

SENATE BILL NO. 605

October 24, 2023, Introduced by Senators IRWIN, MOSS, SHINK, MCMORROW, BAYER, GEISS, POLEHANKI, SANTANA and CHANG and referred to the Committee on Energy and Environment.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 20101, 20107a, 20112a, 20114, 20114b, 20114c, 20114d, 20114e, 20114g, 20126, and 20126a (MCL 324.20101, 324.20107a, 324.20112a, 324.20114, 324.20114b, 324.20114c, 324.20114d, 324.20114e, 324.20114g, 324.20126, and 324.20126a), sections 20101, 20114d, and 20114e as amended by 2018 PA 581, sections 20107a, 20114, 20114c, and 20126 as amended by 2014 PA 542, section 20112a as amended by 2010 PA 234, section 20114b as added by 2010 PA 228, section 20114g as added by 2012 PA 446, and section 20126a as amended by 2010 PA 227; and to repeal acts and

parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

20 (d) "Attorney general" means the department of the attorney
21 general.

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

1 methods:

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

5 (ii) The hazardous substance is listed in table 2, 3, or 4 of
6 the department's 2005 Michigan background soil survey, is present
7 in a soil type identified in 1 or more of those tables, and meets 1
8 of the following:

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

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

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

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

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

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

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

1 (iii) The hazardous substance is listed in any other study or
2 survey conducted or approved by the department and is within the
3 concentrations or falls within the typical ranges published in that
4 study or survey.

5 (iv) A site-specific demonstration.

6 (f) "Baseline environmental assessment" means a written
7 document that describes the results of an all appropriate inquiry
8 and the sampling and analysis that confirm that the property is or
9 contains a facility. For purposes of a baseline environmental
10 assessment, the all appropriate inquiry may be conducted or updated
11 ~~prior to~~ **before** or within 45 days after the earlier of the date of
12 purchase, occupancy, or foreclosure.

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

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

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

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

23 (ii) Cleanup criteria for unrestricted residential use under
24 part 213.

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

28 (j) "Department" means the director or ~~his or her~~ **the**
29 **director's** designee to whom the director delegates a power or duty

1 by written instrument.

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

4 (l) "Directors" means the directors or their designees of the
5 departments of ~~environmental quality, community health,~~
6 **environment, Great Lakes, and energy, health and human services,**
7 agriculture and rural development, and state police.

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

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

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

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

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

1 (r) "Exacerbation" means the occurrence of either of the
2 following caused by **a failure to carry out activities required**
3 **under a due care plan described in section 20107a(1)(g) or by** an
4 activity undertaken by the person ~~who~~**that** owns or operates the
5 property, with respect to contamination for which the person is not
6 liable:

7 (i) Migration of contamination **in soil, air, or water above the**
8 **targe detection limit and** beyond the boundaries of the property
9 that is the source of the release at levels above cleanup criteria
10 for unrestricted residential use unless a criterion is not relevant
11 because exposure is reliably restricted as otherwise provided in
12 this part.

13 (ii) **Migration of contamination in soil or water at levels**
14 **above the cleanup criteria for unrestricted residential use or a**
15 **relevant state drinking water standard, and that exceeds in any**
16 **horizontal or vertical dimension of the area of contamination as**
17 **delineated in the baseline environmental assessment.**

18 (iii) ~~(ii)~~—A change in facility conditions that increases
19 response activity costs.

20 (s) "Facility" means any area, place, parcel or parcels of
21 property, or portion of a parcel of property where a hazardous
22 substance in excess of the concentrations that satisfy the cleanup
23 criteria for unrestricted residential use has been released,
24 deposited, disposed of, or otherwise comes to be located. Facility
25 does not include any area, place, parcel or parcels of property, or
26 portion of a parcel of property where any of the following
27 conditions are satisfied:

28 (i) Response activities have been completed under this part or
29 the comprehensive environmental response, compensation, and

1 liability act **of 1980**, 42 USC 9601 to 9675, that satisfy the
2 cleanup criteria for unrestricted residential use.

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

7 (iii) Site-specific criteria that have been approved by the
8 department for application at the area, place, parcel of property,
9 or portion of a parcel of property are met or satisfied and
10 hazardous substances at the area, place, or property that are not
11 addressed by site-specific criteria satisfy the cleanup criteria
12 for unrestricted residential use.

13 (iv) Hazardous substances in concentrations above unrestricted
14 residential cleanup criteria are present due only to the placement,
15 storage, or use of beneficial use by-products or inert materials at
16 the area, place, or property in compliance with part 115.

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

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

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

26 (u) "Financial assurance" means a performance bond, escrow,
27 cash, certificate of deposit, irrevocable letter of credit,
28 corporate guarantee, or other equivalent security, or any
29 combination thereof.

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

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

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

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

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

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

21 (iv) Petroleum as described as a regulated substance in section
22 21303.

23 (y) "Interim response activity" means the cleanup or removal
24 of a released hazardous substance or the taking of other actions,
25 ~~prior to~~ **before** the implementation of a remedial action, as may be
26 necessary to prevent, minimize, or mitigate injury to the public
27 health, safety, or welfare, or ~~to~~ the environment. Interim response
28 activity also includes, but is not limited to, measures to limit
29 access, replacement of water supplies, and temporary relocation of

1 people as determined to be necessary by the department. In
2 addition, interim response activity means the taking of other
3 actions as may be necessary to prevent, minimize, or mitigate a
4 threatened release.

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

6 (i) A state or nationally chartered bank.

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

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

10 (iv) Any other state or federally chartered lending
11 institution.

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

14 (vi) An insurance company authorized to do business in this
15 state ~~pursuant to~~ **in accordance with** the insurance code of 1956,
16 1956 PA 218, MCL 500.100 to 500.8302.

17 (vii) A motor vehicle sales finance company subject to the
18 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101
19 to 492.141, with net assets in excess of \$50,000,000.00.

20 (viii) A foreign bank.

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

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

27 (xi) A nonprofit tax exempt organization created to promote
28 economic development in which a majority of the organization's

1 assets are held by a local unit of government.

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

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

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

8 (bb) "Local unit of government" means a county, city,
9 township, or village, an agency of a local unit of government, an
10 authority or any other public body or entity created by or pursuant
11 ~~to~~**in accordance with** state law. Local unit of government does not
12 include this state or the federal government or a state or federal
13 agency.

14 (cc) "Method detection limit" means the minimum concentration
15 of a hazardous substance that can be measured and reported with 99%
16 confidence that the analyte concentration is greater than zero and
17 is determined from analysis of a sample in a given matrix that
18 contains the analyte.

19 (dd) "Migrating NAPL" means that ~~terms~~**term** as ~~it is~~ defined
20 in section 21302.

21 (ee) "Mobile NAPL" means that term as ~~it is~~ defined in section
22 21302.

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

24 (gg) "No further action letter" means a written response
25 provided by the department under section 20114d confirming that a
26 no further action report has been approved after review by the
27 department.

28 (hh) "No further action report" means a report under section
29 20114d detailing the completion of remedial actions and including a

1 postclosure plan and a postclosure agreement, if appropriate.

2 (ii) "Nonresidential" means that category of land use for
3 parcels of property or portions of parcels of property that is not
4 residential. This category of land use may include, but is not
5 limited to, any of the following:

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

7 (ii) Recreational properties that are not contiguous to
8 residential property.

9 (iii) Hotels, hospitals, and campgrounds.

10 (iv) Natural areas such as woodlands, brushlands, grasslands,
11 and wetlands.

12 (jj) "Operator" means a person ~~who is in control of that~~
13 **controls or controlled** or **is or was** responsible for the operation
14 of a facility. Operator does not include either of the following:

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

19 (ii) A person ~~who is acting that acts or acted~~ as a fiduciary
20 in compliance with section 20101b.

21 (kk) "Owner" means a person ~~who that~~ owns **or owned** a facility.
22 Owner does not include either of the following:

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

29 (ii) A person ~~who is acting that acts or acted~~ as a fiduciary

1 in compliance with section 20101b.

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

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

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

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

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

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

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

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

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

29 (ii) Emissions from the engine exhaust of a motor vehicle,

1 rolling stock, aircraft, or vessel.

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

10 (iv) If applied according to label directions and according to
11 generally accepted agricultural and management practices at the
12 time of the application, the application of a fertilizer, soil
13 conditioner, agronomically applied manure, or pesticide, or fruit,
14 vegetable, or field crop residuals or processing by-products,
15 aquatic plants, or a combination of these substances. As used in
16 this subparagraph: ~~, fertilizer and soil~~

17 (A) "Fertilizer" means that term as defined in section 8501.

18 (B) "Pesticide" means that term as defined in section 8305.

19 (C) "Soil conditioner" ~~have the meaning given to these terms~~
20 ~~in part 85, and pesticide has the meaning given to~~ **means** that term
21 **as defined in part 83.section 8501a.**

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

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

28 (vii) The placement, storage, or use of beneficial use by-
29 products or inert materials at the site of storage or use if in

1 compliance with part 115.

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

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

11 (ss) "Residential" means that category of land use for parcels
12 of property or portions of parcels of property where people live
13 and sleep for significant periods of time such that the frequency
14 of exposure is reasonably expected or foreseeable to meet the
15 exposure assumptions used by the department to develop generic
16 residential cleanup criteria ~~as set forth in rules promulgated~~
17 under this part. This category of land use may include, but is not
18 limited to, homes and surrounding yards, condominiums, and
19 apartments.

20 (tt) "Residential closure" means a property at which the
21 contamination has been addressed in a no further action report that
22 satisfies the limited residential cleanup criteria under section
23 20120a(1)(c) or the site-specific residential cleanup criteria
24 under sections 20120a(2) and 20120b, that contains land use or
25 resource use restrictions, and that is approved by the department
26 or is considered approved by the department under section 20120d.

27 (uu) "Residual NAPL saturation" means that term as ~~it is~~
28 defined in ~~part 213.~~ **section 21303.**

29 (vv) "Response activity" means evaluation, interim response

1 activity, remedial action, demolition, providing an alternative
2 water supply, or the taking of other actions necessary to protect
3 the public health, safety, or welfare, or the environment or the
4 natural resources. Response activity also includes health
5 assessments or health effect studies carried out under the
6 supervision, or with the approval of, the department of ~~community~~
7 health **and human services** and enforcement actions related to any
8 response activity.

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

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

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

16 (ii) A plan for evaluation activities.

17 (iii) A feasibility study.

18 (iv) A remedial action plan.

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

1 real property for the purpose of securing a loan or other
2 obligation.

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

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

10 (bbb) **"State drinking water standards" means that term as**
11 **defined in section 2 of the safe drinking water act, 1976 PA 399,**
12 **MCL 325.1002.**

13 (ccc) ~~(bbb)~~ "Target detection limit" means the detection limit
14 for a hazardous substance in a given environmental medium that is
15 specified ~~in a rule promulgated by the department~~ **on a list that is**
16 **published not more than once per year.** The department shall
17 identify 1 or more analytical methods, when a method is available,
18 that are judged to be capable of achieving the target detection
19 limit for a hazardous substance in a given environmental medium.
20 The target detection limit for a given hazardous substance is
21 greater than or equal to the method detection limit for that
22 hazardous substance. In establishing a target detection limit, the
23 department shall consider the following factors:

24 (i) The low level capabilities of methods published by
25 government agencies.

26 (ii) Reported method detection limits published by state
27 laboratories.

28 (iii) Reported method detection limits published by commercial
29 laboratories.

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

3 (ddd) **"Technically feasible" means reasonably achievable using**
4 **currently available remediation methods.**

5 (eee) ~~(eee)~~ "Threatened release" or "threat of release" means
6 any circumstance that may reasonably be anticipated to cause a
7 release.

8 (fff) ~~(ddd)~~ "Venting groundwater" means groundwater that is
9 entering a surface water of this state from a facility.

10 (2) As used in this part:

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

15 (b) The phrase "this part" includes "rules promulgated under
16 this part".

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

21 (a) Undertake measures as are necessary to prevent
22 exacerbation.

23 (b) Exercise due care by undertaking response activity
24 necessary to mitigate unacceptable exposure to hazardous
25 substances, mitigate fire and explosion hazards due to hazardous
26 substances, and allow for the intended use of the facility in a
27 manner that protects the public health and safety.

28 (c) Take reasonable precautions against the reasonably
29 foreseeable acts or omissions of a third party and the consequences

1 that foreseeably could result from those acts or omissions.

2 (d) Provide reasonable cooperation, assistance, and access to
3 the persons that are authorized to conduct response activities at
4 the facility, including the cooperation and access necessary for
5 the installation, integrity, operation, and maintenance of any
6 complete or partial response activity at the facility. Nothing in
7 this subdivision ~~shall be~~ **is** interpreted to provide any right of
8 access not expressly authorized by law, including access authorized
9 ~~pursuant to~~ **in accordance with** a warrant or a court order, or to
10 preclude access allowed ~~pursuant to~~ **in accordance with** a voluntary
11 agreement.

12 (e) Comply with any land use or resource use restrictions
13 established or relied on in connection with the response activities
14 at the facility.

15 (f) Not impede the effectiveness or integrity of any land use
16 or resource use restriction employed at the facility in connection
17 with response activities.

18 (g) **Conduct a baseline environmental assessment and comply**
19 **with the time frames specified under this part. The baseline**
20 **environmental assessment must include a due care plan submitted on**
21 **a form and in a manner provided by the department. Within 90**
22 **business days after receipt of a due care plan that contains**
23 **sufficient information for the department to make a decision, the**
24 **department shall approve, approve with conditions, or deny the due**
25 **care plan. If the department denies the due care plan, the**
26 **department shall provide to the person the reasons why the due care**
27 **plan was not approved. A person that disagrees with the**
28 **department's decision under this subdivision may submit a petition**
29 **for review to the response activity review panel in accordance with**

1 section 20114e. A due care plan submitted under this subdivision
2 must include, but is not limited to, both of the following:

3 (i) A nonexhaustive list of specific actions that the person
4 that owns or operates the property will take to fulfill the
5 person's obligations under this part.

6 (ii) A description of how the person that owns or operates the
7 property will monitor the property for a release or threat of
8 release and a timeline for submitting a report to the department
9 regarding the monitoring conducted in accordance with this
10 subparagraph. A report under this subparagraph must be submitted at
11 least once every 5 years or at an interval determined by the
12 department.

13 (2) The owner's or operator's obligations under this section
14 shall be based upon the current numeric cleanup criteria under
15 section 20120a(1) or site-specific criteria approved under section
16 20120b.

17 (3) A person ~~who~~**that** violates subsection (1) ~~who~~**that** is not
18 otherwise liable under this part for the release at the facility is
19 liable for response activity costs and natural resource damages
20 attributable to any exacerbation and any fines or penalties imposed
21 under this part resulting from the violation of subsection (1) but
22 is not liable for performance of additional response activities
23 unless the person is otherwise liable under this part for
24 performance of additional response activities. The burden of proof
25 in a dispute as to what constitutes exacerbation ~~shall be~~**is** borne
26 by the party seeking relief.

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

1 (5) Subsection (1) (a) to (c) does not apply to ~~the~~**this** state
 2 or to a local unit of government that is not liable under section
 3 20126(1) (c) or (3) (a), (b), (c), or (e) or to ~~the~~**this** state or a
 4 local unit of government that acquired property by purchase, gift,
 5 transfer, or condemnation ~~prior to~~**before** June 5, 1995 or to a
 6 person ~~who~~**that** is exempt from liability under section 20126(4) (c).
 7 However, if the state or local unit of government, acting as the
 8 operator of a parcel of property that ~~the~~**this** state or local unit
 9 of government has knowledge is a facility, offers access to that
 10 parcel on a regular or continuous basis ~~pursuant to~~**in accordance**
 11 **with** an express public purpose and invites the general public to
 12 use that property for the express public purpose, ~~the~~**this** state or
 13 local unit of government is subject to this section but only with
 14 respect to that portion of the facility that is opened to and used
 15 by the general public for that express purpose, and not the entire
 16 facility. Express public purpose includes, but is not limited to,
 17 activities such as a public park, municipal office building, or
 18 municipal public works operation. Express public purpose does not
 19 include activities surrounding the acquisition or compilation of
 20 parcels for the purpose of future development.

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

24 Sec. 20112a. (1) Subject to subsection (3), the department
 25 shall create, and update on an ongoing basis, an inventory of
 26 residential closures and a separate inventory of other known
 27 facilities. Each inventory ~~shall~~**must** contain, if applicable, at
 28 least the following information for each facility:

29 (a) Location.

1 (b) Whether 1 or more response activity plans were submitted
2 under section 20114b and the status of department approval.

3 (c) Whether a notice of land use or resource use restrictions
4 under section 20114c was submitted to the department.

5 (d) Whether a no further action report under section 20114d
6 was submitted to the department and whether the report included a
7 postclosure plan or proposed postclosure agreement and the status
8 of department approval.

9 (2) The department may categorize facilities on the inventory
10 created under subsection (1) in a manner that the department
11 believes is useful for the general public.

12 (3) The department shall create and update on an ongoing basis
13 a separate inventory of residential closures.

14 (4) The department shall post ~~the inventories created under~~
15 ~~subsections (1) and (2)~~ **the following** on the department's website:

16 -

17 (a) **The inventories created under subsections (1) and (2).**

18 (b) **All of the following received by the department:**

19 (i) **Response activity plans.**

20 (ii) **Remedial action plans.**

21 (iii) **Postclosure plans.**

22 (iv) **No further action reports.**

23 (v) **Requests for certificate of completion or documentation of**
24 **due care compliance.**

25 (vi) **Initial assessment reports.**

26 (vii) **Final assessment reports.**

27 (viii) **Closure reports.**

28 (ix) **Documentation of due care compliance under part 213.**

29 (x) **Baseline environmental assessments.**

1 (5) The department shall compile the following data on a
2 quarterly basis and post the data **in a searchable format** on its
3 website:

4 (a) The number of response activity plans received by the
5 department and itemized as follows:

6 (i) Approved by the department.

7 (ii) Disapproved by the department.

8 (iii) Recommended for approval by the panel.

9 (iv) Recommended for disapproval by the panel.

10 (v) Approved by operation of law under section 20114b.

11 (b) The number of no further action reports received by the
12 department and itemized as follows:

13 (i) Approved by the department.

14 (ii) Disapproved by the department.

15 (iii) Recommended for approval by the panel.

16 (iv) Recommended for disapproval by the panel.

17 (v) Approved by operation of law.

18 (c) The number of baseline environmental assessments received
19 by the department ~~and a list of all of the following information~~
20 **for each site of a baseline environmental assessment:**

21 (i) **Whether the site is an orphaned site.**

22 (ii) **The size of the site.**

23 (iii) **Type of contaminant present at the site and the potential**
24 **for human exposure.**

25 (iv) **The closure status of the site.**

26 (6) The department shall annually determine the percentage of
27 no further action reports approved by operation of law under
28 section 20114d. If the percentage in any year is in excess of 10%,

1 the department shall notify the standing committees of the senate
2 and the house of representatives with jurisdiction over issues
3 related to natural resources and the environment of this
4 occurrence.

5 **(7) The department shall provide and make available on its**
6 **website guidance documents that detail reasonable time frames for**
7 **remedial actions based on the following characteristics:**

8 **(a) Type and amount of contamination.**

9 **(b) Likelihood of human exposure.**

10 **(c) Likelihood of migration of contaminants beyond the**
11 **boundaries of the property that is the source of a release.**

12 **(d) Available remediation methods.**

13 **(e) Any other characteristics determined necessary by the**
14 **department.**

15 Sec. 20114. (1) Except as provided in subsection ~~(4)~~, **(3)**, an
16 owner or operator of property ~~who~~**that** has knowledge that the
17 property is a facility shall do all of the following with respect
18 to a release for which the owner or operator is liable under
19 section 20126:

20 (a) Subject to subsection ~~(6)~~, **(5)**, determine the nature and
21 extent of the release at the facility.

22 (b) Make the following notifications:

23 (i) If the release is of a reportable quantity of a hazardous
24 substance under 40 CFR 302.4 and 302.6, ~~(July 1, 2012 edition)~~,
25 report the release to the department within 24 hours after
26 obtaining knowledge of the release.

27 (ii) If the owner or operator has reason to believe that 1 or
28 more hazardous substances are emanating from or have emanated from
29 and are present beyond the boundary of ~~his or her~~**the owner's or**

1 **operator's** property at a concentration in excess of cleanup
2 criteria for unrestricted residential use **or a state drinking water**
3 **standard**, notify the department and the owners of property where
4 the hazardous substances are present within 30 days after obtaining
5 knowledge that the release has migrated.

6 (iii) If the release is a result of an activity that is subject
7 to permitting under part 615 and the owner or operator is not the
8 owner of the surface property and the release results in hazardous
9 substance concentrations in excess of cleanup criteria for
10 unrestricted residential use, notify the department and the surface
11 owner within 30 days after obtaining knowledge of the release.

12 (c) Immediately stop or prevent an ongoing release at the
13 source.

14 (d) Immediately implement measures to address, remove, or
15 contain hazardous substances that are released after June 5, 1995
16 if those measures are technically practical ~~, are cost effective,~~
17 and abate an unacceptable risk to the public health, safety, or
18 welfare or the environment. At a facility where hazardous
19 substances are released after June 5, 1995, and those hazardous
20 substances have not affected groundwater but are likely to,
21 groundwater contamination ~~shall~~**must** be prevented if it can be
22 prevented by measures that are technically practical ~~, cost~~
23 ~~effective,~~ and abate an unacceptable risk to the public health,
24 safety, or welfare or the environment.

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

27 (f) Initiate a remedial action that is necessary and feasible
28 to address unacceptable risks associated with residual NAPL
29 saturation, migrating NAPL, and mobile NAPL using best practices

1 for managing NAPL, including, but not limited to, best practices
 2 developed by the American ~~society~~ **Society** for ~~testing~~ **Testing** and
 3 materials ~~Materials~~ or the interstate ~~technology~~ **Interstate**
 4 **Technology** and ~~regulatory council~~ **Regulatory Council**.

5 (g) Diligently pursue response activities necessary to **prevent**
 6 **the horizontal and vertical expansion of contamination in soil and**
 7 **water and to** achieve the cleanup criteria established under this
 8 part. Except as otherwise provided in this part, in pursuing
 9 response activities under this subdivision, the owner or operator
 10 ~~may do either of the following:~~

11 ~~(i) Proceed under section 20114a to conduct self-implemented~~
 12 ~~response activities.~~

13 ~~(ii) Proceed~~ **shall proceed** under section 20114b if the owner or
 14 operator wishes to, or is required to, obtain departmental approval
 15 of 1 or more aspects of planning response activities.

16 (h) Upon written request by the department, take 1 or more of
 17 the following actions:

18 (i) Provide a response activity plan containing a plan for
 19 undertaking interim response activities and undertake interim
 20 response activities consistent with that plan.

21 (ii) Provide a response activity plan containing a plan for
 22 undertaking evaluation activities and undertake evaluation
 23 activities consistent with that plan.

24 ~~(iii) Pursue remedial actions under section 20114a and, upon~~
 25 ~~completion, submit a no further action report under section 20114d.~~

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

29 **(iv)** ~~(v)~~ Submit to the department for approval a response

1 activity plan containing a remedial action plan that, when
2 implemented, will achieve the cleanup criteria established under
3 this part.

4 ~~(v) (vi)~~—Implement an approved response activity plan in
5 accordance with a schedule approved by the department pursuant to
6 **under** this part.

7 ~~(vi) (vii)~~—Submit a no further action report under section
8 20114d after completion of remedial action.

9 **(i) Provide a report on the progress of response activities**
10 **conducted under this part at least once every 5 years until a no**
11 **further action report is submitted under section 20114d, or at an**
12 **interval determined by the department.**

13 ~~(2) Subsection (1) does not preclude a person from~~
14 ~~simultaneously undertaking 1 or more aspects of planning or~~
15 ~~implementing response activities at a facility under section 20114a~~
16 ~~without the prior approval of the department, unless 1 or more~~
17 ~~response activities are being conducted pursuant to an~~
18 ~~administrative order or agreement or judicial decree that requires~~
19 ~~prior department approval, and submitting a response activity plan~~
20 ~~to the department under section 20114b.~~

21 ~~(2) (3)~~—Except as provided in subsection ~~(4)~~, **(3)**, a person
22 ~~who~~**that** holds an easement interest in a portion of a property ~~who~~
23 **that** has knowledge that there may be a release within that easement
24 shall report the release to the department within 24 hours after
25 obtaining knowledge of the release. This subsection applies to
26 reportable quantities of hazardous substances established pursuant
27 ~~to~~**in accordance with** 40 CFR 302.4 and 302.6. ~~(July 1, 2012~~
28 ~~edition).~~

29 **(3) (4)**—The requirements of subsections (1) and ~~(3)~~ **(2)** do not

1 apply to a permitted release or a release in compliance with
2 applicable federal, state, and local air pollution control laws.

3 **(4)** ~~(5)~~—This section does not do either of the following:

4 (a) Limit the authority of the department to take or conduct
5 response activities ~~pursuant to~~ **in accordance with** this part.

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

8 **(5)** ~~(6)~~—If a hazardous substance is released at a property and
9 there is no available analytical method or generic cleanup criteria
10 for that hazardous substance, the nature and extent of the
11 hazardous substance may be determined by any of the following
12 means, singly or in combination:

13 (a) If another hazardous substance with an available
14 analytical method was released at the same location and has similar
15 fate and mobility characteristics, determine the nature and extent
16 of that hazardous substance as a surrogate.

17 (b) For venting groundwater, use ~~a~~ **an ecological demonstration**
18 **or** modeling demonstration, ~~an ecological demonstration,~~ or a
19 combination of both, consistent with section ~~20120e(9) and (10),~~
20 **20120e(6) and (7)**, to determine whether the hazardous substance has
21 reached surface water.

22 (c) Develop and propose to the department an analytical method
23 for approval by the department.

24 (d) In lieu of determining the nature and extent of the
25 hazardous substance release, ~~eliminate the potential for exposure~~
26 ~~in areas where~~ **remove** the hazardous substance ~~is expected to be~~
27 ~~located through removal, containment, exposure barriers, or land~~
28 ~~use or resource use restrictions.~~ **to below detectable levels.**

29 **(6)** ~~(7)~~—As used in this section, "available analytical method"

1 means a method that is approved and published by a governmental
2 agency, is conducted routinely by commercial laboratories in the
3 United States, and identifies and quantitatively measures the
4 specific hazardous substance or class of substances.

5 Sec. 20114b. (1) Subject to section 20114(1)(h), a person
6 undertaking response activity under this part ~~may~~**shall** submit to
7 the department a response activity plan that includes a request for
8 department approval of 1 or more aspects of response activity.

9 (2) A person ~~who~~**that** submits a response activity plan under
10 this section and ~~who~~ is not subject to an administrative order or
11 agreement or judicial decree that requires prior department
12 approval of response activity shall submit a response activity plan
13 review request form with the response activity plan. The department
14 shall specify the required content of the response activity request
15 form and make the form available on the department's website.

16 (3) ~~Upon~~**On** receipt of a response activity plan submitted for
17 approval under this subsection, the department shall approve,
18 approve with conditions, or deny the response activity plan, or
19 ~~shall~~ notify the submitter that the plan does not contain
20 sufficient information for the department to make a decision. The
21 department shall provide its determination within 150 days after
22 the plan was received by the department unless the plan requires
23 public participation under section 20120d(2). If the plan requires
24 public participation under section 20120d(2), the department shall
25 respond within 180 days. If the department's response is that the
26 plan does not include sufficient information, the department shall
27 identify the information that is required for the department to
28 make a decision. If a plan is approved with conditions, the
29 department's approval ~~shall~~**must** state with specificity the

1 conditions of the approval. **The conditions may include, but are not**
2 **limited to, requiring a timeline for completion of certain response**
3 **activities, requiring intermediary benchmarks, and requiring**
4 **submission of progress reports at regular intervals.** If the plan is
5 denied, the department's denial ~~shall,~~**must**, to the extent
6 practical, state with specificity all of the reasons for denial.

7 (4) If the department fails to provide a written response
8 within the time frames required by subsection (3), the response
9 activity plan is considered approved. If the department denies a
10 response activity plan under subsection (3), a person may
11 subsequently revise and resubmit the response activity plan for
12 approval.

13 (5) **The department may require that a person undertaking**
14 **response activity under this part submit a new response activity**
15 **plan under this section if any of the following occur:**

16 (a) **There is new information about the type and extent of**
17 **contamination.**

18 (b) **There is evidence of either of the following:**

19 (i) **Migration of hazardous substances.**

20 (ii) **That the person undertaking response activities**
21 **substantially misrepresented response activities or the type or**
22 **extent of contamination or failed to comply with conditions set**
23 **forth in the response activity plan.**

24 (iii) **There is new scientific information released regarding the**
25 **contaminants present at the facility.**

26 (6) ~~(5)~~ **Any time frame required by this section may be**
27 **extended by mutual agreement of the department and a person**
28 **submitting a response activity plan. An agreement extending a time**
29 **frame shall**must** be in writing.**

1 (7) ~~(6)~~—A person requesting approval of a response activity
 2 plan may appeal the department's decision in accordance with
 3 section 20114e, if applicable.

4 Sec. 20114c. (1) If remedial actions at a facility satisfy
 5 cleanup criteria for unrestricted residential use **and any affected**
 6 **groundwater is restored to meet state drinking water standards,**
 7 land use or resource use restrictions or monitoring is not
 8 required.

9 (2) ~~Upon~~**On** completion of remedial actions at a facility for a
 10 category of cleanup that does not satisfy cleanup criteria for
 11 unrestricted residential use **or that does not meet state drinking**
 12 **water standards,** the person conducting the remedial actions shall
 13 prepare and implement a postclosure plan for that facility. A
 14 postclosure plan ~~shall~~**must** include ~~both~~**all** of the following:

15 (a) Land use or resource use restrictions as provided in
 16 section 20121.

17 (b) Permanent markers to describe restricted areas of the
 18 facility and the nature of any restrictions. A permanent marker is
 19 not required under this subdivision if the only applicable land use
 20 or resource use restrictions relate to 1 or more of the following:

21 (i) A facility at which remedial action satisfies the cleanup
 22 criteria for the nonresidential category under section
 23 20120a(1)(b).

24 (ii) Use of groundwater.

25 (iii) Protection of the integrity of exposure controls that
 26 prevent contact with soil, and those controls are composed solely
 27 of asphalt, concrete, or landscaping materials. This subparagraph
 28 does not apply if the hazardous substances that are addressed by
 29 the barrier exceed a cleanup criterion based on acute toxic

1 effects, reactivity, corrosivity, ignitability, explosivity, or
2 flammability.

3 (iv) Construction requirements or limitations for structures
4 that may be built in the future.

5 (c) A timeline for submitting an annual report to the
6 department that contains the following information:

7 (i) Measures taken to ensure that the land and resource use
8 restrictions are effective in limiting human exposure to
9 contaminants.

10 (ii) Any known failures of the land or resource use
11 restrictions in preventing access or exposure to the restricted
12 land or resource.

13 (d) A description of continuous monitoring sufficient to
14 detect any vertical or horizontal migration or expansion of
15 contamination in soil or groundwater, and reporting on migration or
16 expansion of contaminants.

17 (3) At any time within 10 years after a postclosure plan is
18 submitted under subsection (2), the department may require changes
19 or updates to the postclosure plan based on monitoring and
20 reporting conducted in accordance with subsection (2) (c) and (d).

21 (4) ~~(3)~~—A person ~~who~~ **that** implements a postclosure plan shall
22 provide notice of the land use or resource use restrictions to the
23 department and to the zoning authority for the local unit of
24 government in which the facility is located within 30 days after
25 recording the land use or resource use restrictions with the
26 register of deeds.

27 (5) ~~(4)~~—Implementation of remedial actions does not relieve a
28 person who is liable under section 20126 of that person's
29 responsibility to report and provide for response activity to

1 address a subsequent release or threat of release.

2 **(6)** ~~(5)~~—Implementation by any person of remedial actions
3 without department approval does not relieve that person of an
4 obligation to undertake response activities or limit the ability of
5 the department to take action to require response activities
6 necessary to comply with this part by a person who is liable under
7 section 20126.

8 Sec. 20114d. (1) **On completion of remedial actions that**
9 **satisfy the requirements of this part, a person may submit a no**
10 **further action report to the department.** A person may submit a no
11 further action report under this subsection for remedial actions
12 addressing contamination for which the person is or is not liable.
13 Remedial actions included in a no further action report may address
14 all or a portion of contamination at a facility as follows:

15 (a) The remedial actions may address 1 or more releases at a
16 facility.

17 (b) The remedial actions may address 1 or more hazardous
18 substances at a facility.

19 (c) The remedial actions may address contamination in 1 or
20 more environmental media at a facility.

21 (d) The remedial actions may address contamination within the
22 entire facility or only a portion of a facility.

23 (e) The remedial actions may address contamination at a
24 facility through any combination of subdivisions (a) ~~through~~ **to**
25 (d).

26 (2) A no further action report submitted under subsection (1)
27 must document the basis for concluding that the remedial actions
28 ~~included in the no further action report are protective of the~~
29 ~~public health, safety, and welfare, and the environment with~~

1 ~~respect to the environmental contamination addressed by the~~
2 ~~remedial actions.~~ **have been completed.** A no further action report
3 may include a request that, ~~upon~~ **on** approval, the release or
4 conditions addressed by the no further action report be designated
5 as a residential closure. A no further action report ~~shall~~ **must** be
6 submitted with a form developed by the department. The department
7 shall make this form available on its website.

8 (3) A no further action report submitted under subsection (1)
9 ~~shall~~ **must** be submitted with the following, as applicable:

10 (a) If the remedial action at the facility satisfies the
11 cleanup criteria for unrestricted residential use for the hazardous
12 substances **or meets state drinking water standards** and portion of
13 the facility addressed in the no further action report, neither a
14 postclosure plan or a proposed postclosure agreement is required to
15 be submitted.

16 (b) If the remedial action requires only land use or resource
17 use restrictions and financial assurance is not required or the
18 financial assurance is de minimis, a postclosure plan is required
19 but a proposed postclosure agreement is not required to be
20 submitted.

21 (c) For circumstances other than those described in
22 subdivision (a) or (b), a postclosure plan and a proposed
23 postclosure agreement are required to be submitted.

24 (4) A proposed postclosure agreement that is submitted as part
25 of a no further action report must include all of the following:

26 (a) Provisions for monitoring, operation and maintenance, and
27 oversight necessary to assure the effectiveness and integrity of
28 the remedial action.

29 (b) Financial assurance **in the form of a bond, insurance**

1 **policy, or irrevocable letter of credit** to pay for monitoring,
2 operation and maintenance, oversight, and other costs determined by
3 the department to be necessary to assure the effectiveness and
4 integrity of the remedial action.

5 (c) A provision requiring notice to the department of the
6 owner's intent to convey any interest in the facility 14 days ~~prior~~
7 ~~to~~**before** consummating the conveyance. A conveyance of title, an
8 easement, or other interest in the property ~~shall~~**must** not be
9 consummated by the property owner without adequate and complete
10 provision for compliance with the terms and conditions of the
11 postclosure plan and the postclosure agreement.

12 (d) A provision granting the department the right to enter the
13 property at reasonable times for the purpose of determining and
14 monitoring compliance with the postclosure plan and postclosure
15 agreement, including the right to take samples, inspect the
16 operation of the remedial action measures, and inspect records.

17 (5) A postclosure agreement may waive the requirement for
18 permanent markers.

19 (6) The person ~~submitting~~**that submits** a no further action
20 report shall include a signed affidavit attesting to the fact that
21 the information ~~upon~~**on** which the no further action report is based
22 is complete and true to the best of that person's knowledge. The no
23 further action report must also include a signed affidavit from an
24 environmental consultant who meets the professional qualifications
25 described in section 20114e(2) and who prepared the no further
26 action report, attesting to the fact that the remedial actions
27 detailed in the no further action report comply with all applicable
28 requirements and that the information ~~upon~~**on** which the no further
29 action report is based is complete and true to the best of ~~that~~

1 ~~person's~~ **the environmental consultant's** knowledge. In addition, the
2 environmental consultant shall attach a certificate of insurance
3 demonstrating that the environmental consultant has obtained at
4 least all of the following from a carrier that is authorized to
5 conduct business in this state:

6 (a) Statutory worker compensation insurance as required in
7 this state.

8 (b) Professional liability errors and omissions insurance.
9 This policy must not exclude bodily injury, property damage, or
10 claims arising out of pollution for environmental work and must be
11 issued with a limit of not less than \$1,000,000.00 per claim.

12 (c) Contractor pollution liability insurance with limits of
13 not less than \$1,000,000.00 per claim, if not included under the
14 professional liability errors and omissions insurance required
15 under subdivision (b). The insurance requirement under this
16 subdivision is not required for environmental consultants who do
17 not perform contracting functions.

18 (d) Commercial general liability insurance with limits of not
19 less than \$1,000,000.00 per claim and \$2,000,000.00 aggregate.

20 (e) Automobile liability insurance with limits of not less
21 than \$1,000,000.00 per claim.

22 (7) A person ~~submitting~~ **that submits** a no further action
23 report shall maintain all documents and data prepared, acquired, or
24 relied ~~upon~~ **on** in connection with the no further action report for
25 not less than 10 years after the later of the date on which the
26 department approves the no further action report under this
27 section, or the date on which no further monitoring, operation, or
28 maintenance is required to be undertaken as part of the remedial
29 action covered by the report. All documents and data required to be

1 maintained under this section ~~shall~~**must** be made available to the
2 department ~~upon~~**on** request.

3 (8) ~~Upon~~**On** receipt of a no further action report submitted
4 under this subsection, the department shall approve or deny the no
5 further action report or shall notify the submitter that the report
6 does not contain sufficient information for the department to make
7 a decision. If the no further action report requires a postclosure
8 agreement, the department may negotiate alternative terms than
9 those included within the proposed postclosure agreement. The
10 department shall provide its determination within 150 days after
11 the report was received by the department under this subsection
12 unless the report requires public participation under section
13 20120d(2). If the report requires public participation under
14 section 20120d(2), the department shall respond within 180 days. If
15 the department's response is that the report does not include
16 sufficient information, the department shall identify the
17 information that is required for the department to make a decision.
18 If the report is denied, the department's denial must, to the
19 extent practical, state with specificity all of the reasons for
20 denial. If the no further action report, including any required
21 postclosure plan and postclosure agreement, is approved, the
22 department shall provide the person ~~submitting~~**that submits** the no
23 further action report with a no further action letter. The
24 department shall review and provide a written response within the
25 time frames required by this subsection for at least 90% of the no
26 further action reports submitted to the department under this
27 section in each calendar year.

28 (9) If the department fails to provide a written response
29 within the time frames required by subsection (8), the no further

1 action report is considered approved.

2 (10) A person ~~requesting that~~ **requests** approval of a no
3 further action report under subsection (8) may appeal the
4 department's decision in accordance with section 20114e.

5 (11) Any time frame required by this section may be extended
6 by mutual agreement of the department and a person ~~submitting that~~
7 **submits** a no further action report. An agreement extending a time
8 frame must be in writing.

9 (12) Following approval of a no further action report under
10 this section, the owner or operator of the facility addressed by
11 the no further action report may submit to the department an
12 amended no further action report. The amended no further action
13 report must include the proposed changes to the original no further
14 action report and an accompanying rationale for the proposed
15 change. The process for review and approval of an amended no
16 further action report is the same as the process for no further
17 action reports.

18 Sec. 20114e. (1) The director shall establish a response
19 activity review panel to advise ~~him or her~~ **the director** on
20 **technical or scientific** disputes, **including disputes regarding**
21 **assessment of risk, response activity plans, no further action**
22 **reports, certificates of completion, and documentation of due care**
23 **compliance under this part, and initial assessment reports, final**
24 **assessment reports, closure reports, and documentation of due care**
25 **compliance under part 213.**

26 (2) The panel must consist of 15 individuals, appointed by the
27 director. Each member of the panel must meet all of the following
28 minimum requirements:

29 (a) Meet 1 or more of the following:

1 (i) Hold a current professional engineer's or professional
2 geologist's license or registration from a state, tribe, or United
3 States territory, or the Commonwealth of Puerto Rico, and have the
4 equivalent of 6 years of full-time relevant experience.

5 (ii) Have a baccalaureate degree from an accredited institution
6 of higher education in a discipline of engineering or science and
7 the equivalent of 10 years of full-time relevant experience.

8 (iii) Have a master's degree from an accredited institution of
9 higher education in a discipline of engineering or science and the
10 equivalent of 8 years of full-time relevant experience.

11 (b) Remain current in ~~his or her~~ **the individual's** field
12 through participation in continuing education or other activities.

13 (3) An individual is not eligible to be a member of the panel
14 if any of the following is true:

15 (a) The individual is a current employee of any office,
16 department, or agency of this state.

17 (b) The individual is a party to 1 or more contracts with the
18 department and the compensation paid under those contracts
19 represented more than 5% of the individual's annual gross revenue
20 in any of the preceding 3 years.

21 (c) The individual is employed by an entity that is a party to
22 1 or more contracts with the department and the compensation paid
23 to the individual's employer under these contracts represented more
24 than 5% of the employer's annual gross revenue in any of the
25 preceding 3 years.

26 (d) The individual was employed by the department within the
27 preceding 3 years.

28 (4) An individual appointed to the panel serves for a term of
29 3 years and may be reappointed for 1 additional 3-year term. After

1 serving 2 consecutive terms, the individual shall not be a member
2 of the panel for a period of at least 2 years before being eligible
3 to be appointed to the panel again. The terms for members first
4 appointed must be staggered so that not more than 5 vacancies are
5 scheduled to occur in a single year. Individuals appointed to the
6 panel serve without compensation. However, members of the panel may
7 be reimbursed for their actual and necessary expenses incurred in
8 the performance of their official duties as members of the panel.

9 (5) A vacancy on the panel ~~shall~~**must** be filled in the same
10 manner as the original appointment.

11 (6) The business that the panel may perform ~~shall~~**must** be
12 conducted at a public meeting of the panel held in compliance with
13 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

14 (7) A person ~~who~~**that** submitted a response activity plan, ~~+~~
15 ~~remedial action plan; postclosure plan; a no further action report,~~
16 ~~+~~**or** request for certificate of completion or documentation of
17 due care compliance under this part, ~~+~~**or** an initial assessment
18 report, final assessment report, closure report, or documentation
19 of due care compliance under part 213, may appeal a decision made
20 by the department regarding a **technical or scientific** dispute,
21 **including a dispute regarding an assessment of risk, response**
22 **activity plan, no further action report, request for certificate of**
23 **completion, initial assessment report, final assessment report,**
24 **closure report, or documentation of due care compliance,** by
25 submitting a petition to the director. However, an issue that was
26 addressed as part of the final decision of the director under
27 section 21332 or that is the subject of a contested case hearing
28 under section 21332 is not eligible for review by the panel. The
29 petition must include the issues in dispute, the relevant facts

1 ~~upon~~**on** which the dispute is based, factual data, analysis,
2 opinion, and supporting documentation for the petitioner's
3 position. The petitioner shall also submit a fee of \$3,500.00. If
4 the director believes that the dispute may be able to be resolved
5 without convening the panel, the director may contact the
6 petitioner regarding the issues in dispute and may negotiate a
7 resolution of the dispute. This negotiation period must not exceed
8 45 days. If the dispute is resolved without convening the panel,
9 any fee that is submitted with the petition ~~shall~~**must** be returned.

10 (8) If a dispute is not resolved ~~pursuant to~~**under** subsection
11 (7), the director shall schedule a meeting of 5 members of the
12 panel, selected on the basis of their relevant expertise, within 45
13 days after receiving the original petition. If the dispute involves
14 an underground storage tank system, at least 3 of the members
15 selected must have relevant experience in the American Society for
16 Testing and Materials risk-based corrective action processes
17 described in part 213. A member selected for the dispute resolution
18 process shall agree not to accept employment by the person bringing
19 the dispute before the panel, or to undertake any employment
20 concerning the facility in question for a period of 1 year after
21 the decision has been rendered on the matter if that employment
22 would represent more than 5% of the member's gross revenue in any
23 of the preceding 3 years. The director shall provide a copy of all
24 supporting documentation to members of the panel who will hear the
25 dispute. An alternative member may be selected by the director to
26 replace a member who is unable to participate in the dispute
27 resolution process. Any action by the members selected to hear the
28 dispute requires a majority of the votes cast. The members selected
29 for the dispute resolution process shall elect a chairperson of the

1 dispute resolution process. At a meeting scheduled to hear the
2 dispute, representatives of the petitioner and the department must
3 each be afforded an opportunity to present their positions to the
4 panel. The fee that is received by the director along with the
5 petition ~~shall~~**must** be forwarded to the state treasurer for deposit
6 into the fund.

7 (9) Within 45 days after hearing the dispute, the members of
8 the panel who were selected for and participated in the dispute
9 resolution process shall make a recommendation regarding the
10 petition and provide written notice of the recommendation to the
11 director of the department and the petitioner. The written
12 recommendation must include the specific scientific or technical
13 rationale for the recommendation. The panel's recommendation
14 regarding the petition may be to adopt, modify, or reverse, in
15 whole or in part, the department's decision that is the subject of
16 the petition. If the panel does not make its recommendation within
17 this 45-day time period, the decision of the department is the
18 final decision of the director.

19 (10) Within 60 days after receiving written notice of the
20 panel's recommendation, the director shall issue a final decision,
21 in writing, regarding the petition. However, this time period may
22 be extended by written agreement between the director and the
23 petitioner. If the director agrees with the recommendation of the
24 panel, the department shall incorporate the recommendation into its
25 response to the response activity plan, no further action report,
26 request for certificate of completion, initial assessment report,
27 final assessment report, closure report, or documentation of due
28 care compliance. If the director rejects the recommendation of the
29 panel, the director shall issue a written decision to the

1 petitioner with a specific rationale for rejecting the
2 recommendation of the panel. If the director fails to issue a final
3 decision within the time period provided for in this subsection,
4 the recommendation of the panel ~~shall~~**must** be considered the final
5 decision of the director. The final decision of the director under
6 this subsection is subject to review ~~pursuant to~~**in accordance with**
7 section 631 of the revised judicature act of 1961, 1961 PA 236, MCL
8 600.631.

9 (11) ~~Upon~~**On** request of the director, the panel shall make a
10 recommendation to the department on whether a member should be
11 removed from the panel for noncompliance with this part. ~~Prior to~~
12 **Before** making this recommendation, the panel may convene a peer
13 review panel to evaluate the conduct of the member.

14 (12) A member of the panel shall not participate in the
15 dispute resolution process for any appeal in which that member has
16 a conflict of interest. The director shall select a member of the
17 panel to replace a member who has a conflict of interest under this
18 subsection. For purposes of this subsection, a member has a
19 conflict of interest if a petitioner has hired that member or the
20 member's employer on any environmental matter within the preceding
21 3 years.

22 (13) As used in this section, ÷

23 ~~(a) "Dispute" means any disagreement over a technical,~~
24 ~~scientific, or administrative issue, including, but not limited to,~~
25 ~~disagreements over assessment of risk, response activity plans,~~
26 ~~remedial action plans, no further action reports, certificates of~~
27 ~~completion, documentation of due care compliance under this part,~~
28 ~~determinations of whether a person has submitted sufficient~~
29 ~~information for the department to make a decision regarding a~~

1 ~~submittal under this part or part 213, and initial assessment~~
 2 ~~reports, final assessment reports, closure reports, postclosure~~
 3 ~~plans, and documentations of due care compliance under part 213.~~

4 ~~(b) "Relevant"~~**relevant** experience" means active participation
 5 in the preparation, design, implementation, and assessment of
 6 remedial investigations, feasibility studies, interim response
 7 activities, and remedial actions under this part or experience in
 8 the American ~~society~~**Society** for ~~testing~~**Testing** and ~~materials~~
 9 **Materials** risk-based corrective action processes described in part
 10 213. This experience must demonstrate the exercise of sound
 11 professional judgment and knowledge of the requirements of this
 12 part or part 213, or both.

13 Sec. 20114g. (1) A person ~~may~~**shall** submit to the department
 14 documentation of due care compliance regarding a facility. The
 15 documentation of due care compliance ~~shall~~**must** be submitted on a
 16 form provided by the department and ~~shall~~ contain documentation of
 17 compliance with section 20107a ~~,~~ and **any** other information required
 18 by the department.

19 (2) Within 45 business days after receipt of the documentation
 20 of due care compliance under subsection (1) containing sufficient
 21 information for the department to make a decision, the department
 22 shall approve, approve with conditions, or deny the documentation
 23 of due care compliance. If the department does not approve the
 24 documentation of due care compliance, the department shall provide
 25 the person that submitted the documentation the reasons why the
 26 documentation of due care compliance was not approved.

27 (3) A person that disagrees with a decision of the department
 28 under this section may submit a petition for review of scientific
 29 or technical disputes to the response activity review panel

1 ~~pursuant to~~ **in accordance with** section 20114e.

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

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

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

12 (c) An owner or operator of a facility ~~who~~ **that** becomes an
13 owner or operator on or after June 5, 1995, unless the owner or
14 operator complies with either of the following:

15 (i) A baseline environmental assessment **that meets the**
16 **requirements under section 20107a(1)(g)** is conducted ~~prior to~~
17 **before** or within 45 days after the earlier of the date of purchase,
18 occupancy, or foreclosure, and the owner or operator provides the
19 baseline environmental assessment to the department and subsequent
20 purchaser or transferee within 6 months after the earlier of the
21 date of purchase, occupancy, or foreclosure. For purposes of this
22 section, assessing property to conduct a baseline environmental
23 assessment does not constitute occupancy.

24 (ii) The owner or operator requests and receives from the
25 department a determination that its failure to comply with the time
26 frames in subparagraph (i) when conducting and submitting a baseline
27 environmental assessment was inconsequential.

28 (d) A person ~~who~~ **that** by contract, agreement, or otherwise
29 arranged for disposal or treatment, or arranged with a transporter

1 for transport for disposal or treatment, of a hazardous substance
2 owned or possessed by the person, by any other person, at a
3 facility owned or operated by another person and containing the
4 hazardous substance. This subdivision does not include any of the
5 following:

6 (i) A person ~~who, that~~, on or after June 5, 1995, arranges for
7 the sale or transport of a secondary material for use in producing
8 a new product. As used in this subparagraph, "secondary material"
9 means scrap metal, paper, plastic, glass, textiles, or rubber, that
10 ~~has demonstrated~~ **demonstrates** reuse or recycling potential and ~~has~~
11 ~~been~~ **is** separated or removed from the solid waste stream for reuse
12 or recycling, whether or not subsequent separation and processing
13 is required, if substantial amounts of the material are
14 consistently used in the manufacture of products that may otherwise
15 be produced from a raw or virgin material.

16 (ii) A person ~~who, prior to that, before~~ June 5, 1995, arranges
17 for the sale or transport of a secondary material for use in
18 producing a new product unless the state has incurred response
19 activity costs associated with these secondary materials ~~prior to~~
20 **before** December 17, 1999. As used in this subparagraph, "secondary
21 material" means scrap metal, paper, plastic, glass, textiles, or
22 rubber, that ~~has demonstrated~~ **demonstrates** reuse or recycling
23 potential and ~~has been~~ **is** separated or removed from the solid waste
24 stream for reuse or recycling, whether or not subsequent separation
25 and processing is required, if substantial amounts of the material
26 are consistently used in the manufacture of products that may
27 otherwise be produced from a raw or virgin material.

28 (iii) A person ~~who that~~ arranges the lawful transport or
29 disposal of any product or container that is commonly used in a

1 residential household, is in a quantity commonly used in a
2 residential household, and was used in the person's residential
3 household.

4 (iv) A person ~~who~~**that** stores or uses or arranges for the
5 storage or use of a beneficial use by-product or inert material in
6 compliance with part 115.

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

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

11 **(g) A person that fails to submit documentation of due care**
12 **compliance under section 20114g.**

13 (2) Subject to section 20107a, an owner or operator ~~who~~**that**
14 complies with subsection (1)(c)(i) and (ii) is not liable for
15 contamination existing at the facility at the earlier of the date
16 of purchase, occupancy, or foreclosure, unless the person is
17 responsible for an activity causing the contamination existing at
18 the facility. Subsection (1)(c) does not alter a person's liability
19 with regard to a subsequent release or threat of release at a
20 facility if the person is responsible for an activity causing the
21 subsequent release or threat of release.

22 (3) Notwithstanding subsection (1), the following persons are
23 not liable under this part with respect to contamination at a
24 facility resulting from a release or threat of release unless the
25 person is responsible for an activity causing that release or
26 threat of release:

27 (a) ~~The~~**This** state or a local unit of government that acquired
28 ownership or control of a facility involuntarily through
29 bankruptcy, tax delinquency, abandonment, or other circumstances in

1 which the government involuntarily acquires title or control by
2 virtue of its governmental function or as provided in this part; a
3 local unit of government to which ownership or control of a
4 facility is transferred by ~~the~~**this** state or by another local unit
5 of government that is not liable under subsection (1); or ~~the~~**this**
6 state or a local unit of government that acquired ownership or
7 control of a facility by seizure, receivership, or forfeiture
8 ~~pursuant to~~**in accordance with** the operation of law or by court
9 order.

10 (b) A state or local unit of government that holds or acquires
11 an easement interest in a facility, holds or acquires an interest
12 in a facility by dedication in a plat, or by dedication ~~pursuant to~~
13 **in accordance with** 1909 PA 283, MCL 220.1 to 239.6, or otherwise
14 holds or acquires an interest in a facility for a transportation or
15 utility corridor, including sewers, pipes, and pipelines, or public
16 right of way.

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

22 (d) A person ~~who~~**that** owns severed subsurface mineral rights
23 or severed subsurface formations or who leases subsurface mineral
24 rights or formations.

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

29 (f) A person ~~who~~**that** owns or occupies residential real

1 property if hazardous substance use at the property is consistent
2 with residential use.

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

7 (h) A person ~~who~~**that** did not know and had no reason to know
8 that the property was a facility. To establish that the person did
9 not know and did not have a reason to know that the property was a
10 facility, the person shall have undertaken at the time of
11 acquisition all appropriate inquiry into the previous ownership and
12 uses of the property consistent with good commercial or customary
13 practice. A determination of liability under this subdivision ~~shall~~
14 **must** take into account any specialized knowledge or experience on
15 the part of the person, the relationship of the purchase price to
16 the value of the property if uncontaminated by a hazardous
17 substance, commonly known or reasonable ascertainable information
18 about the property, the obviousness of the presence or likely
19 presence of a release or threat of release at the property, and the
20 ability to detect a release or threat of release by appropriate
21 inspection.

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

26 (j) A lessee ~~who~~**that** uses the leased property for a retail,
27 office, or commercial purpose regardless of the level of the
28 lessee's hazardous substance use.

29 (k) A person ~~who~~**that** holds a license, easement, or lease, or

1 ~~who~~**that** otherwise occupies or operates property, for the purpose
 2 of siting, constructing, operating, or removing a wind energy
 3 conversion system or any component of a wind energy conversion
 4 system. As used in this subdivision, "wind energy conversion
 5 system" means that term as defined in section 13 of the clean ~~and~~
 6 renewable **energy** ~~and efficient~~ energy **waste reduction** act, 2008
 7 PA 295, MCL 460.1013.

8 (l) A person ~~who~~**that** owns or occupies a residential
 9 condominium unit for both of the following:

10 (i) Contamination of the unit if hazardous substance use within
 11 the unit is consistent with residential use.

12 (ii) Contamination of any general common element, limited
 13 common element, or common area in which the person has an ownership
 14 interest or right of occupation by reason of owning or occupying
 15 the residential condominium unit.

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

18 (a) The owner or operator of property at or from which there
 19 is a release or threat of release and the release or threat of
 20 release is subject to corrective action under part 111 or is being
 21 addressed as part of a corrective action under part 111. A
 22 corrective action under part 111 may be implemented using processes
 23 and cleanup criteria, as appropriate, under this part. However, a
 24 release or threat of release that is subject to or that has been or
 25 is being addressed through part 111 corrective action ~~shall~~**must**
 26 not also be subject to remediation and department oversight under
 27 this part.

28 (b) A lender that engages in or conducts a lawful marshalling
 29 or liquidation of personal property if the lender does not cause or

1 contribute to the environmental contamination. This includes
2 holding a sale of personal property on a portion of the facility.

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

6 (d) A person ~~who~~**that** owns or operates a facility in which the
7 release or threat of release was caused solely by 1 or more of the
8 following:

9 (i) An act of God.

10 (ii) An act of war.

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

15 (e) Any person for environmental contamination addressed in a
16 no further action report that is approved by the department or is
17 considered approved under section 20114d. However, a person may be
18 liable under this part for the following:

19 (i) A subsequent release not addressed in the no further action
20 report if the person is otherwise liable under this part for that
21 release.

22 (ii) Environmental contamination that is not addressed in the
23 no further action report and for which the person is otherwise
24 liable under this part.

25 (iii) If the no further action report relies on land use or
26 resource use restrictions, an owner or operator who desires to
27 change those restrictions is responsible for any response
28 activities necessary to comply with this part for any land use or
29 resource use other than the land use or resource use that was the

1 basis for the no further action report.

2 (iv) If the no further action report relies on monitoring
3 necessary to ensure the effectiveness and integrity of the remedial
4 action, an owner or operator who is otherwise liable for
5 environmental contamination addressed in a no further action report
6 is liable under this part for additional response activities
7 necessary to address any potential exposure to the environmental
8 contamination demonstrated by the monitoring in excess of the
9 levels relied on in the no further action report.

10 (v) If the remedial actions that were the basis for the no
11 further action report fail to meet performance objectives that are
12 identified in the no further action report, an owner or operator
13 ~~who~~**that** is otherwise liable for environmental contamination
14 addressed in the no further action report is liable under this part
15 for response activities necessary to satisfy the performance
16 objectives or otherwise comply with this part.

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

27 (6) In establishing liability under this section, the
28 department bears the burden of proof.

29 (7) Notwithstanding subsection (1)(c), if the owner or

1 operator of the facility became the owner or operator of the
 2 facility on or after June 5, 1995 and ~~prior to~~**before** March 6,
 3 1996, and the facility contains an underground storage tank system
 4 as defined in part 213, that owner or operator is liable under this
 5 part only if the owner or operator is responsible for an activity
 6 causing a release or threat of release.

7 (8) An owner or operator ~~who~~**that** was in compliance with
 8 subsection (1)(c)(i) and (ii) ~~prior to~~**before** December 14, 2010 is
 9 considered to be in compliance with subsection (1)(c)(i) and (ii).

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

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

16 (b) Any other costs of response activity reasonably incurred
 17 under the circumstances by any other person.

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

22 (2) The costs of response activity recoverable under
 23 subsection (1) ~~shall~~**must** also include all costs of response
 24 activity reasonably incurred by ~~the~~**this** state ~~prior to~~**before** the
 25 promulgation of rules relating to the selection and implementation
 26 of response activity under this part **or before the cleanup criteria**
 27 **are developed or revised under section 20120a**, excepting those
 28 cases where cost recovery actions have been filed before July 12,
 29 1990. A person ~~challenging~~**that challenges** the recovery of costs

1 under this subdivision has the burden of establishing that the
2 costs were not reasonably incurred under the circumstances that
3 existed at the time the costs were incurred.

4 (3) The amounts recoverable in an action under this section
5 ~~shall include~~ interest. This interest ~~shall accrue~~ **accrues** from the
6 date payment is demanded in writing, or the date of the expenditure
7 or damage, whichever is later. The rate of interest on the
8 outstanding unpaid balance of the amounts recoverable under this
9 section ~~shall~~ **must** be the same rate as is specified in section
10 6013(8) of the revised judicature act of 1961, 1961 PA 236, MCL
11 600.6013.

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

25 (5) A person shall not be required under this part to
26 undertake response activity for a permitted release. Recovery by
27 any person for response activity costs or damages resulting from a
28 permitted release ~~shall~~ **must** be ~~pursuant to~~ **in accordance with**
29 other applicable ~~law,~~ **laws**, in lieu of this part. With respect to a

1 permitted release, this subsection does not affect or modify the
 2 obligations or liability of any person under any other state law,
 3 including common law, for damages, injury, or loss resulting from a
 4 release of a hazardous substance or for response activity or the
 5 costs of response activity.

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

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

17 **(8) A person that does not comply with a reporting requirement**
 18 **specified under this part or a request by the department for**
 19 **documentation is subject to a civil fine as follows:**

20 (a) For a first offense, a civil fine of not more than
 21 \$500.00.

22 (b) For a second offense, a civil fine of not more than
 23 \$5,000.00.

24 (c) For a third or subsequent offense, a civil fine of not
 25 more than \$10,000.00.

26 (9) The prosecutor of the county in which the violation
 27 occurred or the attorney general may bring an action to collect the
 28 civil fines described under subsection (8).

29 Enacting section 1. Section 20114a of the natural resources

1 and environmental protection act, 1994 PA 451, MCL 324.20114a, is
2 repealed.

3 Enacting section 2. This amendatory act does not take effect
4 unless all of the following bills of the 102nd Legislature are
5 enacted into law:

6 (a) Senate Bill No. 606.

7

8 (b) Senate Bill No. 607.