-
5 tection established by the nuclear regulatory commission under
6 section 170 of the atomic energy act of 1954, chapter 1073, 71
7 Stat. 576, 42 U.S.C. 2210, or any release of source by-product or
8 special nuclear material from any processing site designated
9 under section 102(a)(1) of title I or 302(a) of title III of the
10 uranium mill tailings radiation control act of 1978, 42
11 U.S.C. 7912 and 7942.

12 (iv) If applied according to label directions and according
13 to generally accepted agricultural and management practices, the
14 application of a fertilizer, soil conditioner, agronomically
15 applied manure, or a pesticide, or a combination of these
16 substances. As used in this subparagraph, fertilizer and soil
17 conditioner have the meaning given to these terms in ~~the fertil-~~
18 ~~izer act of 1975, Act No. 198 of the Public Acts of 1975, being~~
19 ~~sections 286.751 to 286.767 of the Michigan Compiled Laws~~ PART
20 85, and pesticide has the meaning given to that term in part 83.

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

1 (X) ~~(w)~~ "Remedial action plan" means a work plan for
2 performing remedial action under this part.

3 (Y) ~~(x)~~ "Response activity" means evaluation, interim
4 response activity, remedial action, or the taking of other
5 actions necessary to protect the public health, safety, or wel-
6 fare, or the environment or the natural resources. Response
7 activity also includes health assessments or health effect
8 studies carried out under the supervision, or with the approval
9 of, the department of public health and enforcement actions
10 related to any response activity.

11 (Z) ~~(y)~~ "Response activity costs" or "costs of response
12 activity" means all costs incurred in taking or conducting a
13 response activity, including enforcement costs.

14 ~~(z) "Science advisory council" means the science advisory~~
15 ~~council created in section 20+23.~~

16 (aa) "Site" means the location of environmental
17 contamination.

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

21 Sec. 20101a. (1) For purposes of this part, a ~~commercial~~
22 ~~lending institution~~ LENDER holding a security interest in a
23 facility ~~or other person holding a security interest in a~~
24 ~~facility~~ participates in the management of the facility if that
25 ~~institution or person~~ LENDER engages in acts of facility man-
26 agement that constitute actual participation in the management or
27 operational affairs of a facility and that exceed the mere

1 capacity to influence, or ability to influence, or the
2 unexercised right to control facility operations. A ~~commercial~~
3 ~~lending institution or other person~~ LENDER holding a security
4 interest is participating in the management of a facility, while
5 the borrower is still in possession of the facility encumbered by
6 the security interest, if the ~~commercial lending institution or~~
7 ~~person~~ LENDER holding a security interest does any of the
8 following:

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

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

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

18 (i) Environmental compliance.

19 (ii) All, or substantially all, of the operational aspects
20 of the enterprise other than environmental compliance. As used
21 in this subparagraph, "operational aspects of the enterprise"
22 includes functions such as that of facility or plant manager,
23 operations manager, chief operating officer, or chief executive
24 officer. Operational aspects of the enterprise do not include
25 the financial or administrative aspects of the enterprise such as
26 that of credit manager, accounts payable or receivable manager,

1 personnel manager, controller, chief financial officer, or
2 similar functions.

3 (2) For purposes of this part, the following do not consti-
4 tute participation in the management of a facility by a
5 ~~commercial lending institution or other person~~ LENDER holding a
6 security interest in the facility:

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

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

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

18 (d) Actions that are consistent with holding ownership indi-
19 cia primarily to protect a security interest. The authority
20 ~~for~~ OF the ~~commercial lending institution or other person~~
21 LENDER holding a security interest to take such actions may, but
22 need not, be contained in contractual or other documents specify-
23 ing requirements for financial, environmental, and other warran-
24 ties, covenants, conditions, representations, or promises from
25 the borrower. Loan policing and workout activities cover and
26 include all activities up to foreclosure and its equivalents.

1 (e) Engaging in policing activities prior to foreclosure if
2 the ~~commercial lending institution or other person~~ LENDER
3 holding a security interest does not by such actions participate
4 in the management of the facility as described in
5 subsection (1)(a) to (c). Permissible actions include, but are
6 not limited to, requiring the borrower to undertake response
7 activities at the facility during the term of the security inter-
8 est; requiring the borrower to comply or come into compliance
9 with applicable federal, state, and local environmental and other
10 laws, rules, and regulations during the term of the security
11 interest; and securing or exercising authority to monitor or
12 inspect the facility in which indicia of ownership are main-
13 tained, including on-site inspections, or the borrower's business
14 or financial condition, during the term of the security
15 interest. A ~~commercial lending institution or other person~~
16 LENDER holding a security interest that engages in workout activ-
17 ities prior to foreclosure and its equivalents will remain within
18 the exemption ~~provided that~~ IF the ~~commercial lending institu-~~
19 ~~tion or other person~~ LENDER holding a security interest does not
20 by such action participate in the management of the facility.

21 (3) As used in this section, "workout" refers to those
22 actions by which a ~~commercial lending institution or other~~
23 ~~person~~ LENDER holding a security interest, at any time prior to
24 foreclosure ~~and~~ OR its ~~equivalents~~ EQUIVALENT, seeks to pre-
25 vent, cure, or mitigate a default by the borrower or obligor or
26 to preserve, or prevent the diminution of, the value of the
27 security. Workout activities include, but are not limited to,

1 restructuring or renegotiating the terms of the security
2 interest; requiring payment of additional rent or interest; exer-
3 cising forbearance; requiring or exercising rights pursuant to an
4 assignment of accounts or other amounts owing to an obligor;
5 requiring or exercising rights pursuant to an escrow agreement
6 pertaining to amounts owing to an obligor; and providing specific
7 or general financial or other advice, suggestions, counseling, or
8 guidance.

9 SEC. 20101B. (1) A LENDER OR OTHER PERSON WHO HAS NOT PAR-
10 TICIPATED IN THE MANAGEMENT OF A PROPERTY AS DESCRIBED IN
11 SECTION 20101A PRIOR TO ASSUMING OWNERSHIP OR CONTROL OF THE
12 PROPERTY AS A FIDUCIARY, AS DEFINED BY SECTION 5 OF THE REVISED
13 PROBATE CODE, ACT NO. 642 OF THE PUBLIC ACTS OF 1978, BEING SEC-
14 TION 700.5 OF THE MICHIGAN COMPILED LAWS, OR IN A REPRESENTATIVE
15 CAPACITY FOR A DISABLED PERSON UNDER SECTION 495 OF ACT NO. 642
16 OF THE PUBLIC ACTS OF 1978, BEING SECTION 700.495 OF THE MICHIGAN
17 COMPILED LAWS, AND THAT IS ACTING OR HAS ACTED IN A CAPACITY PER-
18 MITTED BY THE REVISED PROBATE CODE, ACT NO. 642 OF THE PUBLIC
19 ACTS OF 1978, BEING SECTIONS 700.1 TO 700.993 OF THE MICHIGAN
20 COMPILED LAWS, IS NOT PERSONALLY LIABLE AS AN OWNER OR OPERATOR
21 OF THE PROPERTY UNDER THIS PART. THIS SUBSECTION DOES NOT DO
22 EITHER OF THE FOLLOWING:

23 (A) RELIEVE THE FIDUCIARY FROM PERSONAL LIABILITY AS THE
24 RESULT OF THE FIDUCIARY'S ASSUMPTION OF PERSONAL LIABILITY, OR
25 NEGLIGENCE, GROSS NEGLIGENCE, OR RECKLESS, WILLFUL, OR INTEN-
26 TIONAL MISCONDUCT.

1 (B) PREVENT CLAIMS AGAINST THE ASSETS THAT ARE PART OF OR
2 ALL OF THE ESTATE OR TRUST THAT CONTAINS THE FACILITY; ANY OTHER
3 ESTATE OR TRUST OF THE DECEDENT, GRANTOR, WARD, OR OTHER PERSON
4 WHOSE ESTATE OR TRUST CONTAINS THE FACILITY THAT IS ADMINISTERED
5 BY THE LENDER OR OTHER PERSON; OR ANY OTHER ESTATE OR TRUST OF
6 THE DECEDENT, GRANTOR, WARD, OR OTHER PERSON WHOSE ESTATE OR
7 TRUST CONTAINS THE FACILITY. SUCH CLAIMS MAY BE ASSERTED AGAINST
8 THE FIDUCIARY IN ITS REPRESENTATIVE CAPACITY, WHETHER OR NOT THE
9 FIDUCIARY IS PERSONALLY LIABLE.

10 (2) A LENDER THAT HAS NOT PARTICIPATED IN THE MANAGEMENT OF
11 A PROPERTY AS DESCRIBED IN SECTION 20101A PRIOR TO ASSUMING
12 OWNERSHIP OR CONTROL OF THE PROPERTY IN A FIDUCIARY CAPACITY, AND
13 UNDER A FIDUCIARY AGREEMENT ENTERED INTO ON OR BEFORE AUGUST 1,
14 1990 OWNS OR CONTROLS THE PROPERTY IN A FIDUCIARY CAPACITY THAT
15 IS NOT REGULATED BY ACT NO. 642 OF THE PUBLIC ACTS OF 1978 BUT IS
16 AUTHORIZED BY THE BANKING CODE OF 1969, ACT NO. 319 OF THE PUBLIC
17 ACTS OF 1969, BEING SECTIONS 487.301 TO 487.598 OF THE MICHIGAN
18 COMPILED LAWS, OR THE NATIONAL BANK ACT, CHAPTER 106, 13
19 STAT. 99, IS NOT PERSONALLY LIABLE AS AN OWNER OR OPERATOR OF THE
20 PROPERTY UNDER THIS PART. THIS SUBSECTION DOES NOT DO EITHER OF
21 THE FOLLOWING:

22 (A) RELIEVE THE FIDUCIARY FROM PERSONAL LIABILITY AS THE
23 RESULT OF THE FIDUCIARY'S ASSUMPTION OF PERSONAL LIABILITY, NEG-
24 LIGENCE, GROSS NEGLIGENCE, OR RECKLESS, WILLFUL, OR INTENTIONAL
25 MISCONDUCT.

26 (B) PREVENT CLAIMS AGAINST THE ASSETS THAT ARE PART OF OR
27 ALL OF THE ESTATE OR TRUST THAT CONTAINS THE FACILITY; ANY OTHER

1 ESTATE OR TRUST OF THE DECEDENT, GRANTOR, WARD, OR OTHER PERSON
2 WHOSE ESTATE OR TRUST CONTAINS THE FACILITY THAT IS ADMINISTERED
3 BY THE LENDER; OR ANY OTHER ESTATE OR TRUST OF THE DECEDENT,
4 GRANTOR, WARD, OR OTHER PERSON WHOSE ESTATE OR TRUST CONTAINS THE
5 FACILITY. SUCH CLAIMS MAY BE ASSERTED AGAINST THE FIDUCIARY IN
6 ITS REPRESENTATIVE CAPACITY, WHETHER OR NOT THE FIDUCIARY IS PER-
7 SONALLY LIABLE.

8 (3) A LENDER THAT HAS NOT PARTICIPATED IN THE MANAGEMENT OF
9 A PROPERTY AS DESCRIBED IN SECTION 20101A PRIOR TO ASSUMING
10 OWNERSHIP OR CONTROL OF THE PROPERTY IN A FIDUCIARY CAPACITY, AND
11 PURSUANT TO A FIDUCIARY AGREEMENT ENTERED INTO AFTER AUGUST 1,
12 1990 OWNS OR CONTROLS THE PROPERTY IN A FIDUCIARY CAPACITY THAT
13 IS NOT REGULATED BY ACT NO. 642 OF THE PUBLIC ACTS OF 1978 BUT IS
14 AUTHORIZED BY ACT NO. 319 OF THE PUBLIC ACTS OF 1969, OR THE
15 NATIONAL BANK ACT, CHAPTER 106, 13 STAT. 99, THAT HAS SERVED ONLY
16 IN AN ADMINISTRATIVE, CUSTODIAL, OR FINANCIAL CAPACITY WITH
17 RESPECT TO THE PROPERTY, AND HAS NOT EXERCISED SUFFICIENT
18 INVOLVEMENT TO CONTROL THE OWNER'S OR OPERATOR'S HANDLING OF A
19 HAZARDOUS SUBSTANCE, IS NOT PERSONALLY LIABLE AS AN OWNER OR
20 OPERATOR OF THE PROPERTY UNDER THIS PART. THIS SUBSECTION DOES
21 NOT DO EITHER OF THE FOLLOWING:

22 (A) RELIEVE THE FIDUCIARY FROM PERSONAL LIABILITY AS THE
23 RESULT OF THE FIDUCIARY'S ASSUMPTION OF PERSONAL LIABILITY, NEG-
24 LIGENCE, GROSS NEGLIGENCE, OR RECKLESS, WILLFUL, OR INTENTIONAL
25 MISCONDUCT.

26 (B) PREVENT CLAIMS AGAINST THE ASSETS THAT ARE PART OF OR
27 ALL OF THE ESTATE OR TRUST THAT CONTAINS THE FACILITY; ANY OTHER

1 ESTATE OR TRUST OF THE DECEDENT, GRANTOR, WARD, OR OTHER PERSON
2 WHOSE ESTATE OR TRUST CONTAINS THE FACILITY THAT IS ADMINISTERED
3 BY THE LENDER; OR ANY OTHER ESTATE OR TRUST OF THE DECEDENT,
4 GRANTOR, WARD, OR OTHER PERSON WHOSE ESTATE OR TRUST CONTAINS THE
5 FACILITY. SUCH CLAIMS MAY BE ASSERTED AGAINST THE FIDUCIARY IN
6 ITS REPRESENTATIVE CAPACITY, WHETHER OR NOT THE FIDUCIARY IS PER-
7 SONALLY LIABLE.

8 Sec. 20102. The legislature hereby finds and declares:

9 (a) That there exist in this state certain facilities con-
10 taining hazardous substances that pose a danger to the public
11 health, safety, or welfare, or to the environment of this state.

12 (b) That there is a need to provide for a method of elimi-
13 nating the danger of environmental contamination caused by the
14 existence of hazardous substances at ~~sites~~ FACILITIES within
15 the state.

16 (c) That it is the purpose of this part to provide for
17 appropriate response activity to eliminate ~~the environmental~~
18 ~~contamination caused by the presence of hazardous substances at~~
19 ~~sites~~ UNACCEPTABLE RISKS TO PUBLIC HEALTH, SAFETY, OR WELFARE,
20 OR TO THE ENVIRONMENT FROM ENVIRONMENTAL CONTAMINATION AT
21 FACILITIES within the state.

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

25 (e) That the responsibility for the cost of response activi-
26 ties pertaining to a release or threat of release and repairing
27 injury, destruction, or loss to natural resources caused by a

1 release or threat of release should not be placed upon the public
2 except when funds cannot be collected from, or a response activ-
3 ity cannot be undertaken by, a person liable under this part. ~~7~~
4 ~~in conjunction with an appropriate contribution, if applicable,~~
5 ~~from a fund administered by the orphan share administration.~~

6 (F) THAT LIABILITY FOR RESPONSE ACTIVITIES TO ADDRESS ENVI-
7 RONMENTAL CONTAMINATION SHOULD BE IMPOSED UPON THOSE PERSONS WHO
8 ARE RESPONSIBLE FOR THE ENVIRONMENTAL CONTAMINATION.

9 (G) ~~(f)~~ That to the extent possible, consistent with
10 requirements under this part and rules promulgated under this
11 part, response activities shall be undertaken by persons liable
12 under this part.

13 (H) ~~(g)~~ That this part is intended to provide remedies for
14 facilities posing any threat to the public health, safety, or
15 welfare, or to the environment, regardless of whether the release
16 or threat of release of a hazardous substance occurred before or
17 after October 13, 1982, the effective date of the former environ-
18 mental response act, Act No. 307 of the Public Acts of 1982, and
19 for this purpose this part shall be given retroactive
20 application. However, criminal and civil penalties provided in
21 the amendatory Public Acts of 1982 shall apply to violations of
22 this part that occur after July 1, 1991.

23 ~~(h) That money should be appropriated by the legislature~~
24 ~~for response activities taking into consideration the order that~~
25 ~~sites are on the list described in section 20+05(1)(d) and appli-~~
26 ~~cable provisions of the environmental protection bond~~

1 ~~implementation act, Act No. 328 of the Public Acts of 1988, being~~
2 ~~sections 299.671 to 299.685 of the Michigan Compiled Laws.~~

3 (i) That a ~~site~~ FACILITY that is owned by the federal gov-
4 ernment, the state, or a local unit of government, or a ~~site~~
5 FACILITY where a release or threat of release is caused by the
6 federal government, the state, or a local unit of government,
7 should not be treated differently in terms of the expenditure of
8 money for response activities than any ~~other site on the list~~
9 ~~described in section 20105(1)(d)~~ FACILITY.

10 (j) That if a person ~~that may be~~ WHO IS liable under
11 section 20126 is the state or a local unit of government, this
12 part should be enforced by the attorney general and the depart-
13 ment in the same manner as it would be for any other person ~~that~~
14 ~~may be~~ WHO IS liable under section 20126.

15 ~~(k) That prior to expending money to undertake remedial~~
16 ~~action at a site, the department should assure a private or~~
17 ~~public funding source, or a combination of funding sources, that~~
18 ~~is sufficient to assure that the response activities at the site~~
19 ~~proceed without interruptions caused by insufficient financial~~
20 ~~resources until the site meets or exceeds the standards estab-~~
21 ~~lished by the department for that site.~~

22 (K) ~~(l)~~ That this part is not intended to impose penalties
23 or exemplary damages upon parties conducting response activities
24 pursuant to a decree or order to which the United States is a
25 party.

26 (L) ~~(m)~~ That this part is intended to foster the
27 redevelopment and reuse of vacant manufacturing facilities and

1 abandoned industrial sites that have economic development
2 potential, if that redevelopment or reuse assures the protection
3 of the public health, safety, welfare, and the environment.

4 SEC. 20102A. NOTWITHSTANDING ANY AMENDMENTS TO THIS PART
5 ANY LITIGATION THAT WAS COMMENCED BY ANY PERSON UNDER FORMER ACT
6 NO. 307 OF THE PUBLIC ACTS OF 1982 OR ANY ENFORCEABLE AGREEMENT
7 ENTERED INTO BY ANY PERSON UNDER FORMER ACT NO. 307 OF THE PUBLIC
8 ACTS OF 1982 ON OR BEFORE MARCH 1, 1995 SHALL BE GOVERNED BY THE
9 PROVISIONS OF FORMER ACT NO. 307 OF THE PUBLIC ACTS OF 1982 THAT
10 WERE IN EFFECT ON MARCH 1, 1995. FOR PURPOSES OF THIS SECTION,
11 THE PROVISIONS OF FORMER ACT NO. 307 OF THE PUBLIC ACTS OF 1982
12 THAT WERE IN EFFECT ON MARCH 1, 1995 ARE HEREBY INCORPORATED BY
13 REFERENCE.

14 Sec. 20104. The department shall coordinate all activities
15 required under this part and shall promulgate rules to provide
16 for the performance of response activities, to reflect and effec-
17 tuate the powers and duties of the department ~~of natural~~
18 ~~resources~~ under this part, and as otherwise necessary to carry
19 out the requirements of this part.

20 SEC. 20105A. THE DEPARTMENT SHALL ANNUALLY COMPILE A LIST
21 OF SITES THAT ARE RECEIVING PUBLIC FUNDING TO CONDUCT RESPONSE
22 ACTIVITIES. THIS LIST SHALL BE ARRANGED IN ALPHABETICAL ORDER.
23 THE DEPARTMENT SHALL ANNUALLY SUBMIT THIS LIST TO THE
24 LEGISLATURE.

25 Sec. 20107. A person ~~that~~ WHO willfully tears down,
26 removes, or destroys any sign or notice warning of the presence
27 of hazardous substances or marking boundaries of a ~~site~~

1 FACILITY subject to response activity under this part is guilty
2 of a misdemeanor punishable by imprisonment for not more than 90
3 days or a fine of not more than \$500.00, or both.

4 SEC. 20107A. (1) A PERSON WHO OWNS OR OPERATES PROPERTY ON
5 WHICH ENVIRONMENTAL CONTAMINATION EXISTS SHALL DO ALL OF THE
6 FOLLOWING:

7 (A) UNDERTAKE MEASURES AS ARE NECESSARY TO PREVENT EXACERBA-
8 TION OF THE EXISTING CONTAMINATION.

9 (B) EXERCISE DUE CARE WITH REGARD TO ANY ENVIRONMENTAL CON-
10 TAMINATION ON THE PROPERTY BY UNDERTAKING RESPONSE ACTIVITY NEC-
11 ESSARY TO MITIGATE ANY POTENTIAL EXPOSURE TO HAZARDOUS SUBSTANCES
12 AND ALLOW FOR THE INTENDED USE OF THE PROPERTY IN A MANNER THAT
13 PROTECTS THE PUBLIC HEALTH AND SAFETY.

14 (C) TAKE REASONABLE PRECAUTIONS AGAINST THE REASONABLY FORE-
15 SEEABLE ACTS OR OMISSIONS OF A THIRD PARTY AND THE CONSEQUENCES
16 THAT FORESEEABLY COULD RESULT FROM THOSE ACTS OR OMISSIONS.

17 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, A
18 PERSON WHO VIOLATES THIS SECTION IS LIABLE FOR ANY EXACERBATION
19 OF EXISTING ENVIRONMENTAL CONTAMINATION AND ANY DAMAGES RESULTING
20 FROM THE VIOLATION OF THIS SECTION.

21 (3) COMPLIANCE WITH THIS SECTION DOES NOT SATISFY A PERSON'S
22 OBLIGATION TO PERFORM RESPONSE ACTIVITIES AS OTHERWISE REQUIRED
23 UNDER THIS PART.

24 SEC. 20112A. WITHIN 2 YEARS AFTER THE EFFECTIVE DATE OF
25 THIS SECTION AND BIENNIALY THEREAFTER, THE DEPARTMENT SHALL
26 REPORT TO THE LEGISLATURE ON THE EFFECTIVENESS OF THE AMENDATORY
27 ACT THAT ADDED THIS SECTION IN RESTORING THE ECONOMIC VALUE OF

1 SITES OF ENVIRONMENTAL CONTAMINATION. THE REPORT SHALL INCLUDE
 2 BUT NOT BE LIMITED TO AN EXAMINATION OF THE EFFECTIVENESS OF THE
 3 CATEGORICAL CLEANUP CRITERIA AND LIABILITY PROVISIONS IN ENCOUR-
 4 AGING THE REDEVELOPMENT OF SITES OF ENVIRONMENTAL CONTAMINATION.
 5 IN PREPARING THIS REPORT, THE DEPARTMENT SHALL CONSULT THE CHAIR-
 6 PERSONS OF THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COM-
 7 MITTEES WITH JURISDICTION OVER ISSUES PERTAINING TO NATURAL
 8 RESOURCES AND THE ENVIRONMENT.

9 Sec. 20113. (1) Money required to pay for response activi-
 10 ties recommended under this part and to reimburse state depart-
 11 ments and agencies for expenditures for those purposes shall be
 12 appropriated from the fund and any other source the legislature
 13 considers necessary to implement the requirements of this part.

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

17 (2) ~~(3)~~ The fund may be used for match, operation, and
 18 maintenance purposes as required under the comprehensive environ-
 19 mental response, compensation, and liability act of 1980, Public
 20 Law 96-510, 94 Stat. 2767, and under subtitle I of the solid
 21 waste disposal act, title II of Public Law 89-272, 42 U.S.C. 6991
 22 to 6991i.

23 (3) ~~(4)~~ The governor shall recommend an annual appropria-
 24 tion for the fund in his or her annual budget recommendations to
 25 the legislature.

26 Sec. 20114. (1) Except as provided in subsection (3), an
 27 owner or operator of a facility ~~that obtains information that~~

1 ~~there may be a release at that facility shall immediately take~~
2 ~~appropriate action, consistent with applicable laws and rules~~
3 ~~promulgated by the department, to~~ WHO IS LIABLE UNDER SECTION
4 20126 SHALL do all of the following:

5 ~~(a) Confirm the existence of the release.~~

6 (A) ~~(b)~~ Determine the nature and extent of the release.

7 (B) ~~(c)~~ Report the release to the department within 24
8 hours after obtaining knowledge of the release. The requirements
9 of this subdivision shall apply to reportable quantities of haz-
10 ardous substances established pursuant to 40 C.F.R. 302.4 (1989),
11 unless the department establishes through rules alternate or
12 additional reportable quantities as necessary to protect the
13 public health, safety, or welfare, or the environment.

14 (C) ~~(d)~~ Immediately stop or prevent the release at the
15 source.

16 (D) IMMEDIATELY IMPLEMENT SOURCE CONTROL OR REMOVAL MEASURES
17 TO REMOVE OR CONTAIN HAZARDOUS SUBSTANCES THAT HAVE BEEN RELEASED
18 IF THOSE MEASURES ARE TECHNICALLY PRACTICABLE, COST EFFECTIVE,
19 AND PROVIDE PROTECTION TO THE ENVIRONMENT. AT A FACILITY WHERE
20 HAZARDOUS SUBSTANCES HAVE BEEN RELEASED, AND THOSE HAZARDOUS SUB-
21 STANCES HAVE NOT AFFECTED GROUNDWATER BUT ARE LIKELY TO, GROUND-
22 WATER CONTAMINATION SHALL BE PREVENTED IF IT CAN BE PREVENTED BY
23 MEASURES THAT ARE TECHNICALLY PRACTICABLE, COST EFFECTIVE, AND
24 PROVIDE PROTECTION TO THE ENVIRONMENT.

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

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

4 (G) CONDUCT RESPONSE ACTIVITIES NECESSARY TO ACHIEVE THE
5 CLEANUP CRITERIA SPECIFIED IN THIS PART AND THE RULES PROMULGATED
6 UNDER THIS PART.

7 (H) UPON WRITTEN REQUEST BY THE DEPARTMENT, TAKE THE FOLLOW-
8 ING ADDITIONAL ACTIONS:

9 (i) PROVIDE A PLAN FOR AND UNDERTAKE INTERIM RESPONSE
10 ACTIVITIES.

11 (ii) PROVIDE A PLAN FOR AND UNDERTAKE EVALUATION
12 ACTIVITIES.

13 (iii) TAKE ANY OTHER RESPONSE ACTIVITY DETERMINED BY THE
14 DEPARTMENT TO BE TECHNICALLY SOUND AND NECESSARY TO PROTECT THE
15 PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT.

16 (iv) SUBMIT TO THE DEPARTMENT FOR APPROVAL A REMEDIAL ACTION
17 PLAN THAT, WHEN IMPLEMENTED, WILL ACHIEVE THE CLEANUP CRITERIA
18 SPECIFIED IN THIS PART AND THE RULES PROMULGATED UNDER THIS
19 PART.

20 (v) IMPLEMENT AN APPROVED REMEDIAL ACTION PLAN IN ACCORDANCE
21 WITH A SCHEDULE APPROVED BY THE DEPARTMENT PURSUANT TO THIS PART.

22 (2) Except as provided in subsection (3), a person ~~that~~
23 WHO holds an easement interest in a portion of a property ~~that~~
24 WHO has knowledge that there may be a release within that ease-
25 ment shall report the release to the department within 24 hours
26 after obtaining knowledge of the release. Unless the department
27 establishes through rules alternate or additional reportable

1 quantities as necessary to protect the public health, safety, or
2 welfare, or the environment, this subsection shall apply to
3 reportable quantities of hazardous substances established pursu-
4 ant to 40 C.F.R. 302.4 (1989).

5 (3) The requirements of subsections (1) and (2) do not apply
6 to a permitted release or a release in compliance with applicable
7 federal, state, and local air pollution control laws.

8 ~~(4) An owner or operator of a facility or a person notified~~
9 ~~by the department as potentially liable pursuant to~~
10 ~~section 20126, upon written request by the department, shall take~~
11 ~~the following additional actions:~~

12 ~~(a) Provide a plan for and undertake interim response~~
13 ~~activities.~~

14 ~~(b) Provide a plan for and undertake evaluation activities.~~

15 ~~(c) Take any other response activity determined by the~~
16 ~~department to be technically sound and necessary to protect the~~
17 ~~public health, safety, welfare, or the environment.~~

18 ~~(d) Submit to the department for approval a remedial action~~
19 ~~plan that, when implemented, will achieve the cleanup levels~~
20 ~~specified in rules promulgated under this part.~~

21 ~~(e) Implement an approved remedial action plan in accordance~~
22 ~~with a schedule approved by the department pursuant to this~~
23 ~~part.~~

24 (4) ~~(5)~~ Upon a determination by the department that a
25 person has completed all response activity at a facility pursuant
26 to an approved remedial action plan prepared and implemented in
27 compliance with THIS PART AND THE rules promulgated under this

1 part, the department, upon request of a person, shall execute and
2 present a document stating that all response activities required
3 in the approved remedial action plan have been completed.

4 (5) ~~(6)~~ A person in charge of a facility from which a haz-
5 ardous substance is released that is determined to be reportable
6 under subsection ~~(1)(c)~~ (1)(B), other than a permitted release,
7 ~~that~~ WHO fails to notify the department within 24 hours after
8 obtaining knowledge of the release or ~~that~~ WHO submits in such
9 notification any information that the person knows to be false or
10 misleading, is subject to a civil fine of not more than
11 \$25,000.00 for each day in which the violation occurs or the
12 failure to comply continues. A fine imposed under this subsec-
13 tion shall be based upon the seriousness of the violation and any
14 good faith efforts by the violator to comply with this
15 subsection.

16 ~~(7) If a state or local unit of government obtains informa-~~
17 ~~tion that there is a release or threat of release on public prop-~~
18 ~~erty, and is requested by the department to undertake response~~
19 ~~activity, or takes emergency action that has been approved by the~~
20 ~~department, and the state or local unit of government incurs~~
21 ~~expenses in taking the actions, the expenses of the state or~~
22 ~~local unit of government shall be reimbursed from the Michigan~~
23 ~~environmental assurance fund if enabling legislation creating the~~
24 ~~fund is enacted into law and if each of the following is~~
25 ~~established:~~

1 ~~(a) The release or threat of release was not discovered or~~
2 ~~should not have been discovered pursuant to section~~
3 ~~20+27(2)(b)(ii).~~

4 ~~(b) The state or local unit of government did not cause or~~
5 ~~contribute to the release or threat of release.~~

6 ~~(c) The state or local unit of government is not liable~~
7 ~~under section 20+26 for the release or threat of release.~~

8 (6) ~~(8)~~ This section does not do either of the following:

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

11 (b) Limit the liability of a person ~~that may be~~ WHO IS
12 liable under section 20+26.

13 Sec. 20+15. (1) The department, upon confirmation of a
14 release or threat of release of a substance that is regulated by
15 the department of agriculture, shall notify the department of
16 agriculture. The department shall consult with the department of
17 agriculture in the development of response activities if a
18 release or threat of a release of a substance regulated by the
19 department of agriculture occurs. The department of agriculture
20 shall provide to the department information necessary to identify
21 substances regulated by the department of agriculture. This
22 information shall include but is not limited to the list of state
23 registered pesticides.

24 (2) As used in this section, "substance regulated by the
25 department of agriculture" means a fertilizer or soil conditioner
26 as defined in ~~the fertilizer act of 1975, Act No. 198 of the~~
27 ~~Public Acts of 1975, being sections 286.751 to 286.767 of the~~

1 ~~Michigan Compiled Laws~~ PART 85, or a pesticide as defined in
2 part 83.

3 Sec. 20116. (1) A person ~~that~~ WHO has knowledge or infor-
4 mation or is on notice through a recorded instrument that a
5 parcel of his or her real property is a facility ~~at which there~~
6 ~~has been a release, in a quantity required to be reported pursu-~~
7 ~~ant to section 20114(1)(c),~~ shall not transfer an interest in
8 that real property unless he or she provides written notice to
9 the purchaser or other person to which the property is trans-
10 ferred that the real property is ~~such~~ a facility and discloses
11 the general nature and extent of the release. The written notice
12 provided by the transferor shall be a separate instrument and, if
13 the instrument conveying the interest in real property is
14 recorded, the written notice shall be recorded with the register
15 of deeds in the same county.

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

22 (3) A PERSON SHALL NOT TRANSFER AN INTEREST IN REAL PROPERTY
23 UNLESS THE PERSON FULLY DISCLOSES ANY LAND OR RESOURCE USE
24 RESTRICTIONS THAT APPLY TO THAT REAL PROPERTY AS A PART OF REME-
25 DIAL ACTION THAT HAS BEEN IMPLEMENTED IN COMPLIANCE WITH
26 SECTION 20120A.

1 Sec. 20117. (1) To determine the need for response activity
2 or selecting or taking a response activity or otherwise enforcing
3 this part or a rule promulgated under this part, the ~~directors~~
4 ~~or their authorized representatives~~ STATE OR A LOCAL UNIT OF
5 GOVERNMENT may upon reasonable notice require a person to furnish
6 any information that the person may have relating to any of the
7 following:

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

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

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

15 (a) Grant the ~~directors or their authorized~~
16 ~~representatives~~ STATE OR A LOCAL UNIT OF GOVERNMENT access at
17 all reasonable times to any place, property, or location to
18 inspect and copy the related information.

19 (b) Copy and furnish to the ~~directors or their authorized~~
20 ~~representatives~~ STATE OR A LOCAL UNIT OF GOVERNMENT the related
21 information.

22 (3) If there is a reasonable basis to believe that there may
23 be a release or threat of release, the ~~directors or their autho-~~
24 ~~rized representatives~~ STATE OR A LOCAL UNIT OF GOVERNMENT have
25 the right to enter at all reasonable times any public or private
26 property for any of the following purposes:

1 (a) Identifying a facility.

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

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

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

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

12 (4) A person that enters public or private property pursuant
13 to subsection (3) shall present credentials; make a reasonable
14 effort to contact the person in charge of the facility or that
15 person's designee; describe the nature of the activities autho-
16 rized under subsection (3) to be undertaken; and inform the
17 person that is in charge of the facility that he or she is enti-
18 tled to participate in the collection of split samples, and is
19 entitled to a copy of the results of any analysis of samples and
20 a copy of any photograph or videotape taken. The person in
21 charge or his or her agent may accompany the ~~directors or their~~
22 ~~authorized representatives~~ STATE OR A LOCAL UNIT OF GOVERNMENT
23 during the activities authorized under subsection (3) that take
24 place and may participate in the collection of any split samples
25 on the property. The absence or unavailability of the person in
26 charge or that person's agent shall not delay or limit the
27 authority of the ~~directors or their authorized representatives~~

1 STATE OR A LOCAL UNIT OF GOVERNMENT to enter the property or
2 proceed with the activities authorized under subsection (3).

3 (5) If the ~~directors or their authorized representatives~~
4 STATE OR A LOCAL UNIT OF GOVERNMENT obtain any samples, before
5 leaving the property they shall give to the person in charge of
6 the property from which the samples were obtained a receipt
7 describing the sample. A copy of the results of any analysis of
8 the samples shall upon request be furnished promptly to the
9 person in charge. A copy of any photograph or videotape taken
10 pursuant to subsection (3)(c) shall upon request be furnished
11 promptly to the person in charge.

12 (6) All inspections and investigations undertaken by the
13 ~~directors or their authorized representatives~~ STATE OR A LOCAL
14 UNIT OF GOVERNMENT under this section shall be completed with
15 reasonable promptness.

16 (7) If refused entry or information under subsections (1) to
17 (4), for the purposes of enforcing the information gathering and
18 entry authority provided in this section, the attorney general,
19 on behalf of the state, OR A LOCAL UNIT OF GOVERNMENT may do
20 either of the following:

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

24 (b) Commence a civil action to compel compliance with a
25 request for information or entry pursuant to this section, to
26 authorize information gathering and entry provided for in this

1 section, and to enjoin interference with the exercise of the
2 authority provided in this section.

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

13 (9) In a civil action brought pursuant to subsection (7), if
14 there is a reasonable basis to believe there may be a release or
15 a threatened release, the court may assess a civil fine not to
16 exceed \$25,000.00 for each day of noncompliance against a person
17 that unreasonably fails to comply with subsection (1), (2), or
18 (3).

19 (10) Information obtained by the ~~directors or their autho-~~
20 ~~rized representatives~~ STATE OR LOCAL UNIT OF GOVERNMENT as
21 authorized under subsection (1) or (2) shall be available to the
22 public to the extent provided by the freedom of information act,
23 Act No. 442 of the Public Acts of 1976, being sections 15.231 to
24 15.246 of the Michigan Compiled Laws. A person ~~that~~ WHO pro-
25 vides information pursuant to subsection (1) or (2), or the
26 person in charge of a facility at which photographs or videotapes
27 are taken pursuant to subsection (3), may designate the

1 information that the person believes to be entitled to protection
2 as if the information was exempt from disclosure as being either
3 trade secrets or information of a personal nature under
4 section 13(1)(a) or (g) of the freedom of information act, Act
5 No. 442 of the Public Acts of 1976, being section 15.243 of the
6 Michigan Compiled Laws, and submit that specifically designated
7 information separately from other information required to be pro-
8 vided under this section.

9 (11) Notwithstanding subsection (10), the following informa-
10 tion obtained by the ~~directors or their authorized~~
11 ~~representatives~~ STATE OR A LOCAL UNIT OF GOVERNMENT as required
12 by this section shall be available to the public:

13 (a) The trade name, common name, or generic class or cate-
14 gory of the hazardous substance.

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

19 (c) The hazards to the public health, safety, or welfare, or
20 the environment posed by a hazardous substance, including physi-
21 cal hazards, such as explosion, and potential acute and chronic
22 health hazards.

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

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

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

3 (g) Hydrogeologic data.

4 (h) Groundwater monitoring data.

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

19 (13) As used in this section: ~~,"information"~~

20 (A) INFORMATION includes, but is not limited to, documents,
21 materials, records, photographs, and videotapes.

22 (B) "LOCAL UNIT OF GOVERNMENT" MEANS AN AUTHORIZED EMPLOYEE
23 OR REPRESENTATIVE OF A LOCAL UNIT OF GOVERNMENT.

24 (C) "STATE" MEANS THE DIRECTORS OR THEIR AUTHORIZED REPRE-
25 SENTATIVES ON BEHALF OF THE STATE.

26 Sec. 20118. (1) The department may take response activity
27 or approve of response activity proposed by a person that is

1 consistent with THIS PART AND THE rules promulgated under this
2 part relating to the selection and implementation of response
3 activity that the department concludes is necessary and appropri-
4 ate to protect the public health, safety, or welfare, or the
5 environment.

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

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

10 (b) ~~Attain~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5)
11 AND (6), ATTAIN a degree of cleanup and control of hazardous sub-
12 stances that complies with all applicable or relevant and appro-
13 priate requirements, rules, criteria, limitations, and standards
14 of state and federal environmental law.

15 (c) ~~Be~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5) AND
16 (6), BE consistent with any cleanup ~~standards~~ CRITERIA incorpo-
17 rated in ~~any~~ rules promulgated under this part.

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

22 (4) Remedial actions that permanently and significantly
23 reduce the volume, toxicity, or mobility of the hazardous sub-
24 stances are to be preferred.

25 (5) THE DEPARTMENT MAY SELECT OR APPROVE OF A REMEDIAL
26 ACTION PLAN MEETING THE CRITERIA PROVIDED FOR IN SECTION 20120A
27 THAT DOES NOT ATTAIN A DEGREE OF CONTROL OR CLEANUP OF HAZARDOUS

1 SUBSTANCES THAT COMPLIES WITH R 299.5705(5) OR R 299.5705(6) OF
2 THE MICHIGAN ADMINISTRATIVE CODE, OR BOTH, IF THE DEPARTMENT
3 MAKES A FINDING -THAT THE REMEDIAL ACTION IS PROTECTIVE OF THE
4 PUBLIC HEALTH, SAFETY, AND WELFARE, AND THE ENVIRONMENT.
5 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION, THE
6 DEPARTMENT SHALL NOT APPROVE OF A REMEDIAL ACTION PLAN THAT DOES
7 NOT ATTAIN A DEGREE OF CONTROL OR CLEANUP OF HAZARDOUS SUBSTANCES
8 THAT COMPLIES WITH R 299.5705(5) OR R 299.5705(6) OF THE MICHIGAN
9 ADMINISTRATIVE CODE IF THE RELEASE WAS NEGLIGENT, GROSSLY NEGLI-
10 GENT, OR INTENTIONAL, UNLESS ATTAINING THAT DEGREE OF CONTROL IS
11 TECHNICALLY INFEASIBLE, OR THE ADVERSE ENVIRONMENTAL IMPACT OF
12 IMPLEMENTING A REMEDIAL ACTION TO SATISFY THE RULE WOULD EXCEED
13 THE ENVIRONMENTAL BENEFIT OF THAT REMEDIAL ACTION.

14 (6) A REMEDIAL ACTION PLAN MAY BE SELECTED OR APPROVED PUR-
15 SUANT TO SUBSECTION (5) WITH REGARD TO R 299.5705(5) OR
16 R 299.5705(6), OR BOTH, OF THE MICHIGAN ADMINISTRATIVE CODE, IF
17 THE DEPARTMENT DETERMINES, BASED ON THE ADMINISTRATIVE RECORD,
18 THAT 1 OR MORE OF THE FOLLOWING CONDITIONS ARE SATISFIED:

19 (A) COMPLIANCE WITH R 299.5705(5) OR R 299.5705(6), OR BOTH,
20 OF THE MICHIGAN ADMINISTRATIVE CODE IS TECHNICALLY
21 IMPRACTICABLE.

22 (B) THE REMEDIAL ACTION SELECTED OR APPROVED WILL, WITHIN A
23 REASONABLE PERIOD OF TIME, ATTAIN A STANDARD OF PERFORMANCE THAT
24 IS EQUIVALENT TO THAT REQUIRED UNDER R 299.5705(5) OR
25 R 299.5705(6) OF THE MICHIGAN ADMINISTRATIVE CODE.

26 (C) THE ADVERSE ENVIRONMENTAL IMPACT OF IMPLEMENTING A
27 REMEDIAL ACTION TO SATISFY R 299.5705(5) OR R 299.5705(6), OR

1 BOTH, OF THE MICHIGAN ADMINISTRATIVE CODE WOULD EXCEED THE
2 ENVIRONMENTAL BENEFIT OF THE REMEDIAL ACTION.

3 (D) THE REMEDIAL ACTION PROVIDES FOR THE REDUCTION OF HAZ-
4 ARDOUS SUBSTANCE CONCENTRATIONS IN THE AQUIFER THROUGH A NATU-
5 RALLY OCCURRING PROCESS THAT IS DOCUMENTED TO OCCUR AT THE FACIL-
6 ITY AND BOTH OF THE FOLLOWING CONDITIONS ARE MET:

7 (i) IT HAS BEEN DEMONSTRATED THAT THERE WILL BE NO ADVERSE
8 IMPACT ON THE ENVIRONMENT AS THE RESULT OF MIGRATION OF THE HAZ-
9 ARDOUS SUBSTANCES DURING THE REMEDIAL ACTION, EXCEPT FOR THAT
10 PART OF THE AQUIFER SPECIFIED IN AND APPROVED BY THE DEPARTMENT
11 IN THE REMEDIAL ACTION PLAN.

12 (ii) THE REMEDIAL ACTION INCLUDES ENFORCEABLE LAND USE
13 RESTRICTIONS OR OTHER INSTITUTIONAL CONTROLS NECESSARY TO PREVENT
14 UNACCEPTABLE RISK FROM EXPOSURE TO THE HAZARDOUS SUBSTANCES, AS
15 DEFINED BY THE CLEANUP CRITERIA APPROVED AS PART OF THE REMEDIAL
16 ACTION PLAN.

17 (8) IF THE DEPARTMENT APPROVES OF A REMEDIAL ACTION PLAN
18 PURSUANT, IN PART, TO SUBSECTIONS (5) AND (6), THE ADMINISTRATIVE
19 RECORD FOR THE FACILITY SHALL INCLUDE A COMPLETE EXPLANATION OF
20 THE BASIS OF THE DEPARTMENT'S DECISION UNDER SUBSECTIONS (5) AND
21 (6). IN ADDITION, THE INTENT OF AND THE BASIS FOR THE EXERCISE
22 OF AUTHORITY PROVIDED FOR IN SUBSECTIONS (5) AND (6) SHALL BE
23 PART OF AN ANALYSIS OF THE RECOMMENDED ALTERNATIVES IF 1 IS
24 REQUIRED PURSUANT TO R 299.5605(1)(A) OF THE MICHIGAN ADMINISTRA-
25 TIVE CODE.

26 (9) A REMEDIAL ACTION PLAN APPROVED BY THE DEPARTMENT SHALL
27 INCLUDE AN ANALYSIS OF SOURCE CONTROL MEASURES ALREADY

1 IMPLEMENTED OR PROPOSED, OR BOTH. A REMEDIAL ACTION PLAN MAY
2 INCORPORATE BY REFERENCE AN ANALYSIS OF SOURCE CONTROL MEASURES
3 PROVIDED IN A FEASIBILITY STUDY.

4 (10) ANY LIABILITY A PERSON MAY HAVE UNDER THIS PART SHALL
5 BE UNAFFECTED BY A DECISION OF THE DEPARTMENT PURSUANT TO
6 SUBSECTION (5), (6), OR (7), INCLUDING LIABILITY FOR NATURAL
7 RESOURCES DAMAGES PURSUANT TO SECTION 20126A(1)(C).

8 (11) AN AQUIFER MONITORING PLAN SHALL BE PART OF ALL REME-
9 DIAL ACTION PLANS THAT ADDRESS AQUIFER CONTAMINATION. THE AQUI-
10 FER MONITORING PLAN SHALL INCLUDE ALL OF THE FOLLOWING:

11 (A) INFORMATION ADDRESSED BY R 299.5519(2)(A) TO (4) OF THE
12 MICHIGAN ADMINISTRATIVE CODE.

13 (B) IDENTIFICATION OF POINTS OF COMPLIANCE FOR JUDGING THE
14 EFFECTIVENESS OF THE REMEDIAL ACTION.

15 (C) IDENTIFICATION OF POINTS OF COMPLIANCE IF STANDARDS
16 BASED ON SECTION 20120A(1)(A) ARE REQUIRED TO BE MET AS PART OF
17 THE REMEDIAL ACTION.

18 (12) THE DEPARTMENT MAY DETERMINE THAT A MONITORING PLAN IS
19 NOT REQUIRED PURSUANT TO SUBSECTION (11) IF THE PERSON CONDUCTING
20 THE REMEDIAL ACTION DEMONSTRATES THAT THE HORIZONTAL AND VERTICAL
21 EXTENT OF HAZARDOUS SUBSTANCE CONCENTRATIONS IN THE AQUIFER ABOVE
22 THOSE ALLOWED BY THE CRITERIA BASED ON SECTION 20120A(1)(A) WILL
23 NOT SIGNIFICANTLY INCREASE IN THE ABSENCE OF ACTIVE REMOVAL OF
24 THOSE HAZARDOUS SUBSTANCES FROM THE AQUIFER. THE DEPARTMENT'S
25 DETERMINATION PURSUANT TO THIS SUBSECTION SHALL BE BASED ON THE
26 ADMINISTRATIVE RECORD AND INCLUDE AN EXPLANATION OF THE BASIS FOR
27 THE DETERMINATION.

1 (13) ~~-(5)-~~ The department shall encourage the use of
2 innovative cleanup technologies. Before July 1, 1995, the
3 department shall undertake 3 pilot projects to demonstrate inno-
4 vative cleanup technologies at facilities where money from the
5 fund is used.

6 ~~-(6) At a facility where state funds will be spent to plan~~
7 ~~or implement a remedial action plan or where the department~~
8 ~~determines there is a significant public interest, within 30 days~~
9 ~~after the completion of a remedial investigation for the facili-~~
10 ~~ty, the department shall provide the county and the municipality~~
11 ~~in which the facility is located a notice of the completion of~~
12 ~~the remedial investigation, a summary of the remedial investiga-~~
13 ~~tion, and notice of an opportunity for the people in the local~~
14 ~~unit of government to meet with the department regarding the~~
15 ~~remedial investigation and any proposed feasibility study for the~~
16 ~~facility. Upon a request for a public meeting by the governing~~
17 ~~body of the local unit of government or by 25 citizens of the~~
18 ~~local unit of government, the department shall, within 30 days of~~
19 ~~the request, meet with persons in the local unit of government.~~
20 ~~The person or persons requesting the public meeting shall publi-~~
21 ~~cize and provide accommodations for the meeting. The meeting~~
22 ~~shall be held in the local unit of government in which the facil-~~
23 ~~ity is located. The department shall provide copies of the~~
24 ~~notices and summary required in this subsection to the governing~~
25 ~~body of the local unit of government, to the known persons that~~
26 ~~may be liable under section 20+26, and to the main public library~~
27 ~~of the local unit of government in which the facility is~~

1 ~~located. The department shall send representatives to the~~
2 ~~meeting that are familiar with the facility and that are involved~~
3 ~~with determining the appropriate remedial actions to be taken at~~
4 ~~the facility. Persons that may be responsible under section~~
5 ~~20+26 for the facility may send representatives to the meeting.~~

6 ~~(7) Before approval of a proposed remedial action plan at a~~
7 ~~facility included on the list pursuant to section 20+05 that is~~
8 ~~not an interim response activity, if money from the fund is to be~~
9 ~~used or as specified in rules promulgated under this part, the~~
10 ~~department shall do all of the following:~~

11 ~~(a) Publish a notice and brief summary of the proposed reme-~~
12 ~~dial action plan.~~

13 ~~(b) Provide for public review and comment pertinent to docu-~~
14 ~~ments relating to the proposed remedial action plan, including,~~
15 ~~if applicable, the feasibility study that outlines alternative~~
16 ~~remedial action measures considered.~~

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

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

22 ~~(ii) A municipality in which the facility is located, by a~~
23 ~~majority vote of its governing body, requests a public meeting.~~

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

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

4 ~~(8) For purposes of this section, publication includes, at a~~
5 ~~minimum, publication in a major local newspaper of general circu-~~
6 ~~lation in this state. In addition, the administrative record~~
7 ~~shall be made available by the department for inspection by mem-~~
8 ~~bers of the public at or near the facility and in Lansing.~~

9 ~~(9) The department shall prepare a summary document that~~
10 ~~explains the reasons for the selection or approval of a remedial~~
11 ~~action plan. In addition, the department shall compile an admin-~~
12 ~~istrative record of the decision process that results in the~~
13 ~~selection of a remedial action plan. The administrative record~~
14 ~~shall contain all of the following:~~

15 ~~(a) Remedial investigation data regarding the facility.~~

16 ~~(b) If applicable, a feasibility study and potential reme-~~
17 ~~dial actions.~~

18 ~~(c) If applicable, a summary document that explains the rea-~~
19 ~~sons why a remedial investigation or feasibility study was not~~
20 ~~conducted.~~

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

23 ~~(e) If applicable, a document that summarizes the signifi-~~
24 ~~cant concerns raised by the members of the public and how they~~
25 ~~are to be addressed.~~

26 ~~(f) Other information appropriate to the facility.~~

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

6 Sec. 20119. (1) In accordance with this section, if the
7 department determines that there may be an imminent and substan-
8 tial endangerment to the public health, safety, or welfare, or
9 the environment, because of a release or threatened release, the
10 department may require persons ~~that may be~~ WHO ARE liable under
11 section 20126 to take necessary action to abate the danger or
12 threat.

13 (2) The department may issue an administrative order to a
14 person identified by the department as a person ~~that may be~~ WHO
15 IS liable under section 20126 requiring that person to perform
16 response activity relating to a facility for which that person
17 ~~may be~~ IS liable or to take any other action required by this
18 part. An order issued under this section shall state with rea-
19 sonable specificity the basis for issuance of the order and spec-
20 ify a reasonable time for compliance.

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

25 (4) A person ~~that~~ WHO, without sufficient cause, violates
26 or fails to properly comply with an administrative order issued

1 under this section is liable for either or both of the
2 following:

3 (a) A civil fine of not more than \$25,000.00 for each day in
4 which the violation occurs or the failure to comply continues. A
5 fine imposed under this subsection shall be based upon the seri-
6 ousness of the violation and any good faith efforts by the viola-
7 tor to comply with the administrative order.

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

12 (5) A person, to which an administrative order was issued
13 under this section and that complied with the terms of the order,
14 ~~that~~ WHO believes that the order was arbitrary and capricious
15 or unlawful may petition the department, within 60 days after
16 completion of the required action, for reimbursement from the
17 fund for the reasonable costs of the action plus interest at the
18 rate described in section 20126(4) and other necessary costs
19 incurred in seeking reimbursement under this subsection. If the
20 department refuses to grant all or part of the petition, the
21 petitioner may, within 30 days of receipt of the refusal, file an
22 action against the department in the court of claims seeking this
23 relief. A failure by the department either to grant or deny all
24 or any part of a petition within 120 days of receipt constitutes
25 a denial of that part of the petition, which denial is reviewable
26 as final agency action in the court of claims. To obtain
27 reimbursement, the petitioner shall establish by a preponderance

1 of the evidence that the petitioner is not liable under
2 section 20126 or that the action ordered was arbitrary and capri-
3 cious or unlawful, and in either instance that costs for which
4 the petitioner seeks reimbursement are reasonable in light of the
5 action required by and undertaken pursuant to the relevant
6 order.

7 SEC. 20120A. (1) THE DEPARTMENT MAY ESTABLISH CLEANUP CRI-
8 TERIA OR APPROVE OF REMEDIAL ACTIONS IN THE CATEGORIES LISTED IN
9 THIS SUBSECTION. THE CLEANUP CATEGORY PROPOSED SHALL BE THE
10 OPTION OF THE PERSON PROPOSING THE REMEDIAL ACTION, SUBJECT TO
11 DEPARTMENT APPROVAL, CONSIDERING THE APPROPRIATENESS OF THE CATE-
12 GORICAL CRITERIA TO THE FACILITY. THE CATEGORIES ARE AS
13 FOLLOWS:

14 (A) RESIDENTIAL.

15 (B) COMMERCIAL.

16 (C) RECREATIONAL.

17 (D) INDUSTRIAL.

18 (E) OTHER LAND USE BASED CATEGORIES ESTABLISHED BY THE
19 DEPARTMENT.

20 (F) LIMITED RESIDENTIAL.

21 (G) LIMITED COMMERCIAL.

22 (H) LIMITED RECREATIONAL.

23 (I) LIMITED INDUSTRIAL.

24 (J) OTHER LIMITED CATEGORIES ESTABLISHED BY THE DEPARTMENT.

25 (2) THE DEPARTMENT MAY APPROVE A REMEDIAL ACTION PLAN BASED
26 ON SITE SPECIFIC STANDARDS THAT SATISFY THE APPLICABLE
27 REQUIREMENTS OF THIS PART AND THE RULES PROMULGATED UNDER THIS

1 PART. ADDITIONALLY, THE DEPARTMENT MAY APPROVE A REMEDIAL ACTION
2 PLAN FOR A DESIGNATED AREA-WIDE ZONE ENCOMPASSING MORE THAN 1
3 FACILITY, AND MAY CONSOLIDATE REMEDIAL ACTIONS FOR MORE THAN 1
4 FACILITY.

5 (3) THE DEPARTMENT SHALL DEVELOP CLEANUP CRITERIA PURSUANT
6 TO SUBSECTION (1) BASED ON GENERIC HUMAN HEALTH RISK ASSESSMENT
7 ASSUMPTIONS DETERMINED BY THE DEPARTMENT TO APPROPRIATELY CHARAC-
8 TERIZE PATTERNS OF HUMAN EXPOSURE ASSOCIATED WITH CERTAIN LAND
9 USES. THE DEPARTMENT SHALL UTILIZE ONLY REASONABLE AND RELEVANT
10 EXPOSURE PATHWAYS IN DETERMINING THESE ASSUMPTIONS. THE DEPART-
11 MENT MAY PRESCRIBE MORE THAN 1 GENERIC SET OF EXPOSURE ASSUMP-
12 TIONS WITHIN EACH CATEGORY DESCRIBED IN SUBSECTION (1). IF THE
13 DEPARTMENT PRESCRIBES MORE THAN 1 GENERIC SET OF EXPOSURE ASSUMP-
14 TIONS WITHIN A CATEGORY, EACH SET OF EXPOSURE ASSUMPTIONS CREATES
15 A SUBCATEGORY WITHIN A CATEGORY DESCRIBED IN SUBSECTION (1). THE
16 DEPARTMENT SHALL SPECIFY SITE CHARACTERISTICS THAT DETERMINE THE
17 APPLICABILITY OF CRITERIA DERIVED FOR THESE CATEGORIES OR
18 SUBCATEGORIES.

19 (4) IF A HAZARDOUS SUBSTANCE POSES A CARCINOGENIC RISK TO
20 HUMANS, THE CLEANUP CRITERIA DERIVED FOR CANCER RISK UNDER
21 SUBSECTION (3) SHALL BE THE 95% UPPER BOUND ON THE CALCULATED
22 RISK OF 1 ADDITIONAL CANCER ABOVE THE BACKGROUND CANCER RATE PER
23 100,000 INDIVIDUALS USING THE GENERIC SET OF EXPOSURE ASSUMPTIONS
24 ESTABLISHED UNDER SUBSECTION (3) FOR THE APPROPRIATE CATEGORY OR
25 SUBCATEGORY. IF THE HAZARDOUS SUBSTANCE POSES A RISK OF AN
26 ADVERSE HEALTH EFFECT OTHER THAN CANCER, CLEANUP CRITERIA SHALL
27 BE DERIVED USING APPROPRIATE HUMAN HEALTH RISK ASSESSMENT METHODS

1 FOR THAT ADVERSE HEALTH EFFECT AND THE GENERIC SET OF EXPOSURE
2 ASSUMPTIONS ESTABLISHED UNDER SUBSECTION (3) FOR THE APPROPRIATE
3 CATEGORY OR SUBCATEGORY. FOR THE NONCARCINOGENIC EFFECTS OF A
4 HAZARDOUS SUBSTANCE PRESENT IN SOILS, THE INTAKE SHALL BE ASSUMED
5 TO BE 100% OF THE PROTECTIVE LEVEL, UNLESS COMPOUND AND
6 SITE-SPECIFIC DATA ARE AVAILABLE TO DEMONSTRATE THAT A DIFFERENT
7 SOURCE CONTRIBUTION IS APPROPRIATE. IF A HAZARDOUS SUBSTANCE
8 POSES A RISK OF BOTH CANCER AND AN ADVERSE HEALTH EFFECT OTHER
9 THAN CANCER, CLEANUP CRITERIA SHALL BE DERIVED UNDER
10 SUBSECTION (3) FOR CANCER AND EACH ADVERSE HEALTH EFFECT.

11 (5) IF A CLEANUP CRITERION DERIVED UNDER SUBSECTION (4) FOR
12 GROUNDWATER IN AN AQUIFER DIFFERS FROM EITHER: (A) THE STATE
13 DRINKING WATER STANDARD ESTABLISHED PURSUANT TO SECTION 5 OF THE
14 SAFE DRINKING WATER ACT, ACT NO. 399 OF THE PUBLIC ACTS OF 1976,
15 BEING SECTION 325.1005 OF THE MICHIGAN COMPILED LAWS, OR (B)
16 CRITERIA FOR ADVERSE AESTHETIC CHARACTERISTICS DERIVED PURSUANT
17 TO R 299.5709 OF THE MICHIGAN ADMINISTRATIVE CODE, THE CLEANUP
18 CRITERION SHALL BE THE MORE STRINGENT OF (A) OR (B) UNLESS THE
19 DEPARTMENT DETERMINES THAT COMPLIANCE WITH THIS SUBRULE IS NOT
20 NECESSARY BECAUSE THE USE OF THE AQUIFER IS RELIABLY RESTRICTED
21 PURSUANT TO SECTION 20120B(4) OR (5).

22 (6) THE DEPARTMENT SHALL NOT APPROVE OF A REMEDIAL ACTION
23 PLAN IN CATEGORIES SET FORTH IN SUBSECTION (1)(B) TO (J), UNLESS
24 THE PERSON PROPOSING THE PLAN DOCUMENTS THAT THE CURRENT ZONING
25 OF THE PROPERTY IS CONSISTENT WITH THE CATEGORICAL CRITERIA BEING
26 PROPOSED, OR THAT THE GOVERNING ZONING AUTHORITY INTENDS TO
27 CHANGE THE ZONING DESIGNATION SO THAT THE PROPOSED CRITERIA ARE

1 CONSISTENT WITH THE NEW ZONING DESIGNATION, OR THE CURRENT
2 PROPERTY USE IS A LEGAL NONCONFORMING USE. THE DEPARTMENT SHALL
3 NOT GRANT FINAL APPROVAL FOR A REMEDIAL ACTION PLAN THAT RELIES
4 ON A CHANGE IN ZONING DESIGNATION UNTIL A FINAL DETERMINATION OF
5 THAT ZONING CHANGE HAS BEEN MADE BY THE LOCAL UNIT OF
6 GOVERNMENT. THE DEPARTMENT MAY APPROVE OF A REMEDIAL ACTION THAT
7 ACHIEVES CATEGORICAL CRITERIA THAT IS BASED ON GREATER EXPOSURE
8 POTENTIAL THAN THE CRITERIA APPLICABLE TO CURRENT ZONING. IN
9 ADDITION, THE REMEDIAL ACTION PLAN SHALL INCLUDE DOCUMENTATION
10 THAT THE CURRENT PROPERTY USE IS CONSISTENT WITH THE CURRENT
11 ZONING OR IS A LEGAL NONCONFORMING USE. ABANDONED OR INACTIVE
12 PROPERTY SHALL BE CONSIDERED ON THE BASIS OF ZONING CLASSIFICA-
13 TIONS AS DESCRIBED ABOVE.

14 (7) CLEANUP CRITERIA FROM 1 OR MORE CATEGORIES IN
15 SUBSECTION (1) MAY BE APPLIED AT A FACILITY, IF ALL RELEVANT
16 REQUIREMENTS ARE SATISFIED FOR APPLICATION OF A PERTINENT
17 CRITERION.

18 (8) CRITERIA FOR THE RESIDENTIAL CATEGORY IN
19 SUBSECTION (1)(A) SHALL BE THOSE SPECIFIED IN R 299.5709 THROUGH
20 R 299.5715 AND R 299.5723 THROUGH R 299.5727 OF THE MICHIGAN
21 ADMINISTRATIVE CODE, EXCEPT AS PROVIDED IN SUBSECTION (6) AND
22 SUBSECTIONS (9) TO (13).

23 (9) THE NEED FOR SOIL REMEDIATION TO PROTECT AN AQUIFER FROM
24 HAZARDOUS SUBSTANCES IN SOIL SHALL BE DETERMINED BY R 299.5711(2)
25 OF THE MICHIGAN ADMINISTRATIVE CODE, CONSIDERING THE VULNERABIL-
26 ITY OF THE AQUIFER OR AQUIFERS POTENTIALLY AFFECTED IF THE SOIL
27 REMAINS AT THE FACILITY. MIGRATION OF HAZARDOUS SUBSTANCES IN

1 SOIL TO AN AQUIFER IS A PERTINENT PATHWAY IF APPROPRIATE BASED ON
2 CONSIDERATION OF SITE SPECIFIC FACTORS.

3 (10) THE DEPARTMENT MAY ESTABLISH CLEANUP CRITERIA FOR A
4 HAZARDOUS SUBSTANCE USING A BIOLOGICALLY BASED MODEL DEVELOPED OR
5 APPROVED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY IF
6 THE DEPARTMENT DETERMINES ALL OF THE FOLLOWING:

7 (A) THAT APPLICATION OF THE MODEL RESULTS IN A CRITERION
8 THAT MORE ACCURATELY REFLECTS THE RISK POSED.

9 (B) THAT DATA OF SUFFICIENT QUANTITY AND QUALITY ARE AVAIL-
10 ABLE FOR A SPECIFIED HAZARDOUS SUBSTANCE TO ALLOW THE SCIENTIF-
11 ICALLY VALID APPLICATION OF THE MODEL.

12 (C) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HAS
13 DETERMINED THAT APPLICATION OF THE MODEL IS APPROPRIATE FOR THE
14 HAZARDOUS SUBSTANCE IN QUESTION.

15 (11) IF THE CLEANUP CRITERION FOR A HAZARDOUS SUBSTANCE
16 DETERMINED BY R 299.5707 OF THE MICHIGAN ADMINISTRATIVE CODE IS
17 GREATER THAN A CLEANUP CRITERION DEVELOPED FOR A CATEGORY PURSU-
18 ANT TO SUBSECTION (1), THE CRITERION DETERMINED PURSUANT TO
19 R 299.5707 OF THE MICHIGAN ADMINISTRATIVE CODE SHALL BE THE
20 CLEANUP CRITERION FOR THAT HAZARDOUS SUBSTANCE IN THAT CATEGORY.

21 (12) IF THE CLEANUP STANDARD FOR POLYCHLORINATED BIPHENYLS
22 DETERMINED PURSUANT TO R 299.5711(8) OF THE MICHIGAN ADMINISTRA-
23 TIVE CODE IS GREATER THAN THE CRITERION DEVELOPED FOR A CATEGORY
24 PURSUANT TO SUBSECTION (1), THE STANDARD DETERMINED PURSUANT TO
25 R 299.5711(8) OF THE MICHIGAN ADMINISTRATIVE CODE SHALL BE THE
26 CLEANUP CRITERION FOR POLYCHLORINATED BIPHENYLS, IF THE
27 REQUIREMENTS OF THE FEDERAL REGULATION CITED IN R 299.5711(8) OF

1 THE MICHIGAN ADMINISTRATIVE CODE ARE APPLICABLE TO THE RELEASE
2 BEING ADDRESSED.

3 (13) IF A STANDARD FOR A HAZARDOUS SUBSTANCE IS ESTABLISHED
4 BY THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
5 (OSHA) OR DEPARTMENT OF PUBLIC HEALTH COVERING THE PROTECTION OF
6 WORKERS AT COMMERCIAL, INDUSTRIAL, OR RECREATIONAL LOCATIONS,
7 USING IDENTICAL EXPOSURE PATHWAYS IN MAKING THE DETERMINATION AS
8 ARE USED IN DEVELOPING A CLEANUP CRITERION UNDER THIS SECTION,
9 THE STANDARD ESTABLISHED BY OSHA OR THE DEPARTMENT OF PUBLIC
10 HEALTH SHALL BE THE CLEANUP CRITERION FOR THAT HAZARDOUS SUB-
11 STANCE AT THOSE LOCATIONS.

12 (14) RESPONSE ACTIVITY TO ADDRESS THE RELEASE OF UNCONTAMI-
13 NATED MINERAL OIL SATISFIES R 299.5709 FOR GROUNDWATER OR
14 R 299.5711 FOR SOIL UNDER THE MICHIGAN ADMINISTRATIVE CODE IF ALL
15 VISIBLE TRACES OF MINERAL OIL ARE REMOVED FROM GROUNDWATER AND
16 SOIL.

17 (15) APPROVAL BY THE DEPARTMENT OF A REMEDIAL ACTION PLAN
18 BASED ON 1 OR MORE CATEGORICAL STANDARD IN SUBSECTION (1)(A) TO
19 (E) SHALL BE GRANTED ONLY IF THE PERTINENT CRITERIA ARE SATISFIED
20 IN THE AFFECTED MEDIA. THE DEPARTMENT MAY USE STATISTICAL
21 METHODS AND OTHER SCIENTIFIC METHODS OF EVALUATING ENVIRONMENTAL
22 DATA WHEN DETERMINING COMPLIANCE WITH A PERTINENT CLEANUP CRITE-
23 RION IF THE METHODS ARE DETERMINED BY THE DEPARTMENT TO BE RELI-
24 ABLE AND BEST REPRESENT ACTUAL SITE CONDITIONS AND EXPOSURE
25 POTENTIAL.

26 (16) IF A REMEDIAL ACTION ALLOWS FOR VENTING GROUNDWATER,
27 THE DISCHARGE SHALL COMPLY WITH REQUIREMENTS OF PART 31, AND THE

1 RULES PROMULGATED UNDER THAT PART. IF THE DISCHARGE OF VENTING
2 GROUNDWATER IS IN COMPLIANCE WITH PART 31 AND THE RULES PROMUL-
3 GATED UNDER THAT PART AND THE DISCHARGE IS PROVIDED FOR IN A
4 REMEDIAL ACTION PLAN THAT IS APPROVED BY THE DEPARTMENT, A PERMIT
5 FOR THE DISCHARGE IS NOT REQUIRED UNDER PART 31. AS USED IN THIS
6 SUBSECTION, "VENTING GROUNDWATER" MEANS GROUNDWATER THAT IS
7 ENTERING A SURFACE WATER OF THE STATE FROM A FACILITY.

8 (17) A REMEDIAL ACTION PLAN SHALL PROVIDE RESPONSE ACTIVITY
9 TO MEET THE RESIDENTIAL CATEGORICAL CRITERIA, OR PROVIDE FOR
10 ACCEPTABLE LAND USE OR RESOURCE USE RESTRICTIONS PURSUANT TO SEC-
11 TION 20120B.

12 (18) A REMEDIAL ACTION PLAN THAT RELIES ON CATEGORICAL
13 CLEANUP CRITERIA DEVELOPED PURSUANT TO SUBSECTION (1) SHALL ALSO
14 CONSIDER OTHER FACTORS NECESSARY TO PROTECT THE PUBLIC HEALTH,
15 SAFETY, AND WELFARE, AND THE ENVIRONMENT AS SPECIFIED BY THE
16 DEPARTMENT, IF THE DEPARTMENT DETERMINES BASED ON DATA AND EXIST-
17 ING INFORMATION THAT SUCH CONSIDERATIONS ARE RELEVANT TO A SPE-
18 CIFIC FACILITY. THESE FACTORS INCLUDE, BUT ARE NOT LIMITED TO,
19 THE PROTECTION OF SURFACE WATER QUALITY AND CONSIDERATION OF ECO-
20 LOGICAL RISKS IF PERTINENT TO THE FACILITY BASED ON THE REQUIRE-
21 MENTS OF R 299.5717 OF THE MICHIGAN ADMINISTRATIVE CODE.

22 (19) THE DEPARTMENT SHALL ANNUALLY EVALUATE AND REVISE, IF
23 APPROPRIATE, THE CLEANUP CRITERIA DERIVED UNDER THIS SECTION.
24 THE EVALUATION SHALL INCORPORATE KNOWLEDGE GAINED THROUGH
25 RESEARCH AND STUDIES IN THE AREAS OF FATE AND TRANSPORT AND RISK
26 ASSESSMENT. THE DEPARTMENT SHALL PREPARE AND SUBMIT TO THE

1 LEGISLATURE A REPORT DETAILING REVISIONS MADE TO CLEANUP CRITERIA
2 UNDER THIS SECTION.

3 SEC. 20120B. (1) IF A REMEDIAL ACTION PLAN IS SELECTED OR
4 APPROVED BY THE DEPARTMENT BASED ON CRITERIA FOR THE RESIDENTIAL
5 CATEGORY PROVIDED FOR IN SECTION 20120A(1)(A), LAND USE RESTRIC-
6 TIONS OR MONITORING ARE NOT REQUIRED ONCE THOSE STANDARDS HAVE
7 BEEN ACHIEVED BY THE REMEDIAL ACTION.

8 (2) IF A REMEDIAL ACTION PLAN IS SELECTED OR APPROVED BY THE
9 DEPARTMENT BASED ON CRITERIA IN CATEGORIES PROVIDED FOR IN
10 SECTION 20120A(1)(B) TO (E), A NOTICE OF APPROVED ENVIRONMENTAL
11 REMEDIATION SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE
12 COUNTY IN WHICH THE FACILITY IS LOCATED WITHIN 21 DAYS AFTER
13 SELECTION OR APPROVAL BY THE DEPARTMENT OF THE REMEDIAL ACTION,
14 OR WITHIN 21 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE REME-
15 DIAL ACTION AS APPROPRIATE TO THE CIRCUMSTANCES. A NOTICE SHALL
16 BE FILED PURSUANT TO THIS SECTION ONLY BY THE PROPERTY OWNER OR
17 BY ANOTHER PERSON WHO HAS THE EXPRESS WRITTEN PERMISSION OF THE
18 PROPERTY OWNER. THE FORM AND CONTENT OF THE NOTICE ARE SUBJECT
19 TO APPROVAL BY THE STATE. ANY RESTRICTIONS CONTAINED IN THE
20 NOTICE SHALL BE BINDING ON THE OWNER'S SUCCESSORS, ASSIGNS, AND
21 LESSEES, AND SHALL RUN WITH THE LAND. A NOTICE OF ENVIRONMENTAL
22 REMEDIATION RECORDED PURSUANT TO THIS SUBSECTION SHALL STATE THE
23 DEPARTMENT'S DETERMINATION, AS THE RESULT OF THE APPROVAL OF A
24 REMEDIAL ACTION PLAN PURSUANT TO SECTION 20118, AS TO WHICH OF
25 THE CATEGORIES OF LAND USE SPECIFIED IN SECTION 20120A(1)(B) TO
26 (D) ARE CONSISTENT WITH THE ENVIRONMENTAL CONDITIONS AT THE
27 PROPERTY TO WHICH THE NOTICE APPLIES, AND THAT A CHANGE FROM THAT

1 LAND USE OR USES MAY NECESSITATE FURTHER EVALUATION OF POTENTIAL
2 RISKS TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
3 ENVIRONMENT. THE NOTICE OF APPROVED ENVIRONMENTAL REMEDIATION
4 SHALL INCLUDE A SURVEY AND PROPERTY DESCRIPTION THAT DEFINE THE
5 AREAS ADDRESSED BY THE REMEDIAL ACTION PLAN AND THE SCOPE OF ANY
6 LAND USE OR RESOURCE USE LIMITATIONS. ADDITIONAL REQUIREMENTS
7 FOR FINANCIAL ASSURANCE, MONITORING, OR OPERATION, AND MAINTENANCE
8 DO NOT APPLY IF A REMEDIAL ACTION COMPLIES WITH CRITERIA
9 PROVIDED FOR IN SECTION 20120A(1)(B) TO (E), UNLESS MONITORING OR
10 OPERATION AND MAINTENANCE ARE REQUIRED TO ASSURE THE COMPLIANCE
11 WITH CRITERIA THAT APPLY OUTSIDE THE BOUNDARY OF THE PROPERTY
12 THAT IS THE SOURCE OF THE RELEASE.

13 (3) IF A REMEDIAL ACTION PLAN IS SELECTED OR APPROVED BY THE
14 DEPARTMENT BASED ON CRITERIA PROVIDED FOR IN SECTION 20120A(1)(F)
15 TO (J) OR (2), PROVISIONS CONCERNING SUBDIVISIONS (A) THROUGH (E)
16 SHALL BE STIPULATED IN A LEGALLY ENFORCEABLE AGREEMENT WITH THE
17 DEPARTMENT. IF THE DEPARTMENT CONCURS WITH AN ANALYSIS PROVIDED
18 IN A REMEDIAL ACTION PLAN THAT 1 OR MORE OF THE REQUIREMENTS
19 SPECIFIED IN SUBDIVISIONS (B) TO (E) IS NOT NECESSARY TO PROTECT
20 THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT AND TO
21 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL ACTION,
22 THAT ELEMENT MAY BE OMITTED FROM THE AGREEMENT. IF PROVISIONS
23 FOR ANY OF THE FOLLOWING, DETERMINED BY THE DEPARTMENT TO BE
24 APPLICABLE FOR A FACILITY, LAPSE OR ARE NOT COMPLIED WITH AS PRO-
25 VIDED IN THE AGREEMENT OR REMEDIAL ACTION PLAN, THE DEPARTMENT'S
26 APPROVAL OF THE REMEDIAL ACTION PLAN IS VOID FROM THE TIME OF THE

1 LAPSE OR VIOLATION, UNLESS THE LAPSE OR VIOLATION IS CORRECTED TO
2 THE SATISFACTION OF THE DEPARTMENT:

3 (A) LAND USE OR RESOURCE USE RESTRICTIONS.

4 (B) MONITORING.

5 (C) OPERATION AND MAINTENANCE.

6 (D) PERMANENT MARKERS TO DESCRIBE RESTRICTED AREAS OF THE
7 SITE AND THE NATURE OF ANY RESTRICTIONS.

8 (E) FINANCIAL ASSURANCE, IN A MECHANISM ACCEPTABLE TO THE
9 DEPARTMENT TO PAY FOR MONITORING, OPERATION AND MAINTENANCE,
10 OVERSIGHT, AND OTHER COSTS DETERMINED BY THE DEPARTMENT TO BE
11 NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REME-
12 DIAL ACTION.

13 (4) IF A REMEDIAL ACTION PLAN RELIES IN WHOLE OR IN PART ON
14 CLEANUP CRITERIA APPROVED PURSUANT TO SECTION 20120A(1)(F) TO (J)
15 OR (2), LAND USE OR RESOURCE USE RESTRICTIONS TO ASSURE THE
16 EFFECTIVENESS AND INTEGRITY OF ANY CONTAINMENT, EXPOSURE BARRIER,
17 OR OTHER LAND USE OR RESOURCE USE RESTRICTIONS NECESSARY TO
18 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDY SHALL BE
19 DESCRIBED IN A RESTRICTIVE COVENANT. THE RESTRICTIVE COVENANT
20 SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE COUNTY IN
21 WHICH THE PROPERTY IS LOCATED WITHIN 21 DAYS OF THE DEPARTMENT'S
22 SELECTION OR APPROVAL OF THE REMEDIAL ACTION PLAN, OR WITHIN 21
23 DAYS OF THE COMPLETION OF CONSTRUCTION OF THE CONTAINMENT OR BAR-
24 RIER, AS APPROPRIATE TO THE CIRCUMSTANCES. THE RESTRICTIVE COVE-
25 NANT SHALL BE FILED BY THE PROPERTY OWNER OR WITH THE EXPRESS
26 WRITTEN PERMISSION OF THE PROPERTY OWNER. THE RESTRICTIONS SHALL
27 RUN WITH THE LAND AND BE BINDING ON THE OWNER'S SUCCESSORS,

1 ASSIGNS, AND LESSEES. SUCH RESTRICTIONS SHALL APPLY UNTIL THE
2 DEPARTMENT DETERMINES THAT HAZARDOUS SUBSTANCES THAT ARE CON-
3 TROLLED BY THE BARRIER OR CONTAINED NO LONGER PRESENT AN UNAC-
4 CEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
5 ENVIRONMENT AS DEFINED BY THE CLEANUP CRITERIA AND EXPOSURE CON-
6 TROL REQUIREMENTS SET FORTH IN THE REMEDIAL ACTION PLAN. THE
7 RESTRICTIVE COVENANT SHALL INCLUDE A SURVEY AND PROPERTY DESCRIP-
8 TION THAT DEFINE THE AREAS ADDRESSED BY THE REMEDIAL ACTION PLAN
9 AND THE SCOPE OF ANY LAND USE OR RESOURCE USE LIMITATIONS. THE
10 FORM AND CONTENT OF THE RESTRICTIVE COVENANT ARE SUBJECT TO
11 APPROVAL BY THE DEPARTMENT AND SHALL INCLUDE PROVISIONS TO ACCOM-
12 PLISH ALL OF THE FOLLOWING:

13 (A) RESTRICT ACTIVITIES AT THE FACILITY THAT MAY INTERFERE
14 WITH A REMEDIAL ACTION, OPERATION AND MAINTENANCE, MONITORING, OR
15 OTHER MEASURES NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEG-
16 RITY OF THE REMEDIAL ACTION.

17 (B) RESTRICT ACTIVITIES THAT MAY RESULT IN EXPOSURES ABOVE
18 LEVELS ESTABLISHED IN THE REMEDIAL ACTION PLAN.

19 (C) REQUIRE NOTICE TO THE DEPARTMENT OF THE OWNER'S INTENT
20 TO CONVEY ANY INTEREST IN THE FACILITY 14 DAYS PRIOR TO CONSUM-
21 MATING THE CONVEYANCE. A CONVEYANCE OF TITLE, AN EASEMENT, OR
22 OTHER INTEREST IN THE PROPERTY SHALL NOT BE CONSUMMATED BY THE
23 PROPERTY OWNER WITHOUT ADEQUATE AND COMPLETE PROVISION FOR COM-
24 PLIANCE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT DESCRIBED
25 IN SUBSECTION (3) AND THE PREVENTION OF RELEASES AND EXPOSURES
26 DESCRIBED IN SUBDIVISION (B).

1 (D) GRANT TO THE DEPARTMENT THE RIGHT TO ENTER THE PROPERTY
2 AT REASONABLE TIMES FOR THE PURPOSE OF DETERMINING AND MONITORING
3 COMPLIANCE WITH THE REMEDIAL ACTION PLAN, INCLUDING THE RIGHT TO
4 TAKE SAMPLES, INSPECT THE OPERATION OF THE REMEDIAL ACTION MEAS-
5 SURES, AND INSPECT RECORDS.

6 (E) ALLOW THE STATE TO ENFORCE THE RESTRICTION SET FORTH IN
7 THE COVENANT BY LEGAL ACTION IN A COURT OF APPROPRIATE
8 JURISDICTION.

9 (F) DESCRIBE GENERALLY THE USES OF THE PROPERTY THAT ARE
10 CONSISTENT WITH THE CATEGORICAL CRITERIA AND LIMITATIONS APPROVED
11 AS PART OF A REMEDIAL ACTION PLAN.

12 (5) IF THE DEPARTMENT DETERMINES THAT EXPOSURE TO HAZARDOUS
13 SUBSTANCES MAY BE RELIABLY RESTRICTED BY AN INSTITUTIONAL CONTROL
14 IN LIEU OF A RESTRICTIVE COVENANT, AND THAT IMPOSITION OF LAND
15 USE OR RESOURCE USE RESTRICTIONS THROUGH RESTRICTIVE COVENANTS IS
16 IMPRACTICAL, THE DEPARTMENT MAY APPROVE OF A REMEDIAL ACTION PLAN
17 UNDER SECTION 20120A(1)(F) TO (J) OR (2) THAT RELIES ON SUCH
18 INSTITUTIONAL CONTROL. MECHANISMS THAT MAY BE CONSIDERED UNDER
19 THIS SUBSECTION INCLUDE, BUT ARE NOT LIMITED TO, AN ORDINANCE
20 THAT PROHIBITS THE USE OF GROUNDWATER OR AN AQUIFER IN A MANNER
21 AND TO A DEGREE THAT PROTECTS AGAINST UNACCEPTABLE EXPOSURES AS
22 DEFINED BY THE CLEANUP CRITERIA APPROVED AS PART OF THE REMEDIAL
23 ACTION PLAN. AN ORDINANCE THAT SERVES AS AN EXPOSURE CONTROL
24 PURSUANT TO THIS SUBSECTION SHALL BE FILED WITH THE REGISTER OF
25 DEEDS AS AN ORDINANCE AFFECTING MULTIPLE PROPERTIES AND SHALL
26 INCLUDE A REQUIREMENT THAT THE LOCAL UNIT OF GOVERNMENT NOTIFY
27 THE DEPARTMENT AT LEAST 30 DAYS PRIOR TO ADOPTING A MODIFICATION

1 TO THE ORDINANCE, OR TO THE LAPSING OR REVOCATION OF THE
2 ORDINANCE.

3 (6) SELECTION OR APPROVAL BY THE DEPARTMENT OF A REMEDIAL
4 ACTION DOES NOT RELIEVE A PERSON WHO IS LIABLE UNDER
5 SECTION 20126 OF THAT PERSON'S RESPONSIBILITY TO REPORT AND PRO-
6 VIDE FOR RESPONSE ACTIVITY TO ADDRESS A SUBSEQUENT RELEASE OR
7 THREAT OF RELEASE AT THE FACILITY.

8 (7) A REMEDIAL ACTION SHALL NOT BE CONSIDERED APPROVED BY
9 THE DEPARTMENT UNLESS A REMEDIAL ACTION PLAN IS SUBMITTED TO THE
10 DEPARTMENT AND THE DEPARTMENT APPROVES THE PLAN. IMPLEMENTATION
11 BY ANY PERSON OF RESPONSE ACTIVITY WITHOUT DEPARTMENT APPROVAL
12 DOES NOT RELIEVE THAT PERSON OF AN OBLIGATION TO UNDERTAKE
13 RESPONSE ACTIVITY OR LIMIT THE ABILITY OF THE DEPARTMENT TO TAKE
14 ACTION TO REQUIRE RESPONSE ACTIVITY NECESSARY TO COMPLY WITH THIS
15 ACT BY A PERSON WHO IS LIABLE UNDER SECTION 20126.

16 (8) A PERSON SHALL NOT FILE A NOTICE OF APPROVED ENVIRONMEN-
17 TAL REMEDIATION INDICATING APPROVAL OR A DETERMINATION OF THE
18 DEPARTMENT UNLESS THE DEPARTMENT HAS APPROVED OF THE FILING OF
19 THE NOTICE.

20 (9) A PERSON WHO IMPLEMENTS A REMEDIAL ACTION PLAN APPROVED
21 BY THE DEPARTMENT PURSUANT TO SUBSECTIONS (2) TO (5) SHALL PRO-
22 VIDE NOTICE OF THE LAND USE RESTRICTIONS THAT ARE PART OF THE
23 REMEDIAL ACTION PLAN TO THE ZONING AUTHORITY FOR THE LOCAL UNIT
24 OF GOVERNMENT IN WHICH THE FACILITY IS LOCATED WITHIN 30 DAYS OF
25 APPROVAL OF THE PLAN.

26 SEC. 20120C. (1) AN OWNER OR OPERATOR SHALL NOT REMOVE
27 SOIL, OR ALLOW SOIL TO BE REMOVED, FROM A FACILITY TO AN OFF-SITE

1 LOCATION UNLESS THAT PERSON OWNS THE OFF-SITE LOCATION AND
2 DETERMINES THAT THE SOIL CAN BE LAWFULLY RELOCATED WITHOUT POSING
3 A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE
4 ENVIRONMENT. THE DETERMINATION SHALL CONSIDER WHETHER THE SOIL
5 IS SUBJECT TO REGULATION PURSUANT TO PART 111.

6 (2) FOR THE PURPOSES OF SUBSECTION (1), SOIL POSES A THREAT
7 TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR THE ENVIRONMENT IF
8 CONCENTRATIONS OF HAZARDOUS SUBSTANCES IN THE SOIL EXCEED THE
9 CLEANUP CRITERION DETERMINED PURSUANT TO SECTION 20120A(1) OR (2)
10 THAT APPLY TO THE LOCATION TO WHICH THE SOIL WILL BE MOVED OR
11 RELOCATED, EXCEPT THAT IF THE SOIL IS TO BE REMOVED FROM THE
12 FACILITY FOR DISPOSAL OR TREATMENT, THE SOIL SHALL SATISFY THE
13 APPROPRIATE REGULATORY CRITERIA FOR DISPOSAL OR TREATMENT. ANY
14 LAND USE RESTRICTIONS THAT WOULD BE REQUIRED FOR THE APPLICATION
15 OF A CRITERION PURSUANT TO SECTION 20120A(1) OR (2) SHALL BE IN
16 PLACE AT THE LOCATION TO WHICH THE SOIL WILL BE MOVED. SOIL MAY
17 BE RELOCATED ONLY TO ANOTHER FACILITY THAT IS SIMILARLY CONTAMI-
18 NATED, CONSIDERING THE NATURE, CONCENTRATION, AND MOBILITY OF
19 HAZARDOUS SUBSTANCES PRESENT AT THE LOCATION TO WHICH CONTAMI-
20 NATED SOIL WILL BE MOVED. CONTAMINATED SOIL SHALL NOT BE MOVED
21 TO A LOCATION THAT IS NOT A FACILITY UNLESS IT IS TAKEN THERE FOR
22 TREATMENT OR DISPOSAL IN CONFORMANCE WITH APPLICABLE LAWS AND
23 REGULATIONS.

24 (3) AN OWNER OR OPERATOR SHALL NOT RELOCATE SOIL, OR ALLOW
25 SOIL TO BE RELOCATED, WITHIN A SITE OF ENVIRONMENTAL CONTAMINA-
26 TION WHERE A REMEDIAL ACTION PLAN HAS BEEN APPROVED UNLESS THAT
27 PERSON ASSURES THAT THE SAME DEGREE OF CONTROL REQUIRED FOR

1 APPLICATION OF THE CRITERIA OF SECTION 20120A(1) OR (2) IS
2 PROVIDED FOR THE CONTAMINATED SOIL.

3 (4) THE PROHIBITION IN SUBSECTION (3) AGAINST RELOCATION OF
4 CONTAMINATED SOIL WITHIN A SITE OF ENVIRONMENTAL CONTAMINATION
5 DOES NOT APPLY TO SOILS THAT ARE TEMPORARILY RELOCATED FOR THE
6 PURPOSE OF IMPLEMENTING RESPONSE ACTIVITY IF THE RESPONSE ACTIV-
7 ITY IS COMPLETED IN A TIMELY FASHION AND THE SHORT-TERM HAZARDS
8 ARE APPROPRIATELY CONTROLLED.

9 (5) IF SOIL IS BEING MOVED OFF-SITE FROM, MOVED TO, OR RELO-
10 CATED ON-SITE AT A FACILITY WHERE A REMEDIAL ACTION PLAN HAS BEEN
11 APPROVED BY THE DEPARTMENT BASED ON A CATEGORICAL CLEANUP CRITE-
12 RION IN SECTION 20120A(1)(F) TO (J) OR (2), THE SOIL SHALL NOT BE
13 MOVED WITHOUT PRIOR DEPARTMENT APPROVAL.

14 (6) IF SOIL IS BEING RELOCATED IN A MANNER NOT ADDRESSED BY
15 SUBSECTION (5), THE OWNER OR OPERATOR OF THE FACILITY FROM WHICH
16 SOIL IS BEING MOVED MUST PROVIDE NOTICE TO THE DEPARTMENT
17 WITHIN 14 DAYS AFTER THE SOIL IS MOVED. THE NOTICE SHALL INCLUDE
18 ALL OF THE FOLLOWING:

19 (A) THE LOCATION FROM WHICH SOIL WILL BE REMOVED.

20 (B) THE LOCATION TO WHICH THE SOIL WILL BE TAKEN.

21 (C) THE VOLUME OF SOIL TO BE MOVED.

22 (D) A SUMMARY OF INFORMATION OR DATA ON WHICH THE OWNER OR
23 OPERATOR IS BASING THE DETERMINATION REQUIRED IN SUBSECTION (2)
24 THAT THE SOIL DOES NOT PRESENT A THREAT TO THE PUBLIC HEALTH,
25 SAFETY, OR WELFARE, OR THE ENVIRONMENT.

26 (E) IF LAND USE RESTRICTIONS WOULD APPLY PURSUANT TO
27 SECTION 20120A(1) TO THE SOIL WHEN IT IS RELOCATED, THE NOTICE

1 SHALL INCLUDE DOCUMENTATION THAT THOSE RESTRICTIONS ARE IN
2 PLACE.

3 (7) THE DETERMINATION REQUIRED BY SUBSECTIONS (1) AND (3)
4 SHALL BE BASED ON KNOWLEDGE OF THE PERSON UNDERTAKING OR APPROV-
5 ING OF THE REMOVAL OR RELOCATION OF SOIL, OR ON CHARACTERIZATION
6 OF THE SOIL FOR THE PURPOSE OF COMPLIANCE WITH THIS SECTION.

7 SEC. 20120D. (1) AT A FACILITY WHERE STATE FUNDS WILL BE
8 SPENT TO DEVELOP OR IMPLEMENT A REMEDIAL ACTION PLAN OR WHERE THE
9 DEPARTMENT DETERMINES THERE IS A SIGNIFICANT PUBLIC INTEREST,
10 WITHIN 30 DAYS AFTER THE COMPLETION OF A REMEDIAL INVESTIGATION
11 FOR THE FACILITY, THE DEPARTMENT SHALL PROVIDE THE COUNTY AND THE
12 TOWNSHIP, CITY, OR VILLAGE IN WHICH THE FACILITY IS LOCATED A
13 NOTICE OF THE COMPLETION OF THE REMEDIAL INVESTIGATION, A SUMMARY
14 OF THE REMEDIAL INVESTIGATION, AND NOTICE OF AN OPPORTUNITY FOR
15 THE PEOPLE IN THE LOCAL UNIT OF GOVERNMENT TO MEET WITH THE
16 DEPARTMENT REGARDING THE REMEDIAL INVESTIGATION AND ANY PROPOSED
17 FEASIBILITY STUDY FOR THE FACILITY. UPON A REQUEST FOR A PUBLIC
18 MEETING BY THE GOVERNING BODY OF THE LOCAL UNIT OF GOVERNMENT OR
19 BY 25 CITIZENS OF THE LOCAL UNIT OF GOVERNMENT, THE DEPARTMENT
20 SHALL, WITHIN 30 DAYS OF THE REQUEST, MEET WITH PERSONS IN THE
21 LOCAL UNIT OF GOVERNMENT. THE PERSON OR PERSONS REQUESTING THE
22 PUBLIC MEETING SHALL PUBLICIZE AND PROVIDE ACCOMMODATIONS FOR THE
23 MEETING. THE MEETING SHALL BE HELD IN THE LOCAL UNIT OF GOVERN-
24 MENT IN WHICH THE FACILITY IS LOCATED. THE DEPARTMENT SHALL PRO-
25 VIDE COPIES OF THE NOTICES AND SUMMARY REQUIRED IN THIS SUBSEC-
26 TION TO THE GOVERNING BODY OF THE LOCAL UNIT OF GOVERNMENT, TO
27 THE KNOWN PERSONS WHO ARE LIABLE UNDER SECTION 20126, AND TO THE

1 MAIN PUBLIC LIBRARY OF THE LOCAL UNIT OF GOVERNMENT IN WHICH THE
2 FACILITY IS LOCATED. THE DEPARTMENT SHALL SEND REPRESENTATIVES
3 TO THE MEETING WHO ARE FAMILIAR WITH THE FACILITY AND WHO ARE
4 INVOLVED WITH DETERMINING THE APPROPRIATE REMEDIAL ACTIONS TO BE
5 TAKEN AT THE FACILITY. PERSONS WHO ARE LIABLE UNDER SECTION
6 20126 FOR THE FACILITY MAY SEND REPRESENTATIVES TO THE MEETING.

7 (2) THE DEPARTMENT SHALL MAINTAIN, AND PERIODICALLY PUBLISH,
8 A LIST OF REMEDIAL ACTION PLANS SUBMITTED FOR APPROVAL THAT
9 COMPLY WITH THE REQUIREMENTS OF R 299.5515 OF THE MICHIGAN ADMIN-
10 ISTRATIVE CODE.

11 (3) BEFORE APPROVAL OF A PROPOSED REMEDIAL ACTION PLAN WHICH
12 IS TO BE IMPLEMENTED WITH MONEY FROM THE FUND, OR IS BASED ON
13 CATEGORICAL CRITERIA PROVIDED FOR IN SECTION 20120A(1)(F) TO (J)
14 OR (2), OR IF SECTION 20120B(5) OR (6) APPLIES, OR THE DEPARTMENT
15 DETERMINES THAT THERE IS SIGNIFICANT PUBLIC INTEREST, THE DEPART-
16 MENT SHALL DO ALL OF THE FOLLOWING:

17 (A) PUBLISH A NOTICE AND BRIEF SUMMARY OF THE PROPOSED REME-
18 DIAL ACTION PLAN.

19 (B) PROVIDE FOR PUBLIC REVIEW AND COMMENT PERTINENT TO DOCU-
20 MENTS RELATING TO THE PROPOSED REMEDIAL ACTION PLAN, INCLUDING,
21 IF APPLICABLE, THE FEASIBILITY STUDY THAT OUTLINES ALTERNATIVE
22 REMEDIAL ACTION MEASURES CONSIDERED.

23 (C) PROVIDE AN OPPORTUNITY FOR A PUBLIC MEETING AT OR NEAR
24 THE FACILITY WHEN ANY OF THE FOLLOWING OCCUR:

25 (i) THE DEPARTMENT DETERMINES THAT THERE IS A SIGNIFICANT
26 PUBLIC INTEREST OR THAT FOR ANY OTHER REASON A PUBLIC MEETING IS
27 APPROPRIATE.

1 (ii) A CITY, TOWNSHIP, OR VILLAGE IN WHICH THE FACILITY IS
2 LOCATED, BY A MAJORITY VOTE OF ITS GOVERNING BODY, REQUESTS A
3 PUBLIC MEETING.

4 (iii) A LOCAL HEALTH DEPARTMENT WITH JURISDICTION IN THE
5 AREA IN WHICH THE FACILITY IS LOCATED REQUESTS A PUBLIC MEETING.

6 (D) PROVIDE A DOCUMENT THAT SUMMARIZES THE MAJOR ISSUES
7 RAISED BY THE PUBLIC AND HOW THEY ARE TO BE ADDRESSED BY THE
8 FINAL APPROVED REMEDIAL ACTION PLAN.

9 (4) FOR PURPOSES OF THIS SECTION, PUBLICATION SHALL INCLUDE,
10 AT A MINIMUM, PUBLICATION IN A MAJOR LOCAL NEWSPAPER OF GENERAL
11 CIRCULATION IN THIS STATE. IN ADDITION, THE ADMINISTRATIVE
12 RECORD SHALL BE MADE AVAILABLE BY THE DEPARTMENT FOR INSPECTION
13 BY MEMBERS OF THE PUBLIC AT OR NEAR THE FACILITY AND IN LANSING.

14 (5) THE DEPARTMENT SHALL PREPARE A SUMMARY DOCUMENT THAT
15 EXPLAINS THE REASONS FOR THE SELECTION OR APPROVAL OF A REMEDIAL
16 ACTION PLAN. IN ADDITION, THE DEPARTMENT SHALL COMPILE AN ADMIN-
17 ISTRATIVE RECORD OF THE DECISION PROCESS THAT RESULTS IN THE
18 SELECTION OF A REMEDIAL ACTION PLAN. THE ADMINISTRATIVE RECORD
19 SHALL CONTAIN ALL OF THE FOLLOWING:

20 (A) REMEDIAL INVESTIGATION DATA REGARDING THE FACILITY.

21 (B) IF APPLICABLE, A FEASIBILITY STUDY AND POTENTIAL REME-
22 DIAL ACTIONS.

23 (C) IF APPLICABLE, A SUMMARY DOCUMENT THAT EXPLAINS THE REA-
24 SONS WHY A REMEDIAL INVESTIGATION OR FEASIBILITY STUDY WAS NOT
25 CONDUCTED.

26 (D) APPLICABLE COMMENTS AND INFORMATION RECEIVED FROM THE
27 PUBLIC, IF ANY.

1 (E) IF APPLICABLE, A DOCUMENT THAT SUMMARIZES THE
2 SIGNIFICANT CONCERNS RAISED BY THE MEMBERS OF THE PUBLIC AND HOW
3 THEY ARE TO BE ADDRESSED.

4 (F) OTHER INFORMATION APPROPRIATE TO THE FACILITY.

5 (6) IF COMMENTS OR INFORMATION ARE SUBMITTED FOR INCLUSION
6 IN THE ADMINISTRATIVE RECORD THAT ARE NOT INCLUDED IN THE ADMIN-
7 ISTRATIVE RECORD, A BRIEF EXPLANATION OF WHY THE INFORMATION WAS
8 NOT CONSIDERED RELEVANT SHALL BE SENT TO THE PARTY BY THE DEPART-
9 MENT AND INCLUDED IN THE RECORD.

10 SEC. 20120E. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), ALL
11 DECISIONS MADE BY THE DEPARTMENT UNDER THIS PART SHALL BE GOV-
12 ERNED BY A REASONABLENESS STANDARD. ANYONE CHALLENGING A DECI-
13 SION OF THE DEPARTMENT MUST DEMONSTRATE THAT THE DEPARTMENT'S
14 DECISION WAS UNREASONABLE UNDER THE CIRCUMSTANCES WITH THE INFOR-
15 MATION KNOWN IN THE ADMINISTRATIVE RECORD AT THE TIME OF THE
16 DEPARTMENT'S DECISION. THESE DECISIONS INCLUDE BUT ARE NOT
17 LIMITED TO APPROVALS OF REMEDIAL ACTION PLANS, FEASIBILITY
18 STUDIES, SITE INVESTIGATION PLANS, AND OTHER ASSOCIATED APPROVALS
19 UNDER THIS PART AND THE RULES PROMULGATED UNDER THIS PART.

20 (2) THIS SECTION DOES NOT CHANGE THE STANDARD FOR REVIEW
21 PROVIDED IN SECTIONS 20119 AND 20137.

22 Sec. 20126. (1) Notwithstanding any other provision or rule
23 of law and ~~subject only to the defenses set forth in sections~~
24 ~~20127 and 20128, if there is a release or threatened release from~~
25 ~~a facility that causes response activity costs to be incurred~~
26 EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3) AND SECTION 20128,

1 the following persons ~~shall be~~ ARE liable under this ~~section~~
2 PART:

3 (a) The owner or operator of ~~the~~ A facility IF THE OWNER
4 OR OPERATOR IS RESPONSIBLE FOR AN ACTIVITY CAUSING A RELEASE OR
5 THREAT OF RELEASE.

6 (b) The owner or operator of ~~the~~ A facility at the time of
7 disposal of a hazardous substance IF THE OWNER OR OPERATOR IS
8 RESPONSIBLE FOR AN ACTIVITY CAUSING A RELEASE OR THREAT OF
9 RELEASE.

10 (c) ~~The owner or operator of the facility since the time of~~
11 ~~disposal of a hazardous substance not included in subdivision (a)~~
12 ~~or (b).~~ AN OWNER OR OPERATOR OF A FACILITY WHO BECOMES AN OWNER
13 OR OPERATOR ON OR AFTER MARCH 1, 1995 UNLESS THE OWNER OR OPERA-
14 TOR COMPLIES WITH BOTH OF THE FOLLOWING:

15 (i) A BASELINE ENVIRONMENTAL ASSESSMENT IS CONDUCTED.

16 (ii) THE OWNER OR OPERATOR DISCLOSES THE RESULTS OF THE
17 BASELINE ASSESSMENT TO THE DEPARTMENT AND SUBSEQUENT PURCHASER OR
18 TRANSFEREE.

19 (d) A person ~~that~~ WHO by contract, agreement, or otherwise
20 arranged for disposal or treatment, or arranged with a trans-
21 porter for transport for disposal or treatment, of a hazardous
22 substance owned or possessed by the person, by any other person,
23 at ~~the~~ A facility owned or operated by another person and con-
24 taining the hazardous substance. THIS SUBDIVISION DOES NOT
25 INCLUDE A PERSON WHO ARRANGES THE SALE OR TRANSPORT OF A SECOND-
26 ARY MATERIAL FOR USE IN PRODUCING A NEW PRODUCT.

1 (e) A person ~~that~~ WHO accepts or accepted any hazardous
2 substance for transport to ~~the~~ A facility selected by that
3 person.

4 (F) THE ESTATE OR TRUST OF A PERSON DESCRIBED IN
5 SUBDIVISIONS (A) TO (E).

6 ~~(2) A person described in subsection (1) is liable for all~~
7 ~~of the following:~~

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

11 ~~(b) Any other necessary costs of response activity incurred~~
12 ~~by any other person consistent with rules relating to the selec-~~
13 ~~tion and implementation of response activity promulgated under~~
14 ~~this part.~~

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

19 ~~(3) The costs of response activity recoverable under subsec-~~
20 ~~tion (2) shall also include:~~

21 ~~(a) All costs of response activity reasonably incurred by~~
22 ~~the state prior to the date upon which rules were promulgated~~
23 ~~relating to the selection and implementation of response activity~~
24 ~~under former Act No. 307 of the Public Acts of 1982, excepting~~
25 ~~those cases where cost recovery actions have been filed before~~
26 ~~July 11, 1990. A person challenging the recovery of costs under~~
27 ~~this subdivision has the burden of establishing that the costs~~

~~1 were not reasonably incurred under the circumstances that existed
2 at the time the costs were incurred. Recoverable costs include
3 costs incurred reasonably consistent with the rules relating to
4 the selection and implementation of response activity in effect
5 on July 11, 1990.~~

~~6 (b) Any other necessary costs of response activity reason-
7 ably incurred by any other person prior to June 26, 1990, the
8 date upon which rules were promulgated relating to the selection
9 and implementation of response activity under former Act No. 307
10 of the Public Acts of 1982. A person seeking recovery of these
11 costs has the burden of establishing that the costs were reason-
12 ably incurred under the circumstances that existed at the time
13 the costs were incurred.~~

~~14 (4) The amounts recoverable in an action under this section
15 include interest on the amounts recoverable under subsections (2)
16 and (3). This interest accrues from the date payment is demanded
17 in writing, or the date of the expenditure or damage, whichever
18 is later. The rate of interest on the outstanding unpaid balance
19 of the amounts recoverable under this section is the same rate as
20 is specified in section 6013(5) of the revised judicature act of
21 1961, Act No. 236 of the Public Acts of 1961, being section
22 600.6013 of the Michigan Compiled Laws.~~

~~23 (5) A person shall not be required under this part to under-
24 take response activity for a permitted release. Recovery by any
25 person for response activity costs or damages resulting from a
26 permitted release shall be pursuant to other applicable law in
27 lieu of this part. This subsection does not affect or modify in~~

~~1 any way the obligations or liability of any person under any
2 other state law, including common law, for damages, injury, or
3 loss resulting from a release of a hazardous substance or for
4 response activity or the costs of response activity.~~

~~5 (6) If the department determines that there may be an immi-
6 nent and substantial endangerment to the public health or welfare
7 or the environment because of an actual or threatened release
8 from a facility, the attorney general may bring an action against
9 any person described in subsection (1) or any other appropriate
10 person to secure the relief that may be necessary to abate the
11 danger or threat. The court has jurisdiction to grant such
12 relief as the public interest and the equities of the case may
13 require.~~

14 (2) NOTWITHSTANDING SUBSECTION (1), THE FOLLOWING PERSONS
15 ARE NOT LIABLE UNDER THIS PART UNLESS THE PERSON IS RESPONSIBLE
16 FOR AN ACTIVITY CAUSING A RELEASE AT THE FACILITY:

17 (A) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT ACQUIRED
18 OWNERSHIP OR CONTROL OF A FACILITY INVOLUNTARILY THROUGH BANK-
19 RUPTCY, TAX DELINQUENCY, ABANDONMENT, A TRANSFER FROM A LENDER
20 PURSUANT TO SUBSECTION (6), OR OTHER CIRCUMSTANCES IN WHICH THE
21 GOVERNMENT INVOLUNTARILY ACQUIRES TITLE OR CONTROL BY VIRTUE OF
22 ITS GOVERNMENTAL FUNCTION OR AS PROVIDED IN THIS PART, A LOCAL
23 UNIT OF GOVERNMENT TO WHICH OWNERSHIP OR CONTROL OF A FACILITY IS
24 TRANSFERRED BY THE STATE, OR THE STATE OR A LOCAL UNIT OF GOVERN-
25 MENT THAT ACQUIRED OWNERSHIP OR CONTROL OF A FACILITY BY SEIZURE,
26 RECEIVERSHIP, OR FORFEITURE PURSUANT TO THE OPERATION OF LAW OR
27 BY COURT ORDER.

1 (B) A STATE OR LOCAL UNIT OF GOVERNMENT THAT HOLDS OR
2 ACQUIRES AN EASEMENT INTEREST IN A FACILITY, HOLDS OR ACQUIRES AN
3 INTEREST IN A FACILITY BY DEDICATION IN A PLAT, OR BY DEDICATION
4 PURSUANT TO ACT NO. 283 OF THE PUBLIC ACTS OF 1909, BEING SEC-
5 TIONS 220.1 TO 239.6 OF THE MICHIGAN COMPILED LAWS.

6 (C) A PERSON WHO HOLDS AN EASEMENT INTEREST IN A FACILITY
7 FOR THE PURPOSE OF CONVEYING OR PROVIDING GOODS OR SERVICES,
8 INCLUDING, BUT NOT LIMITED TO, UTILITIES, SEWERS, ROADS, RAIL-
9 WAYS, AND PIPELINES; OR A PERSON THAT ACQUIRES ACCESS THROUGH AN
10 EASEMENT.

11 (D) A PERSON WHO HOLDS ONLY SUBSURFACE MINERAL RIGHTS TO THE
12 PROPERTY.

13 (E) THE STATE OR A LOCAL UNIT OF GOVERNMENT THAT LEASES
14 PROPERTY TO A PERSON IF THE STATE OR THE LOCAL UNIT OF GOVERNMENT
15 IS NOT LIABLE UNDER THIS PART FOR ENVIRONMENTAL CONTAMINATION AT
16 THE PROPERTY.

17 (F) A PERSON WHO OWNS OR OCCUPIES RESIDENTIAL REAL PROPERTY
18 IF THE ENVIRONMENTAL CONTAMINATION OCCURRED PRIOR TO THE PURCHASE
19 OR OCCUPANCY OF THE PROPERTY AND HAZARDOUS SUBSTANCE USE AT THE
20 PROPERTY IS CONSISTENT WITH RESIDENTIAL USE.

21 (G) A PERSON WHO ACQUIRES A FACILITY BY INHERITANCE.

22 (H) A PERSON WHO OWNS OR OPERATES A FACILITY IN WHICH THE
23 RELEASE OR THREAT OF RELEASE WAS CAUSED SOLELY BY 1 OR MORE OF
24 THE FOLLOWING:

25 (i) AN ACT OF GOD.

26 (ii) AN ACT OF WAR.

1 (iii) AN ACT OR OMISSION OF A THIRD PARTY OTHER THAN AN
2 EMPLOYEE OR AGENT OF THE PERSON.

3 (3) NOTWITHSTANDING SUBSECTION (1), THE FOLLOWING PERSONS
4 ARE NOT LIABLE UNDER THIS PART:

5 (A) THE OWNER OR OPERATOR OF AN UNDERGROUND STORAGE TANK
6 SYSTEM OR THE PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK
7 SYSTEM IS LOCATED, AS DEFINED IN PART 213, FROM WHICH THERE IS A
8 RELEASE OR THREAT OF RELEASE IF THE RELEASE OR THREAT OF RELEASE
9 IS SOLELY FROM AN UNDERGROUND STORAGE TANK SYSTEM AND IS SUBJECT
10 TO CORRECTIVE ACTION UNDER PART 213. IF THE RELEASE AT A FACIL-
11 ITY IS NOT SOLELY THE RESULT OF A RELEASE OR THREAT OF RELEASE
12 FROM AN UNDERGROUND STORAGE TANK SYSTEM, THE OWNER OR OPERATOR OF
13 THE UNDERGROUND STORAGE TANK SYSTEM OR THE PROPERTY ON WHICH THE
14 UNDERGROUND STORAGE TANK SYSTEM IS LOCATED MAY CHOOSE TO CLOSE
15 THE UNDERGROUND STORAGE TANK SYSTEM OR CONDUCT CORRECTIVE ACTIONS
16 OF THE RELEASE FROM THE UNDERGROUND STORAGE TANK SYSTEM PURSUANT
17 TO PART 213.

18 (B) THE OWNER OR OPERATOR OF A HAZARDOUS WASTE TREATMENT,
19 STORAGE, OR DISPOSAL FACILITY REGULATED PURSUANT TO PART 111 FROM
20 WHICH THERE IS A RELEASE OR THREAT OF RELEASE SOLELY FROM THE
21 TREATMENT, STORAGE, OR DISPOSAL FACILITY AND THE RELEASE OR
22 THREAT OF RELEASE IS SUBJECT TO CORRECTIVE ACTION UNDER PART
23 111.

24 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART, THE
25 STATE OR A LOCAL UNIT OF GOVERNMENT ARE NOT LIABLE UNDER THIS
26 PART FOR COSTS OR DAMAGES AS A RESULT OF RESPONSE ACTIVITY TAKEN
27 IN RESPONSE TO A RELEASE OR THREAT OF RELEASE. THIS SUBSECTION

1 DOES NOT PRECLUDE LIABILITY FOR COSTS OR DAMAGES AS A RESULT OF
2 GROSS NEGLIGENCE, INCLUDING RECKLESS, WILLFUL, OR WANTON MISCON-
3 DUCT, OR INTENTIONAL MISCONDUCT BY THE STATE OR LOCAL UNIT OF
4 GOVERNMENT.

5 (5) ~~(7)~~ In establishing liability under this section, the
6 ~~department~~ PLAINTIFF bears the burden of proof. If the
7 ~~department~~ PLAINTIFF proves a prima facie case against a
8 ~~person~~ DEFENDANT, the ~~person~~ DEFENDANT shall bear the burden
9 of showing by a preponderance of the evidence that ~~they are~~ HE
10 OR SHE IS not liable under this section.

11 (6) A LENDER THAT IS NOT RESPONSIBLE FOR AN ACTIVITY CAUSING
12 A RELEASE AT A FACILITY THAT ESTABLISHES THAT IT HAS MET THE
13 REQUIREMENTS OF SUBSECTION (1)(C)(i) AND (ii) WITH RESPECT TO
14 THAT FACILITY MAY IMMEDIATELY TRANSFER TO THE STATE THE PROPERTY
15 ON WHICH THERE HAS BEEN A RELEASE OR A THREAT OF A RELEASE IF THE
16 LENDER COMPLIES WITH ALL OF THE FOLLOWING:

17 (A) WITHIN 9 MONTHS FOLLOWING FORECLOSURE AND FOR A PERIOD
18 OF AT LEAST 120 DAYS, THE LENDER EITHER LISTS THE FACILITY WITH A
19 BROKER, DEALER, OR AGENT WHO DEALS WITH THE TYPE OF PROPERTY IN
20 QUESTION, OR ADVERTISES THE FACILITY AS BEING FOR SALE OR DISPO-
21 SITION ON AT LEAST A MONTHLY BASIS IN EITHER A REAL ESTATE PUBLI-
22 CATION, A TRADE OR OTHER PUBLICATION SUITABLE FOR THE FACILITY IN
23 QUESTION, OR A NEWSPAPER OF GENERAL CIRCULATION OF OVER 10,000
24 COVERING THE AREA WHERE THE PROPERTY IS LOCATED.

25 (B) THE LENDER HAS TAKEN REASONABLE CARE IN MAINTAINING AND
26 PRESERVING THE REAL ESTATE AND PERMANENT FIXTURES.

1 (C) THE LENDER PROVIDES TO THE DEPARTMENT ALL ENVIRONMENTAL
2 INFORMATION RELATED TO THE FACILITY THAT IS AVAILABLE TO THE
3 LENDER.

4 (D) IF THE DEPARTMENT HAS ISSUED AN ORDER PURSUANT TO SEC-
5 TION 20119, THE LENDER HAS COMPLIED WITH THE ORDER TO THE
6 DEPARTMENT'S SATISFACTION.

7 (E) IF CONDITIONS ON THE PROPERTY POSE A THREAT OF FIRE OR
8 EXPLOSION OR PRESENT AN IMMINENT HAZARD THROUGH DIRECT CONTACT
9 WITH HAZARDOUS SUBSTANCES, THE LENDER HAS UNDERTAKEN APPROPRIATE
10 RESPONSE ACTIVITIES TO ABATE THE THREAT OR HAZARD.

11 (7) THE DEPARTMENT SHALL ESTABLISH MINIMUM TECHNICAL STAN-
12 DARDS FOR BASELINE ENVIRONMENTAL ASSESSMENTS CONDUCTED UNDER THIS
13 SECTION.

14 (8) AS USED IN THIS SECTION:

15 (A) "BASELINE ENVIRONMENTAL ASSESSMENT" MEANS AN EVALUATION
16 OF ENVIRONMENTAL CONDITIONS AT A FACILITY THAT DOES ALL OF THE
17 FOLLOWING:

18 (i) REASONABLY DEFINES THE EXISTING CONDITIONS AND CIRCUM-
19 STANCE AT THE FACILITY SO THAT, IN THE EVENT OF A SUBSEQUENT
20 RELEASE CAUSED BY THE NEW OWNER OR OPERATOR, THERE IS A MEANS OF
21 DISTINGUISHING THE NEW RELEASE FROM EXISTING CONTAMINATION.

22 (ii) ALLOWS THE NEW OWNER OR OPERATOR TO ESTABLISH THE
23 LIKELY IMPACTS, IF ANY, OF EXISTING CONTAMINATION ON INTENDED USE
24 OF THE PROPERTY AND THE METHODS FOR ELIMINATING UNACCEPTABLE
25 IMPACTS TO ALLOW FOR ITS SAFE USE.

26 (iii) ALLOWS THE NEW OWNER OR OPERATOR TO ESTABLISH THE
27 LIKELY IMPACTS, IF ANY, OF THE NEW OWNER'S OR OPERATOR'S INTENDED

1 FUTURE DEVELOPMENT OR USE ON THE EXISTING CONTAMINATION AT THE
2 PROPERTY.

3 (B) "RESPONSIBLE FOR AN ACTIVITY CAUSING A RELEASE" MEANS 1
4 OR MORE OF THE FOLLOWING:

5 (i) THE PERSON TOOK PART IN AN ACTIVITY OR USE OF THE FACIL-
6 ITY RESULTING IN A RELEASE.

7 (ii) THE PERSON HAD THE AUTHORITY TO CONTROL THE HAZARDOUS
8 SUBSTANCE HANDLING PRACTICES THAT RESULTED IN A RELEASE.

9 (iii) THE PERSON COULD HAVE REASONABLY PREVENTED THE
10 RELEASE.

11 SEC. 20126A. (1) A PERSON WHO IS LIABLE UNDER SECTION 20126
12 IS JOINTLY AND SEVERALLY LIABLE FOR ALL OF THE FOLLOWING:

13 (A) ALL COSTS OF RESPONSE ACTIVITY LAWFULLY INCURRED BY THE
14 STATE RELATING TO THE SELECTION AND IMPLEMENTATION OF RESPONSE
15 ACTIVITY UNDER THIS PART.

16 (B) ANY OTHER NECESSARY COSTS OF RESPONSE ACTIVITY INCURRED
17 BY ANY OTHER PERSON CONSISTENT WITH RULES RELATING TO THE SELEC-
18 TION AND IMPLEMENTATION OF RESPONSE ACTIVITY PROMULGATED UNDER
19 THIS PART.

20 (C) DAMAGES FOR THE FULL VALUE OF INJURY TO, DESTRUCTION OF,
21 OR LOSS OF NATURAL RESOURCES, INCLUDING THE REASONABLE COSTS OF
22 ASSESSING THE INJURY, DESTRUCTION, OR LOSS RESULTING FROM THE
23 RELEASE.

24 (2) THE COSTS OF RESPONSE ACTIVITY RECOVERABLE UNDER SUBSEC-
25 TION (1) SHALL ALSO INCLUDE ALL OF THE FOLLOWING:

26 (A) ALL COSTS OF RESPONSE ACTIVITY REASONABLY INCURRED BY
27 THE STATE PRIOR TO THE PROMULGATION OF RULES RELATING TO THE

1 SELECTION AND IMPLEMENTATION OF RESPONSE ACTIVITY UNDER THIS
2 PART, EXCEPTING THOSE CASES WHERE COST RECOVERY ACTIONS HAVE BEEN
3 FILED BEFORE JULY 11, 1990. A PERSON CHALLENGING THE RECOVERY OF
4 COSTS UNDER THIS SUBDIVISION HAS THE BURDEN OF ESTABLISHING THAT
5 THE COSTS WERE NOT REASONABLY INCURRED UNDER THE CIRCUMSTANCES
6 THAT EXISTED AT THE TIME THE COSTS WERE INCURRED. RECOVERABLE
7 COSTS INCLUDE COSTS INCURRED REASONABLY CONSISTENT WITH THE RULES
8 RELATING TO THE SELECTION AND IMPLEMENTATION OF RESPONSE ACTIVITY
9 IN EFFECT ON JULY 11, 1990.

10 (B) ANY OTHER NECESSARY COSTS OF RESPONSE ACTIVITY REASON-
11 ABLY INCURRED BY ANY OTHER PERSON PRIOR TO THE PROMULGATION OF
12 RULES RELATING TO THE SELECTION AND IMPLEMENTATION OF RESPONSE
13 ACTIVITY UNDER THIS PART. A PERSON SEEKING RECOVERY OF THESE
14 COSTS HAS THE BURDEN OF ESTABLISHING THAT THE COSTS WERE REASON-
15 ABLY INCURRED UNDER THE CIRCUMSTANCES THAT EXISTED AT THE TIME
16 THE COSTS WERE INCURRED.

17 (3) THE AMOUNTS RECOVERABLE IN AN ACTION UNDER THIS SECTION
18 SHALL INCLUDE INTEREST ON THE AMOUNTS RECOVERABLE UNDER SUBSEC-
19 TIONS (2) AND (3). THIS INTEREST SHALL ACCRUE FROM THE DATE PAY-
20 MENT IS DEMANDED IN WRITING, OR THE DATE OF THE EXPENDITURE OR
21 DAMAGE, WHICHEVER IS LATER. THE RATE OF INTEREST ON THE OUT-
22 STANDING UNPAID BALANCE OF THE AMOUNTS RECOVERABLE UNDER THIS
23 SECTION SHALL BE THE SAME RATE AS IS SPECIFIED IN SECTION 6013(5)
24 OF THE REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC
25 ACTS OF 1961, BEING SECTION 600.6013 OF THE MICHIGAN COMPILED
26 LAWS.

1 (4) A PERSON SHALL NOT BE REQUIRED UNDER THIS PART TO
2 UNDERTAKE RESPONSE ACTIVITY FOR A PERMITTED RELEASE. RECOVERY BY
3 ANY PERSON FOR RESPONSE ACTIVITY COSTS OR DAMAGES RESULTING FROM
4 A PERMITTED RELEASE SHALL BE PURSUANT TO OTHER APPLICABLE LAW, IN
5 LIEU OF THIS PART. THIS SUBSECTION DOES NOT AFFECT OR MODIFY THE
6 OBLIGATIONS OR LIABILITY OF ANY PERSON UNDER ANY OTHER STATE LAW,
7 INCLUDING COMMON LAW, FOR DAMAGES, INJURY, OR LOSS RESULTING FROM
8 A RELEASE OF A HAZARDOUS SUBSTANCE OR FOR RESPONSE ACTIVITY OR
9 THE COSTS OF RESPONSE ACTIVITY.

10 (5) IF THE DEPARTMENT DETERMINES THAT THERE MAY BE AN IMMI-
11 NENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC HEALTH OR WELFARE
12 OR THE ENVIRONMENT BECAUSE OF AN ACTUAL OR THREATENED RELEASE
13 FROM A FACILITY, THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST
14 ANY PERSON WHO IS LIABLE UNDER SECTION 20126 OR ANY OTHER APPRO-
15 PRIATE PERSON TO SECURE THE RELIEF THAT MAY BE NECESSARY TO ABATE
16 THE DANGER OR THREAT. THE COURT HAS JURISDICTION TO GRANT SUCH
17 RELIEF AS THE PUBLIC INTEREST AND THE EQUITIES OF THE CASE MAY
18 REQUIRE.

19 Sec. 20128. (1) Except as otherwise provided in this sec-
20 tion, a person ~~that~~ WHO is a response activity contractor for
21 any release or threatened release is not liable to any person for
22 injuries, costs, damages, expenses, or other liability, includ-
23 ing, but not limited to, claims for indemnification or contribu-
24 tion and claims by third parties for death, personal injuries,
25 illness, or loss of or damages to property or economic loss that
26 result from the release or threatened release. This subsection
27 does not apply if a release or threatened release is caused by

1 conduct of the response activity contractor that is negligent,
2 grossly negligent, or that constitutes intentional misconduct.

3 (2) Subsection (1) does not affect the liability of a person
4 under any warranty under federal, state, or common law. This
5 subsection does not affect the liability of an employer ~~that~~
6 WHO is a response activity contractor to any employee of the
7 employer under law, including any law relating to worker's
8 compensation.

9 (3) An employee of this state or a local unit of government
10 ~~that~~ WHO provides services relating to a response activity
11 while acting within the scope of his or her authority as a gov-
12 ernmental employee has the same exemption from liability as is
13 provided to the response activity contractor under subsection
14 (1).

15 (4) ~~The defense provided by section 20+27(1)(c) is not~~
16 ~~available to any person that may be liable under section 20+26~~
17 ~~with respect to any costs or damages caused by any act or omis-~~
18 ~~sion of a response activity contractor.~~ Except as provided in
19 this section, this section does not affect the liability under
20 this part or under any other federal or state law of any person.

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

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

25 (i) The department.

26 (ii) The department of public health.

1 (iii) A person ~~that may be~~ WHO IS liable under
2 section 20126 ~~that~~ WHO is carrying out an agreement to
3 undertake a response activity under this part.

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

6 (i) A person ~~that~~ WHO enters into a response activity con-
7 tract with respect to a release or threatened release and is car-
8 rying out the terms of a contract.

9 (ii) A person ~~that~~ WHO is retained or hired by a person
10 described in subparagraph (i) to provide any service relating to
11 a response activity.

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

22 (a) A person ~~that may be~~ WHO IS liable under section 20126
23 ~~that~~ WHO is a responsible party.

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

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

1 (7) A person ~~that may be~~ WHO IS liable under section 20126
2 ~~that~~ WHO is a responsible party is liable for any response
3 activity costs and damages that another person is relieved of
4 under subsection (6).

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

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

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

16 (c) "National contingency plan" means the national contin-
17 gency plan prepared and published under section 311 of title III
18 of the federal water pollution control act, chapter 758,
19 86 Stat. ~~844~~ 862, 33 U.S.C. 1321.

20 (d) "Petroleum" means that term as it is defined in part
21 213.

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

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

1 Sec. 20129. (1) If 2 or more persons acting independently
2 ~~cause a release or threat of release that results in response~~
3 ~~activity costs or damages for injury to, destruction of, or loss~~
4 ~~of natural resources,~~ ARE LIABLE UNDER SECTION 20126 and there
5 is a reasonable basis for division of harm according to the con-
6 tribution of each person, each person is subject to liability
7 under ~~section 20126~~ THIS PART only for the portion of the total
8 harm ATTRIBUTABLE TO that ~~the~~ person. ~~caused.~~ However, a
9 person seeking to limit ~~its~~ HIS OR HER liability on the
10 ~~ground~~ GROUNDS that the entire harm is capable of division has
11 the burden of proof as to the divisibility of the harm and as to
12 the apportionment of liability.

13 (2) If 2 or more persons ~~cause or contribute to~~ ARE LIABLE
14 UNDER SECTION 20126 FOR an indivisible harm, ~~that results in~~
15 ~~response activity costs or damages for injury to, destruction of,~~
16 ~~or loss of natural resources,~~ each person is subject to liabil-
17 ity ~~under section 20126~~ for the entire harm.

18 (3) A person may seek contribution from any other person
19 ~~that~~ WHO is liable ~~or may be liable~~ under section 20126
20 during or following a civil action brought under this part.
21 ~~However, a person that is participating in the allocation pro-~~
22 ~~cess described in section 20125 is not subject to a contribution~~
23 ~~action during the pendency of that allocation process.~~ This sub-
24 section does not diminish the right of a person to bring an
25 action for contribution in the absence of a civil action by the
26 state under this part. ~~The~~ IN A CONTRIBUTION ACTION BROUGHT
27 UNDER THIS PART, THE court shall consider all of the following

1 factors in allocating response activity costs and damages among
2 liable persons:

3 (a) Each person's relative degree of responsibility in caus-
4 ing the release or threat of release.

5 (b) The principles of equity pertaining to contribution.

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

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

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

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

21 (5) A person ~~that~~ WHO has resolved ~~its~~ HIS OR HER
22 liability to the state in an administrative or judicially
23 approved consent order is not liable for claims for contribution
24 regarding matters addressed in the consent order. The consent
25 order does not discharge any of the other persons liable under
26 section 20126 unless the terms of the consent order provide for

1 this discharge, but the potential liability of the other persons
2 is reduced by the amount of the consent order.

3 (6) If the state obtains less than complete relief from a
4 person ~~that~~ WHO has resolved ~~its~~ HIS OR HER liability to the
5 state in an administrative or judicially approved consent order
6 under this part, the state may bring an action against any other
7 person liable under section 20126 ~~that~~ WHO has not resolved
8 ~~its~~ HIS OR HER liabilities.

9 (7) A person ~~that~~ WHO has resolved ~~its~~ HIS OR HER
10 liability to the state for some or all of a response activity in
11 an administrative or judicially approved consent order may seek
12 contribution from any person ~~that~~ WHO is not a party to the
13 consent order described in subsection (5).

14 (8) In an action for contribution under this section, the
15 rights of any person ~~that~~ WHO has resolved ~~its~~ HIS OR HER
16 liability to the state ~~shall be~~ IS subordinate to the rights of
17 the state, if the state files an action under this part.

18 SEC. 20129A. (1) A PERSON MAY PETITION THE DEPARTMENT FOR A
19 DETERMINATION THAT THAT PERSON MEETS THE REQUIREMENTS FOR AN
20 EXEMPTION FROM LIABILITY UNDER SECTION 20126(1)(C) AND, IN CON-
21 JUNCTION WITH THAT EXEMPTION, A DETERMINATION THAT THE PROPOSED
22 USE OF THE FACILITY SATISFIES THE PERSON'S OBLIGATIONS UNDER
23 SECTION 20107A. THIS REQUEST MAY BE MADE BY A PROSPECTIVE PUR-
24 CHASER OR TRANSFEREE PRIOR TO ACTUAL TRANSFER OF OWNERSHIP OR
25 OTHER INTEREST TO THAT PERSON. THE REQUEST SHALL BE SUBMITTED ON
26 A FORM PROVIDED BY THE DEPARTMENT ALONG WITH THE FEE PROVIDED IN
27 SUBSECTION (4). THE PERSON PETITIONING THE DEPARTMENT UNDER THIS

1 SUBSECTION SHALL ATTACH THE BASELINE ENVIRONMENTAL ASSESSMENT, A
2 DETAILED DESCRIPTION OF THE PROPOSED USE OF THE FACILITY, RECOM-
3 MENDATIONS REGARDING RESPONSE ACTIVITIES WHICH ARE NECESSARY TO
4 ASSURE THAT THE PROPOSED USE OF THE FACILITY SATISFIES THE
5 REQUIREMENTS OF SECTION 20107A, IF A DETERMINATION REGARDING COM-
6 PLIANCE WITH THAT SECTION IS REQUESTED, AND THE QUALIFICATIONS OF
7 THE ENVIRONMENTAL PROFESSIONALS WHO HAVE MADE THE
8 RECOMMENDATIONS.

9 (2) WITHIN 30 DAYS AFTER RECEIPT OF A PETITION UNDER
10 SUBSECTION (1), THE DEPARTMENT SHALL ISSUE A WRITTEN DETERMINA-
11 TION TO THE PERSON SUBMITTING THE PETITION WHICH DOES EITHER OF
12 THE FOLLOWING:

13 (A) AFFIRMS THAT THE CRITERIA FOR OBTAINING THE EXEMPTION
14 HAVE BEEN MET AND AFFIRMS THAT THE PROPOSED USE OF THE FACILITY
15 SATISFIES THE PERSON'S OBLIGATIONS UNDER SECTION 20107A.

16 (B) PROVIDES THAT THE CRITERIA FOR OBTAINING THE EXEMPTION
17 HAVE NOT BEEN MET, OR THAT THE PROPOSED USE OF THE FACILITY DOES
18 NOT SATISFY THE PERSON'S OBLIGATION UNDER SECTION 20107A, THE
19 SPECIFIC REASONS FOR THE DENIAL, -AND HOW THE APPLICANT COULD MEET
20 THE CRITERIA AND SATISFY THE PERSON'S OBLIGATIONS UNDER
21 SECTION 20107A, IF POSSIBLE.

22 (3) A WRITTEN DETERMINATION BY THE DEPARTMENT UNDER
23 SUBSECTION (2) THAT AFFIRMS THAT THE PERSON REQUESTING THE PETI-
24 TION FOR THE DETERMINATION MEETS THE CRITERIA FOR AN EXEMPTION
25 AND SATISFIES THE PERSON'S OBLIGATIONS UNDER SECTION 20107A FOR
26 THE PROPOSED USE OF THE FACILITY CONSTITUTES A SETTLEMENT WITH
27 THAT PERSON FOR PURPOSES OF ESTABLISHING LIABILITY UNDER THE

1 COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY
2 ACT OF 1980, PUBLIC LAW 96-510, 94 STAT. 2767.

3 (4) A PETITION SUBMITTED UNDER SUBSECTION (3) SHALL BE
4 ACCOMPANIED BY A FEE OF \$500.00.

5 Sec. 20130. (1) An indemnification, hold harmless, or simi-
6 lar agreement or conveyance is not effective to transfer from a
7 person ~~that may be~~ WHO IS liable under section 20126 to the
8 state for evaluation or response activity costs or damages for a
9 release or threat of release to any other person the liability
10 imposed under this part. This section does not bar an agreement
11 to insure, hold harmless, or indemnify a party to the agreement
12 for liability under this part.

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

17 Sec. 20132. (1) The state may provide a person with a cove-
18 nant not to sue concerning any liability to the state under this
19 part, including future liability, resulting from a release or
20 threatened release addressed by response activities, whether that
21 action is on a facility or off a facility, if each of the follow-
22 ing is met:

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

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

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

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

6 (2) The state shall provide a person, to which the depart-
7 ment is authorized under subsection (1) to issue a covenant not
8 to sue for the portion of response activity described in subdivi-
9 sion (a) or (b), with a covenant not to sue with respect to
10 future liability to the state under this part for a future
11 release or threatened release, and a person provided the covenant
12 not to sue is not liable to the state under section 20126 with
13 respect to that release or threatened release at a future time.
14 The portion of response activity to which the covenant not to sue
15 pertains is either of the following:

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

24 (b) The treatment of hazardous substances so as to destroy,
25 eliminate, or permanently immobilize the hazardous constituents
26 of the substances, so that, in the judgment of the department,
27 the substances no longer present any current or currently

1 foreseeable future significant risk to the public health, safety,
2 or welfare, or the environment; no by-product of the treatment or
3 destruction process presents any significant hazard to the public
4 health, safety, or welfare, or the environment; and all
5 by-products are themselves treated, destroyed, or contained in a
6 manner that assures that the by-products do not present any cur-
7 rent or currently foreseeable future significant risk to the
8 public health, safety, or welfare, or the environment.

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

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

19 (a) The effectiveness and reliability of the remedial
20 action, in light of the other alternative remedial actions con-
21 sidered for the facility concerned.

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

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

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

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

3 (f) Whether the fund or other sources of funding would be
4 available for any additional response activities that might even-
5 tually be necessary at the facility.

6 (g) Whether response activity will be carried out, in whole
7 or in significant part, by persons ~~that may be~~ WHO ARE liable
8 under section 20126.

9 (5) A covenant not to sue under this section is subject to
10 the satisfactory performance by a person of ~~its~~ HIS OR HER
11 obligations under the agreement concerned.

12 (6) Except for the portion of the remedial action that is
13 subject to a covenant not to sue under subsection (2), ~~or under~~
14 ~~section 20125,~~ a covenant not to sue a person concerning future
15 liability to the state shall include an exception to the covenant
16 that allows the state to sue that person concerning future
17 liability resulting from the release or threatened release that
18 is the subject of the covenant if the liability arises out of
19 conditions that are unknown at the time the department certifies
20 under subsection (3) that remedial action has been completed at
21 the facility concerned.

22 (7) In extraordinary circumstances, the state may determine,
23 after assessment of relevant factors such as those referred to in
24 subsection (4) and volume, toxicity, mobility, strength of evi-
25 dence, ability to pay, litigative risks, public interest consid-
26 erations, precedential value, and inequities and aggravating
27 factors, not to include the exception in subsection (6) if other

1 terms, conditions, or requirements of the agreement containing
2 the covenant not to sue are sufficient to provide all reasonable
3 assurances that the public health and the environment will be
4 protected from any future releases at or from the facility.

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

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

21 (a) An owner or operator WHO IS LIABLE UNDER SECTION 20126
22 for injunctive relief necessary to prevent irreparable harm to
23 the public health, safety, or welfare, or the environment from a
24 release or threatened release in relation to that facility.

25 (b) A person ~~that~~ WHO is ~~alleged to be in~~ LIABLE UNDER
26 SECTION 20126 FOR A violation of this part or a rule promulgated

1 UNDER THIS PART or AN order issued under this part in relation to
2 that facility.

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

6 (2) The circuit court has jurisdiction in actions brought
7 under subsection (1)(a) to grant injunctive relief necessary to
8 protect the public health, safety, or welfare, or the environment
9 from a release or threatened release. The circuit court has
10 jurisdiction in actions brought under subsection (1)(b) to
11 enforce this part or a rule promulgated or order issued under
12 this part by ordering such action as may be necessary to correct
13 the violation and to impose any civil fine provided for in this
14 part for the violation. A civil fine recovered under this sec-
15 tion shall be deposited in the fund. The circuit court has
16 jurisdiction in actions brought under subsection (1)(c) to order
17 1 or more of the directors to perform the nondiscretionary act or
18 duty concerned.

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

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

24 (i) The department.

25 (ii) The attorney general.

26 (iii) The proposed defendants.

1 (b) The state has not commenced and is not diligently
2 prosecuting an action under this part or under other appropriate
3 legal authority to obtain injunctive relief concerning the facil-
4 ity or to require compliance with this part or a rule or an order
5 under this part.

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

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

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

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

22 SEC. 20135A. (1) A PERSON MAY FILE A PETITION IN THE CIR-
23 CUIT COURT OF THE COUNTY IN WHICH A FACILITY IS LOCATED SEEKING
24 ACCESS TO THE FACILITY IN ORDER TO CONDUCT RESPONSE ACTIVITIES
25 APPROVED BY THE DEPARTMENT. IF THE COURT GRANTS ACCESS TO A
26 FACILITY UNDER THIS SECTION, THE COURT MAY DO ANY OF THE
27 FOLLOWING:

1 (A) PROVIDE COMPENSATION TO THE FACILITY OWNER OR OPERATOR
2 FOR DAMAGES RELATED TO THE GRANTING OF ACCESS TO THE FACILITY,
3 INCLUDING COMPENSATION FOR LOSS OF USE OF THE FACILITY.

4 (B) ENJOIN INTERFERENCE WITH THE RESPONSE ACTIVITIES.

5 (C) GRANT ANY OTHER APPROPRIATE RELIEF AS DETERMINED BY THE
6 COURT.

7 (2) IF A COURT GRANTS ACCESS TO A FACILITY UNDER THIS SEC-
8 TION, THE OWNER OR OPERATOR OF THE FACILITY IS NOT LIABLE FOR A
9 RELEASE CAUSED BY THE RESPONSE ACTIVITIES OR FROM CONDITIONS THAT
10 MAY PRESENT A THREAT TO PUBLIC HEALTH OR SAFETY, UNLESS THE OWNER
11 OR OPERATOR IS OTHERWISE LIABLE UNDER SECTION 20126.

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

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

18 (b) Recovery of state response activity costs pursuant to
19 section ~~20126~~ 20126A.

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

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

1 (e) A civil fine of not more than \$1,000.00 for each day of
2 noncompliance without sufficient cause with a written request of
3 the department pursuant to section ~~20114(4)~~ 20114(1)(H). A
4 fine imposed under this subdivision shall be based on the seri-
5 ousness of the violation and any good faith efforts of the person
6 to comply with the request of the department.

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

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

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

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

20 (j) Enforcement of the reporting requirements under section
21 ~~20114(2)~~ 20114(1), (2), and ~~(6)~~ (5).

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

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

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

7 (4) A state court does not have jurisdiction to review chal-
8 lenges to a response activity selected or approved by the depart-
9 ment under this part or to review an administrative order issued
10 under this part in any action except an action that is 1 of the
11 following:

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

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

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

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

23 (e) An action by the state pursuant to section ~~20126(6)~~
24 20126A(5) to compel response activity.

25 (5) In any judicial action under this part, judicial review
26 of any issues concerning the selection or adequacy of a response
27 activity taken, ordered, or agreed to by the state are limited to

1 the administrative record. If the court finds that the record is
2 incomplete or inadequate, the court may consider supplemental
3 material in the action. In considering objections raised in a
4 judicial action under this part, the court shall uphold the
5 state's decision in selecting a response activity unless the
6 objecting party can demonstrate based on the administrative
7 record that the decision was arbitrary and capricious or other-
8 wise not in accordance with law. In reviewing alleged procedural
9 errors, the court may disallow costs or damages only to the
10 extent the errors were so serious and related to matters of such
11 central importance that the activity would have been signifi-
12 cantly changed had the errors not been made.

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

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

1 response activity at the facility for which the person is
2 responsible.

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

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

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

19 (i) Assets of a qualified pension plan or individual retire-
20 ment account under the internal revenue code.

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

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

1 (3) A petition submitted pursuant to subsection (2) shall
2 set forth with as much specificity as possible the type of lien
3 sought, the property that would be affected, and the reasons the
4 attorney general believes the lien is necessary. Upon receipt of
5 a petition under subsection (2), the court shall promptly sched-
6 ule a hearing to determine whether the petition should be
7 granted. Notice of the hearing shall be provided to the attorney
8 general, the property owner, and any persons holding liens or
9 perfected security interests in the real property subject to
10 response activity. A LIEN SHALL NOT BE GRANTED UNDER SUBSECTION
11 (2) AGAINST THE OWNER OF THE FACILITY IF THE OWNER IS NOT LIABLE
12 UNDER SECTION 20126.

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

22 (5) A lien provided in subsection (1), (2), or (4) is per-
23 fected against real property when a notice of lien is filed by
24 the department with the register of deeds in the county in which
25 the real property is located. A lien upon personal property pro-
26 vided in subsection (2) is perfected when a notice of lien is
27 filed by the department in accordance with applicable law and

1 regulation for the perfection of a lien on that type of personal
2 property. In addition, the department shall, at the time of the
3 filing of the notice of lien, provide a copy of the notice of
4 lien to the owner of that property by certified mail.

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

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

12 (8) If the department, at the time or prior to the time of
13 filing the notice of release of lien pursuant to subsection (7),
14 has made a determination that the person liable under section
15 20126 has completed all of the response activity at the real
16 property pursuant to the approved remedial action plan, the
17 department shall execute and file with the notice of release of
18 lien a document stating that all response activities required in
19 the approved remedial action plan have been completed.

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

22 (2) A person ~~that knowingly~~ WHO DOES ANY OF THE FOLLOWING
23 IS GUILTY OF A FELONY AND SHALL BE FINED NOT LESS THAN \$2,500.00
24 OR MORE THAN \$25,000.00 FOR EACH VIOLATION:

25 (A) KNOWINGLY releases or causes ~~the~~ A release ~~of a haz~~
26 ~~ardous substance~~ contrary to applicable federal, state, or local
27 requirements or contrary to any permit or license held by that

1 person, ~~and that~~ IF THAT PERSON knew or should have known that
2 the release could cause personal injury or property damage. ~~or~~
3 ~~that intentionally~~

4 (B) INTENTIONALLY makes a false statement, representation,
5 or certification in any application, record, report, plan, or
6 other document filed or required to be maintained under this part
7 and rules promulgated under this part. ~~or that intentionally~~

8 (C) INTENTIONALLY renders inaccurate any monitoring device
9 or record required to be maintained under this part or a rule
10 promulgated under this part. ~~is guilty of a felony and shall~~
11 ~~be fined not less than \$2,500.00 or more than \$25,000.00 for each~~
12 ~~violation. The~~

13 (D) MISREPRESENTS HIS OR HER QUALIFICATIONS IN A DOCUMENT
14 PREPARED PURSUANT TO SECTION 20129A.

15 (3) IN ADDITION TO A FINE IMPOSED UNDER SUBSECTION (2), THE
16 court may impose an additional fine of not more than \$25,000.00
17 for each day during which the release occurred. If the convic-
18 tion is for a violation committed after a first conviction of the
19 person under this subsection, the court shall impose a fine of
20 not less than \$25,000.00 and not more than \$50,000.00 per day of
21 violation. Upon conviction, in addition to a fine, the court in
22 its discretion may sentence the defendant to imprisonment for not
23 more than 2 years or impose probation upon a person for a viola-
24 tion of this part. With the exception of the issuance of crimi-
25 nal complaints, issuance of warrants, and the holding of an
26 arraignment, the circuit court for the county in which the
27 violation occurred has exclusive jurisdiction.

1 (4) ~~(3)~~ Upon a finding by the court that the action of a
2 criminal defendant PROSECUTED UNDER THIS SECTION poses or posed a
3 substantial endangerment to public health, safety, or welfare,
4 the court shall impose, in addition to the penalties set forth in
5 ~~subsection~~ SUBSECTIONS (2) AND (3), a fine of not less than
6 \$1,000,000.00 and, in addition to a fine, a sentence of 5 years'
7 imprisonment.

8 (5) ~~(4)~~ To find a defendant criminally liable for substan-
9 tial endangerment under subsection ~~(3)~~ (4), the court shall
10 determine that the defendant knowingly or recklessly acted in
11 such a manner as to cause a danger of death or serious bodily
12 injury and that either of the following has occurred:

13 (a) The defendant had an actual awareness, belief, or under-
14 standing that his or her conduct would cause a substantial danger
15 of death or serious bodily injury.

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

19 (6) ~~(5)~~ Knowledge possessed by a person other than the
20 defendant under subsection ~~(4)~~ (5) may be attributable to the
21 defendant if the defendant took affirmative steps to shield him-
22 self or herself from the relevant information.

23 (7) ~~(6)~~ The department may pay an award of up to
24 \$10,000.00 to an individual that provides information leading to
25 the arrest and conviction of a person for a violation of this
26 section. The department shall promulgate rules that prescribe
27 criteria for granting awards under this section. An award shall

1 not be made under this section until rules are promulgated
2 prescribing the criteria for making awards. Awards under this
3 subsection may be paid from the Michigan environmental assurance
4 fund, if enabling legislation creating the fund is enacted into
5 law.

6 (8) ~~(7) "Serious"~~ AS USED IN THIS SECTION, "SERIOUS bodily
7 injury" means bodily injury that involves a substantial risk of
8 death, unconsciousness, extreme physical pain, protracted and
9 obvious disfigurement, or protracted loss or impairment of the
10 function of a bodily member, organ, or mental faculty.

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

14 (a) For the recovery of response activity costs and natural
15 resources damages pursuant to section ~~20126(2)(a), (b),~~
16 20126A(1)(B) or (c), within 6 years of initiation of physical
17 on-site construction activities for the remedial action selected
18 or approved by the department at a facility, except as provided
19 in subdivision (b).

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

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

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

4 Section 2. Sections 20105, 20112, 20120, 20121, 20122,
5 20123, 20124, 20125, 20127, 20133, 20134a, 20136, and 20141 of
6 Act No. 451 of the Public Acts of 1994, being sections 324.20105,
7 324.20112, 324.20120, 324.20121, 324.20122, 324.20123, 324.20124,
8 324.20125, 324.20127, 324.20133, 324.20134a, 324.20136, and
9 324.20141 of the Michigan Compiled Laws, are repealed.