



SENATE BILL No. 217

February 2, 1995, Introduced by Senator YOUNG and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend sections 10c and 10e of Act No. 307 of the Public Acts of 1982, entitled as amended "The environmental response act," as added by Act No. 233 of the Public Acts of 1990, being sections 299.610c and 299.610e of the Michigan Compiled Laws; and to add sections 10g and 10h.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 10c and 10e of Act No. 307 of the
2 Public Acts of 1982, as added by Act No. 233 of the Public Acts
3 of 1990, being sections 299.610c and 299.610e of the Michigan
4 Compiled Laws, are amended and sections 10g and 10h are added to
5 read as follows:

6 Sec. 10c. (1) A person that has knowledge or information or
7 is on notice through a recorded instrument that a parcel of his
8 or her real property is a facility at which there has been a

1 release, in a quantity required to be reported pursuant to
2 section 10a(1)(c), shall not transfer an interest in that real
3 property unless he or she provides written notice to the pur-
4 chaser or other person to whom the property is transferred that
5 the real property is such a facility and discloses the general
6 nature and extent of the release. The written notice provided by
7 the transferor shall be a separate instrument and, if the instru-
8 ment conveying the interest in real property is recorded, the
9 written notice shall be recorded with the register of deeds in
10 the same county.

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

17 (3) A PERSON SHALL NOT TRANSFER AN INTEREST IN REAL PROPERTY
18 UNLESS HE OR SHE FULLY DISCLOSES ANY LAND OR RESOURCE USE
19 RESTRICTIONS THAT APPLY TO THAT REAL PROPERTY AS A PART OF REME-
20 DIAL ACTION THAT HAS BEEN IMPLEMENTED IN COMPLIANCE WITH
21 SECTION 10G.

22 Sec. 10e. (1) The department may take response activity or
23 approve of response activity proposed by a person that is consis-
24 tent with any rules promulgated under this act relating to the
25 selection and implementation of response activity that the
26 department concludes is necessary and appropriate to protect the
27 public health, safety, welfare, or the environment.

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

3 (a) Assure the protection of the public health, safety, wel-
4 fare, or the environment.

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

10 (c) ~~Be~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5) AND
11 (6), BE consistent with any cleanup standards incorporated in any
12 rules promulgated under this act.

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

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

20 (5) THE DEPARTMENT MAY SELECT OR APPROVE OF A REMEDIAL
21 ACTION MEETING THE CRITERIA PROVIDED FOR IN SECTION 10G THAT DOES
22 NOT ATTAIN A DEGREE OF CONTROL OR CLEANUP OF HAZARDOUS SUBSTANCES
23 THAT COMPLIES WITH R 299.5705(5) OR R 299.5705(6) OF THE MICHIGAN
24 ADMINISTRATIVE CODE, OR BOTH, IF THE DEPARTMENT MAKES A FINDING
25 THAT THE REMEDIAL ACTION IS PROTECTIVE OF THE PUBLIC HEALTH,
26 SAFETY, WELFARE, AND THE ENVIRONMENT.

1 (6) A REMEDIAL ACTION MAY BE SELECTED OR APPROVED PURSUANT
2 TO SUBSECTION (5) IF THE DEPARTMENT DETERMINES, BASED ON THE
3 ADMINISTRATIVE RECORD, THAT 1 OR MORE OF THE FOLLOWING CONDITIONS
4 ARE SATISFIED:

5 (A) COMPLIANCE WITH AN APPLICABLE RULE IS TECHNICALLY
6 IMPRACTICABLE.

7 (B) THE REMEDIAL ACTION SELECTED OR APPROVED WILL, WITHIN A
8 REASONABLE PERIOD OF TIME, ATTAIN A STANDARD OF PERFORMANCE THAT
9 IS EQUIVALENT TO THAT REQUIRED UNDER AN OTHERWISE APPLICABLE
10 RULE.

11 (C) THE ADVERSE ENVIRONMENTAL IMPACT OF ACHIEVING COMPLIANCE
12 WOULD EXCEED THE ENVIRONMENTAL BENEFIT OF ACHIEVING COMPLIANCE.
13 MEASURES TO REDUCE THE LOADING OF HAZARDOUS SUBSTANCES ON THE
14 ENVIRONMENTAL SHALL BE PART OF ALL REMEDIAL ACTION PLANS APPROVED
15 BY THE DEPARTMENT IF THE REDUCED LOADING CAN BE ACCOMPLISHED
16 THROUGH REASONABLE MEASURES.

17 (D) THE REMEDIAL ACTION PROVIDES FOR THE REDUCTION OF HAZ-
18 ARDOUS SUBSTANCE CONCENTRATIONS IN AN AQUIFER THROUGH A NATURALLY
19 OCCURRING PROCESS THAT IS DOCUMENTED TO OCCUR AT THE FACILITY AND
20 BOTH OF THE FOLLOWING CONDITIONS ARE MET:

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

26 (ii) THE REMEDIAL ACTION INCLUDES ENFORCEABLE LAND USE
27 RESTRICTIONS OR OTHER INSTITUTIONAL CONTROLS NECESSARY TO PREVENT

1 UNACCEPTABLE RISK FROM EXPOSURE TO THE HAZARDOUS SUBSTANCES, AS
2 DEFINED BY THE CLEANUP STANDARDS APPROVED AS PART OF THE REMEDIAL
3 ACTION PLAN.

4 (7) IF THE DEPARTMENT APPROVES OF A REMEDIAL ACTION PURSU-
5 ANT, IN PART, TO SUBSECTIONS (5) AND (6), THE ADMINISTRATIVE
6 RECORD FOR THE FACILITY SHALL INCLUDE A COMPLETE EXPLANATION OF
7 THE BASIS OF THE DEPARTMENTS DECISION UNDER SUBSECTIONS (5) AND
8 (6). IN ADDITION, THE INTENT OF AND THE BASIS FOR THE EXERCISE
9 OF AUTHORITY PROVIDED FOR IN SUBSECTIONS (5) AND (6) SHALL BE
10 PART OF AN ANALYSIS OF THE RECOMMENDED ALTERNATIVES IF 1 IS
11 REQUIRED PURSUANT TO R 299.5605(1)(A) OF THE MICHIGAN ADMINISTRA-
12 TIVE CODE.

13 (8) A REMEDIAL ACTION PLAN APPROVED BY THE DEPARTMENT SHALL
14 INCLUDE AN ANALYSIS OF MEASURES EMPLOYED TO CONTROL SOURCES OF
15 AQUIFER CONTAMINATION. A REMEDIAL ACTION PLAN MAY INCORPORATE BY
16 REFERENCE AN ANALYSIS OF SOURCE CONTROL MEASURES PROVIDED IN A
17 FEASIBILITY STUDY. AT A FACILITY WHERE HAZARDOUS SUBSTANCES ARE
18 PRESENT IN SOIL AND THOSE HAZARDOUS SUBSTANCES HAVE NOT YET
19 AFFECTED GROUNDWATER, BUT ARE LIKELY TO, GROUNDWATER CONTAMINA-
20 TION SHALL BE PREVENTED IF IT CAN BE PREVENTED BY REASONABLE
21 MEASURES.

22 (9) ANY LIABILITY A PERSON MAY HAVE UNDER THIS ACT SHALL BE
23 UNAFFECTED BY A DECISION OF THE DEPARTMENT PURSUANT TO
24 SUBSECTIONS (5) AND (6).

25 (10) IF A REMEDIAL ACTION IS SELECTED OR APPROVED BY THE
26 DEPARTMENT BASED ON STANDARDS FOR THE RESIDENTIAL CATEGORY
27 PROVIDED FOR IN SECTION 10G(1)(A), LAND USE RESTRICTIONS OR

1 MONITORING AND NOT REQUIRED ONCE THOSE STANDARDS HAVE BEEN
2 ACHIEVED BY THE REMEDIAL ACTION.

3 (11) IF A REMEDIAL ACTION IS SELECTED OR APPROVED BY THE
4 DEPARTMENT BASED ON STANDARDS IN CATEGORIES PROVIDED FOR IN
5 SECTION 10G(1)(B) TO (E), A NOTICE OF APPROVED ENVIRONMENTAL
6 REMEDIATION SHALL BE RECORDED WITH THE REGISTER OF DEEDS FOR THE
7 COUNTY IN WHICH THE FACILITY IS LOCATED WITHIN 21 DAYS AFTER
8 SELECTION OR APPROVAL BY THE DEPARTMENT OF THE REMEDIAL ACTION,
9 OR WITHIN 21 DAYS AFTER COMPLETION OF CONSTRUCTION OF THE REME-
10 DIAL ACTION. THE FORM AND CONTENT OF THE NOTICE SHALL BE SUBJECT
11 TO APPROVAL BY THE DEPARTMENT. ANY RESTRICTIONS CONTAINED IN THE
12 NOTICE SHALL BE BINDING ON THE OWNER'S SUCCESSORS, ASSIGNS, AND
13 LESSEES, AND SHALL RUN WITH THE LAND. A NOTICE OF ENVIRONMENTAL
14 REMEDIATION RECORDED PURSUANT TO THIS SUBSECTION SHALL STATE THE
15 DEPARTMENT'S DETERMINATION, AS THE RESULT OF THE APPROVAL OF A
16 REMEDIAL ACTION PLAN PURSUANT TO THIS SECTION, AS TO WHICH OF THE
17 CATEGORIES OF LAND USE SPECIFIED IN SECTION 10G(1)(B) TO (D) ARE
18 CONSISTENT WITH THE ENVIRONMENTAL CONDITIONS AT THE PROPERTY TO
19 WHICH THE NOTICE APPLIES, AND THAT A CHANGE FROM THAT LAND USE OR
20 USES MAY NECESSITATE FURTHER EVALUATION OF POTENTIAL RISKS TO THE
21 PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT. THE NOTICE
22 OF APPROVED ENVIRONMENTAL REMEDIATION SHALL INCLUDE A SURVEY AND
23 PROPERTY DESCRIPTION THAT DEFINE THE AREAS ADDRESSED BY THE REME-
24 DIAL ACTION PLAN AND THE SCOPE OF ANY LAND USE OR RESOURCE USE
25 LIMITATIONS. ADDITIONAL REQUIREMENTS FOR FINANCIAL ASSURANCE,
26 MONITORING, OR OPERATION, AND MAINTENANCE DO NOT APPLY IF A
27 REMEDIAL ACTION COMPLIES WITH STANDARDS PROVIDED FOR IN

1 SECTION 10G(1)(B) TO (E), UNLESS MONITORING OR OPERATION AND
2 MAINTENANCE ARE REQUIRED TO ASSURE THE COMPLIANCE WITH STANDARDS
3 THAT APPLY OUTSIDE THE BOUNDARY OF THE PROPERTY THAT IS THE
4 SOURCE OF THE RELEASE.

5 (12) IF A REMEDIAL ACTION IS SELECTED OR APPROVED BY THE
6 DEPARTMENT BASED ON STANDARDS PROVIDED FOR IN SECTION 10G(1)(F)
7 TO (K), PROVISIONS CONCERNING SUBDIVISIONS (A) THROUGH (E) SHALL
8 BE STIPULATED IN A LEGALLY ENFORCEABLE AGREEMENT WITH THE
9 DEPARTMENT. IF THE DEPARTMENT CONCURS WITH AN ANALYSIS PROVIDED
10 IN A REMEDIAL ACTION PLAN THAT 1 OR MORE OF THE REQUIREMENTS
11 SPECIFIED IN SUBDIVISIONS (B) TO (E) IS NOT NECESSARY TO PROTECT
12 THE PUBLIC HEALTH, SAFETY, WELFARE, AND THE ENVIRONMENT AND TO
13 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE REMEDIAL ACTION,
14 THAT ELEMENT MAY BE OMITTED FROM THE AGREEMENT. IF PROVISIONS
15 FOR ANY OF THE FOLLOWING, DETERMINED BY THE DEPARTMENT TO BE
16 APPLICABLE FOR A FACILITY, LAPSE OR ARE NOT COMPLIED WITH AS PRO-
17 VIDED IN THE AGREEMENT OR REMEDIAL ACTION PLAN, THE DEPARTMENT'S
18 APPROVAL OF THE REMEDIAL ACTION PLAN IS VOID:

19 (A) LAND USE RESTRICTIONS.

20 (B) MONITORING.

21 (C) OPERATION AND MAINTENANCE.

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

24 (E) FINANCIAL ASSURANCE, IN A MECHANISM ACCEPTABLE TO THE
25 DEPARTMENT TO PAY FOR MONITORING, OPERATION AND MAINTENANCE,
26 OVERSIGHT, AND OTHER COSTS DETERMINED BY THE DEPARTMENT TO BE

1 NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE
2 REMEDIAL ACTION.

3 (13) IF A REMEDIAL ACTION APPROVED PURSUANT TO
4 SUBSECTION (12) RELIES IN WHOLE OR IN PART ON CONTAINMENT FOR A
5 HAZARDOUS SUBSTANCE, OR OTHER BARRIER TO PREVENT EXPOSURE TO A
6 HAZARDOUS SUBSTANCE, LAND USE OR RESOURCE USE RESTRICTIONS TO
7 ASSURE THE EFFECTIVENESS AND INTEGRITY OF THE CONTAINMENT OR BAR-
8 RIER SHALL BE DESCRIBED IN A RESTRICTIVE COVENANT THAT IS EXE-
9 CUTED BY THE OWNER OF THE PROPERTY ON WHICH THE CONTAINMENT OR
10 BARRIER IS LOCATED. THE RESTRICTIVE COVENANT SHALL BE RECORDED
11 WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE PROPERTY
12 IS LOCATED WITHIN 21 DAYS OF THE DEPARTMENT'S SELECTION OR
13 APPROVAL OF THE REMEDIAL ACTION, OR WITHIN 21 DAYS OF THE COMPLE-
14 TION OF CONSTRUCTION OF THE CONTAINMENT OR BARRIER, WHICHEVER IS
15 LATER. THE RESTRICTIONS SHALL RUN WITH THE LAND AND BE BINDING
16 ON THE OWNER'S SUCCESSORS, ASSIGNS, AND LESSEES. SUCH RESTRIC-
17 TIONS SHALL APPLY UNTIL THE DEPARTMENT DETERMINES THAT HAZARDOUS
18 SUBSTANCES THAT ARE CONTROLLED BY THE BARRIER OR CONTAINED NO
19 LONGER PRESENT AN UNACCEPTABLE RISK TO THE PUBLIC HEALTH, SAFETY,
20 WELFARE, OR THE ENVIRONMENT AS DEFINED BY THE STANDARDS AND EXPO-
21 SURE CONTROL REQUIREMENTS SET FORTH IN THE REMEDIAL ACTION PLAN.
22 THE RESTRICTIVE COVENANT SHALL INCLUDE A SURVEY AND PROPERTY
23 DESCRIPTION THAT DEFINES THE AREAS TO WHICH RESTRICTIONS APPLY.
24 THE FORM AND CONTENT OF THE RESTRICTIVE COVENANT ARE SUBJECT TO
25 APPROVAL BY THE DEPARTMENT AND SHALL INCLUDE PROVISIONS TO ACCOM-
26 PLISH ALL OF THE FOLLOWING:

1 (A) RESTRICT ACTIVITIES AT THE FACILITY THAT MAY INTERFERE
2 WITH A REMEDIAL ACTION, OPERATION AND MAINTENANCE, MONITORING, OR
3 OTHER MEASURES NECESSARY TO ASSURE THE EFFECTIVENESS AND INTEG-
4 RITY OF THE REMEDIAL ACTION.

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

7 (C) REQUIRE NOTICE TO THE DEPARTMENT OF THE OWNER'S INTENT
8 TO CONVEY ANY INTEREST IN THE FACILITY 14 DAYS PRIOR TO CONSUM-
9 MATING THE CONVEYANCE. A CONVEYANCE OF TITLE, AN EASEMENT, OR
10 OTHER INTEREST IN THE PROPERTY SHALL NOT BE CONSUMMATED BY THE
11 PROPERTY OWNER WITHOUT ADEQUATE AND COMPLETE PROVISION FOR THE
12 CONTINUED OPERATION AND MAINTENANCE OF THE REMEDY AND THE PREVEN-
13 TION OF RELEASES AND EXPOSURES DESCRIBED IN THE PROVISIONS OF
14 SUBDIVISION (B).

15 (D) GRANT TO THE DEPARTMENT AND ITS DESIGNATED REPRESENTA-
16 TIVES THE RIGHT TO ENTER THE PROPERTY AT REASONABLE TIMES FOR THE
17 PURPOSE OF DETERMINING AND MONITORING COMPLIANCE WITH THE REME-
18 DIAL ACTION PLAN, INCLUDING THE RIGHT TO TAKE SAMPLES, INSPECT
19 THE OPERATION OF THE REMEDIAL ACTION MEASURES, AND INSPECT
20 RECORDS.

21 (E) ALLOW THE STATE TO ENFORCE THE RESTRICTION SET FORTH IN
22 THE COVENANT BY LEGAL ACTION IN A COURT OF APPROPRIATE
23 JURISDICTION.

24 (F) DESCRIBE GENERALLY THE USES OF THE PROPERTY THAT ARE
25 CONSISTENT WITH THE CATEGORICAL STANDARDS AND LIMITATIONS
26 APPROVED AS PART OF A REMEDIAL ACTION PLAN.

1 (14) IF THE DEPARTMENT DETERMINES THAT EXPOSURE TO HAZARDOUS
2 SUBSTANCES MAY BE RELIABLY RESTRICTED BY AN INSTITUTIONAL CONTROL
3 IN LIEU OF A RESTRICTIVE COVENANT, THE DEPARTMENT MAY APPROVE OF
4 A REMEDIAL ACTION PLAN UNDER SECTION 10G(1)(F) TO (K) THAT RELIES
5 ON SUCH INSTITUTIONAL CONTROL. MECHANISMS THAT MAY BE CONSIDERED
6 PURSUANT TO THIS SUBSECTION INCLUDE, BUT ARE NOT LIMITED TO, AN
7 ORDINANCE THAT PROHIBITS THE USE OF GROUNDWATER OR AN AQUIFER IN
8 A MANNER AND TO A DEGREE THAT PROTECTS AGAINST UNACCEPTABLE EXPO-
9 SURES AS DEFINED BY THE STANDARDS APPROVED AS PART OF THE REME-
10 DIAL ACTION PLAN. AN ORDINANCE THAT SERVES AS AN EXPOSURE CON-
11 TROL PURSUANT TO THIS SUBSECTION SHALL INCLUDE A REQUIREMENT THAT
12 THE LOCAL UNIT OF GOVERNMENT NOTIFY THE DEPARTMENT 30 DAYS PRIOR
13 TO ADOPTING A MODIFICATION TO THE ORDINANCE, OR TO THE LAPSING OR
14 REVOCATION OF THE ORDINANCE.

15 (15) SELECTION OR APPROVAL BY THE DEPARTMENT OF A REMEDIAL
16 ACTION DOES NOT RELIEVE A PERSON WHO MAY BE LIABLE UNDER
17 SECTION 12 OF THAT PERSON'S RESPONSIBILITY TO REPORT AND PROVIDE
18 FOR RESPONSE ACTIVITY TO ADDRESS A SUBSEQUENT RELEASE OR THREAT
19 OF RELEASE AT THE FACILITY.

20 (16) A REMEDIAL ACTION SHALL NOT BE CONSIDERED APPROVED BY
21 THE DEPARTMENT UNLESS A REMEDIAL ACTION PLAN IS SUBMITTED TO THE
22 DEPARTMENT AND THE DEPARTMENT APPROVES THE PLAN. IMPLEMENTATION
23 BY ANY PERSON OF RESPONSE ACTIVITY WITHOUT DEPARTMENT APPROVAL
24 DOES NOT RELIEVE THAT PERSON OF LIABILITY UNDER THIS ACT TO
25 UNDERTAKE RESPONSE ACTION OR LIMIT THE ABILITY OF THE DEPARTMENT
26 TO TAKE ACTION TO REQUIRE RESPONSE ACTIVITY BY A PERSON WHO MAY
27 BE LIABLE UNDER SECTION 12.

1 (17) A PERSON SHALL NOT FILE A NOTICE OF APPROVED
2 ENVIRONMENTAL REMEDIATION INDICATING A DETERMINATION OF THE
3 DEPARTMENT UNLESS THE DEPARTMENT HAS APPROVED OF THE FILING OF
4 SUCH NOTICE. FILING OF SUCH NOTICE WITHOUT DEPARTMENT APPROVAL
5 IS A VIOLATION OF THIS ACT SUBJECT TO PENALTIES AS PROVIDED FOR
6 IN SECTION 16B.

7 (18) A PERSON WHO IMPLEMENTS A REMEDIAL ACTION PLAN APPROVED
8 BY THE DEPARTMENT PURSUANT TO SUBSECTIONS (11) TO (14) SHALL PRO-
9 VIDE NOTICE OF THE LAND USE RESTRICTIONS THAT ARE PART OF THE
10 REMEDIAL ACTION PLAN TO THE ZONING AUTHORITY FOR THE LOCAL UNIT
11 OF GOVERNMENT IN WHICH THE FACILITY IS LOCATED.

12 (19) ~~(5)~~ The department shall encourage the use of innova-
13 tive cleanup technologies. Before July 1, 1995, the department
14 shall undertake 3 pilot projects to demonstrate innovative
15 cleanup technologies at facilities where money from the fund is
16 used.

17 (20) ~~(6)~~ At a facility where state funds will be spent to
18 plan or implement a remedial action plan or where the director
19 determines there is a significant public interest, within 30 days
20 after the completion of a remedial investigation for the facili-
21 ty, the department shall provide the county and the township,
22 city, or village in which the facility is located a notice of the
23 completion of the remedial investigation, a summary of the reme-
24 dial investigation, and notice of an opportunity for the people
25 in the local unit of government to meet with the department
26 regarding the remedial investigation and any proposed feasibility
27 study for the facility. Upon a request for a public meeting by

1 the governing body of the local unit of government or by 25
2 citizens of the local unit of government, the department shall,
3 within 30 days of the request, meet with persons in the local
4 unit of government. The person or persons requesting the public
5 meeting shall publicize and provide accommodations for the
6 meeting. The meeting shall be held in the local unit of govern-
7 ment in which the facility is located. The department shall pro-
8 vide copies of the notices and summary required in this subsec-
9 tion to the governing body of the local unit of government, to
10 the known persons that may be liable under section 12, and to the
11 main public library of the local unit of government in which the
12 facility is located. The department shall send representatives
13 to the meeting who are familiar with the facility and who are
14 involved with determining the appropriate remedial actions to be
15 taken at the facility. Persons that may be responsible under
16 section 12 for the facility may send representatives to the
17 meeting.

18 (21) ~~(7) Before approval of a proposed remedial action plan~~
19 ~~at a facility included on the list pursuant to section 6 that is~~
20 ~~not an interim response activity, if money from the fund is to be~~
21 ~~used or as specified in rules promulgated under this act, the~~
22 ~~department shall do all of the following:~~ THE DEPARTMENT SHALL
23 MAINTAIN, AND MAKE AVAILABLE TO THE PUBLIC ON REQUEST, A LIST OF
24 REMEDIAL ACTION PLANS SUBMITTED FOR APPROVAL THAT COMPLY WITH THE
25 REQUIREMENTS OF R 299.5515 OF THE MICHIGAN ADMINISTRATIVE CODE.
26 BEFORE APPROVAL OF A PROPOSED REMEDIAL ACTION PLAN WHICH IS TO BE
27 IMPLEMENTED WITH MONEY FROM THE FUND, OR IS BASED ON CATEGORICAL

1 STANDARDS PROVIDED FOR IN SECTION 10G(1)(F) TO (K), OR IF THE
2 PROVISIONS OF SUBSECTION (5) OR (6) APPLY, OR THE DEPARTMENT
3 DETERMINES THAT THERE IS SIGNIFICANT PUBLIC INTEREST, THE DEPART-
4 MENT SHALL DO ALL OF THE FOLLOWING:

5 (a) Publish a notice and brief summary of the proposed reme-
6 dial action plan.

7 (b) Provide for public review and comment pertinent to docu-
8 ments relating to the proposed remedial action plan, including,
9 if applicable, the feasibility study that outlines alternative
10 remedial action measures considered.

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

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

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

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

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

24 (22) ~~(8)~~ For purposes of this section, publication shall
25 include, at a minimum, publication in a major local newspaper of
26 general circulation in this state. In addition, the
27 administrative record shall be made available by the department

1 for inspection by members of the public at or near the facility
2 and in Lansing.

3 (23) THE PERSON PROPOSING A REMEDIAL ACTION PLAN SHALL PRO-
4 VIDE, AT THE TIME THE REMEDIAL ACTION PLAN IS SUBMITTED, NOTICE
5 TO PERSONS WHO RESIDE OR OPERATE BUSINESSES ON OR IMMEDIATELY
6 ADJACENT TO THE FACILITY, AND TO THE OWNERS OR OCCUPANTS OF PROP-
7 ERTY FOR WHICH A PRIVATE DRINKING WATER SUPPLY IS THREATENED BY A
8 RELEASE ADDRESSED IN THE REMEDIAL ACTION PLAN. THE NOTICE SHALL
9 CONSIST OF A DESCRIPTION OF THE SITE, A SUMMARY OF THE NATURE AND
10 EXTENT OF CONTAMINATION AND THE MEDIA AFFECTED, A SUMMARY OF THE
11 CLEANUP STANDARDS PROPOSED TO BE APPLIED, AND A SUMMARY OF THE
12 REMEDIAL ACTION PROPOSED. IT SHALL ALSO IDENTIFY A CONTACT AT
13 THE DEPARTMENT REGARDING THE FACILITY AND THE LOCATION AT WHICH
14 INFORMATION ABOUT THE REMEDIAL ACTION PLAN MAY BE REVIEWED.
15 NOTICE MAY BE DISTRIBUTED BY MAIL OR BY HAND DELIVERY TO THE RES-
16 IDENCES AND BUSINESSES ON OR IMMEDIATELY ADJACENT TO THE
17 FACILITY. UPON REQUEST, THE PERSON PROVIDING THE NOTICE PRE-
18 SCRIBED BY THIS SUBSECTION SHALL EXECUTE AN AFFIDAVIT ATTESTING
19 UNDER OATH THAT THIS NOTICE REQUIREMENT HAS BEEN MET. OTHER
20 PROOF THAT NOTICE HAS BEEN DELIVERED IS NOT REQUIRED. A PERSON
21 PROVIDING NOTICE PURSUANT TO THIS SUBSECTION SHALL ALSO PROVIDE A
22 COPY OF THE NOTICE TO THE DEPARTMENT.

23 (24) ~~(9)~~ The department shall prepare a summary document
24 that explains the reasons for the selection or approval of a
25 remedial action plan. In addition, the department shall compile
26 an administrative record of the decision process that results in

1 the selection of a remedial action plan. The administrative
2 record shall contain all of the following:

3 (a) Remedial investigation data regarding the facility.

4 (b) If applicable, a feasibility study and potential reme-
5 dial actions.

6 (c) If applicable, a summary document that explains the rea-
7 sons why a remedial investigation or feasibility study was not
8 conducted.

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

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

14 (f) Other information appropriate to the facility.

15 (25) ~~(10)~~ If comments or information are submitted for
16 inclusion in the administrative record that are not included in
17 the administrative record, a brief explanation of why the infor-
18 mation was not considered relevant shall be sent to the party by
19 the department and included in the record.

20 SEC. 10G. (1) THE DIRECTOR MAY ESTABLISH CLEANUP STANDARDS
21 OR APPROVE OF REMEDIAL ACTIONS IN THE FOLLOWING CATEGORIES, WHICH
22 SUBJECT TO DEPARTMENT REVIEW AND APPROVAL SHALL BE THE OPTION OF
23 THE PERSON PROPOSING THE REMEDIAL ACTION, CONSIDERING THE APPRO-
24 PRIATENESS OF THE CATEGORICAL STANDARD TO THE FACILITY:

25 (A) RESIDENTIAL.

26 (B) COMMERCIAL.

1 (C) RECREATIONAL.

2 (D) INDUSTRIAL.

3 (E) OTHER CATEGORIES ESTABLISHED BY THE DIRECTOR PURSUANT TO
4 SUBSECTION (2).

5 (F) LIMITED RESIDENTIAL.

6 (G) LIMITED COMMERCIAL.

7 (H) LIMITED RECREATIONAL.

8 (I) LIMITED INDUSTRIAL.

9 (J) OTHER LIMITED CATEGORIES ESTABLISHED BY THE DIRECTOR.

10 (K) SITE SPECIFIC STANDARDS BASED ON THE REQUIREMENTS OF
11 R 299.5717 OF THE MICHIGAN ADMINISTRATIVE CODE

12 (2) CLEANUP STANDARDS DEVELOPED PURSUANT TO SUBSECTION
13 (1) (A) TO (E) SHALL BE BASED ON GENERIC HUMAN HEALTH RISK ASSESS-
14 MENT ASSUMPTIONS DETERMINED BY THE DEPARTMENT TO APPROPRIATELY
15 CHARACTERIZE PATTERNS OF EXPOSURE ASSOCIATED WITH CERTAIN LAND
16 USES. THE DEPARTMENT MAY PRESCRIBE CLEANUP STANDARDS APPLICABLE
17 TO MORE THAN 1 GENERIC SET OF EXPOSURE ASSUMPTIONS WITHIN EACH
18 CATEGORY DESCRIBED IN SUBSECTION (1). THE DEPARTMENT SHALL SPEC-
19 IFY SITE CHARACTERISTICS THAT DEFINE THE APPLICABILITY OF STAN-
20 DARDS FROM THESE CATEGORIES OR SUBCATEGORIES.

21 (3) THE DEPARTMENT SHALL NOT APPROVE OF A REMEDIAL ACTION
22 PLAN IN ANY CATEGORY PURSUANT TO SUBSECTION (1) UNLESS THE PERSON
23 PROPOSING THE PLAN DOCUMENTS THAT THE CURRENT ZONING OF THE PROP-
24 ERTY IS CONSISTENT WITH THE CATEGORICAL STANDARD BEING PROPOSED,
25 OR THAT THE GOVERNING ZONING AUTHORITY HAS CHANGED THE ZONING
26 DESIGNATION SO THAT THE PROPOSED STANDARDS ARE CONSISTENT WITH
27 THE NEW ZONING DESIGNATION, OR THE CURRENT PROPERTY USE IS A

1 LEGAL NONCONFORMING USE. THE DEPARTMENT SHALL NOT GRANT FINAL
2 APPROVAL FOR A REMEDIAL ACTION PLAN THAT RELIES ON A CHANGE IN
3 ZONING DESIGNATION UNTIL A FINAL DETERMINATION OF THAT ZONING
4 CHANGE HAS BEEN MADE BY THE LOCAL UNIT OF GOVERNMENT.

5 (4) CLEANUP STANDARDS FROM 1 OR MORE CATEGORIES MAY BE
6 APPLIED AT A FACILITY, IF ALL RELEVANT REQUIREMENTS ARE SATISFIED
7 FOR APPLICATION OF A PERTINENT STANDARD.

8 (5) STANDARDS FOR THE RESIDENTIAL CATEGORY IN SUBSECTION
9 (1) (A) SHALL BE THOSE SPECIFIED IN R 299.5709 THROUGH R 299.5715
10 AND R 299.5723 THROUGH R 299.5727 OF THE MICHIGAN ADMINISTRATIVE
11 CODE, EXCEPT AS PROVIDED IN SUBSECTIONS (6) TO (9). THE NEED FOR
12 SOIL REMEDIATION TO PROTECT AN AQUIFER FROM HAZARDOUS SUBSTANCES
13 IN SOIL SHALL BE DETERMINED BY R 299.5711(2) OF THE MICHIGAN
14 ADMINISTRATIVE CODE, CONSIDERING THE VULNERABILITY OF THE AQUIFER
15 OR AQUIFERS POTENTIALLY AFFECTED IF THE SOIL REMAINS AT THE
16 FACILITY. MIGRATION OF HAZARDOUS SUBSTANCES IN SOIL TO AN AQUI-
17 FER IS A PERTINENT PATHWAY IF APPROPRIATE BASED ON CONSIDERATION
18 OF SITE SPECIFIC FACTORS.

19 (6) THE DEPARTMENT MAY ESTABLISH CLEANUP STANDARDS FOR LEAD
20 USING AN ALGORITHM OR METHOD OTHER THAN THOSE SPECIFIED IN RULE
21 IF HE OR SHE DETERMINES THAT ANOTHER ALGORITHM OR METHOD RESULTS
22 IN A STANDARD THAT BETTER REFLECTS THE RISK POSED.

23 (7) IF THE CLEANUP STANDARD FOR A HAZARDOUS SUBSTANCE DETER-
24 MINED BY R 299.5707 OF THE MICHIGAN ADMINISTRATIVE CODE IS
25 GREATER THAN A CLEANUP STANDARD DEVELOPED FOR A CATEGORY PURSUANT
26 TO SUBSECTION (1), THE STANDARD DETERMINED PURSUANT TO R 299.5707

1 OF THE MICHIGAN ADMINISTRATIVE CODE SHALL BE THE CLEANUP STANDARD
2 FOR THAT HAZARDOUS SUBSTANCE IN THAT CATEGORY.

3 (8) IF THE CLEANUP STANDARD FOR POLYCHLORINATED BIPHENYLS
4 DETERMINED PURSUANT TO R 299.5711(8) OF THE MICHIGAN ADMINISTRA-
5 TIVE CODE IS GREATER THAN THE STANDARD DEVELOPED FOR A CATEGORY
6 PURSUANT TO SUBSECTION (1), THE STANDARD DETERMINED PURSUANT TO
7 R 299.5711(8) OF THE MICHIGAN ADMINISTRATIVE CODE SHALL BE THE
8 CLEANUP STANDARD FOR POLYCHLORINATED BIPHENYLS, PROVIDED THAT THE
9 REQUIREMENTS OF THE FEDERAL REGULATION CITED IN R 299.5711(8) OF
10 THE MICHIGAN ADMINISTRATIVE CODE ARE APPLICABLE TO THE RELEASE
11 BEING ADDRESSED.

12 (9) RESPONSE ACTIVITY TO ADDRESS THE RELEASE OF UNCONTAMI-
13 NATED MINERAL OIL WILL BE DEEMED TO SATISFY R 299.5709 OR
14 R 299.5711 OF THE MICHIGAN ADMINISTRATIVE CODE IF ALL VISIBLE
15 TRACES OF MINERAL OIL ARE REMOVED FROM GROUNDWATER OR SOIL,
16 RESPECTIVELY.

17 (10) APPROVAL BY THE DEPARTMENT OF A REMEDIAL ACTION PLAN
18 FOR THE RESIDENTIAL, COMMERCIAL, RECREATIONAL, AND INDUSTRIAL
19 CATEGORIES IN SUBSECTION (1) SHALL BE GRANTED ONLY IF THE PERTI-
20 NENT STANDARDS ARE SATISFIED THROUGHOUT THE AFFECTED MEDIA. THE
21 DEPARTMENT MAY USE TESTS OF STATISTICAL SIGNIFICANCE AND OTHER
22 SCIENTIFIC METHODS OF EVALUATING ENVIRONMENTAL DATA WHEN DETER-
23 MINING COMPLIANCE WITH A PERTINENT CLEANUP STANDARD IF THE
24 METHODS ARE DETERMINED BY THE DEPARTMENT TO BE RELIABLE AND BEST
25 REPRESENT ACTUAL SITE CONDITIONS.

1 (11) A REMEDIAL ACTION PLAN SHALL PROVIDE RESPONSE ACTIVITY
2 TO MEET THE RESIDENTIAL CATEGORICAL STANDARDS, OR FOR ACCEPTABLE
3 LAND USE OR RESOURCE USE RESTRICTIONS PURSUANT TO SECTION 10E.

4 (12) A REMEDIAL ACTION PLAN THAT RELIES ON GENERIC CLEANUP
5 STANDARDS DEVELOPED PURSUANT TO SUBSECTION (1) SHALL ALSO CON-
6 sider OTHER FACTORS NECESSARY TO PROTECT THE PUBLIC HEALTH,
7 SAFETY, WELFARE, AND THE ENVIRONMENT AS SPECIFIED BY THE DEPART-
8 MENT, IF THE DEPARTMENT DETERMINES BASED ON DATA AND EXISTING
9 INFORMATION THAT SUCH CONSIDERATIONS ARE RELEVANT TO A SPECIFIC
10 SITE. THESE FACTORS INCLUDE, BUT ARE NOT LIMITED TO, THE PROTEC-
11 TION OF SURFACE WATER QUALITY AND CONSIDERATION OF ECOLOGICAL
12 RISKS IF APPROPRIATE TO THE FACILITY.

13 SEC. 10H. (1) AN OWNER OR OPERATOR OF A SITE SHALL NOT
14 REMOVE SOIL, OR ALLOW SOIL TO BE REMOVED, FROM A SITE OF ENVIRON-
15 MENTAL CONTAMINATION TO AN OFF-SITE LOCATION UNLESS THAT PERSON
16 DETERMINES THAT THE SOIL CAN BE RELOCATED WITHOUT POSING A THREAT
17 TO THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT.

18 (2) FOR THE PURPOSES OF SUBSECTION (1), SOIL POSES A THREAT
19 TO THE PUBLIC HEALTH, SAFETY, WELFARE, OR THE ENVIRONMENT IF CON-
20 CENTRATIONS OF HAZARDOUS SUBSTANCES IN THE SOIL EXCEED THE CATE-
21 GORICAL CLEANUP STANDARD DETERMINED PURSUANT TO SECTION 10G(1)
22 THAT APPLY TO THE LOCATION TO WHICH THE SOIL WILL BE MOVED OR
23 RELOCATED, EXCEPT THAT IF THE SOIL IS TO BE REMOVED FROM THE SITE
24 FOR DISPOSAL OR TREATMENT, THE SOIL SHALL SATISFY THE APPROPRIATE
25 REGULATORY CRITERIA FOR DISPOSAL OR TREATMENT. ANY LAND USE
26 RESTRICTIONS THAT WOULD BE REQUIRED FOR THE APPLICATION OF A
27 CATEGORICAL STANDARD PURSUANT TO SECTION 10G(1) SHALL BE IN PLACE

1 AT THE LOCATION TO WHICH THE SOIL WILL BE MOVED. SOIL MAY BE
2 RELOCATED ONLY TO ANOTHER FACILITY THAT IS SIMILARLY CONTAMI-
3 NATED, CONSIDERING THE NATURE, CONCENTRATION, AND MOBILITY OF
4 HAZARDOUS SUBSTANCES PRESENT AT THE LOCATION TO WHICH CONTAMI-
5 NATED SOIL WILL BE MOVED. CONTAMINATED SOIL SHALL NOT BE MOVED
6 TO A LOCATION THAT IS NOT A SITE OF ENVIRONMENTAL CONTAMINATION
7 UNLESS IT IS TAKEN THERE FOR TREATMENT OR DISPOSAL IN CONFORMANCE
8 WITH APPLICABLE LAWS AND REGULATIONS.

9 (3) AN OWNER OR OPERATOR OF A SITE SHALL NOT RELOCATE SOIL,
10 OR ALLOW SOIL TO BE RELOCATED, WITHIN A SITE OF ENVIRONMENTAL
11 CONTAMINATION WHERE A REMEDIAL ACTION PLAN HAS BEEN APPROVED
12 UNLESS THAT PERSON DETERMINES THAT THE SAME DEGREE OF CONTROL
13 WILL BE PROVIDED FOR THE CONTAMINATED SOIL AS WAS PROVIDED IN THE
14 REMEDIAL ACTION PLAN.

15 (4) THE PROHIBITION IN SUBSECTION (3) AGAINST RELOCATION OF
16 CONTAMINATED SOIL WITHIN A SITE OF ENVIRONMENTAL CONTAMINATION
17 DOES NOT APPLY TO SOILS THAT ARE TEMPORARILY RELOCATED FOR THE
18 PURPOSE OF IMPLEMENTING RESPONSE ACTIVITY. IF SOIL IS BEING
19 MOVED OFF SITE FROM, MOVED TO, OR RELOCATED ON SITE AT A FACILITY
20 WHERE A REMEDIAL ACTION PLAN HAS BEEN APPROVED BY THE DIRECTOR
21 BASED ON A CLEANUP STANDARD CATEGORY IN SECTION 10G(1)(F) TO (K),
22 THE SOIL SHALL NOT BE MOVED WITHOUT PRIOR DEPARTMENT APPROVAL.

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